

Research Briefing

24 April 2023

By Melanie Gower,
Joanna Dawson,
CJ McKinney

Illegal Migration Bill: Progress of the Bill



Summary

- 1 Background
- 2 Committee stage
- 3 Remaining stages (Commons)

Image Credit

House of Commons Chamber 1 by UK Parliament. Licensed under CC BY 3.0 / image cropped.

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclibraryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary	4
1 Background	7
1.1 Overview of the Bill	7
1.2 Second reading	7
1.3 Relevant material published since second reading	8
2 Committee stage	10
2.1 Government amendments	10
2.2 Non-government amendments	11
2.3 Other significant issues debated in Committee	13
3 Remaining stages (Commons)	20
3.1 Government amendments	20
3.2 Non-government amendments	28

Summary

The [Illegal Migration Bill](#) was introduced in the Commons on 7 March 2023 and had its second reading on 13 March. Most of the Bill's provisions would apply across all four parts of the UK.

The Bill's purpose is to “prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal ... of certain persons who enter or arrive in the United Kingdom in breach of immigration control”.

The Bill was considered in a Committee of the whole House on 27 and 28 March. It is due to have report and third reading in the Commons on 26 April.

Summary of changes made in Committee

Two new clauses proposed by the Government were added to the Bill without divisions: **clauses 49 and 50** of the Bill as amended in Committee. The new clauses would allow First-Tier Tribunal judges to act as judges of the Upper Tribunal, and for the Special Immigration Appeals Commission (rather than the Upper Tribunal) to hear suspensive claim appeals when the refusal decision is based on information the Secretary of State considers should not be made public.

Various clauses were subject to other Government amendments which were generally minor or consequential.

There were eight divisions on non-Government amendments or new clauses. None were added to the Bill.

During committee stage, the Minister for Immigration gave assurances to various Conservative MPs that the Government was willing to discuss concerns and amendments they had raised before report stage. These included proposed amendments on legal challenges to removal, interim measures of the European Court of Human Rights, the use of scientific age assessment methods, the extension of powers in the Bill to potential victims of trafficking and modern slavery, and proposals to amplify provisions on the availability of safe and legal routes of entry. There are several related Government amendments proposed for report stage.

An updated version of the [Bill as amended in Committee](#) (PDF) has been published.

Issues to be covered at report stage

Government amendments tabled shortly before report stage propose **nine new clauses and a new schedule** for consideration.

The Government's proposed new clauses are:

- **New clause 8** (Report on safe and legal routes). This clause was originally in the name of Tim Loughton. It would require the Secretary of State, within six months of the Bill's enactment, to prepare and publish a report on safe and legal routes of entry to the UK. The Government has also adopted **amendment 11**, also originally proposed by Tim Loughton. It would require consultation with local authorities on the cap on the number of people who may enter the UK through specified safe and legal routes to begin within three months of the Bill's passing.
- **New clause 22** (Interim measures). This clause would forbid the domestic courts from issuing injunctions preventing or delaying removal under the Bill. It is sponsored by the Home Secretary and a number of Conservative MPs, including Danny Kruger, Jonathan Gullis and Sir William Cash.
- **New clause 26** (Interim measures of the European Court of Human Rights). This clause would provide that interim measures of the European court do not affect the clause 2 duty to arrange removal, unless a minister determines that they should.
- **New clause 17** (Serious harm suspensive claims: interpretation). This clause is a replacement for a placeholder clause in the Bill as introduced. It identifies some things that can be accepted as "serious and irreversible harm" for the purpose of legal challenge to removal, and some things that cannot.
- **New clause 20** (Legal aid). This would allow people exercising the remaining rights of legal challenge to removal permitted by the Bill to access state funding for legal costs.
- **New clause 23** (Electronic devices etc) and related **new schedule**. These would give immigration officers powers to search people for mobile phones and other electronic devices.
- **New clause 19** (Credibility of claimant: concealment of information etc). This would extend existing legislation concerning behaviour that must be treated as damaging to an asylum seeker's credibility to include failure to hand over information required to access an electronic device, such as a PIN.
- **New clause 24** (Decisions relating to a person's age) and **new clause 25** (Age assessments: power to make regulations about refusal to consent to scientific methods). These clauses would provide a power to make

regulations about the consequences of a person refusing consent for their age to be assessed by a “specified scientific method”. These consequences could include the person being treated as an adult if they refused consent. People subject to the duty to arrange removal would be prevented from appealing against an age assessment decision, subject to the availability of judicial review.

The Government is also proposing to **leave out two clauses**. These are **clause 8**, concerning removal of family members, and **clause 51**, which was introduced as a placeholder clause for provisions on interim measures of the European Court of Human Rights.

The Government has also tabled many amendments to existing clauses. Significant Government amendments include **amendment 174**, narrowing the power to remove unaccompanied children in clause 3(2) and **amendments 134 and 136**, which would limit the exercise of the powers to detain an unaccompanied child to circumstances to be specified in regulations.

The Government is also proposing to strengthen existing rules on modern slavery victims seen as a threat public order or to be acting in bad faith. **Amendment 114** would require such people to be disqualified from a 30-day recovery period for potential victims during which they cannot be removed from the UK, unless there are compelling countervailing circumstances. The Government also wishes to expand the circumstances in which a victim would be treated as a threat to public order (**amendments 115-116**).

A common theme of proposed non-Government amendments and new clauses is to introduce safeguards and exemptions to the exercise of powers in the Bill in relation to vulnerable groups, including unaccompanied children, families and pregnant women, and suspected victims of modern slavery in the UK.

There have also been amendments proposed by shadow frontbench teams and backbench MPs seeking to soften the cap on the number of people able to use safe and legal routes of entry to the UK, as envisioned in clause 53. These include proposals to exempt children under 18, or replace the cap with an annual target.

1 Background

1.1 Overview of the Bill

The [Illegal Migration Bill](#) was introduced in the Commons on 7 March 2023 and had its second reading on 13 March. Most of the Bill's provisions apply across all four parts of the UK.

The Bill was considered in a Committee of the whole House on 27 and 28 March. It is due to have its remaining stages in the Commons on 26 April.

The Bill's purpose is to “prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal... of certain persons who enter or arrive in the United Kingdom in breach of immigration control”.

The [Library's briefing on the Bill](#), published on 10 March in advance of second reading, provides an overview of the main clauses of the Bill as introduced and related policy background.

