

Research Briefing

7 July 2023

By Melanie Gower,  
CJ McKinney

# Illegal Migration Bill: Lords stages and amendments



## Summary

- 1 Material published during the bill's passage in the Lords
- 2 Lords stages: second reading and committee
- 3 Lords stages: report

### Image Credits

CRI-1767 by UK Parliament/Mark Crick image. Licensed under CC BY 2.0 / 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](mailto:hoclibraryonline@parliament.uk) or visit [commonslibrary.parliament.uk/resources](https://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](mailto: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](https://commonslibrary.parliament.uk). If you have general questions about the work of the House of Commons email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

# Contents

<b>Summary</b>	<b>4</b>
<b>1 Material published during the bill's passage in the Lords</b>	<b>7</b>
1.1 Committee reports	7
1.2 Other external scrutiny	10
1.3 Home Office impact assessments	11
<b>2 Lords stages: second reading and committee</b>	<b>14</b>
2.1 Second reading	14
2.2 Committee stage	15
<b>3 Lords stages: report</b>	<b>17</b>
3.1 Government amendments	17
3.2 International law	18
3.3 Retroactive effect	19
3.4 Refusing to process asylum claims	20
3.5 Detention and removal of migrants	20
3.6 Modern slavery and human trafficking	23
3.7 Children	25
3.8 Legal challenges to removal	28
3.9 Safe and legal routes	29
3.10 Tackling people smuggling	29

## Summary

The Illegal Migration Bill was introduced in the House of Commons on 7 March 2023 and the House of Lords on 27 April 2023. It was considered in a Lords Committee of the whole House for five days between 24 May and 14 June, and at Lords report stage for three days between 28 June and 5 July.

[The bill as amended at Lords report stage is now available](#) (PDF). Lords third reading is on 10 July and the bill returns to the Commons on 11 July.

## New material and further scrutiny

A significant amount of relevant material was published after the bill left the Commons. The Home Office published its overarching [economic impact assessment](#) (PDF) and a [child's rights impact assessment](#) (PDF) towards the end of the bill's passage in the Lords, in addition to an existing [equality impact assessment](#) (PDF).

The bill has been considered in detailed reports by the [Delegated Powers and Regulatory Reform Committee](#), [Constitution Committee](#) and [Joint Committee on Human Rights](#).

The Senedd of Wales [voted in June to withhold legislative consent](#). The Presiding Officer of the Scottish Parliament decided that the bill did not require a vote on legislative consent.

## Changes made in the Lords

Government amendments approved at committee stage were generally minor, technical or clarificatory. A number of non-government amendments were debated at committee but not voted upon until report stage.

The Lords made a number of government and non-government amendments at report stage, including 20 amendments approved following a division in which the government was defeated:

- [Amendment 5](#), providing that “nothing in this Act shall require any act or omission” that conflicts with certain international treaties, such as the United Nations Refugee Convention

- [Amendment 6](#), eliminating the bill’s retroactive effect (so the government would not have a duty to remove people who arrive in the UK before commencement)
- [Amendment 12](#), which (with related amendments) maintains existing protections against removal for potential human trafficking victims
- [Amendment 14](#), permitting the processing of asylum claims by unaccompanied children
- [Amendment 15](#), providing that that asylum claims must be processed if the person has not been removed within six months
- [Amendment 37](#), preventing the removal of LGBT people to certain countries
- [Amendment 51](#), applying existing safeguards on detention of unaccompanied children to the bill’s proposed detention powers
- [Amendment 57](#), applying existing safeguards on detention of accompanied children to the bill’s proposed detention powers
- [Amendment 65](#), applying existing safeguards on detention of pregnant women to the bill’s proposed detention powers
- [Amendment 76](#), applying existing ‘Hardial Singh’ safeguards on immigration detention to the bill’s proposed detention powers
- [Amendment 89](#), providing that unaccompanied children could not be removed from local authority to Home Office accommodation (as proposed by the bill) unless necessary for their welfare
- [Amendment 95](#), maintaining existing protections against removal for potential human trafficking victims exploited in the UK
- [Amendment 96](#), strengthening the proposed exception to the bill whereby some potential human trafficking victims could remain in the UK to cooperate with a criminal investigation or prosecution
- [Amendment 130](#), reducing the threshold for someone to succeed in a challenge to removal from the UK on the basis that it risks causing them “serious harm”
- [Amendment 152](#), leaving out a clause that would prevent UK courts from granting injunctions to prevent or delay someone’s removal from the UK
- [Amendment 156A](#), maintaining the right of people assessed as being over 18 to appeal against that decision
- [Amendment 158A](#), extending the scope for judges to quash a decision that a person is over 18 if challenged by judicial review

- [Amendment 164](#), requiring the Home Secretary to establish new “safe and legal routes” for refugees to come to the UK
- [Amendment 168](#), giving the National Crime Agency a duty to combat organised crime in relation to Channel crossings by small boat
- [Amendment 168A](#), requiring the Home Secretary to “prepare a ten-year strategy for tackling refugee crises affecting migration by irregular routes” in collaboration with other countries, to include measures to tackle people smuggling

The bill is due to return to the Commons on 11 July. Further time for ‘ping-pong’ consideration of Lords amendments [has been scheduled for 17 July, and if necessary 18 and 19 July](#).

## Previous briefings on the bill

[House of Commons Library briefing CBP-9747](#) describes the bill as considered at Commons second reading, and [Commons Library briefing CBP-9776](#) addresses amendments during Commons committee stage. A [House of Lords Library briefing](#) describes the bill as introduced to the Lords.

# 1 Material published during the bill's passage in the Lords

This section refers to clauses as numbered in the bill as brought from the Commons ([HL Bill 133](#)).

## 1.1 Committee reports

### Delegated Powers and Regulatory Reform Committee

The Lords Delegated Powers and Regulatory Reform Committee published [its report on the bill](#) on 18 May 2023.<sup>1</sup> The [government's response](#) was published on 26 June.<sup>2</sup>

The committee drew five measures to the attention of the House. The government accepted three of the committee's recommendations for changes. These related to the proposed form of parliamentary scrutiny for the regulation-making powers in **clause 3(7)** (power to make exceptions to the duty to arrange removal) and **clause 10** (powers of detention in respect of unaccompanied children), and the inappropriateness of the power to amend the definition of a "working day", as provided for in **clause 37(9)**. The government tabled amendments to reflect these recommendations for Lords report stage.

