

BRIEFING

Gambling with lives

How a bad policy wrecked the UK asylum system

Overview

For three years now, the UK's approach to asylum has lurched from one controversy to another. Ministers make outrageous statements vilifying people seeking sanctuary. People are confined on a barge or in isolated and decrepit former barracks. Acts of Parliament seek to remove judicial scrutiny, so that official action can proceed unhampered by law.

All these controversies are serious in themselves, with real and dire consequences for people, efficient administration and the rule of law. But they are just the symptoms of the irresponsible policy that underpins them all.

The UK government's asylum policy is to refuse to process the asylum claims of people coming to the country in search of safety. It has proved disastrous from almost any perspective. It has failed to achieve the aims that ministers stated for it. It has done much harm to many people. And its impact on the administration and cost of the asylum system has been ruinous.

But ministers refuse to face the facts. Instead, they repeatedly double down on the policy – and each time the outcome of the gamble is more chaos, harm and expense.

This briefing explains the policy in more detail and traces its development. It then outlines some of its most harmful impacts and how the damage has worsened with time. The conclusion is clear: the only way to repair the damage is to abandon the policy.

The policy

The policy is to refuse to accept responsibility for the asylum claims of people who arrive in the UK without prior permission. Such claims are to be treated as 'inadmissible' (not allowed in) to the UK asylum decision-making process. If people persist with their claims, the intention is to transport them, along with all responsibility for them and their claims, to a third country – not their home country, from which they are seeking protection against persecution, but somewhere else.

The aim of this policy is to deter people from coming to the UK. Ministers have repeatedly claimed that refusing to process people's claims will dissuade people from travelling here. This, they say, will reduce dangerous, sometimes fatal, journeys and reduce the power and profits of organised and ruthless criminal gangs who control those journeys. Ministers also claim the policy is needed to create and maintain a cost-effective and efficient asylum system: one that will deliver on the UK's international obligations, including its shared responsibility to provide asylum, with priority given to people of especial vulnerability and need.

- ▶ The policy was first introduced by immigration rules made by the home secretary and laid before Parliament on 10 December 2020, to take effect at 11pm, 31 December 2020.¹ The timing coincided with the completion of the UK's transitional departure from the European Union, because of which the UK was no longer a member of EU arrangements for allocating responsibility for asylum claims made on the territory of EU member states.² Under those arrangements, the UK had transported people seeking asylum from the UK to other EU countries, and received people seeking asylum from those countries – neither in any great number.³

Since then, the policy has become law under the Nationality and Borders Act 2022.⁴ This Act limited the home secretary's ability to take responsibility for asylum claims, but left some discretion. The home secretary could decide to treat a claim as admissible to begin with, or reverse a decision that a claim is inadmissible.⁵ The Illegal Migration Act 2023, however, will – if it ever comes into force fully – remove that discretion altogether.⁶ The policy would then be mandatory, permanent and inflexible.⁷ It would apply to people arriving in the UK on or after 20 July 2023.

Legality of the policy

The policy is in breach of the UK's international law obligations under the 1951 Refugee Convention. That convention requires all states to share responsibility for receiving refugees from persecution and providing asylum to them. The UNHCR, the UN body responsible for refugees and the convention has consistently and forcefully made clear that the UK's various attempts to implement the policy are contrary to international asylum law.⁸

It is a clear breach of the Refugee Convention and other international law to send anyone to a place where they are at risk of being tortured or persecuted, or of being sent on to another such place. That – referred to as *refoulement* – is the key reason why the UK Supreme Court rejected the government's plan to send people to Rwanda.⁹ But international asylum law requires much more:

- It requires all countries to share the responsibility for guaranteeing the right to seek and enjoy asylum from persecution.¹⁰
- It prohibits all countries from punishing people for exercising their right to seek asylum by crossing borders without permission.¹¹
- It does not require that anyone seek asylum in any particular country.¹²

1 Statement of Changes in Immigration Rules (HC 1043). This added new paragraphs 345A to 345D to the rules, introducing the inadmissibility policy.