The Bill's provisions are highly controversial. Its expedited passage through the Commons has also been criticised by some Members of Parliament and external commentators for undermining opportunities for legislative scrutiny.¹

At the time of writing, no impact assessments for the Bill had been published, although ministers had confirmed their intention to do so.²

1.2 Second reading

The Bill was granted a second reading on 13 March by 312 votes to 250.³

Introducing the Bill, the Home Secretary, Suella Braverman, said that it would help achieve her “top priority” which is to “stop the boats”.⁴ It would do this by enabling the swift removal of people entering the UK irregularly, and the resulting deterrent effect.⁵ Ms Braverman dismissed criticisms that the Bill

¹ [HC Deb 13 March 2023 c594; c602](#); Hannah White, Institute for Government, [Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted](#), 13 March 2023

² [HC Deb 23 March 2023 c451](#); [CWH Deb 28 March 2023 c957](#)

³ HC Deb 13 March 2023, c648-651 ([Division 191](#))

⁴ [HC Deb 13 March 2023 c574](#); [c582](#)

⁵ [HC Deb 13 March 2023 c581](#)

would breach the 1951 Refugee Convention as “simply fatuous”, commenting “the convention obliges parties to provide protection to those seeking refuge. It does not require that this protection be in the UK”.⁶

The main opposition parties opposed the Bill at second reading.⁷

Yvette Cooper, Shadow Home Secretary, argued that cross-party consensus on border security and preventing boat crossings should be possible, expressing Labour’s support for “strong border security and a properly managed... fair and firm asylum and refugee system”.⁸ But she said Labour could not support the Bill, arguing that it “would not do the things the Prime Minister and Home Secretary have promised” and would “rip up our long-standing commitment to international law”.⁹ She advocated “fast-track decisions and returns”, whereas the Bill was a “con” which would make it harder to return people and lead to “tens of thousands more people in asylum accommodation and hotels”.¹⁰

Labour’s reasoned amendment declining to give the Bill a second reading was rejected by 312 votes to 249.¹¹

The SNP’s Home Affairs Spokesperson, Alison Thewliss, said the Bill was “not legal, not just, and not compatible with the Human Rights Act 1998”.¹² She called on the Government to withdraw the Bill in favour of addressing the asylum backlog and letting asylum seekers work whilst their claims are being considered.¹³

1.3

Relevant material published since second reading

Since second reading, the Government has published [factsheets on various aspects of the Bill](#), and [Keeling Schedules](#) (PDF) on the Bill as introduced. It has also [released some provisional statistics on relevant issues](#) such as small boat crossings, the asylum backlog and migrants returned to their home country.

The UN Refugee Agency (UNHCR) [published its legal observations on the Bill](#) on 22 March. It has also published factsheets on ‘Safe and Regular Routes to the

⁶ [HC Deb 13 March 2023, c580](#)

⁷ [HC Deb 13 March 2023 c591; c594](#)

⁸ [HC Deb 13 March 2023 c582](#)

⁹ [HC Deb 13 March 2023 c584](#)

¹⁰ [HC Deb 13 March 2023 c584-7; c591](#)

¹¹ HC Deb 13 March 2023, cc644-647, [Division 190](#)

¹² [HC Deb 13 March 2023 c594](#)

¹³ [HC Deb 13 March 2023 cc594-600](#)

UK for Asylum-Seekers'; 'Arrivals to the UK over the Channel'; and 'Why the UK Illegal Migration Bill is an Asylum Ban'.

The Joint Committee on Human Rights took oral evidence on the Bill in late March. [On 22 March](#) it heard evidence from Colin Yeo, barrister at Garden Court Chambers, and representatives from the British Institute of International and Comparative Law, the Refugee Council and the British Red Cross. [On 29 March](#) it heard evidence from Professor Cathryn Costello, Professor of International Refugee and Migration Law, University of Oxford, and representatives from Policy Exchange, the Migration Observatory, and UNHCR.

The Committee has also [published 68 pieces of written evidence](#), mostly from charities and academics. The Equality and Human Rights Commission has produced its own report stage briefing saying that [the Bill "risks breaching the UK's legal obligations"](#) under the European Convention on Human Rights.

2 Committee stage

The Bill was considered in Committee of the whole House on 27 and 28 March.

Clauses 37 – 51 and related new clauses were considered on the first day. The second day covered clauses 2 – 5; the Schedule; clauses 6 – 36; clauses 52 – 58; remaining new clauses; and clause 1.

Clause 11 (Powers of detention) was ordered to stand part of the Bill upon division, by 302 votes to 242.¹⁴ All other clauses were approved to stand part without divisions.

Two new clauses and various amendments proposed by the Government were added to the Bill without divisions. There were eight divisions on non-Government amendments or new clauses. None were added to the Bill.

The text and outcome of each of the amendments considered at committee stage can be tracked from the [‘amendments’ tab](#) in the committee stage section of the Bill’s page on the Parliament website. An updated version of the [Bill as amended in Committee](#) (PDF) has also been published.¹⁵

2.1 Government amendments

Two new clauses and various amendments proposed by the Government were added to the Bill without divisions.

- **New clause 11** (Judges of the First-Tier Tribunal and Upper Tribunal; clause 49 of the Bill as amended in Committee) would amend the Tribunals, Courts and Enforcement Act 2007 so that First-Tier Tribunal judges may act as judges of the Upper Tribunal.¹⁶
- **New clause 12** (Special Immigration Appeals Commission; clause 50 of the Bill as amended in Committee) would provide for appeals against refusal of a suspensive claim to be heard by the Special Immigration Appeals Commission (SIAC), rather than the Upper Tribunal, where the Secretary of State certifies that the decision was made “wholly or partly” on information which she considers should not be made public.¹⁷

¹⁴ HC Deb 28 March 2023 cc971-975, [Division 204](#)

¹⁵ Bill 284 of 2022-3

¹⁶ [HC Deb 27 March 2023 c784](#)

¹⁷ [HC Deb 27 March 2023 c785](#)

Some consequential amendments arising from the new clauses were also approved.¹⁸

Other government amendments were generally minor, consequential or for clarification purposes.

The following clauses were subject to government amendments:

- **Clause 7 (Further provisions about removal)**. Clause 7(8)(a) was amended to enable the Secretary of State, as well as an immigration officer, to require a person facing removal be prevented from disembarking a ship, aircraft, train or vehicle.¹⁹ A new subsection (clause 7(10) of the Bill as amended in Committee) provides that periods of detention for that purpose are subject to new paragraph 17A of Schedule 2 of the Immigration Act 1971 (as provided for by clause 12(1)(b)).²⁰
- **Clause 11 (Powers of detention)** was amended to clarify that people detained under the new powers in the Bill can no longer be detained under paragraphs 16(2), (3) or (4) of Schedule 2 of the Immigration Act 1971.²¹
- **Clause 13 (Powers to grant immigration bail)** was amended to replace the reference to “any other prerogative remedy” with alternative wording clarifying that the clause would not affect a person’s right to apply to the Court of Session (in Scotland) for suspension and liberation and to resolve a drafting inconsistency.²²
- **Clause 45 (suspensive claims: duty to remove)** was amended to clarify that the reference in the clause to a “change of circumstances” includes where a person’s human rights claim or application for judicial review is unsuccessful.²³
- **Clause 55 (Defined expressions)** was amended to provide a definition of “immigration officer”.²⁴

2.2

Non-government amendments

No non-government amendments or new clauses were added to the Bill.