The committee raised additional concerns about the powers to seize and retain electronic devices and access information stored on them, and about the appropriateness of the related power to make regulations concerning the seizure of legally privileged material (**clause 14 and Schedule 2 para 10**). In response, the government confirmed that "there is no intention that ...legally privileged information will be used".<sup>3</sup>

The committee had also recommended that guidance issued under clauses **21(6), 23(6) and 24(6)** (on compelling circumstances for potential victims of modern slavery to remain in the UK to assist with an investigation) should be

---

<sup>1</sup> Delegated Powers and Regulatory Reform Committee, [34<sup>th</sup> Report of Session 2022-23](#) (PDF), HL Paper 198, 18 May 2023

<sup>2</sup> Delegated Powers and Regulatory Reform Committee, [37<sup>th</sup> Report of Session 2022-23](#) (PDF), HL Paper 222, 26 June 2023

<sup>3</sup> As above, pp2-3

subject to parliamentary scrutiny. The government disagreed, referring to its established policy position on the appropriate use of statutory guidance.<sup>4</sup>

## Constitution Committee

The Lords Constitution Committee published [its report on the bill](#) on 19 May.<sup>5</sup>

The committee identified various issues that the House might want to consider. They included:

- “Very considerable constitutional implications” arising from the cumulative impact of the ouster and partial ouster clauses.<sup>6</sup> It commented on the clauses relating to the duty to arrange removal (**clauses 4, 52, and 53**), powers to detain (**clauses 11 and 12**), suspensive claims (**clauses 49 and 51**), and age assessments (**clause 55(5)**).
- Whether there is a justification for the retrospective effect of the duty to arrange removal.
- The “novel nature” of **clause 1(3) and (5)**.<sup>7</sup> The committee recommended that an amendment be made to provide for statutory guidance on how the bill is to be implemented compatibly with the European Convention on Human Rights.
- The use of delegated legislation. The committee recommended amendments to clauses allowing for delegated legislation to amend devolved legislation (as in **clause 19(1)** in respect of support and accommodation for unaccompanied children and **clauses 22-24** in respect of victims of trafficking modern slavery).
- Constitutionally significant delegated powers in **clause 39(2)** (to amend the definition of serious and irreversible harm) and **clause 56** (to make regulations about the effect of not consenting to a scientific age assessment method). The committee recommended significant changes to both clauses.

The committee also reiterated concerns it had raised in relation to the Nationality and Borders Act 2022 about the limited opportunity for pre-legislative scrutiny of the bill and unacceptable use of placeholder clauses.

---

<sup>4</sup> As above, p3

<sup>5</sup> Constitution Committee, [Illegal Migration Bill](#) (PDF), HL Paper 200, 19 May 2023

<sup>6</sup> As above, para 27

<sup>7</sup> As above, para 41



## Joint Committee on Human Rights

The Joint Committee on Human Rights published [a report on its legislative scrutiny of the bill](#) on 11 June.<sup>8</sup> The government has not formally responded at time of writing.

The committee considered the bill's compatibility with the UK's human rights obligations including under the United Nations Refugee Convention, the European Convention on Human Rights, the UN Convention on the Rights of the Child, and the Council of Europe Convention on Action Against Trafficking.

The report's central conclusion was that the bill "would deny the vast majority of refugees access to the UK's asylum system" and "breaches a number of the UK's international human rights obligations and risks breaching others".<sup>9</sup>

The committee proposed a series of amendments to the bill (collated in the annex to its report). They include recommendations to completely remove some of the bill's main clauses, including:

- **Clause 1(5)**, which would disapply section 3 of the Human Rights Act 1998.
- **Clauses 2 – 4 and 6**, which relate to the removal arrangements duty.
- **Clauses 21 – 24**, which would apply to victims of trafficking and modern slavery.
- **Clause 39**, on the definition of "serious and irreversible harm".
- **Clause 52**, on interim remedies relating to removal decisions.
- **Clause 53**, on the effect of interim measures of the European Court of Human Rights.
- **Clause 55**, restricting scope to challenge age assessment decisions.

Alternatively, the committee suggested substantial amendments to some of the above clauses, as well as to clauses relating to detention and bail, powers to provide accommodation and support to unaccompanied children, and bans on re-entry and leave to remain.

## Women and Equalities Committee

The Commons Women and Equalities Committee published its report on [Equality and the UK asylum process](#) on 27 June 2023.<sup>10</sup> There is no formal government response at time of writing.

---

<sup>8</sup> Joint Committee on Human Rights, [Legislative Scrutiny: Illegal Migration Bill](#), HC 1241/HL Paper 208, 11 June 2023

<sup>9</sup> As above, p129, para 52

<sup>10</sup> Women and Equalities Committee, [Equality and the UK asylum process](#), HC 93, 27 June 2023

The committee raised concerns about the use of immigration detention and asked the government to abandon plans to detain unaccompanied asylum-seeking children. It also called on it to abandon any plans to forcibly remove children to Rwanda.

## 1.2

## Other external scrutiny

### Legislative consent motions

The Senedd Cymru/Welsh Parliament voted to withhold legislative consent for the bill on 20 June.<sup>11</sup>

In contrast, the Presiding Officer of the Scottish Parliament decided that the bill did not require a vote on legislative consent.<sup>12</sup>

### Council of Europe

On 21 June 2023 the Parliamentary Assembly of the Council of Europe adopted a resolution expressing concerns “that recent legislation introduced by the UK Government to Parliament, and in particular the Bill of Rights Bill and the Illegal Migration Bill, indicates an increased willingness on the part of the UK Government, and certain legislators, to legislate in a way that could risk breaching the UK’s international legal obligations and thus the rule of law”.<sup>13</sup>

The resolution was based on the findings of a report of the Committee on Legal Affairs and Human Rights.<sup>14</sup> The report had concerns about measures in the bill relating to interim measures; restrictions on protections for victims of modern slavery and human trafficking; adequacy of safeguards against indefinite or arbitrary detention; protections for children, refugees and stateless people; and adequacy of due process and availability of an effective remedy for those affected.

Previously, the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings had expressed “deep concern” about the bill’s compatibility with the Convention on Action Against Trafficking, at a meeting in March 2023.<sup>15</sup>

---

<sup>11</sup> Plenary (20 June 2023) [Motion NDM8296](#)

<sup>12</sup> [“Scottish migration minister: Illegal Migration Bill ‘violates human rights.’”](#), The Herald [online], 27 June 2023

<sup>13</sup> [Resolution 2505](#), 21 June 2023

<sup>14</sup> Committee on Legal Affairs and Human Rights, [UK reform of its human rights legislation: consequences for domestic and European Human Rights protection](#), Doc 15782, 5 June 2023

<sup>15</sup> Council of Europe press release, [“UK’s Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention”, says Council of Europe Expert Group on Trafficking”](#), 29 March 2023

## UN Committee on the Rights of the Child

A June 2023 report prepared by the United Nations Committee on the Rights of the Child expressed “deep concern” about the bill’s potential impact on children seeking asylum in the UK.<sup>16</sup> It called on the UK to urgently amend the bill, “to repeal all draft provisions that would have the effect of violating children’s rights... and bring the Bill in line with the State party’s obligations under international human rights law to ensure children’s rights to nationality, to seek asylum and to have their best interests taken as a primary consideration and to prevent their prolonged detention and removal”.<sup>17</sup>

### 1.3

## Home Office impact assessments

### Equality impact assessment

The Home Office published an [equality impact assessment](#) (PDF) on 11 May 2023.<sup>18</sup> The document identifies elements of the bill as potentially giving rise to indirect discrimination, including on the characteristics of age, race, sex and sexual orientation. A recurring justification for differential impacts cited in the assessment is that they are “the result of the person’s conduct and... justified and proportionate in order to achieve the legitimate aims of controlling migration and reducing crime”.<sup>19</sup>