2 The Dublin Regulations, Regulation (EU) No. 604/2013 of 26 January 2013.

3 A House of Commons Library insight report, *What is the Dublin III Regulation? Will it be affected by Brexit?*, November 2019, identified the UK to have received 2,365 and removed 1,395 people under these arrangements between 2015 and 2018: commonslibrary.parliament.uk/what-is-the-dublin-iii-regulation-will-it-be-affected-by-brexit/

4 Section 16 of the Nationality and Borders Act introduced sections 80B and 80C in the Nationality, Immigration and Asylum Act 2002 on 28 June 2028 (commenced by reg 2, SI 2022/590).

5 Section 80B(1) of the Nationality, Immigration and Asylum Act 2002 empowers the home secretary to declare a claim inadmissible. This remains a matter of the home secretary's discretion (as it was under the previous rules). However, once a claim has been declared inadmissible, the home secretary's discretion to reverse that is made more limited by section 80B(7).

6 Section 5(2) of that Act requires the home secretary to declare claims inadmissible; and section 5(3) requires the home secretary not to determine the claims declared inadmissible.

7 The Act provides no scope for the home secretary to reverse the obligations established under section 5(2) and (3).

8 Among the UNHCR's relevant publications are *Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement*, 8 June 2022; its *Updated Observations on the Nationality and Borders Bill as amended*, January 2022; and its *Legal Observations on the Illegal Migration Bill*, May 2023.

9 [2023] UKSC 42, 15 November 2023.

10 Responsibility-sharing is expressly identified as an underlying principle in the Preamble to the 1951 Refugee Convention.

11 Article 31 prohibits the principle of penalisation. The non-penalisation is further discussed in the UNHCR analysis, see footnote 8.

12 Notwithstanding assertions of a 'first country' or 'first safe country' principle, no such principle is to be found in international asylum law (including the 1951 Refugee Convention).