¹⁸ Government amendments 66, 67, 68 as considered in Committee

¹⁹ Government amendment 165. There was a related consequential amendment (168) to clause 8 (Removal of family members).

²⁰ Government amendment 166

²¹ Government amendment 169

²² Government amendment 170

²³ Gov 69 as considered in CWH

²⁴ Government amendment 167 and 172

Divisions on non-government amendments

The following non-government amendments were pressed to divisions:

- Amendment 189, proposed by the SNP, would have disapplied **clause 2 (Duty to make arrangements for removal)** to Afghan nationals facing a real risk of persecution or serious harm if returned to Afghanistan. It was one of a series of amendments described by Alison Thewliss as an attempt to highlight the specific impacts the Bill would have if implemented.²⁵ It was rejected upon division by 309 votes to 242.²⁶
- Amendment 288, proposed by Labour, concerned **clause 22 (Provisions relating to support: England and Wales)**. It sought to remove the restriction on providing modern slavery support to people subject to the removal arrangements duty (as provided for in clause 2). The amendment was rejected upon division by 299 votes to 248.²⁷
- Amendment 76, proposed by the SNP in relation to **clause 37 (Suspensive claims: interpretation)**, would have changed the definition of “serious harm suspensive claim” to be a protection or human rights claim, or a claim to be a victim of slavery or human trafficking. Stuart C McDonald, SNP Justice and Immigration spokesperson, said the amendment would ensure that those claims were considered before any removal action, explaining “... that is basically how things have been until now... and that is generally what is required to live up to our obligations under international law”.²⁸ The amendment was rejected upon division by 308 votes to 244.²⁹

There were divisions on five proposed new clauses.

- **New clause 6 (Safe passage pilot scheme)**, proposed by the Liberal Democrats. It would have required the Secretary of State to establish a “humanitarian travel permit scheme”. This would be available to people from designated countries or territories and enable them to travel to the UK to claim asylum. Only countries or territories with a historical UK asylum grant rate of at least 80% could be designated under the scheme. The proposal was rejected by 307 votes to 67.³⁰
- **New clause 24 (Safe and legal routes: family reunion for children)**, proposed by Labour. It would have required the Secretary of State to change the immigration rules, within three months of Royal Assent, to provide a route of entry to the UK for unaccompanied asylum seeking children in EU member states who have family members in the UK. The intention behind the new clause was to reinstate a legal route of entry for

²⁵ [HC Deb 28 March 2023 c877](#)

²⁶ [Division 203](#)

²⁷ [Division 205](#)

²⁸ [HC Deb 27 March 2023 c716](#)

²⁹ [Division 199](#)

³⁰ [HC Deb 27 March 2023, cc787-789, Division 200](#)

unaccompanied children who have family members in the UK, as was available when the UK participated in the EU's 'Dublin system'. The clause was rejected by 248 votes to 301.³¹

- **New clause 25 (International co-operation)**, proposed by Labour. It would have required the Secretary of State to lay before Parliament a framework for new cooperation agreements with neighbouring countries and relevant international organisations concerning the removal of people inadmissible to the UK asylum system and broader measure to prevent illegal migration. It was rejected by 309 votes to 196.³²
- **New clause 21 (Organised immigration crime enforcement)**, proposed by Labour. The clause would have given the National Crime Agency a statutory responsibility to combat organised immigration crime across the English Channel and maintain a "Cross-Border People Smuggling Unit" to coordinate related cooperation with international partners. It was rejected by 301 votes to 249.³³
- **New clause 27 (Accommodation: duty to consult)** proposed by Labour, would have introduced a statutory requirement for the Home Office and contracted accommodation providers to consult with local authorities representatives when arranging for the provision of asylum accommodation under related powers in the Immigration and Asylum Act 1999. It was rejected by 301 votes to 248.³⁴

2.3

Other significant issues debated in Committee

Robert Jenrick, Minister for Immigration, gave assurances to various Conservative Members that the Government was willing to discuss concerns and amendments they had raised before report stage.³⁵ These included proposed amendments on legal challenges to removal, interim measures of the European Court of Human Rights, the use of scientific age assessment methods, the extension of powers in the Bill to potential victims of trafficking and modern slavery, and proposals to amplify provisions on the availability of safe and legal routes of entry.

Exemptions and safeguards for vulnerable groups

Many amendments proposed by the SNP and other shadow frontbench teams, and backbenchers, aimed to introduce exemptions and safeguards for how provisions in the Bill would be exercised in relation to vulnerable groups, including unaccompanied children, families, pregnant women, suspected

³¹ HC Deb 27 March 2023, [Division 201](#)

³² HC Deb 27 March 2023 c795-798, [Division 202](#)

³³ [Division 206](#)

³⁴ [Division 207](#)

³⁵ [HC Deb 27 March 2023 cc776-777](#); [HC Deb 28 March 2023 cc958-959](#)

victims of torture and potential victims of trafficking or modern slavery. Many focused on the removal arrangements duty³⁶ and related powers of detention.³⁷ Robert Jenrick argued that it was “essential... to pass the Bill as it is”.³⁸ He said the SNP’s proposals would undermine the “coherent and robust scheme” outlined in the Bill and would result in “a scheme so riven with holes, exceptions and get-out clauses as to make the whole Bill unworkable”.³⁹

Robert Jenrick sought to clarify the Government’s intended approach to the use of the powers to detain children (as provided for in **clause 11**), saying that the Government does “not want to detain children” and that “We have to apply the highest moral standards when we take this decision.” He said that the “very judicious” powers would be used in unresolved age dispute cases, arguing that “it would be wrong... to place those people in the same accommodation as minors who are clearly children, creating safeguarding risks for them”.⁴⁰

Age assessment techniques

An amendment tabled by Sir John Hayes (Con) would have permitted the use of scientific methods to assess the age of a person claiming to be under 18 and prevented any review or legal challenge to the assessment “process or conclusion”.⁴¹ Sir John explained “Little epitomises the anger felt by my constituents and many others about the unfairness of the system more than those economic migrants with no legal right to be here who arrive in Dover claiming to be younger than they are in order to game our asylum rules.”⁴² He argued that the amendment was necessary to achieve the objective of breaking the business model of people smugglers, suggesting that otherwise, “These vile traffickers will simply tell the people whose lives they are risking to lie about their age to prevent them from being removed.”⁴³

Robert Jenrick said Sir John had raised “valid points”. He confirmed that the Government was carefully considering the issue and he hoped to revisit it at report stage.⁴⁴

Accommodation and support for unaccompanied children (clauses 15-20)

Some Labour Members highlighted concerns arising from previous documented safeguarding failures involving unaccompanied children

³⁶ For example, amendments 187 - 192, 195, 196, 282, 285, 140, new clause 6, new clause 33

³⁷ For example, amendments 143, 144, 145, 21

³⁸ [HC Deb 28 March 2023 c955](#)

³⁹ [HC Deb 28 March 2023 c954](#)

⁴⁰ [HC Deb 28 March 2023 c957](#)

⁴¹ Considered in Committee as amendment 283.