The assessment identifies “genuine children closer to the age of 18” as more likely to be affected by the age assessment provisions”.<sup>20</sup> It also recognises a risk that unaccompanied children approaching 18 might try to abscond in an attempt to avoid removal upon reaching adulthood.<sup>21</sup> The proposed mitigation is “robust safeguarding procedures... to ensure all unaccompanied children in Home Office accommodation are safe and supported” and a “multi-agency response” to trace and locate a missing child. It also cites the bill’s anticipated deterrent effect as a long-term mitigation, contending that fewer children arriving in the UK will have an impact on the risk of absconding.<sup>22</sup>

The assessment recognises that disqualification from modern slavery support could have a disproportionate impact on female potential victims of modern slavery.<sup>23</sup> It notes that the majority of identified potential victims of sexual exploitation are women and notes links between sexual abuse, exploitation or gender-based violence and experience of symptoms of trauma or PTSD. It

---

<sup>16</sup> UNCRRC, [Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) (PDF), CRC/C/GBR/CO/6-7, 22 June 2023

<sup>17</sup> As above, para 50(a)

<sup>18</sup> Home Office, [Equality Impact Assessment](#), 26 April 2023

<sup>19</sup> As above, p6, p10, p12

<sup>20</sup> As above, p6

<sup>21</sup> As above, p7

<sup>22</sup> As above, p7

<sup>23</sup> As above, p11

argues against making an exception for female victims, on the basis that “it is not unreasonable to assume that this may result in a change of methodology from people traffickers, targeting vulnerable women to a greater extent”.<sup>24</sup>

The assessment says that the Home Office “will continually monitor the impact of the modern slavery measures on people with this protected characteristic to ensure our approach is appropriate for that cohort”. It also says that a “net effect” of measures in the bill will be “a reduction in risks of sexual exploitation in the UK, since the individuals will no longer be brought into the UK”.<sup>25</sup>

## Economic impact assessment

The bill’s [economic impact assessment](#) (PDF) was published on 26 June 2023.<sup>26</sup> It does not attempt to make a full value for money assessment of the legislation. This is because the bill “is a novel and untested scheme, and it is therefore uncertain what level of deterrence impact it will have” and “the delivery plan is still being developed”.<sup>27</sup>

The assessment does not attempt to estimate the annual volumes of people who may arrive following commencement, or the total costs or benefits of implementation. It says that “the large range in these figures would not be informative given the uncertainties”.<sup>28</sup> It does calculate estimated costs for relocating a person from the UK to a safe third country and the level of deterrence required to break even.

The impact assessment was the subject of an Urgent Question in the Commons and also discussed in the Lords on 27 June.<sup>29</sup> MPs and Lords criticised it for failing to adhere to government guidance about the publication of impact assessments, including in relation to the timing of publication, consideration of alternative policy options, and explanation of costs and benefits.<sup>30</sup> Other criticisms included that the published assessment does not measure the impact on local authorities, or impact of being unable to remove people to a safe third country (such as if there are no removal agreements in place), or the impacts on children and victims of modern slavery.<sup>31</sup>

Lord Murray of Blidworth (Minister for Migration and Borders) said the bill only considered two scenarios (“do nothing” or “fully implement the Bill”) because “there are no other options”. He maintained that the assessment complies with government guidance “in the context of the Bill”, saying “it sets out, so far as can be ascertained, the likely impact. But this Bill, like others, is

---

<sup>24</sup> As above, p11

<sup>25</sup> As above, pp11-12

<sup>26</sup> [JA No HO 0438 \(PDF\)](#), 26 June 2023

<sup>27</sup> As above, p1

<sup>28</sup> As above, para 27

<sup>29</sup> [HC Deb 26 June 2023 cc149-164](#); [HL Deb 27 June 2023 cc582-586](#)

<sup>30</sup> [HC Deb 27 June 2023 cc149-50](#); [HL Deb 27 June 2023 c583](#)

<sup>31</sup> [HC Deb 27 June 2023 cc154-5](#); [HL Deb 27 June 2023 c584](#)

predicated on a strong theory of deterrence, and it is therefore important to note that it is hard empirically to provide detailed statistics”.<sup>32</sup>

The Migration Observatory at the University of Oxford tweeted a series of observations about the impact assessment’s calculations and underlying assumptions.<sup>33</sup>

## Child’s rights impact assessment

Members of the Lords received various assurances from ministers about plans to publish a child’s rights impact assessment. The Home Office [published its assessment \(PDF\)](#) on 4 July, the day before the final day of report stage.<sup>34</sup>

The assessment considers the bill’s impact on children’s rights, with specific reference to rights protected by the UN Convention on the Rights of the Child. It finds that “taken in totality, including in particular the overriding interest to protect children from the risk of death, trafficking, etc. the Bill will have a positive impact”.<sup>35</sup> As with the equality impact assessment, it argues against making exceptions for children on the basis that people smugglers and adult migrants could try to use them to their advantage.<sup>36</sup>

Provisions relating to the detention and removal of families and children are assessed as having a combination of positive, neutral and adverse impacts. For example, removal of families is assessed as having a neutral or positive impact on certain rights because it would support maintaining family cohesion.<sup>37</sup>

The assessment confirms that Home Office’s policies on the family returns process and on the use of force on children will be revised.<sup>38</sup> To mitigate potential adverse effects of the use of reasonable force on children, the Home Office is proposing measures such as targeted consultations on policy changes and monitoring provisions.<sup>39</sup>

---

<sup>32</sup> [HL Deb 27 June 2023 c584](#)

<sup>33</sup> Migration Observatory (@MigObs), [Twitter](#), 27 June 2023

<sup>34</sup> Home Office, [Illegal Migration Bill: Child’s Rights Impact Assessment](#) (PDF), July 2023

<sup>35</sup> As above, p14

<sup>36</sup> As above, pp3, 4

<sup>37</sup> As above, p10

<sup>38</sup> As above, p3

<sup>39</sup> As above, p10

## 2 Lords stages: second reading and committee

This section refers to clauses as numbered in the bill as brought from the Commons ([HL Bill 133](#)).

### 2.1 Second reading

Lord Murray of Blidworth opened and closed the debate on behalf of the government.

Over 80 members of the Lords were listed to speak. Baroness Mobarik (Conservative), who spoke against the bill, suggested that the number of participants was an indication of “the disquiet and discomfort that so many of us feel”.<sup>40</sup>

In a high-profile contribution, the Archbishop of Canterbury said the bill “fails to live up to our history, our moral responsibility and our political and international interests”.<sup>41</sup> He urged the government to reconsider many of its provisions.

Several Conservative peers spoke against the bill, including Lord Garnier, Baroness Helic, Baroness Sugg, Baroness Mobarik, Lord Kirkhope of Harrogate and Lord Bourne of Aberystwyth.<sup>42</sup> They focussed on similar issues as Labour, Liberal Democrat, crossbench and other peers who did not support the bill.

