



## **Illegal Migration Bill**

### **HL Bill 133 of 2022–23**

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Date published: 4 May 2023

The purpose of the [Illegal Migration Bill](#) is “to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal from the UK” of those who enter in breach of immigration control. The bill would create a new duty on the home secretary to arrange for the removal, as soon as “reasonably practicable”, of certain individuals (as defined in clause 2 of the bill). The bill outlines some exceptions to this duty to remove. The bill includes the power to remove unaccompanied children and details specific circumstances in which this power could be used.

Those meeting the conditions of clause 2 would have any asylum or human rights claim they make declared as inadmissible. The bill includes new powers to detain individuals subject to clause 2 and removes existing statutory time limits on detention of pregnant women and families with children. The bill provides the secretary of state with greater powers to decide the place of detention. It would also give the Home Office powers to provide accommodation and support to unaccompanied children.

The bill would disapply some modern-day slavery protections, such as the right to a recovery period, from potential victims of trafficking who are subject to clause 2. The bill includes provision for a cap on those entering the country from a safe and legal route. It would permanently ban those who are subject to clause 2 from gaining immigration status or citizenship in the future, subject to some exceptions. The bill specifies procedures and timescales for challenging the removal duty and defines suspensive claims which can delay removal.

Clause 1 of the bill would exempt the bill from section 3 of the Human Rights Act 1998. The government has stated that it is unable to make a statement of the bill’s compatibility with the European Convention on Human Rights but wishes Parliament to proceed with the bill. The bill’s second reading is scheduled to take place in the House of Lords on 10 May 2023.

The bill has been contentious. Shadow Home Secretary Yvette Cooper has described the bill as a “government gimmick” and a “con”. The SNP’s Alison Thewliss has condemned the bill as “an abhorrent dog whistle”. Section 5 outlines some reaction the bill has received externally.

Immigration is a reserved matter, therefore most of the bill’s provisions apply across all four parts of the UK.

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## I. Overview

The Illegal Migration Bill was introduced in the House of Commons on 7 March 2023. It builds upon commitments made by Prime Minister Rishi Sunak on 4 January 2023 to “stop the boats and tackle the unfairness of illegal migration”.<sup>1</sup> The bill’s purpose, as laid out by the explanatory notes, is to:

- deter illegal entry into the UK
- break the business model of the people smugglers and save lives
- promptly remove those with no legal right to remain in the UK
- make provision for setting an annual cap on the number of people to be admitted to the UK for resettlement through safe and legal asylum routes<sup>2</sup>

The bill was not mentioned in the 2022 Queen’s Speech, although more general commitments on the issue were made:

My government will protect the integrity of the United Kingdom’s borders and ensure the safety of its people. My ministers will take action to prevent dangerous and illegal Channel crossings and tackle the criminal gangs who profit from facilitating them.<sup>3</sup>

Provisions in the Illegal Migration Bill would introduce a duty on the home secretary to remove all adults entering the UK illegally (as defined in clause 2) after 7 March 2023. It would also introduce powers to detain those individuals prior to removal. The bill increases the secretary of state’s powers to decide the place and duration of an individual’s detention. In addition to the duty to remove adults, the bill contains a power to remove those under 18 years of age; this would become a duty and the secretary of state would be required to remove an unaccompanied child upon them reaching 18.

The bill would make the asylum claims of any individual subject to removal inadmissible and remove protections of the modern slavery act from them. It would also place restrictions on future grants of visas, settlement and citizenship to those people who were ever subject to the duty to remove, subject to some limited exceptions.

The bill would introduce an annual cap, set by Parliament, on the number of people who can enter the UK through safe and legal routes. It would also make asylum claims and human rights claims made by nationals of safe countries (as defined by the bill) inadmissible.

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<sup>1</sup> Prime Minister’s Office, ‘[PM speech on building a better future](#)’, 4 January 2023.

<sup>2</sup> [Explanatory notes](#), p 3.

<sup>3</sup> Prime Minister’s Office, ‘[Queen’s Speech 2022](#)’, 10 May 2022.