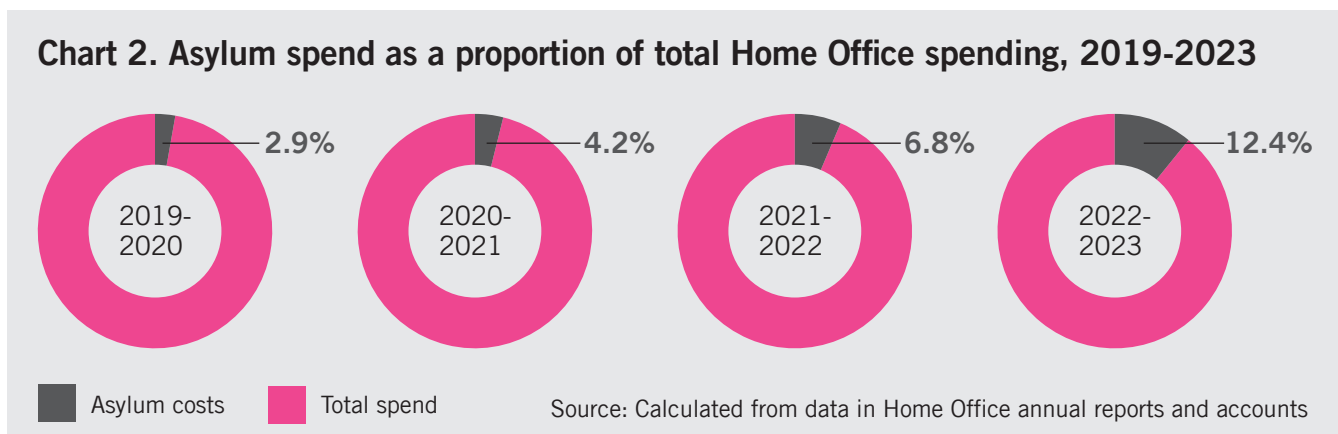
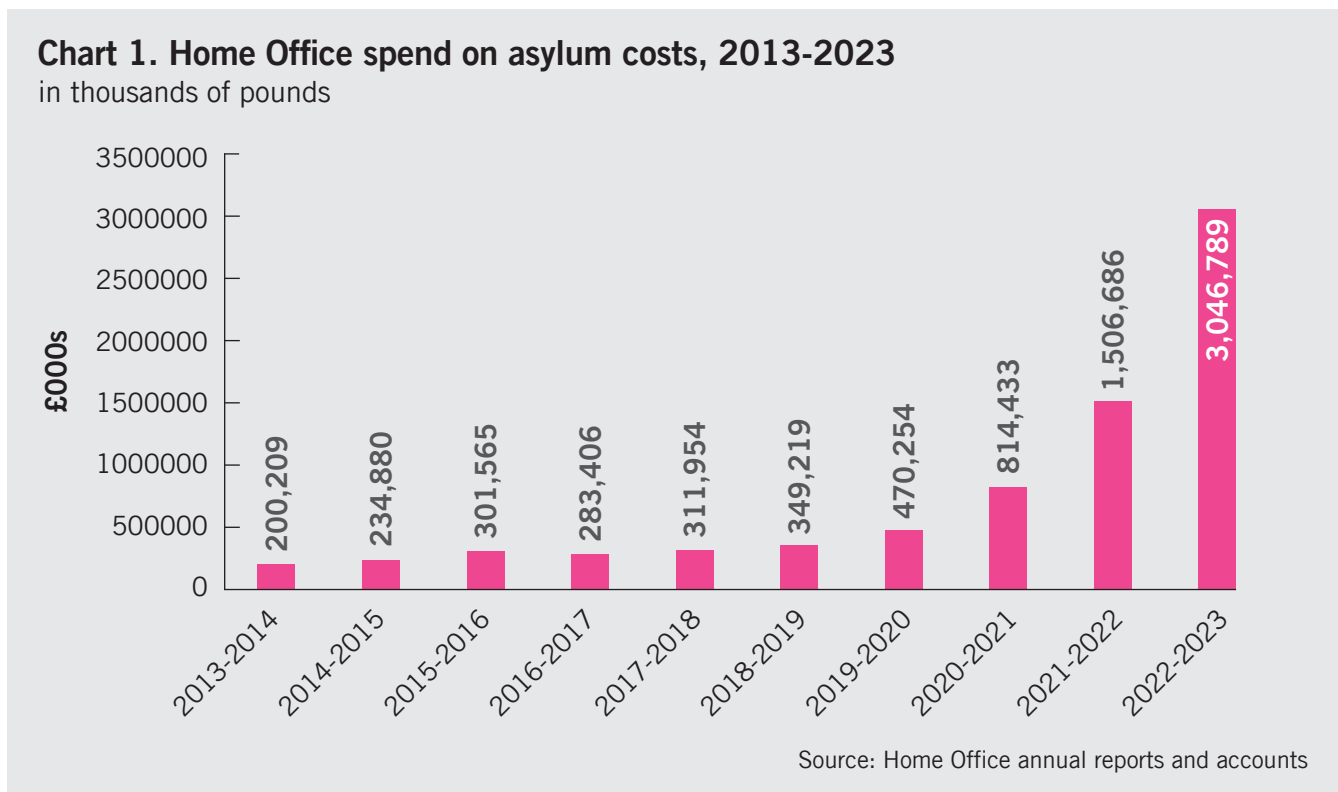
- ▶ The UK policy is consistent with none of this. Indeed, if others were to follow the UK by also refusing the responsibilities that fall to them, the whole international system for protecting refugees could soon break down entirely.