Concerns raised by the bill’s detractors included its impact on the UK’s international standing, the rule of law, and the UK’s compliance with its international legal obligations;<sup>43</sup> practical and moral issues related to its implementation;<sup>44</sup> doubts about whether it is likely to succeed in its objectives and have a deterrent effect;<sup>45</sup> and concerns about its impact on children, pregnant women and victims of trafficking or modern slavery.<sup>46</sup> Lords also raised other problems in the asylum system, focusing in particular on the

<sup>40</sup> [HL Deb 10 May 2023 cc1889-90](#)

<sup>41</sup> [HL Deb 10 May 2023 cc1793-4](#); “Archbishop of Canterbury savages ‘morally unacceptable’ Tory small boats bill”, *Mirror* [online], 10 May 2023

<sup>42</sup> For example, [HL Deb 10 May 2023 cc1842-3](#); [cc1851-2](#); [cc1860-1](#); [cc1889-90](#)

<sup>43</sup> [HL Deb 10 May 2023 c1841](#); [cc1838-9](#); [cc1851-2](#)

<sup>44</sup> [HL Deb 10 May 2023 cc1842-3](#); [cc1868-9](#)

<sup>45</sup> [HL Deb 10 May 2023 cc1842-3](#); [cc1851-2](#); [cc1899-1901](#)

<sup>46</sup> [HL Deb 10 May 2023 cc1889-90](#)

backlog of unresolved asylum claims and provision of safe and legal alternative routes of entry.<sup>47</sup>

Lord Paddick (Liberal Democrat) proposed a motion to decline the bill a second reading. The Lords did not agree to it, with 76 members voting in favour and 179 against.<sup>48</sup> Labour abstained. Lord Coaker, the party's home affairs spokesperson, reasoned that if the fatal motion were passed, the government would simply use the Parliament Acts to reintroduce the bill.<sup>49</sup> Many other speakers took a similar view, explaining that they wanted an opportunity to amend the bill.

Those speaking in support of the bill took a different view about its compatibility with the UK's international legal obligations, and emphasised the importance of stopping trafficking, illegal migration and dangerous boat crossings. Several acknowledged that the bill raised difficult and controversial issues but argued that its critics had not provided a viable alternative. Lord Howard of Lympne (Conservative), a former Home Secretary, said he supported it as "the best option available".<sup>50</sup> Lord Swire (Conservative) similarly argued "difficult and controversial though aspects of this Bill certainly are... if not this, then what?".<sup>51</sup> Lord Dobbs (Conservative) argued that the bill acted on a moral obligation to stop people smugglers.<sup>52</sup>

As with its critics, some of the bill's supporters expressed a concern about whether it would be effective. Lord Farmer (Conservative) warned of the potential for amendments to "water down" the bill.<sup>53</sup> Lord Balfe (Conservative) said his main worry was that the bill would not work if the government could not find a way to stop small boat crossings. He argued "if you cannot get across the channel, you will not try, but if you are told that you will wait for 10 years before being deported, of course you will come across".<sup>54</sup>

## 2.2

## Committee stage

The bill was [considered by the Lords in a Committee of the whole House over five sitting days](#) (24 May, 5 June, 7 June, 12 June, 14 June).

---

<sup>47</sup> HL Deb 10 May 2023 [cc1893-5](#)

<sup>48</sup> HL Deb 10 May 2023, [Division 1](#)

<sup>49</sup> [HL Deb 10 May 2023 c1788](#)

<sup>50</sup> [HL Deb 10 May 2023 cc1795-6](#)

<sup>51</sup> [HL Deb 10 May 2023 cc1893-5](#)

<sup>52</sup> [HL Deb 10 May 2023 c1807](#)

<sup>53</sup> [HL Deb 10 May 2023 cc1896-7](#)

<sup>54</sup> [HL Deb 10 May 2023 cc1895-6](#)

## Government amendments

A new clause and some amendments to existing clauses were all approved without divisions. The amendments were generally minor, technical or consequential on other amendments.

The amendments to **clause 5** (removal for the purposes of section 2 or 3) would affect people who are not nationals of Albania, Switzerland or an EU or EEA country (countries listed in section 80AA of the Nationality, Immigration and Asylum Act 2002 as amended by the bill) but who hold a passport or identity document for one of those countries. They would be subject to the same considerations for determining the country of removal as apply to nationals of those countries, as set out in clause 5(4).

The government's justification for the **new clause "Procedure for Tribunal Procedure Rules"** (which would enable the Lord Chancellor rather than the Tribunal Procedure Committee to make the first procedure rules for suspensive claim appeals) is that it wants to implement the bill as soon as practicable after royal assent, so needs a faster process to ensure the rules are in place upon commencement.<sup>55</sup>

Letters from Lord Murray to Lord Coaker [dated 18 May](#) and [26 May 2023](#), and an associated [supplementary delegated powers memorandum](#) dated 25 May 2023 provide overviews of the amendments at committee stage and the government's reasons for making them.

## Non-government amendments

There were no clause stand part divisions and no votes on non-government amendments at committee stage. The [text and outcome of each proposed amendment](#) considered in committee is listed in the bill's committee stage pages on the parliament website. Many of the issues raised in committee were brought back for votes at report stage. Accordingly, they are covered in the next section of this briefing.

---

<sup>55</sup> [Letter from Lord Murray of Blidworth to Lord Coaker](#), 26 May 2023



## 3 Lords stages: report

The bill [was considered by the Lords at report stage over three sitting days](#) (28 June, 3 July, 5 July). There were [20 divisions and 20 government defeats](#) on those divisions.

This section refers to clauses as numbered in the bill as amended at Lords committee stage ([HL Bill 148](#)).

### 3.1 Government amendments

The Lords approved dozens of amendments proposed by the government. Many were minor, technical or consequential.

#### Removals

[Amendment 47](#) creates a new criminal offence. Section 24(1) of the Immigration Act 1971 contains a list of offences punishable by up to six months' imprisonment or an unlimited fine. This includes an offence of disembarking from a ship or aircraft when being removed from the UK under Schedules 2 or 3 of the 1971 Act. Amendment 47 would create a similar offence, committed by someone who disembarks when being removed from the UK under the bill.

Lord Murray of Blidworth, the minister, said the amendment was prompted by a question in committee by Lord Ponsonby of Shulbrede (Labour) about “how transport workers could deal with a non-compliant person”. The new offence would, he said, engage [section 3 of the Criminal Law Act 1967](#) (allowing people to use reasonable force to prevent a crime from being committed).<sup>56</sup>

#### Suspensive claims

The bill would provide for two forms of legal challenge that could suspend someone's removal from the UK. These were originally known as ‘serious harm suspensive claims’ and ‘factual suspensive claims’.

[Amendment 126](#) changes the name of the latter from ‘factual suspensive claims’ to ‘removal conditions suspensive claims’. [Amendment 128](#) changes the nature of such claims so that removal can be challenged if the person

---

<sup>56</sup> [HL Deb 28 June 2023 c783](#)

does not meet the conditions for it, rather than if the Home Office has made a “mistake of fact”.

[Amendment 129](#) removes the power to amend the definition of a “working day” in relation to the deadline for suspensive claims, as recommended by the Delegated Powers and Regulatory Reform Committee.

The rest of this section considers non-government amendments.