The Human Rights Act 1998 requires any minister in charge of a bill to lay a statement in the relevant House before a bill's second reading specifying that:

- in the minister's view, the bill is compatible with human rights; or
- that it is incompatible, but that the government nevertheless wishes to proceed with it.<sup>4</sup>

The government has confirmed that it is unable to make a statement that the bill is compatible with convention rights, but nonetheless wishes it to go ahead.<sup>5</sup>

The government human rights memorandum, prepared by the Home Office for the Joint Committee on Human Rights (JCHR), gave the government's analysis of the human rights implications of the bill.<sup>6</sup> A supplementary memorandum was published by the Home Office about amendments made during report stage. This included details on provisions about how the government could interpret interim measures made by the European Court of Human Rights (ECtHR).<sup>7</sup> At second reading in the Commons, the home secretary noted that although there are "good arguments for compatibility" the measures contained in the bill are "novel and legally untested", meaning that the government is "unable to say decisively that the bill is compatible with the European Convention on Human Rights (ECHR)".<sup>8</sup>

The JCHR began an inquiry into the bill on 16 March 2023. The inquiry is examining how the bill engages with rights protected under the ECHR. It will also consider if the bill in its current form meets the UK's human rights obligations under other international treaties, including the 1951 UN Refugee Convention and the UN Convention on the Rights of the Child.<sup>9</sup> Chair Joanna Cherry (SNP MP for Edinburgh South West) stated that the committee aimed to report "before the bill has finished its passage through the House of Lords."<sup>10</sup>

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<sup>4</sup> Liberty, '[The Human Rights Act](#)', accessed 25 April 2023.

<sup>5</sup> UK Parliament, '[Illegal Migration Bill](#)', accessed 1 May 2023.

<sup>6</sup> Home Office, '[Illegal Migration Bill: European Convention on Human Rights memorandum](#)', 7 March 2023.

<sup>7</sup> Home Office, '[Illegal Migration Bill: Supplementary European Convention on Human Rights memorandum](#)', 25 April 2023.

<sup>8</sup> [HC Hansard, 13 March 2023, col 580.](#)

<sup>9</sup> UK Parliament, '[Inquiry into Illegal Migration Bill launched: Home Secretary asked to appear before committee](#)', 16 March 2023.

<sup>10</sup> [HC Hansard, 28 March 2023, col 928.](#)

Concerns have been raised about the bill's parliamentary timetable leading to a lack of scrutiny, meaning that pre-legislative scrutiny of the bill was not possible.<sup>11</sup> There has been criticism about the lack of impact assessments accompanying the bill.<sup>12</sup>

At the time of writing the government had not published any such impact assessment. Other documents, such as the delegated powers memorandum, can be found on the bill page on the UK Parliament website.<sup>13</sup> The government has also published a range of factsheets on the bill.<sup>14</sup>

The bill received second reading in the House of Commons on 13 March 2023 and was considered in a committee of the whole house (CWH) on 27 and 28 March 2023. It received its report stage and third reading on 25 April 2023.

At committee stage only government amendments were made to the bill, including two new clauses. There were eight unsuccessful divisions on non-government amendments or new clauses. There was also a division on whether clause 11 (now clause 10) on powers of detention should stand as part of the bill, which the government won by 302 votes to 242.<sup>15</sup> All other clauses were approved without division.

At report stage, the government introduced numerous amendments.<sup>16</sup> These included changes to provide that interim measures of the ECtHR would not affect the duty to remove an individual, unless a minister determined it should. The government also removed the bill's clause 8, which would have allowed the home secretary to remove from the UK family members of a person subject to clause 2.

Other government amendments on safe and legal routes for migration and age verification of migrants were also introduced at report. There were five divisions on non-government amendments. None of these were agreed.

The bill passed its third reading by 289 votes to 230.<sup>17</sup>

On 27 April 2023, the bill was introduced in the House of Lords. It is due to receive its second reading on 10 May 2023. Lord Paddick (Liberal Democrat)

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<sup>11</sup> Hannah White, '[Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted](#)', Institute for Government, 13 March 2023.

<sup>12</sup> [HC Hansard, 28 March 2023, cols 936–7.](#)

<sup>13</sup> UK Parliament, '[Illegal Migration Bill](#)', accessed 28 April 2023.

<sup>14</sup> Home Office, '[Illegal Migration Bill: Factsheets](#)', 31 March 2023.

<sup>15</sup> [HC Hansard, 28 March 2023, cols 972–5.](#)

<sup>16</sup> Home Office, '[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)', 24 April 2023, DEP2023-0363.