The financial cost

Part of the cost of this policy can be assessed direct from the Home Office annual report and accounts. Since 2012-2013, these have included a figure for ‘asylum costs’. Their importance lies not merely in the staggering waste of public money, but also in the lost opportunity to spend money in ways that would truly aid people seeking asylum and assist efficient delivery of the UK’s asylum responsibilities.

In 2012-2013, annual asylum costs were recorded as £201 million. Seven years later, in 2019-2020, they had risen to £470 million. In 2020-21, the year in which the policy was introduced, they rose to £814 million. In 2022-2023, they surpassed £3 billion.

One aspect of the policy – transporting people to Rwanda – needed a ‘ministerial direction’ from the home secretary – a political authorisation required when the department’s accounting officer cannot confirm the policy will be ‘value for money’.



- ▶ The ministerial direction, given in April 2022, stated that ‘there are also credible invest-to-save arguments in the long term.’¹³ At that time, the annual asylum costs for 2021-2022 (over £1.5 billion) had doubled from 2020-2021 (£814 million). They doubled again after that direction.

In its legal position – published alongside the Safety of Rwanda (Asylum and Immigration) Bill, currently before Parliament – the Home Office warns that without the bill, the costs of asylum accommodation alone could rise to around £11 billion by 2026.¹⁴ This figure is taken from the department’s impact assessment on its previous legislation (now the Illegal Migration Act 2023). In early February 2024, the home secretary indicated he would seek parliamentary approval for funding to meet a £2.6 billion Home Office overspend for 2023-24.¹⁵

The impact assessment on the Illegal Migration Act,¹⁶ just like the impact assessment on the Safety of Rwanda (Asylum and Immigration) Bill,¹⁷ considers only two options: persist with the policy as it is, or increase its severity through legislation. It does not consider the potential impact of any other course of action.

The human cost

No single measurement can capture the human cost of the policy. Here, we consider the lives lost, the endless uncertainty imposed and the risks of exploitation (including human trafficking and modern slavery). The policy has exacerbated all of these. Yet reducing loss of life and risk of exploitation is declared to be a key aim of the policy. And the uncertainty caused by failure to resolve claims is a menace to both administrative efficiency and any real care for people to whom the policy is applied.

Lives lost

The missing migrants project of the International Organisation for Migration (IOM) has recorded 239 people confirmed dead or missing on the Channel crossing since 2014.¹⁸ The most recent loss of life occurred on 14 January 2024, when five people died at sea. The worst incident since the policy went into operation (31 December 2020) was on 24 November 2021, when 31 people drowned. Despite the ministerial and media fixation on boat crossings, the greatest loss of life since 2014 occurred on 23 October 2019, when 39 people were found dead in a refrigerated trailer in Essex.

We cannot know how many more deaths went unrecorded. Nonetheless, two things are clear. First, since the policy’s inception, substantial loss of life on the Channel crossing has continued. IOM data shows that the last full month without anyone known to have died or gone missing was June 2023. Second, journeys by boat – while undoubtedly dangerous – are not the only dangerous route by which people without safe alternatives seek to come to the UK.

Lives are also lost in the UK asylum system. Independent investigations have confirmed that since the policy was introduced, there has been a significant increase in both the number of people taking their own lives in Home Office asylum accommodation and the number of other deaths in such

13 The ministerial direction is at: [gov.uk/government/publications/migration-and-economic-development-partnership-ministerial-direction](https://www.gov.uk/government/publications/migration-and-economic-development-partnership-ministerial-direction)

14 UK government, *Safety of Rwanda (Asylum and Immigration) Bill 2023: legal position*, Policy paper, 11 December 2023 [gov.uk/government/publications/safety-of-rwanda-asylum-and-immigration-bill-2023-legal-position/safety-of-rwanda-asylum-and-immigration-act-2023-legal-position-accessible](https://www.gov.uk/government/publications/safety-of-rwanda-asylum-and-immigration-bill-2023-legal-position/safety-of-rwanda-asylum-and-immigration-act-2023-legal-position-accessible)