## 3.2 International law

### Compliance with treaty obligations

Clause 1 of the bill as amended in committee would describe the bill’s purpose and provide that the remaining provisions must be interpreted so as to achieve that purpose. It would also say that [section 3 of the Human Rights Act 1998](#), which requires legislation to be interpreted in a way which is compatible with the European Convention on Human Rights, does not apply to the bill.

[Amendment 5](#), in the name of Baroness Chakrabarti (Labour), leaves out clause 1. Instead there would be a new clause saying “nothing in this Act shall require any act or omission” that conflicts with certain international treaties. These include the European Convention on Human Rights, the United Nations Refugee Convention and the Anti-Trafficking Convention.

Baroness Chakrabarti said amendment 5 was “essential to protecting the most vulnerable people... it is equally important for the international rules-based order and for our reputation as a great democracy in a troubled world”. Lord Paddick (Liberal Democrat) argued that if the UK did not comply with its international obligations, it was unlikely to get international co-operation in dealing with the global refugee crisis.

Lord Wolfson of Tredegar (Conservative) opposed amendment 5 on the ground that it would amount to incorporating the relevant treaties into UK law. Lord Murray called the amendment “unnecessary” because nothing in the bill breaches international law.<sup>57</sup>

Amendment 5 was agreed following a division ([222 content to 179 not content](#)).<sup>58</sup>

### European Court of Human Rights

Clause 54 addresses injunctions (“interim measures”) from the European Court of Human Rights. It would give the Home Secretary discretion to decide

---

<sup>57</sup> [HL Deb 28 June 2023 cc702-714](#)

<sup>58</sup> [HL Deb 28 June 2023 cc714-716](#)

whether or not to comply with an injunction if it orders a pause on someone's removal from the UK.

[Amendment 153](#), in the name of Baroness Chakrabarti (Labour), would have left out clause 54. She said “I believe Clause 54 to be a negotiating position on the part of the Government, who are trying to negotiate with the Strasbourg court” about such injunctions.

Lord Murray told the House: “reflections within the Strasbourg court are ongoing, and we are closely following the process. We are confident that they will lead to meaningful change”. On that basis, Baroness Chakrabarti did not press for a division, “to allow the Government more time to proceed with those negotiations before Third Reading”.<sup>59</sup>

### 3.3 Retroactive effect

Clause 2 would require the bill to have retroactive effect. The government wants it to apply to people who have come to the UK on or after 7 March 2023.

[Amendment 6](#), in the name of Lord Carlile of Berriew (crossbench), eliminates this retroactivity. Instead the bill would only apply to people who come to the UK after it is in force.

Lord Carlile told the House that “retrospectivity is the enemy of legal certainty”. He noted that people had continued to enter the UK by small boat since 7 March, including 3,500 people in June. The idea that the bill's retroactive element would deter people from arriving was a “fairy tale, but one of those nasty fairy tales that keeps the victims of it awake at night because of the uncertainty of what will happen to them”.

Lord Murray insisted that the retroactive element was “critical”. If it were omitted, there might be an increase in small boat crossings in the run-up to commencement of the bill. The minister accepted that there should be a “good reason” for retroactive legislation, but the “challenge we face in stopping the boats” was a very good reason.<sup>60</sup>

Amendment 6 was agreed following a division ([219 content to 177 not content](#)).<sup>61</sup>

---

<sup>59</sup> [HL Deb 3 July 2023 cc1084-1088v](#)

<sup>60</sup> [HL Deb 28 June 2023 cc714-728](#)

<sup>61</sup> [HL Deb 28 June 2023 cc728-730](#)

## 3.4 Refusing to process asylum claims

The bill would provide that asylum claims by most people who enter the UK by irregular means must be declared ‘inadmissible’. An inadmissible claim cannot be processed; it is, essentially, null and void. There are already inadmissibility rules applying to people who pass through safe countries en route to the UK, but their claim will normally be processed if they are not removed within six months.<sup>62</sup> The bill, by contrast, envisages claims being “permanently inadmissible”.<sup>63</sup>

[Amendment 15](#), in the name of Lord German (Liberal Democrat), provides that asylum claims must be processed if the person has not been removed within six months. In effect, this cements the existing inadmissibility policy in primary legislation.

Lord German described amendment 15 as providing a “route out of limbo” for people with inadmissible claims who are nevertheless not removed from the UK. It would be a “backstop” so that the government does not have to provide such people with financial support indefinitely. Lord Kerr of Kinlochard (crossbench) agreed: “the idea of limbo is insane, immoral and illegal, and... would be costly”.

Lord Murray emphasised that existing policy does not set a hard limit of six months after which claims must be processed (only a “general guideline”)<sup>64</sup>. The government would not agree to an amendment to make the inadmissibility rules “more lenient”. He added that the point of the bill is to remove people from the UK within days or weeks, so the amendment was also unnecessary.<sup>65</sup>

Amendment 15 was agreed following a division ([204 content to 168 not content](#)).<sup>66</sup>

## 3.5 Detention and removal of migrants

### Duration of detention

Clause 11 would allow people to be held in immigration detention for as long as the Home Secretary considers it “reasonably necessary”. This power would apply regardless of whether it is possible to remove the person from the UK

<sup>62</sup> See Library briefing [Refusing to process asylum claims: the safe country and inadmissibility rules](#), 8 February 2023, section 3.2

<sup>63</sup> Home Office, [Illegal Migration Bill, Delegated Powers Memorandum \(PDF\)](#), 7 March 2023, para 3

<sup>64</sup> Home Office, [Inadmissibility: safe third country cases](#), version 7.0, 28 June 2022, pp27-28

<sup>65</sup> [HL Deb 28 June 2023 cc749-758](#)

<sup>66</sup> [HL Deb 3 July 2023 cc997-998](#). The division was deferred from 28 June because of a technical fault.

for the time being. At present, what is a reasonable period of detention can be determined by judges by reference to the ‘Hardial Singh’ principles.<sup>67</sup>

[Amendment 66](#) and [amendment 76](#), in the name of Lord Carlile of Berriew (crossbench), provide that none of the changes to detention powers in clause 11 could be inconsistent with the Hardial Singh principles. For example, detention would not be authorised if the person could not be removed “within a reasonable period” – as determined by the courts rather than the Home Secretary.

Lord Carlile described the Hardial Singh criteria as “magnificent principles” developed by the common law. Viscount Hailsham (Conservative) agreed, saying that he did not want to see a “huge enlargement” in the Home Secretary’s discretionary powers over detention: “the judgment of the legality of detention should be left to the judges and the courts”, applying the Hardial Singh principles.

Lord Murray, for the government, put it to the House that “it is properly a matter for the Home Secretary rather than the courts to decide such matters, as the Home Office will be in full possession of all the relevant facts and best placed to decide whether continued detention is reasonable in the circumstances”. He added that people would be able to apply for release from detention by way of a writ of habeas corpus, or for immigration bail after the first 28 days.<sup>68</sup>

Amendment 66 was agreed following a division ([216 content to 163 not content](#)). Amendment 76 and various consequential provisions were agreed without a division.<sup>69</sup>

## Pregnant women

[Section 60 of the Immigration Act 2016](#) prevents the routine detention of pregnant women. It also provides for a maximum of 72 hours if they are detained (which can be extended to seven days if personally authorised by a minister). This would not apply to the new detention powers introduced by the bill.