⁴² [HC Deb 28 March 2023 c916](#)

⁴³ [HC Deb 28 March 2023 c917](#)

⁴⁴ [HC Deb 28 March 2023 c958](#)

accommodated in Home Office hotels and other facilities, such as the Manston short-term facility.⁴⁵

David Simmonds (Con) identified a risk of “unintended consequences” within the clauses on provision of accommodation for unaccompanied children. He queried how the Bill’s provisions would interact with the positive obligations that public authorities have through other pieces of legislation, such as the Children Act 1989.⁴⁶ In particular, he highlighted that local authorities’ obligations to provide support to children in need apply irrespective of their immigration status, and warned that some of the Bill’s provisions would “inevitably lead to an enormous tangle of judicial reviews where public bodies may be required to pay compensation for failing in duties where those duties are in conflict with other legislation”.⁴⁷

Mr Simmonds also questioned how the powers to detain children pending removal would interact with the Children Act, noting the Home Office does not have legal capacity to care for a child and that local authorities would still have duties towards unaccompanied children in immigration detention.⁴⁸ As an example, he probed whether detained accommodation for children would be regulated by Ofsted.

Similarly, Edward Timpson (Con), a former Minister for Vulnerable Children and Families and a former Chair of the Child Safeguarding Practice Review Panel, asked why the provisions enabling the Home Office to remove children from local authority care (**clause 16**) were necessary, observing that the Home Secretary does not have powers and responsibilities under the Children Act.⁴⁹

In response, Robert Jenrick confirmed “nothing in the Bill disapplies the Children Act, which will continue to apply in all respects with regard to the children we deal with in this situation.” He explained that the power was needed so that “in the very small number of judicious cases in which we set out to remove a child” the Home Office could accommodate the child “for the short period before they are removed”.⁵⁰ He gave two examples of when that might occur. Firstly, when seeking to remove a child to relatives in another country, which the Minister said “does happen occasionally”. Secondly, when removing an unaccompanied child to another safe country to be met by social services, which “happens all the time”.⁵¹

⁴⁵ For example, [HC Deb 28 March 2023 c896-7; c919-921](#)

⁴⁶ [HC Deb 28 March 2023 c905-7](#)

⁴⁷ [HC Deb 28 March 2023 c906-7](#)

⁴⁸ [HC Deb 28 March 2023 c907](#)

⁴⁹ [HC Deb 28 March 2023 c896](#)

⁵⁰ [HC Deb 28 March 2023 c956-7](#)

⁵¹ [HC Deb 28 March 2023 c957](#)

Restrictions on entry, settlement, and citizenship (clauses 29–36)

The clauses on restrictions on entry, settlement, and citizenship for people subject to the duty to arrange removal received less scrutiny at committee stage compared to other parts of the Bill. Robert Jenrick undertook to reflect on whether the grounds to grant limited leave to enter or remain in the UK to people who have been subject to the removal arrangement duty in compelling circumstances should also apply to applications for citizenship (and indefinite leave).⁵² This was in response to an amendment proposed by Sir Jeremy Wright (Con).⁵³

Domestic legal challenges to removal (clauses 4 and 37-48)

Clause 4 of the Bill (as introduced) would provide that the duty to arrange removal applies regardless of whether the person has applied for judicial review. The Bill introduces new forms of legal challenge, known as ‘suspensive claims’. The intention is that “all other legal proceedings... will be non-suspensive”: they would not delay the person’s removal from the UK.⁵⁴

Sir William Cash proposed an amendment making this explicit. It would have provided that suspensive claims “shall be the only means through which a removal notice may be challenged”. No court order, including one for interim relief (an injunction) would have been able to prevent removal.

He argued “we do not want or need lawyers and judges to invent new blocks on removal with judicial activism. The statutory block on interim relief would prevent them from doing so”. But he did not press the amendment to a vote, on the understanding that the Government would give assurances of relevant changes to the Bill.⁵⁵ The Minister for Immigration, Robert Jenrick, undertook to engage with Sir William and other Conservative Members ahead of Report stage.⁵⁶

European Court of Human Rights (clause 49)

Clause 49 (clause 51 in the Bill as amended in Committee) was a placeholder in the Bill as introduced which would have enabled the Government to make regulations about interim measures of the European Court of Human Rights (ECtHR).

Interim measures are issued under rule 39 of the ECtHR’s [Rules of Court](#) which states:

⁵² [HC Deb 28 March 2023 c958](#)

⁵³ Amendment 182

⁵⁴ Home Office, [Illegal Migration Bill Explanatory Notes \(PDF\)](#), 7 March 2023, para 169

⁵⁵ [HC Deb 27 March 2023 c699](#)

⁵⁶ [HC Deb 27 March 2023 c776](#)

The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

They are urgent measures which only apply where there is an imminent risk of irreparable damage.⁵⁷ They are only applied in limited situations, most typically where there are fears of a threat to life or torture.⁵⁸ The majority of cases relate to expulsion, extradition or the applicant's health while in detention.

It was reported after the Bill's introduction that the Government was engaged in negotiations with the Council of Europe concerning the procedure for granting interim measures.

At committee stage, a group of Conservative backbenchers tabled amendments which would have removed clause 49 and added a new clause to the Bill providing that it should be given effect

notwithstanding any judgment, interim measures or other decision, of the European Court of Human Rights, or other international court or tribunal; and notwithstanding any international law obligation.⁵⁹

The amendment's sponsor, Danny Kruger, suggested that UK courts should not be subject to the findings of a foreign court, and that the process for applying for interim measures was insufficiently transparent, and did not permit the involvement of the UK Government.

He suggested that the granting of interim measures in the Rwanda case effectively amounted to the striking down of law passed by Parliament "by courts claiming a greater sovereignty, in deference to a higher power than parliamentary statute: the power of international law". He further suggested that there was no legal basis for complying with interim measures.⁶⁰

Joanna Cherry (SNP), the Chair of the Joint Committee on Human Rights, suggested that it would be reasonable to reform the system for granting interim measures to ensure that the UK Government would be able to be heard in any application for interim measures. However, the absence of such a system does not justify ignoring obligations, she suggested, and it is not unusual for such measures to be granted without the other party being heard "because they are interim measure to preserve the status quo while a lasting decision is made".⁶¹

⁵⁷ *Mamatkulov and Askarov v Turkey* [GC], 46827/99 and 46951/99 (2005)

⁵⁸ Practice Direction, [General presentation of interim measures](#), European Court of Human Rights

⁵⁹ Amendment 131

⁶⁰ [HC Deb 27 March 2023](#), c724

⁶¹ [As above, c737](#)

Responding, the Minister said that he was keen to give an undertaking to engage with supporters of the amendment.⁶²

Safe and legal routes (clause 51)

A considerable number of proposed non-government amendments and new clauses considered in Committee related to **clause 51** (Cap on number of entrants using safe and legal routes; clause 53 of the Bill as amended) and the provision of safe and legal routes of entry more generally. Several attracted cross-party support.