15 Written Statement of the home secretary: Home Office Funding 2023-24, 1 February 2024.

16 Home Office Impact Assessment, HO 0438, 26 June 2023.

17 Home Office Economic Note, HOEN 0036, 11 December 2023.

18 Missing Migrants Project, missingmigrants.iom.int/

▶ accommodation.¹⁹ An increase has also been documented in the mortality rate of babies born to people seeking asylum in the UK since the policy's introduction.²⁰

Lives in limbo

The policy has left an increasing number of people in limbo, their status in the UK unresolved. There are two factors behind this. One is the direct impact of the policy: because ministers have chosen not to admit, consider and decide asylum claims, people are left indefinitely awaiting a decision which may never come. The other is the government's inability to remove people caught by the policy from the UK. In effect, people are stuck here – potentially forever. In the great majority of cases, they are stuck in Home Office asylum accommodation (an immigration detention centre, the Bibby Stockholm barge, a B&B or hotel, former military barracks, asylum housing and so on).²¹

There are two reasons for the government's inability to remove people from the UK. First, refusing to determine whether someone is a refugee means the person cannot be safely returned to their country of origin (even if a proper examination of their claim would show they are not a refugee and not at risk there). Second, throughout the time of the policy's operation, the government has had no effective arrangement with any third country for it to receive people. Rwanda is the only country with which there is an arrangement – first made in April 2022 – but that has been shown to be unsafe.²²

Exploitation

Measuring exploitation is particularly difficult. Smugglers, human traffickers, modern slavers and other abusers – whether individuals or organised criminal gangs – rarely flaunt their abuses. Easier to measure are the conditions in which exploitation thrives.

There is every reason to conclude that exploitation is thriving. While the government's asylum policy may not deter people from making journeys, there are indications that it deters people from maintaining contact with the Home Office. Many people, including children, are going missing from the asylum system.²³

How many people may be avoiding that system altogether is unknown. If more people feel they must travel in hiding, more tragedies such as the trailer deaths in Essex in October 2019 can be expected. Certainly, we should expect human suffering from criminal exploitation to increase, whether in the UK or on journeys to this country. The human, social and financial costs of that cannot be precisely calculated, but they will be dreadful.

19 Liberty Investigates has reported on each of these matters with data compiled from FOI requests: libertyinvestigates.org.uk/articles/suicides-of-asylum-seekers-in-home-office-accommodation-double-in-last-four-years/

20 Liberty Investigates has also reported on infant deaths: libertyinvestigates.org.uk/articles/not-safe-for-babies-calls-for-investigation-after-shocking-infant-deaths-in-asylum-seeker-housing/

21 Much of this accommodation is inadequate. Throughout the period of the policy, there have been frequent reports of such accommodation providing inhuman and dangerous conditions for people housed or held there, including outbreaks of potentially fatal disease and overcrowding.

22 The Memorandum of Understanding between the governments of the UK and Rwanda ('the MoU') was first published in April 2022. In December 2023, it was replaced by a treaty between the governments.