[Amendment 65](#) and consequential [amendment 64](#), in the name of Baroness Lister of Burtersett (Labour), applies the section 60 safeguards to detention authorised by the bill. She described this as merely restoring the status quo and charged that the government had “given the flimsiest of justifications, lacking any evidential base” for its proposal. Baroness Sugg (Conservative) said the amendment was “supported by the royal colleges, medical professionals and over 140 groups representing women”. She also noted that

---

<sup>67</sup> *R (Singh) v Governor of Durham Prison* [1983] FWHC 1 (QB), 13 December 1983, as adopted in *Lumba (WL) v Secretary of State for the Home Department* [2011] UKSC 12, 23 March 2011. See generally Free Movement, [What are the Hardial Singh principles?](#), 9 July 2020

<sup>68</sup> [HL Deb 3 July 2023 cc1017-1025](#)

<sup>69</sup> [HL Deb 3 July 2023 cc1025-1029](#)

the amendment would not exempt women from the rest of the bill, such as the duty to arrange removal.

Lord Murray said that the bill would “send a clear message that vulnerable individuals, including pregnant women, cannot be exploited by the people-smuggling gangs”. In practice, he said, the government expected that anyone in the “later stages of pregnancy” and who could not be removed in the short term would be released on immigration bail. The minister also referred to safeguards apart from section 60, such as the policy on [Adults at Risk in immigration detention](#) (which includes pregnant women).<sup>70</sup>

Amendment 64 was agreed following a division ([226 content to 152 not content](#)), with six Conservatives voting against the government. Amendment 65 was agreed without a division.<sup>71</sup>

## Removal of LGBT people

Schedule 1 lists countries considered safe for people to be removed to if they are not a citizen of that country.

[Amendment 37](#), in the name of Lord Etherton (crossbench), adds a new clause called “restrictions on removal destinations: LGBT persons”. This would prevent the removal of certain types of people to specific countries: trans people to Brazil and LGBT people to ten mostly African countries. It would also stop people being sent to EU countries which are being formally investigated by the European Commission over human rights or rule of law concerns (as Poland and Hungary currently are).

Lord Etherton noted that Schedule 1 already contained some restrictions, with certain countries being listed as safe for men but not women. He argued that other minority groups should have similar protections and cited evidence for the proposed restrictions with respect to the countries named in the amendment. It would, Lord Etherton concluded, be “wholly unjust and a travesty in every moral sense to remove members of the LGBTQ+ community to any of those countries I have mentioned”. Similarly, it would be “inappropriate” for Poland and Hungary to be considered safe in light of the proceedings against their governments.

Lord Stewart of Dirleton (Conservative), the Advocate General for Scotland, said that an LGBT person who fears for their safety if sent to a given country – for example, a gay Ugandan being sent to Gambia – has a means of challenging removal under the bill. They could make a serious harm suspensive claim: “clause 38 makes it clear that persecution and onward refoulement... constitute serious and irreversible harm for the purposes of such a suspensive claim”.<sup>72</sup>

---

<sup>70</sup> [HL Deb 3 July 2023 c1008-1015](#)

<sup>71</sup> [HL Deb 3 July 2023 c1015-1017](#)

<sup>72</sup> [HL Deb 28 June 2023 c761-773](#)

Amendment 37 was agreed following a division ([216 content to 147 not content](#)).<sup>73</sup>

## 3.6 Modern slavery and human trafficking

The bill's proposed duty to arrange removal would apply to potential victims of human trafficking unless their presence is necessary for a criminal investigation or prosecution of their alleged traffickers. Accordingly, clause 4(1)(c) would provide that the duty applies "regardless of whether... the person claims to be a victim of slavery or... human trafficking".

[Amendment 12](#), in the name of Lord Hunt of Kings Heath, leaves out clause 4(1)(c). This and various related amendments sought to "restore current protections of victims of trafficking and modern slavery".

Lord Hunt noted that the Home Office had assessed around 90% of potential trafficking victims to be genuine in 2022. He quoted former Prime Minister Theresa May, who said at Commons second reading "the Home Office knows that the Bill means that genuine victims of modern slavery will be denied support". The Bishop of Manchester, like other speakers, argued there was no evidence for widespread abuse of modern slavery laws to frustrate removal.<sup>74</sup>

Lord Murray, the minister, described amendment 12 and those consequential on it as "wrecking amendments". He said that 73% of people detained for removal after arriving on a small boat had been referred as potential trafficking victims in 2021.<sup>75</sup> As such, diluting the removal arrangements duty to cater for trafficking cases would "profoundly undermine" the government's ability to tackle Channel crossings.<sup>76</sup>

Amendment 12 was agreed following a division ([210 content to 145 not content](#)).<sup>77</sup> The Lords also agreed various related and consequential provisions without a division.

[Amendment 95](#), in the name of Lord Randall of Uxbridge (Conservative), would keep existing protections for potential modern slavery victims where the suspected exploitation took place in the UK.

Baroness Helic (Conservative), supporting amendment 95, argued "removing modern slavery protections will not help stop the boats". The bill as drafted set a "high bar for co-operation before any person can be considered for an exemption" from the removal arrangements duty.

---

<sup>73</sup> [HL Deb 3 July 2023 cc999-1001](#). The division was deferred from 28 June because of a technical fault.

<sup>74</sup> [HL Deb 28 June 2023 c732-737](#)

<sup>75</sup> See Home Office, [Modern slavery referrals for people detained for return after arriving in the UK on small boats](#), 7 March 2023

<sup>76</sup> [HL Deb 28 June 2023 c741](#)

<sup>77</sup> [HL Deb 28 June 2023 c746-748](#)

Lord Murray described amendment 95 as “more targeted” than the amendments of Lord Hunt, but nevertheless as undermining the bill. He offered the following assurances:

The Bill does not impact [modern slavery] referrals of British citizens or persons who are in the UK without valid leave, having overstayed, and who are therefore, I suggest, more susceptible to exploitation in the UK; nor will unaccompanied children arriving on small boats be affected while they remain under 18... Finally, the Bill provides for an exception to the application of the public order disqualification where it is necessary for someone to remain in the United Kingdom to co-operate with an investigation or prosecution related to their exploitation.<sup>78</sup>

Amendment 95 was agreed following a division ([214 content to 150 not content](#)).<sup>79</sup> Several consequential changes were agreed without a division.

Clause 21(5) relates to the exceptions for people whose presence in the UK is considered necessary for a criminal investigation or prosecution. It would provide that someone’s presence in the UK must be assumed to be unnecessary unless there are “compelling circumstances”. Clause 21(6) would provide that the Home Secretary must have regard to Home Office guidance in deciding whether there are compelling circumstances (although it is not clear whether this imposes a duty to issue such guidance or just to have regard to guidance if issued).