Amendments proposed by the SNP would have replaced the numerical ‘cap’ on the number of people who may enter through safe and legal routes with a ‘target’; given Parliament a greater role in setting the target; extended accountability for failure to satisfy the target and expanded the range of stakeholders to be consulted about the size of the target.⁶³ Various new clauses proposed by Liberal Democrat, Labour and Conservative Members sought to provide new humanitarian visa/travel permit schemes for people wishing to claim asylum in the UK or to amend existing refugee family reunion routes.⁶⁴

Tim Loughton (Con) proposed six new clauses and amendments relating to safe and legal routes of entry to the UK. His proposed new clause 13 would have required the Secretary of State to identify in regulations safe and legal routes available to adults and unaccompanied children (routes already in existence and additional routes), and the associated eligibility criteria and application process. A related proposal (amendment 74 as considered in Committee) would have prevented the making of commencement regulations before regulations specifying safe and legal routes had been made. Mr Loughton’s broader argument was that the “tough measures” in the Bill should not come into effect before safe and legal routes were operational. He contended “We need to isolate the bogus asylum seekers who are paying people smugglers... by making it clear that we are open to genuine cases of people fleeing danger, and there is a legitimate, practical, and usable route for them”.⁶⁵

In response, Robert Jenrick expressed a willingness to engage further before report stage, and to table further amendments to address the concerns Mr Loughton had raised, if necessary.⁶⁶ He confirmed the Government’s support for amendments “to ensure that there are new routes in addition to the existing schemes, and accelerating the point at which they become operational, with our intention being to open them next year”.⁶⁷ He also said that consultation with local authorities on safe and legal routes would begin

⁶² [As above, c776](#)

⁶³ Amendments 173, 176, 177 and 179. For related discussion see for example [CWH Deb 27 March 2023 c758](#).

⁶⁴ New clauses 4, 6, 7, 10, 24, 19

⁶⁵ [HC Deb 27 March 2023 c712](#)

⁶⁶ [HC Deb 27 March 2023 c777](#)

⁶⁷ [HC Deb 27 March 2023 c777](#)

“at the same time as the commencement of the Bill”. He defended the requirement first to consult with local authorities as “a good step forward” that would ensure that decisions to establish safe and legal routes “are not virtue signalling” but rather reflect communities’ capacity to receive them.⁶⁸

Impact assessments

Various Members criticised the Bill’s programme motion and the use of Committee of the whole House procedures, arguing that Members had been given inadequate opportunity for detailed scrutiny of the Bill’s provisions.⁶⁹ Robert Jenrick challenged this, observing that debates had concluded before the allocated time on both days in Committee.⁷⁰

The absence of any published official impact assessments in time for committee stage was identified as an additional concern.⁷¹ Labour, the Liberal Democrats and several backbenchers tabled amendments and proposed new clauses which sought publication of various types of impact assessment or would have imposed obligations to review and report on the effects of the Bill or aspects of the wider asylum system.⁷² Robert Jenrick said in the later stages of the Committee proceedings that an impact assessment would be published “in due course”.⁷³ The Leader of the House had previously expressed support for publication before committee stage, suggesting to the House on 23 March that it could be published “very shortly”.⁷⁴

⁶⁸ [HC Deb 27 March 2023 cc777-8](#)

⁶⁹ For example, [HC Deb 27 March 2023 c720](#); [cc778-9](#); [CWH Deb c929](#); [c937](#)

⁷⁰ [HC Deb 28 March 2023 c954](#)

⁷¹ For example, [HC Deb 28 March 2023 c890](#)

⁷² For example, amendments 286, 287, new clause 5, new clause 8, new clause 9, new clause 18, new clause 22, new clause 26, new clause 28

⁷³ [HC Deb 28 March 2023 c957](#)

⁷⁴ [HC Deb 23 March 2023 c451](#)

3 Remaining stages (Commons)

The Bill's remaining stages in the Commons are scheduled for 26 April.

Full [text of all amendments and new clauses proposed for consideration](#) at report stage, with accompanying explanatory statements, can be accessed from the 'publications' tab of the Bill's pages on the Parliament website.

The following sections provide an overview of some of the amendments and new clauses tabled for consideration by the Commons on 26 April.

References to clause numbers in this section relate to the [Bill as amended in Committee](#) (PDF).⁷⁵

3.1 Government amendments

Government amendments, tabled shortly before report stage, propose nine new clauses and a new schedule for consideration. The Government has also tabled a large number of amendments to existing clauses.

The Government's proposed new clauses are:

- **New clause 17** (Serious harm suspensive claims: interpretation).
- **New clause 19** (Credibility of claimant: concealment of information etc).
- **New clause 20** (Legal aid).
- **New clause 23** (Electronic devices etc) and related **new schedule**.
- **New clause 24** (Decisions relating to a person's age).
- **New clause 25** (Age assessments: power to make regulations about refusal to consent to scientific methods).
- **New clause 26** (Interim measures of the European Court of Human Rights).

The Government has also adopted two new clauses which it said originated as backbench amendments tabled by Conservative Members:

⁷⁵ Bill 284 of 2022-3

- **New clause 8** (Report on safe and legal routes), originally put down for report stage in the name of Tim Loughton.
- **New clause 22** (Interim remedies), credited to Danny Kruger and reflecting a committee stage amendment proposed by Sir William Cash.⁷⁶

The Government is proposing to leave out two of the Bill’s clauses. These are

- **Clause 8** (Removal of family members), as per **amendment 83**.
- **Clause 51** (Interim measures of the European Court of Human Rights), as per **amendment 186**. The Government had previously described the clause as a “placeholder”. It has now been superseded by other government amendments.

The Government has also tabled several dozen amendments to clauses in the Bill, some of which make substantial changes.

A Home Office press release quotes the Home Secretary, Suella Braverman, saying that the Government’s amendments “will help secure our borders and make it easier for us to remove people by preventing them from making last minute, bogus claims, while ensuring we strengthen our safe and legal routes”. She is further quoted as saying “we now must work to pass [the Bill] through Parliament as soon as possible so we can stop the boats”.⁷⁷

Some of the significant Government amendments are covered in further detail below.

European Court of Human Rights interim measures

Government new clause 26 would provide that interim measures of the ECtHR do not affect the clause 2 duty to arrange removal, unless a Minister of the Crown determines that they should.

In determining whether interim measures should mean that the duty does not apply, the Minister would be required to consider in particular:

- Whether the UK Government had the opportunity to make representations before the ECtHR’s decision on interim measures;
- The ‘form’ of the decision to indicate interim measures;
- Whether the UK Government would be able to make representations seeking to persuade the ECtHR to reconsider the decision to indicate interim measures;

⁷⁶ Home Office press release, [New measures to stop the boats in Illegal Migration Bill](#), 21 April 2023; [HC Deb 27 March 2023 cc685-701](#)

⁷⁷ Home Office press release, [New measures to stop the boats in Illegal Migration Bill](#), 21 April 2023

- The likely duration of the measures and the timing of any final decision by the ECtHR.