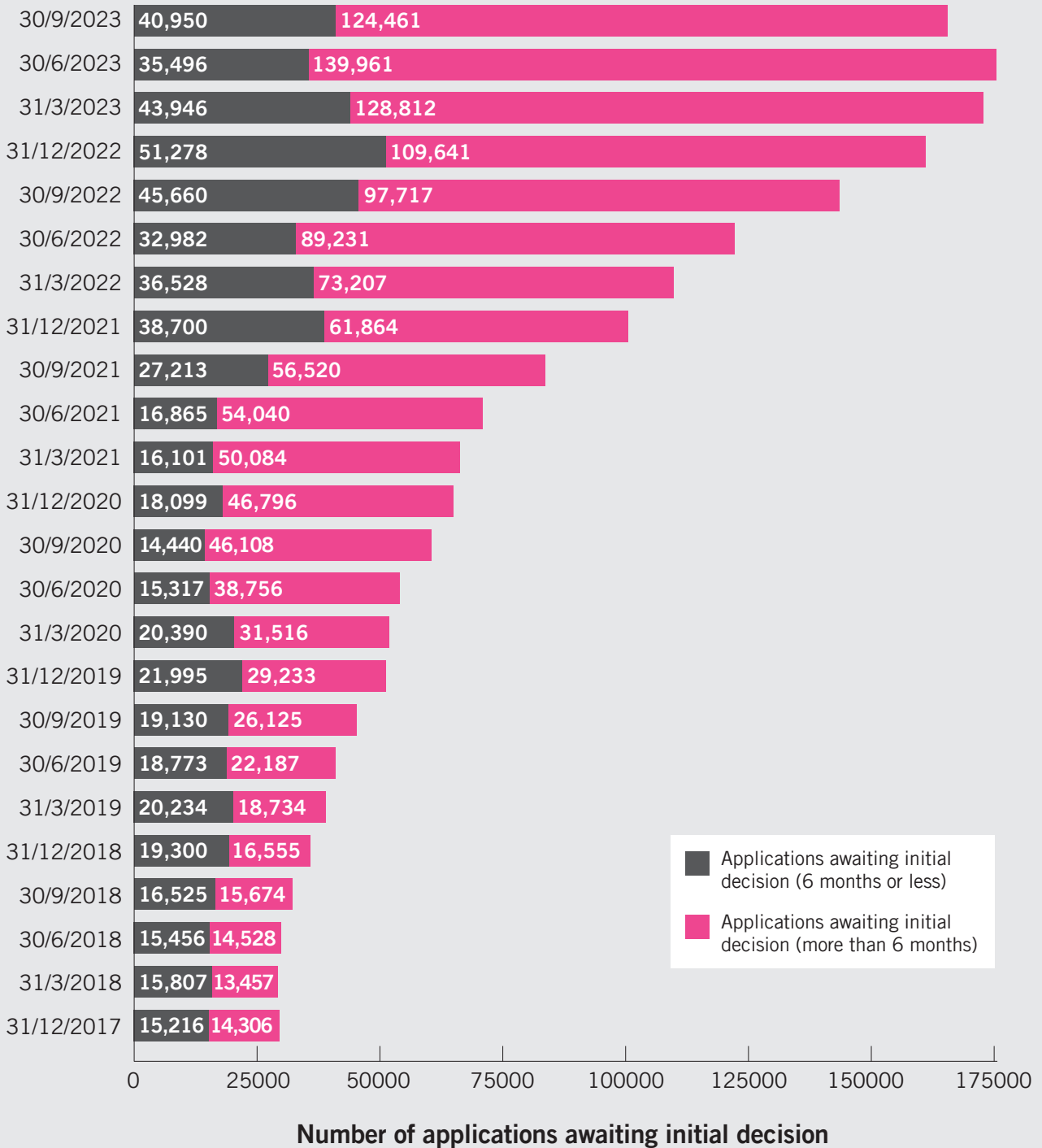
23 This was discussed in a Home Office evidence session before the Home Affairs Committee on 29 November 2023, Q204-Q213. Earlier, that session discussed the whereabouts of up to 17,316 people; officials accepted they thought the department did not know where all of them were, without confirming whether it knew where any of them were, Q134. See Home Affairs Committee, Oral Evidence: Work of the Home Office, HC 356.

► The asylum backlog

The 'asylum backlog' is the number of people awaiting a Home Office decision on the asylum claim that they have made (main claimants) or on which they are dependent (dependent partners and children). From the introduction of the policy, this backlog rose quickly.

Chart 3. Asylum claims awaiting first decision, 31 December 2017-30 September 2023

Data presented below includes dependants on an outstanding application. It does not include fresh claims.