[Amendment 96](#), in the name of Lord Carlile of Berriew (crossbench), leaves out clause 21(5) and (6). It would instead insert a power to make regulations about when it will be considered necessary for someone to remain in the UK to cooperate with an investigation or prosecution.

Lord Carlile described clause 21(5) and (6) as “contrary to all good prosecution practice”. A potential witness who is “on the other side of the globe somewhere” would be “unlikely to turn up”.

For the government, Lord Murray argued that “remote participation is now the norm in the workplace, and the criminal justice system is no different. It is simply no longer the case that a victim of crime needs to be in face-to-face contact with the police or others to assist with an investigation”. Cooperation could, in the majority of cases, “continue by email, messaging and video conferencing”. Pressed on whether the Director of Public Prosecutions had been consulted on these provisions, he undertook to find out and write to Lord Carlile.

Amendment 96 was agreed following a division ([202 content to 154 not content](#)).

---

<sup>78</sup> [HL Deb 28 June 2023 c739-743](#)

<sup>79</sup> [HL Deb 3 July 2023 cc1046-1047](#)



## 3.7

## Children

**Admissibility of asylum claims**

Clause 4 would provide that asylum claims, and human rights claims against removal to the person’s home country, cannot be processed.

[Amendment 14](#), in the name of Lord Dubs (Labour), would allow such claims to be processed if lodged by unaccompanied children.

Lord Dubs argued that automatically turning away asylum-seeking children would not have the deterrent effect desired by the government: “I have talked to some of the children in the Calais area. Those who get to Calais are absolutely determined to continue their journey”. Baroness Butler-Sloss (crossbench) said the government often talked about the best interests of children but such considerations were “totally ignored” in the bill.

Lord Murray said the government recognised the “particular vulnerability” of unaccompanied children, but that was why the bill set out to deter them from making dangerous journeys to the UK. Exempting this cohort would create a “perverse incentive” for children to take small boats where adults might not.<sup>80</sup>

Amendment 14 was agreed following a division ([185 content to 133 not content](#)).<sup>81</sup>

**Detention of unaccompanied children**

Section 5 of the Immigration Act 2014 limits the detention of unaccompanied children to short-term holding facilities and prevents them from being held for longer than 24 hours.<sup>82</sup> This would not apply to the new detention powers introduced by the bill.

[Amendment 51](#), in the name of Baroness Mobarik (Conservative), would retain existing limits on the detention of unaccompanied children. She noted the government’s argument that to exempt children would incentivise more adults to pretend to be under 18 or for smugglers to carry more children by boat. But she felt “preventing presumed future actions of an unknown number of adults is not a justification”. The power in the bill to specify new time limits by regulations was “wholly insufficient”. Baroness Stroud (Conservative) said that the safeguards on child detention in the 2014 Act were among the “landmark achievements” of the 2010-2015 Conservative-led government.

Lord Murray reiterated the government’s position that nobody would be detained for longer than “absolutely necessary” to remove them from the UK.

<sup>80</sup> [HL Deb 28 June 2023 c746-755](#)

<sup>81</sup> [HL Deb 28 June 2023 c756-757](#)

<sup>82</sup> [Immigration Act 2014\\_s5](#)

The government would use the power to impose a time limit by regulations if that were needed. Those regulations would now be subject to the affirmative procedure as a result of government amendments (see section 3.1 above).<sup>83</sup>

Amendment 51 was agreed following a division ([230 content to 152 not content](#)).<sup>84</sup>

## Detention of other children

Baroness Mobarik also proposed [amendment 57](#), to retain separate time limits on children who are accompanied.

Lord Murray warned that “children may be put at further risk by adults seeking to pass off unaccompanied children as their own”.

Amendment 57 was agreed following a division ([230 content to 151 not content](#)).<sup>85</sup>

## Accommodation of unaccompanied children

The bill would give the Home Secretary the power to provide or arrange accommodation for unaccompanied children within the scope of the removal arrangements duty. This would be exercised “pending their removal as adults or if it is decided to use the power to remove as a child”.<sup>86</sup> Clause 16(4) and (5) would allow the Home Secretary to decide that such a child should be transferred from local authority accommodation and into Home Office accommodation, and order that to happen.

[Amendment 89](#), in the name of the Bishop of Durham, provides that a decision to order transfer from local authority accommodation cannot happen unless “necessary to safeguard and promote the welfare of the child”. The bishop said it was a “damning indictment that an amendment of this nature is even required”. More generally, he argued that “the Home Office does not have the expertise, knowledge or experience to look after children”. It would be “very rare” that a child’s welfare would be served by transfer to Home Office accommodation.

Lord Murray noted that [section 55 of the Borders, Citizenship and Immigration Act 2009](#) already requires the Home Secretary have regard to child welfare in carrying out immigration functions. The bishop’s amendment was therefore unnecessary. He added that the government was “engaging with stakeholders” and working closely with the Department for Education. Pressed by Baroness Meacher (Conservative) for an assurance that children would not be in the “so-called care of the Home Office” for more than 48 hours or an otherwise short time, Lord Murray refused, saying it was

---

<sup>83</sup> [HL Deb 28 June 2023 cc786-794](#)

<sup>84</sup> [HL Deb 3 July 2023 cc1001-1004](#)

<sup>85</sup> [HL Deb 3 July 2023 cc1006-1008](#)

<sup>86</sup> Home Office, [Illegal Migration Bill Explanatory Notes \(PDF\)](#), 7 March 2023, para 100

“obvious” the government’s hands could not be tied given the scale of the Channel crossings issue.<sup>87</sup>

Amendment 89 was agreed following a division ([218 content to 158 not content](#)).<sup>88</sup>

## Age assessments

Clause 56 would remove the right of people who are subject to the removal arrangements duty to appeal against a decision that they are over 18.<sup>89</sup>

[Amendment 156A](#), in the name of the Bishop of Durham, restores this right of appeal. The bishop argued that the implications of incorrect age assessment decisions would be “disastrous” for the child; removing legal safeguards is “as horrifying as it is immoral”. He pointed to Home Office data showing that in nearly two thirds of cases where age was disputed last year, the person is ultimately assessed as under 18. Viscount Hailsham (Conservative) supported the amendment, although worried that the grounds of appeal provided were too narrow.

Lord Murray cited alternative statistics, covering a longer period, showing that the person is ultimately found to be a child in around half of cases where age is disputed. It was, he said, “important that we take steps to deter adults from claiming to be children and to avoid lengthy legal challenges to age-assessment decisions”.<sup>90</sup>

Amendment 156A was agreed following a division ([235 content to 185 not content](#)).<sup>91</sup>

The bill as amended in committee would have allowed for judicial review challenges to an age assessment decision, but judges would only have been able to quash decisions if “wrong in law” and not on the basis of factual error.

[Amendment 158A](#), in the name of Lord Hope of Craighead, extends the scope of such a judicial review. Judges would be able to quash an age assessment decision if it “proceeded on information about the person’s age which was incomplete, misleading or otherwise so seriously misinformed that no reasonable decision-maker would have relied on it”. This followed a recommendation of the Constitution Committee, on which Lord Hope sits.