If a Minister does not make a determination that interim measures mean that the duty to make arrangements for removal does not apply, the following decision makers would be prevented from taking account of the interim measures:

- The secretary of State or an immigration officer when exercising a function under clauses 2(1) or 7(2), (4) or (5);
- The Upper Tribunal when considering an application or appeal under the Bill;
- A court or tribunal when considering a decision to remove a person under the Bill's provisions.

As noted in the Library's briefing on the Bill, the ECtHR has held that non-compliance with interim measures would amount to a violation of Article 34 of the Convention, which requires States not to hinder the effective exercise of an applicant's right to bring a claim.⁷⁸

Joshua Rozenberg has suggested therefore that any failure by the UK Government to ensure compliance with an interim measure would be treated by the ECtHR as a breach of the Convention.⁷⁹

Mr Rozenberg further suggests that the factors that the Minister would be required to consider when making a determination under the new clause represent the reforms the UK is seeking in its negotiation over the rule 39 procedure. He speculates that the new clause may be an example of "negotiation by legislation".

The Chair of the Bar Council, Nick Vineall KC, commented on initial reports of the proposed measures, saying

Legislating to allow the UK Government to ignore the rulings of a court undermines the rule of law, which is the foundation upon which domestic and international justice systems are built.

How can a government expect citizens to respect judicial rulings if it is willing to ignore them itself?

The Bar Council echoes the concerns raised by the former Lord Chief Justice Lord Thomas. This would be bad law, sets a dangerous precedent, and risks serious damage to the UK's international reputation. We urge the Government to reconsider this move.⁸⁰

⁷⁸ *Paladi v Moldova* [GC], App. No. 39806/05 (2009); *Mamatkulov and Askarov v Turkey* [GC], App. No. 46827/99 (2005). See Commons Library briefing [Illegal Migration Bill 2022-23](#) (CBP 9747), part 7.3, and ECtHR Factsheet [Interim measures](#), February 2023

⁷⁹ A Lawyer Writes, [Interim measures](#), 24 April 2023

⁸⁰ [Illegal Migration Bill amendment undermines rule of law](#), Press release, Bar Council, 20 April 2023

The deputy vice president of the Law Society, Richard Atkinson, expressed similar concerns, saying the amendment would “undermine the global rules-based order, set a dangerous precedent within the international community and damage the UK’s standing in the world”.⁸¹

Government amendment 185 would amend clause 2 to reflect new clause 26. **Government amendment 186** would remove clause 51 (clause 49 as introduced) from the Bill as it would be replaced by new clause 26.

Domestic court injunctions delaying removal

Government new clause 22 would restrict the powers of the domestic courts. It is sponsored by the Home Secretary and a number of Conservative Members, including Danny Kruger, Jonathan Gullis and Sir William Cash.

NC22 would apply where a decision (or purported decision) has been taken to remove someone from the UK under the Bill, and there are court proceedings in relation to that removal. In that scenario:

The court may not grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom in pursuance of the decision.

This is directed at judicial review “in particular”. It builds on existing clause 4(1)(d), which would provide that the duty to arrange removal applies regardless of any application for judicial review.

People who are appealing against refusal of a ‘suspensive claim’ could not be removed from the UK while the appeal is pending despite new clause 22. The bar on their removal arises from clause 45, not an interim remedy.

Removal of children and families

Government amendment 83 would leave out **clause 8** (Removal of family members) entirely. This is a reasonably significant change, requiring 26 consequential amendments to other parts of the Bill.

The power to remove family members was not subject to detailed debate at committee stage. But in her evidence to the Joint Committee on Human Rights, Professor Cathryn Costello criticised it as a breach of Article 31 of the UN Refugee Convention.⁸²

Government amendment 174 would narrow the power to remove unaccompanied children in **clause 3(2)**. A new clause 2A would specify that this power could only be used:

⁸¹ Law Society press release, [Illegal Migration Bill amendment and rule of law](#), 24 April 2023

⁸² Joint Committee on Human Rights, [Oral evidence: Legislative Scrutiny: Illegal Migration Bill](#), HC 1241, 29 March 2023, Q17

- To reunite the child with a parent
- To send the child to a home country listed as safe in clause 52 (EU and western European countries plus Albania)
- To send a child who has not claimed asylum to their home country or a country they were in immediately before coming to the UK

However, clause 2A authorises the Secretary of State to make regulations specifying further circumstances in which unaccompanied children could be removed.

The Government had previously said that, “as a matter of policy”, unaccompanied children would only be removed in “very limited circumstances” such as those now outlined in the proposed clause.⁸³

Powers to detain unaccompanied children

Government amendments 134 and 136 amend **clause 11** (Powers of detention) which provides new powers for immigration officers and the Secretary of State to detain people who are, or may be, covered by the duty to arrange removal.

The amendments would limit the exercise of the powers to detain an unaccompanied child to circumstances to be specified in regulations. The regulations may also specify time limits for the detention of an unaccompanied child pending removal. **Amendments 135 and 137** provide that the regulations would be subject to the [negative procedure](#) (so would not require approval from Parliament before becoming law).

Accommodation and other support to unaccompanied children

Some Members had queried in Committee how the Bill would relate to local authorities’ responsibilities to unaccompanied children under the Children Act 1989. In response, Robert Jenrick had confirmed that the Children Act would continue to apply “in all respects”.⁸⁴

Government amendment 124 would change the wording in **clause 16** to make it explicit that local authorities would be providing accommodation to children under section 20 of the Children Act 1989.

Government amendment 125 would remove section 16(4). This is in consequence of amendment 124 and also on the grounds that a child being transferred from Home Office accommodation would have been within the local authority’s area (and consequently, a child to whom the local authority

⁸³ Home Office, [Illegal Migration Bill: children factsheet](#), 24 April 2023

⁸⁴ [HC Deb 28 March 2023 c956](#)

had responsibilities for under the Children Act). Amendments 126 – 131 make further consequential amendments in light of amendment 124.

Consent to biological methods of age assessment

Government new clause 25 would provide a power to make regulations about the consequences of an asylum seeker refusing consent for their age to be assessed by a “specified scientific method”. Such regulations could treat people as adults if they refused consent.

The Home Office says this is designed to “increase[e] protections around the safeguarding risk caused by adults pretending to be children”.⁸⁵

Scientific methods are provided for in [section 52 of the Nationality and Borders Act 2022](#). This allows the Secretary of State to make regulations about which methods may be used, including DNA and “imaging technology”. No such regulations have yet been made and it is “not currently Home Office policy to commission scientific age assessments”.⁸⁶

A committee established to advise the Home Office on appropriate methods looked at X-rays (of teeth and hand/wrist bones) and MRI imaging of knee and collar bones). It suggested that such methods could be used in combination with the existing ‘Merton’ process, with biological evidence used to check whether the age assigned by social workers is more or less likely than the person’s claimed age.