<sup>17</sup> [HC Hansard, 26 April 2023, cols 887–90.](#)

has tabled an amendment to decline to give the bill second reading.<sup>18</sup>

## 2. Background to the bill

### Small boats: A big issue?

On 4 January 2023, Prime Minister Rishi Sunak gave a speech setting out his priorities for 2023. Amongst these was a pledge to “pass new laws to stop small boats, making sure that if you come to this country illegally, you are detained and swiftly removed”.<sup>19</sup>

The number of those arriving in the UK by small boat crossings of the Channel has increased in recent years, leading the government to describe the UK asylum system as “broken”.<sup>20</sup> Home Office figures show nearly 45,000 people were detected arriving in small boats in 2022, a figure which has risen each year since the scale of the crossings was first identified in 2018. In 2018, less than 300 people were detected arriving by small boat crossings. In comparison, 8,466 people were detected in 2020 and 28,526 people were detected in 2021.<sup>21</sup>

The majority of those entering the UK in a small boat claim asylum. The Home Office estimates that 90% of all small boat arrivals in 2022 made asylum claims. Arrivals by small boats accounted for less than half (45%) of the total number of people claiming asylum in 2022. However, between 2018 and 2022 just 28% of all asylum applications during the period were made by people arriving by small boat crossing, so the proportions have increased.<sup>22</sup>

Home Office statistics also analyse the demographic background of those arriving by small boat. Figures show that 87% of all small boat arrivals in 2022 were male; 72% of arrivals by small boat were males aged 18 years and above.<sup>23</sup> The number of small boat arrivals of either sex who were under 18 years of age was 7,117 or 16%.

Since January 2018, Iranians have comprised 22% of all small boat arrivals. While they represented most small boat arrivals in 2018 (80%) and 2019 (66%), a greater mix of nationalities have been identified making the crossing since 2020. Almost half of small boat arrivals in 2022 have been Albanian and Afghan nationals. Albanians were more prominent from July to September

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<sup>18</sup> UK Parliament, ‘[House of Lords business: Second reading amendment motion](#)’, accessed 4 May 2023.

<sup>19</sup> Prime Minister’s Office, ‘[PM speech on building a better future](#)’, 4 January 2023.

<sup>20</sup> Home Office, ‘[Illegal Migration Bill: Overarching factsheet](#)’, updated 28 April 2023.

<sup>21</sup> Home Office, ‘[Official statistics: Irregular migration to the UK, year ending December 2022](#)’, 23 February 2023.

<sup>22</sup> House of Commons Library, ‘[Asylum statistics](#)’, 1 March 2023, p 34.

<sup>23</sup> Home Office, ‘[Official statistics: Irregular migration to the UK, year ending December 2022](#)’, 23 February 2023, table Irr\_02c.

2022, whereas Afghans became more prominent from October to December 2022.<sup>24</sup>

The government has said that the bill will tackle the “abuse of our modern slavery system by people seeking to thwart their removal”.<sup>25</sup> The Modern Slavery Act 2015 extended the national referral mechanism (NRM) to all victims of modern slavery. The NRM is a framework for identifying and referring potential victims of modern slavery and seeks to ensure they receive appropriate support. Staff at organisations designated as ‘first responders’, such as police forces, the Border Force, the Refugee Council and local authorities, make online referrals to the NRM.<sup>26</sup>

The government has pointed to a “significant rise” in the modern slavery caseload, stating that two-thirds of those detained arriving on a small boat are referred to the NRM, up from six percent in 2019.<sup>27</sup>

### Refugees and asylum seekers

Refugees are specifically defined and protected in international law. The 1951 UN Refugee Convention defines a refugee as a person who is unable or unwilling to return to their country of origin “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”.<sup>28</sup> The UN High Commissioner for Refugees (UNHCR) has argued that refugees are therefore “clearly defined under international and regional refugee law, and states have agreed to a well-defined and specific set of legal obligations towards them”.<sup>29</sup> The UK is party to the convention and its 1967 protocol.<sup>30</sup>

An asylum seeker is a person who is seeking international protection and has applied for refugee status under the convention, but whose claim has not yet been determined. Asylum encompasses a variety of elements, including non-refoulement (no-one should be returned to a country where they would face persecution), permission to remain in the territory of the asylum country and humane standards of treatment. The UN states that every person has a right to seek asylum in another country. However, people who do not qualify for protection as a refugee would not receive refugee status and may be deported.<sup>31</sup>

<sup>24</sup> Home Office, ‘[Official statistics: Irregular migration to the UK, year ending December 2022](#)’, 23 February 2023.

<sup>25</sup> Home Office, ‘[Illegal Migration Bill: Overarching factsheet](#)’, 31 March 2023 updated 28 April 2023.