Amendment 158A was agreed following a division ([232 content to 178 not content](#)).<sup>92</sup>

---

<sup>87</sup> [HL Deb 3 July 2023 cc1033-1042](#)

<sup>88</sup> [HL Deb 3 July 2023 cc1042-1043](#)

<sup>89</sup> Under [section 54 of the Nationality and Borders Act 2022](#), although this is not yet in force.

<sup>90</sup> [HL Deb 5 July 2023 cc1229-1241](#)

<sup>91</sup> [HL Deb 5 July 2023 cc1241-1243](#)

<sup>92</sup> [HL Deb 5 July 2023 cc1244-1246](#)

## 3.8

## Legal challenges to removal

## Suspensive claims

The only forms of legal challenge envisaged by the bill as preventing someone's removal are those provided for in clauses 37-52 ('suspensive claims'). One of the two forms of challenge available would be a 'serious harm suspensive claim'. Clause 38 would provide that such a claim succeeds if the person would "face a real, imminent and foreseeable risk of serious and irreversible harm" if sent from the UK to a third country (eg Rwanda).

[Amendment 130](#), in the name of Lord Etherton (crossbench), replaces clause 38 and inserts new examples of what would count as serious harm. These would include persecution, inhuman or degrading treatment, and onward removal to a country where there is a real risk of serious harm.

Lord Etherton was particularly critical of the proposed requirement for "irreversible" harm to trigger a successful claim against removal. "That would be not only novel but against all principle, and the meaning, intent and wording of the refugee convention". He was, however, willing to avoid a division if ministers were to give assurances that persecution within the ordinary meaning of the Refugee Convention was sufficient for a successful serious harm suspensive claim.

Lord Murray said that lowering the threshold for a serious harm claim would undermine the purpose of the bill. The formulation of "serious and irreversible harm" had been chosen with reference to the test of the European Court of Human Rights for issuing injunctions.<sup>93</sup>

No assurance having been provided, amendment 130 was agreed following a division ([187 content to 139 not content](#)). [Amendment 132](#), removing the Home Secretary's power to define "serious and irreversible harm" by regulations, was then approved without a division.<sup>94</sup>

## Judicial review

Clause 53 would provide that UK courts cannot grant injunctions preventing or delaying someone's removal under the bill.

[Amendment 152](#), in the name of Baroness Chakrabarti (Labour), leaves out clause 53. The clause was "anathema to our common-law system" and removing it "essential to most other protections which your Lordships propose".

Lord Murray argued that clause 53 was essential to the bill. It would provide a "necessary and effective safeguard against the endless merry-go-round of

<sup>93</sup> [HL Deb 3 July 2023 cc1062-1068](#)

<sup>94</sup> [HL Deb 3 July 2023 cc1068-1070](#)

legal challenges that those with no right to be here use to thwart their removal”.<sup>95</sup>

Amendment 152 was agreed following a division ([153 content to 128 not content](#)).<sup>96</sup>

## 3.9 Safe and legal routes

[Amendment 164](#), in the name of Baroness Stroud (Conservative), requires the Home Secretary to make regulations establishing “additional” safe and legal routes for refugees to enter the UK. This, she said, is designed to place a duty on the government “to do what they say they intend to do anyway”. The “moral credibility” of the entire bill depends on more safe and legal routes being created. Baroness Butler-Sloss (crossbench) was among the speakers backing the amendment, saying there are “absolutely no safe and legal routes at the moment, unless you go through UNHCR”.

Lord Lilley (Conservative) said that while he supported the idea of safe and legal routes, “there is no way that they will stop the boats”. Lord Murray, for the government, endorsed the point. He also argued that “proper process” should be followed in establishing new safe and legal routes, including consultation with local authorities on capacity as required by the bill.<sup>97</sup>

After extensive and at times heated debate, amendment 164 was agreed following a division ([232 content to 169 not content](#)).<sup>98</sup>

## 3.10 Tackling people smuggling

### National Crime Agency

[Amendment 168](#), in the name of Lord Coaker (Labour), would add a new clause to the bill. This would give the National Crime Agency a duty to combat organised crime in relation to Channel crossings, including a ‘cross-border people smuggling unit’ to work with other countries. There should, he said, be “no hiding place” for smugglers. He accepted that it was “not the most brilliant amendment in the world” but passing it would force the Commons to discuss the issue again. Baroness Meacher (crossbench) supported the amendment. It was, she said, the sole attempt in the bill to have the government focus on criminals and not on removing safeguards for their victims.

---

<sup>95</sup> [HL Deb 3 July 2023 cc1084-1088](#)

<sup>96</sup> [HL Deb 3 July 2023 cc1088-1089](#)

<sup>97</sup> [HL Deb 5 July 2023 cc1248-1267](#)

<sup>98</sup> [HL Deb 5 July 2023 cc1267-1269](#)

Lord Garnier (Conservative) noted that the National Crime Agency already has responsibility for tackling organised crime “of all types”.<sup>99</sup> It would be a “a step too far if we legislate the internal administration of a police authority”. Baroness Butler-Sloss said she shared that concern to some extent, asking whether the agency itself had been consulted.

The Advocate General for Scotland said he sympathised with the aim of the amendment but the government considered it unnecessary. He also argued that it would “undermine the operational independence of the NCA”. Lord Stewart also pointed to the government’s “dedicated multiagency organised immigration crime task force”, which the National Crime Agency is part of.<sup>100</sup>

Amendment 168 was agreed following a division ([188 content to 158 not content](#)).<sup>101</sup>

## Ten-year strategy

[Amendment 168A](#), in the name of the Archbishop of Canterbury, inserts a new clause requiring the Home Secretary to “prepare a ten-year strategy for tackling refugee crises” in collaboration with other countries that have signed refugee rights treaties. The strategy would have to include provisions for tackling human trafficking. The amendment attracted both Conservative and Labour support.

The archbishop argued that the UK needs a “long-term vision... that reaches beyond short-term electoral cycles”. That such a strategy might be useful, he suggested, was demonstrated by “the fact that we are here debating a second migration Bill in as many years”.

Lord Bourne of Aberystwyth (Conservative) said the UK would be well placed to lead such international discussions as a member of the UN Security Council. Lord Green of Deddington (crossbench) said he had been persuaded by the archbishop’s speech about the “useful proposal”. Lord German (Liberal Democrat) told the House “we cannot just be isolationists”.

Lord Murray said the government “recognise the interconnected nature of migration and the need to work collectively”. But it did not want to create a “siloes refugee strategy” or divert resources from existing work of a similar nature.<sup>102</sup>

Amendment 168A was agreed following a division ([186 content to 131 not content](#)).<sup>103</sup>

---

<sup>99</sup> See [section 1 of the Crime and Courts Act 2013](#)

<sup>100</sup> [HL Deb 5 July 2023 cc1269-1280](#)

<sup>101</sup> [HL Deb 5 July 2023 cc1280-1281](#)

<sup>102</sup> [HL Deb 5 July 2023 cc1281-1293](#)

<sup>103</sup> [HL Deb 5 July 2023 cc1293-1295](#)

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](https://commonslibrary.parliament.uk).

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



 [commonslibrary.parliament.uk](https://commonslibrary.parliament.uk)

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