On consent for such tests, the report recommended:

[...] no automatic assumptions or consequences should result from refusal to consent to biological age assessment and, in cases of refusal, the applicant should not be automatically considered an adult.

Biological methods of age assessment are in use elsewhere in Europe, [according to the Parliamentary Office of Science and Technology](#). But its briefing notes that “these techniques have limitations, and their use in this context is widely criticised by a range of stakeholders”.⁸⁷

Government new clause 24 would provide that someone subject to the duty to arrange removal under the Bill cannot [appeal against an age assessment decision](#). They would be permitted to apply for judicial review, but the application would “not prevent the exercise of any duty or power under this Act to make arrangements for the person’s removal”.

⁸⁵ Home Office press release, [New measures to stop the boats in Illegal Immigration Bill](#), 21 April 2023

⁸⁶ Home Office, [National Age Assessment Board: caseworker guidance](#), version 1.0, 31 March 2023, p13; [Assessing age for asylum applicants: caseworker guidance](#), version 6.0, 31 March 2023, p51

⁸⁷ POST research briefing 666, [The Use of Biological Methods in Asylum Age Assessments](#), March 2022

Meaning of “serious and irreversible harm”

People would be able to challenge removal from the UK if it would create a “real risk of serious and irreversible harm”. The Bill as introduced did not define serious and irreversible harm, instead containing a placeholder clause.

Government new clause 17 would list some things that can be accepted as serious and irreversible harm for the purpose of legal challenge, and some things that cannot. Qualifying forms of harm would include death; torture; inhuman or degrading treatment or punishment; persecution as defined by [section 31\(2\) of the Nationality and Borders Act 2022](#); and removal to a country where there is a “real, imminent and foreseeable risk” of any of the above.

The types of harm that could not qualify as serious and irreversible are persecution as defined by section 31(2) of the 2022 Act where the person can access protection; persecution other than as defined in section 31(2); and harm resulting from lower standards of healthcare available abroad. In addition, “pain or distress” resulting from medical treatment being entirely unavailable abroad would be **unlikely** to qualify.

The clause would therefore not exhaustively define serious and irreversible harm.

Search and seizure of mobile phones

Government new clause 23 and a **new schedule** to the Bill would give immigration officers powers to search people for mobile phones and other electronic devices. The Home Office would be permitted to access and copy information on the device, and retain the device itself, so long as it is relevant to any “relevant function” (ie enforcing immigration laws).

This may be a response to a High Court decision about existing search and seizure powers in March 2022. The court held that while paragraph 25B of Schedule 2 to the Immigration Act 1971 does allow immigration officers to search people arriving by small boat, it did not cover seizure and retention of phones. The judgment said “if Parliament sees a need for further legislation to address the problem, then it is for Parliament to do that, and not for the executive to assume powers on the basis of an impermissible construction of existing legislation”.⁸⁸

Government new clause 19 and consequential amendments would provide that failure to hand over information required to access an electronic device (eg a PIN) must be treated as damaging to the person’s credibility in any asylum or human rights claim. This would be done by amending [section 8 of the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#).

⁸⁸ *R (HM) v Secretary of State for the Home Department* [2022] EWHC 695 (Admin), 25 March 2022; Free Movement, [Migrants who arrived by small boat may be able to claim damages for unlawful seizure of phones](#), 29 March 2022

Provision of safe and legal routes of entry to the UK

Government new clause 8 was originally proposed for report stage by Tim Loughton (Con). It would require the Secretary of State, within six months of the Bill's enactment, to prepare and publish a report on safe and legal routes of entry to the UK. The report must detail safe and legal routes available at the time of publication as well as any proposed additional routes. It must also identify which routes are available to adults and children respectively and provide details of how they can be accessed. Mr Loughton had argued at committee stage for a similar clause which would have required existing and additional safe and legal routes to be specified in regulations.

There is a precedent for the Government to be obliged to conduct a review of safe and legal routes. A similar statutory duty was added to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, in response to pressure from MPs and Peers.⁸⁹ That review was published in July 2021.⁹⁰

The Government has also adopted **amendment 11**, also originally in the name of Tim Loughton. It would amend **clause 53** (Cap on number of entrants using safe and legal routes) to require the Secretary of State to begin consultation with local authorities on the cap on the number of people who may enter the UK through specified safe and legal routes within three months of the Bill's passing.

The new clause and amendments reflect comments and assurances given by the Minister at committee stage about the Government's intentions to open additional legal routes next year and to begin consultation with local authorities "at the same time as the commencement of the Bill".⁹¹

Modern slavery

Cooperation with investigations

Government amendments 95-97 would replace a regulation making power concerning the circumstances in which it is necessary for a victim of slavery or trafficking to remain in the UK in order to cooperate with an investigation or criminal proceedings concerning that slavery or trafficking.

Under the Bill as introduced, clauses 21 (5), 23(5) and 24(5) would give a power to the Secretary of State to make regulations providing for the circumstances in which it is necessary for a person to be present in the UK for the purposes of such cooperation, for England and Wales, Scotland and Northern Ireland respectively.

Government amendments would replace these with a requirement that the Secretary of State must assume that it is not necessary for the person to be

⁸⁹ [Section 3, Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020](#)

⁹⁰ Home Office, [Report in relation to legal routes from the EU for protection claimants, including family reunion of unaccompanied children](#) (PDF), July 2021

⁹¹ [CWH Deb 27 March 2023 c777](#)

present unless they consider that there are compelling circumstances which require it. The amendments would also require the Secretary of State to have regard to their own guidance when determining whether there are compelling circumstances.

Disapplication of modern slavery protections

Government amendments 114-116 would amend clause 28, which would amend section 63 of the Nationality and Borders Act 2022. This provides that victims of modern slavery or trafficking **may** be disqualified from a recovery period during which they cannot be removed or required to leave, if they are a threat to public safety or have claimed to be a victim in bad faith.

Amendment 114 would **require** competent authorities to disqualify such victims from the recovery period unless there are compelling countervailing circumstances (by contrast with the current permissive position).

Amendments 115-116 would expand the circumstances in which a victim would be treated as a threat to public order for the purposes of section 63 to include a case where the person has been convicted of an offence and sentenced to a term of immediate imprisonment.

Government amendments 111-113 and 117-119 are consequential on these amendments.

3.2

Non-government amendments

The following section provides an overview of some of the non-government amendments and proposed new clauses tabled for report stage. At the time of writing the list of non-government amendments and new clauses might be selected for debate and votes was not available.

Leave out amendments

Several amendments propose removing certain clauses from the Bill:

- **Amendment 51**, proposed by the SNP frontbench, regarding **clause 11** (Powers of detention).
- **Amendment 52** (SNP), relating to **clause 12** (Period for which persons may be detained).
- **Amendment 53** (SNP), relating to **clause 15** (Accommodation and support for unaccompanied migrant children).
- **Amendment 7**, in the name of Dame Diana Johnson (Lab), in respect of **clause 16** (transfer of children from Secretary of State to local authority and vice versa).