Source: Home Office: Immigration system statistics, quarterly release for year ending September 2023, Table Asy_D03

- ▶ Ministers sometimes refer to the ‘legacy backlog’.²⁴ Just a part of the total backlog, this includes only those claimants (and any dependants), who applied for asylum before 28 June 2022.²⁵ The new designation marked a belated effort to slow and reduce the asylum backlog without abandoning the policy.

When ministers refer to ‘clearing the legacy backlog’, they do not necessarily mean resolving the asylum claims in it. Rather, they mean making decisions on the claims. The claim will be resolved if the decision is to grant asylum. However, if the decision is to refuse asylum, the person may remain in the asylum system if pursuing an appeal.

A third type of decision can be made: to neither grant nor refuse asylum. These are referred to as ‘non-substantive’ decisions and they too are deemed to be clearing the backlog. Such decisions can include concluding that the claim is withdrawn because the person has left the UK or has asked to withdraw their claim. However, they also include decisions to treat a claim as withdrawn because, it is said, the claimant failed to comply with the process, for example by not returning a Home Office questionnaire or not attending an interview with the Home Office.

But has the person really withdrawn their claim? Have they really left the UK? Given the increasing chaos that the asylum policy has caused and the ever-swelling backlog, does anyone in the department really know?

The government’s claim at the beginning of 2024 to have cleared the legacy backlog is misleading in at least three ways:²⁶

- The government has acknowledged that more than 4,500 claims are yet to be decided.²⁷
- In 2022 and 2023, nearly 50,000 claims received a non-substantive decision. The likelihood is that many of these claims will have to be dealt with eventually. Already, the Home Office has accepted that more than 5,500 claims concern people who remain in the UK. Those claims it will have to resolve.²⁸
- The portion of the asylum backlog outside the legacy has continued to grow and the prospects are that it will continue to do so. Indeed, if the Illegal Migration Act 2023 is fully enforced, this looks inevitable. An increasing number of claims will never be decided because the Act leaves the government no flexibility: it cannot process the claims.

A failed policy

The refusal to process asylum claims has not deterred people from coming to the UK. People who seek asylum and attempt dangerous journeys do so out of necessity. Ministers and others have sought to convince themselves and the public that people attempt these journeys for far less compelling reasons. They claim that people are safe elsewhere – in France for instance.

This is an extreme example of making policy without any serious understanding of the people and the circumstances to which it will apply. The resulting policy does not work, and by promising what it cannot deliver, it inflames attitudes and tensions that it can never satisfy.

24 See for example *Hansard HC*, 15 November 2023: Col 651 and 15 January 2024: Col 557 per the home secretary.

25 The date is when the various asylum provisions in the Nationality and Borders Act 2022, and their application to claims made on or after that date, came into force.

26 On 2 January 2024, the Home Office published a ‘news story’ accompanied by a set of ad hoc statistics: [gov.uk/government/news/legacy-backlog-cleared-as-plan-to-stop-the-boats-delivers](https://www.gov.uk/government/news/legacy-backlog-cleared-as-plan-to-stop-the-boats-delivers)

27 See footnote 26.

28 As reported by the BBC (among others) on 19 January 2024: [bbc.co.uk/news/uk-politics-68026423](https://www.bbc.co.uk/news/uk-politics-68026423)

- ▶ In addition to the dreadful human and financial cost, the policy has two further consequences:
- By refusing to take (or share) responsibility for asylum claims, the UK government encourages others (including other governments) to shirk their own responsibilities. More people are left unwelcomed and unsafe, needing to attempt onward journeys in search of safety and readily exploitable.
 - Ministers' pursuit of this policy creates ever greater tension between the government and the courts (UK courts as well as the European Court of Human Rights). Increasingly, ministers are steering Parliament into direct tension with the courts. The Safety of Rwanda (Asylum and Immigration) Bill is the most recent and most alarming example, but its immediate predecessors did so too.