- **Amendment 66** (SNP), in respect of **clause 33** (British overseas citizenship).
- **Amendment 67** (SNP), in respect of **clause 34** (British subjects).

Detention of vulnerable people

Amendments 2 and 3 would amend **clause 11** (Powers of detention) so that the new powers to detain people covered or potentially covered by the duty to arrange removal (and their family members) would not apply to unaccompanied children, pregnant women, and people with dependent children.

The amendments are sponsored by Dame Diana Johnson (Lab; Chair of Home Affairs Committee), Joanna Cherry (SNP; Chair of Joint Committee on Human Rights) and Caroline Nokes (Con; Chair of Women and Equalities Committee).

The Government has argued against exempting groups from the Bill's provisions, citing the risk of creating 'pull-factors'. The Prime Minister told the Liaison Committee on 28 March that whilst it isn't a policy objective to detain children, the Bill's detention powers should apply equally to families "because otherwise you increase the likelihood that people bring children here and make very dangerous crossings".⁹² He continued: "The policy should, and must, apply to families, but it is right that we then look at families differently, as we do. They should be in accommodation that is appropriate for them, and those family groups should not be separated".⁹³

A follow-up letter from the Prime Minister also confirmed that the Home Office's Adults at Risk in Immigration detention policy "would be updated through secondary legislation to work with the provisions in the Bill".⁹⁴

Amendment 183, in the name of Tim Loughton (Con), would provide that a child could only be placed in secure accommodation by the Home Office under **clause 15(1)** if certain conditions were met. It requires that unaccompanied children could only be placed in such accommodation if they are likely to abscond from any other type of accommodation and likely to suffer significant harm if they abscond.

The amendment requires judicial oversight of decisions to hold an unaccompanied child in secure accommodation for longer than 72 hours. It also imposes maximum time limits for holding unaccompanied children in secure accommodation (three months, with the possibility of extension authorised by the court, up to a maximum of six months at any one time).

⁹² Liaison Committee, [Oral evidence: Work of the Prime Minister, HC 1222](#) (PDF), 28 March 2023, Q60

⁹³ As above

⁹⁴ Liaison Committee, [Letter from the Prime Minister, dated 4 April](#) (PDF), 18 April 2023

Modern slavery

Clause 21 of the Bill would disapply modern slavery protections for people subject to the duty to arrange removal, with limited exceptions. **Amendment 4** would expand those exemptions to cover suspected victims who were exploited in the UK. Among the sponsors are Sir Iain Duncan Smith (Con), Theresa May (Con), Caroline Lucas (Green) and Stella Creasy (Lab).

At committee stage, Sir Iain and Mrs May argued that removing modern slavery protections would make it “harder to catch the traffickers and slave drivers”.⁹⁵ The Minister for Immigration responded with the statistic that 73% of people who arrived on small boats in 2021 and were detained for removal had “put forward a modern slavery claim” (ie been referred as a potential victim).⁹⁶ This figure “suggests that, were we to implement the scheme in the Bill... a very large number would claim modern slavery”.⁹⁷

Amendments 13 and 15 would exclude victims of sexual exploitation from the provision in clauses 22 and 24 that would prevent victims of trafficking or slavery from receiving support if subject to the duty to arrange removal.

Availability of safe and legal routes

Providing a legal route for unaccompanied children with family in the UK

New clause 14, proposed by the Opposition, seeks to expand legal routes of entry to the UK for unaccompanied children. It would require the Government, within three months of the Bill’s passing, to change the Immigration Rules to provide a legal route of entry for unaccompanied children in EU member states who have family members here.

The rules would have to include, “as far as is practicable”, provisions reflecting measures in the Dublin III Regulation.⁹⁸

The Dublin III Regulation applied in the UK when it was an EU member state. Its primary objective is to specify a hierarchy for determining which state is responsible for processing an asylum claim of someone who has entered the EU. The regulation gave some separated families a legal route to reuniting in the UK that they would not have otherwise had. This is because it prioritises respect for family reunion above certain other considerations and applies more expansive eligibility criteria than the UK’s family reunion rules.

⁹⁵ [CWH Deb 28 March 2023 cc886-889](#)

⁹⁶ See Home Office, [Modern slavery referrals for people detained for return after arriving in the UK on small boats](#), 7 March 2023. Formally, people cannot lodge a modern slavery ‘claim’; they must be referred into the system by an [authorised first responder organisation](#).

⁹⁷ [HC Deb 28 March 2023 c960](#)

⁹⁸ [Regulation \(EU\) 604/2013](#) (PDF) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

Over the years of the UK's participation in the Dublin system there was a significant increase in the number of Dublin transfers to the UK on family reunion grounds, including unaccompanied children transferred under Article 8.⁹⁹ There have been consistent calls from campaigners, supported by some Parliamentarians, for the UK to reinstate comparable provisions.

When the UK left the EU, the then Government did not want to continue to participate in the Dublin system as a non-EU member state. The UK proposed a new agreement with the EU on the transfer of unaccompanied children which was more limited in scope than under Dublin III.¹⁰⁰ Detailed negotiations did not take place.

The Dublin III Regulation provides that, where in the child's best interests, unaccompanied children's cases should be processed by the state where they have a family member (parent or responsible adult), sibling, or other relative (adult aunt, uncle, or grandparent) who is lawfully present (which includes people who are seeking asylum).¹⁰¹ States also have discretion to accept transfers of people in certain other circumstances, including "to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations".¹⁰²

The regulation also gives certain guarantees for children which stem from a commitment that the best interests of the child shall be a primary consideration.¹⁰³ These include provision of a suitably qualified representative for unaccompanied children, and an obligation to facilitate the tracing of family members or relatives living in other member states.

Cap on number of entrants using safe and legal routes

Amendment 9, in the name of Dame Diana Johnson, would amend clause 53 to exclude children under 18 from the annual cap on the maximum number of people who can enter the UK through specified safe and legal routes.

Amendment 75, tabled by the SNP frontbench, would replace the cap with an annual "target" for people entering through safe and legal routes. The amendment also seeks to give Parliament a greater role in setting the target, by requiring approval through resolutions of both Houses rather than approval of regulations subject to the draft affirmative procedure (as the Bill currently anticipates). The SNP's **amendment 76** would broaden the range of stakeholders to consult about the annual cap to include UNHCR, the devolved governments, and the Home Affairs Committee.

⁹⁹ See Commons Library briefing [The UK's refugee family reunion rules: a comprehensive framework?](#), 27 March 2020, section 2

¹⁰⁰ See Commons Library briefing [Brexit: the end of the Dublin III Regulation in the UK](#), 21 December 2020

¹⁰¹ Regulation (EU) 604/2013, Article 8

¹⁰² Regulation (EU) 604/2013, Article 17

¹⁰³ Regulation (EU) 604/2013, Article 6

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)