This policy has cost human lives. It has also wasted money, wrecked the UK's asylum system and flouted international law. Yet ministers just will not let it go. They ignored warnings of what would happen, and evidence of what did happen. The more the policy fails, the more extreme are the attempts to resurrect it. Ministers strive to drown out criticism with increasingly intemperate rhetoric, to shore up support with increasingly unrealistic promises, and to overcome practical and legal obstacles with increasingly ill-advised legislation.

It is time to stop gambling with human lives and public money. Ministers and their supporters must recognise that the policy is bad – and always was.

Repairing the damage

The way ahead is clear: abandon the current policy and re-establish an effective asylum system.

An effective system needs to determine the asylum claims that people make in the UK. It must do so as efficiently and fairly as possible. And it must ensure that people identified as being in need of safety have their claim recognised as quickly as possible, and in circumstances that will best enable them to get on with their lives and integrate well.

Co-operation with other countries will be vital in the longer term. Arrangements to return people safely to their countries of origin – if they are not at risk there – can be sought. So can arrangements to enable people to seek asylum in this country without having to rely on smuggling gangs, particularly if they have significant family or other connections here.

Together, countries can undermine smuggling gangs and provide the safety that people fleeing persecution are entitled to – but only if they take and share responsibility. That starts with each country operating an effective asylum system.

► Timeline of the policy

10 Dec 2020	Immigration Rules laid before Parliament to introduce the policy, amid warnings that it will create or exacerbate backlogs
31 Dec 2020	The policy takes effect; for now, it is discretionary 64,895 people are awaiting a first decision on an asylum claim
24 Mar 2021	Home secretary publishes a consultation on her 'New Plan for Immigration'
July 2021	Although about three-quarters of responses to the consultation opposed 'many of the proposals', the government decides to go ahead anyway
24 Nov 2021	27 people die in the Channel
31 Dec 2021	100,564 people are awaiting a first decision on an asylum claim
14 Apr 2022	Home secretary announces UK-Rwanda Memorandum of Understanding
28 Apr 2022	Nationality and Borders Act 2022 receives Royal Assent
30 Oct 2022	People seeking asylum held at Western Jet Foil are attacked with petrol bombs
31 Oct 2022	In responding to the petrol bomb attack, the home secretary describes people seeking asylum as constituting 'an invasion on our southern coast'
13 Dec 2022	Prime minister announces 'the backlog of initial asylum decisions' will be abolished by the end of 2023
31 Dec 2022	160,939 people are awaiting a first decision on an asylum claim
29 Jun 2023	Court of Appeal rules that Rwanda is not safe
20 Jul 2023	Illegal Migration Act 2023 receives Royal Assent
7 Aug 2023	First 39 people moved on to the Bibby Stockholm barge. Legionella identified on the barge the same day and everyone is soon taken off the barge
30 Sep 2023	165,411 people are awaiting a first decision on an asylum claim
15 Nov 2023	Supreme Court rules that Rwanda is not safe
5 Dec 2023	Home secretary announces UK-Rwanda Treaty
7 Dec 2023	Home secretary introduces Safety of Rwanda (Asylum and Immigration) Bill to Parliament
2 Jan 2024	The Home Office announces it has met the prime minister's commitment to clear the 'legacy backlog'. It publishes data showing that more than 50,000 of the claims said to have been cleared have received no substantive decision

Home secretaries over the period

Priti Patel	24 Jul 2019 – 6 Sep 2022
Suella Braverman	6 Sep 2022 – 19 Oct 2022
Grant Shapps	19 Oct 2022 – 25 Oct 2022
Suella Braverman	25 Oct 2022 – 13 Nov 2022
James Cleverly	13 Nov 2022 – present

Prime ministers over the period

Boris Johnson	24 July 2019 – 6 Sep 2022
Elizabeth Truss	6 Sep 2022 – 25 Oct 2022
Rishi Sunak	25 Oct 2022 – present

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