<sup>26</sup> Home Office, ‘[National referral mechanism guidance: Adult \(England and Wales\)](#)’, 19 May 2022.

<sup>27</sup> [Explanatory notes](#), p 7.

<sup>28</sup> UNHCR, ‘[Convention and protocol relating to the status of refugees](#)’, accessed 11 April 2023.

<sup>29</sup> UNHCR, ‘[“Refugees” and “Migrants”: Frequently asked questions](#)’, 31 August 2018

<sup>30</sup> UNHCR, ‘[Protocol relating to the status of refugees](#)’, 31 January 1967.

<sup>31</sup> House of Lords Library, ‘[Refugees and asylum-seekers: UK policy](#)’, 1 December 2022.

To claim asylum in the UK, a person must be physically in the UK. It is not possible to apply from outside the country, and there is no asylum visa. A person cannot obtain a visa with the explicit purpose of seeking asylum. Therefore, for individuals who do not have visa-free travel to the UK, they must enter either irregularly—such as by a small boat—by using false documents, or on a visa for another purpose, such as tourism or study.

As well as its asylum system, the UK runs several schemes for refugees looking for protection in the UK and for others seeking access to the UK for humanitarian reasons. These include:

- The UK resettlement scheme, community sponsorship, and the mandate scheme, which are refugee resettlement programmes.
- Refugee family reunion visas. These visas are available to people who are immediate relatives of people granted refuge in the UK before they left their country of origin.
- Bespoke nationality-specific immigration routes, such as those available to some Afghans, Ukrainians and people from Hong Kong.<sup>32</sup>

### Previous government policy on immigration

Researchers at UK in a Changing Europe have argued that “the most significant change” to asylum policy recently occurred when the UK left the EU on 31 December 2020.<sup>33</sup> This meant the UK was no longer part of the Dublin Regulation, also referred to as Dublin III. This EU legislation sets out which member state handles the examination of an asylum application, often the country where an asylum seeker first arrives. No agreement between the EU and UK on asylum policy was made when the UK left Dublin III. No returns agreements have since been made, although the UK has said it intends to agree bilateral arrangements with EU member states for the return of asylum seekers.<sup>34</sup>

In March 2021, Boris Johnson’s government published a policy statement for its new plan for immigration. In the statement, the government set out its proposals to reform the asylum system, which it said was “broken”.<sup>35</sup>

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<sup>32</sup> For further information see, House of Commons Library, ‘[Safe and legal routes to the UK for people seeking protection](#)’, 25 January 2023.

<sup>33</sup> UK in a Changing Europe, ‘[The Illegal Migration Bill](#)’, accessed 25 March 2023.

<sup>34</sup> UK in a Changing Europe, ‘[The Illegal Migration Bill](#)’, accessed 25 April 2023.

<sup>35</sup> Home Office, ‘[New plan for immigration: Policy statement](#)’, 29 March 2022.



The government said it wanted to encourage people seeking asylum to enter the UK through safe and legal routes and would strengthen support for those that entered the country in this manner. It said it would introduce measures to discourage people from entering the UK by irregular means, including those crossing the Channel by small boats. The government said its intention was to prevent the abuse of the asylum system.

Several of the measures put forward in the new plan were introduced under the Nationality and Borders Act 2022, including:<sup>36</sup>

- A maximum sentence of life imprisonment for people smugglers.
- An increase in the maximum penalty for illegally entering the UK or overstaying a visa from six months' imprisonment to four years.
- A power for the differential treatment of refugees.<sup>37</sup> This would allow different treatment for those granted refugee status having travelled directly to the UK from the country they were fleeing, compared to refugees who had travelled through a safe third country. Differentiation may relate to length of leave, requirements for settlement, family reunion and recourse to public funds.
- Changes relevant to third country inadmissibility processes to make it easier to remove someone to a safe third country. The changes made it possible to remove someone whilst their asylum claim was pending, provided removal would be in line with the UK's international obligations.<sup>38</sup>

As part of its plans to deter asylum seekers from entering the UK by irregular means and remove those that do to a safe third country, Boris Johnson's government agreed the migration and economic development partnership (MEDP) with the Rwandan government.<sup>39</sup>

The MEDP is an asylum arrangement allowing the UK to send some people to Rwanda who would otherwise claim asylum in the UK. The partnership was agreed in April 2022. However, the scheme has not yet started. The government is currently awaiting court judgements on various legal challenges over the scheme.<sup>40</sup> This included the ECtHR granting injunctions

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<sup>36</sup> Home Office, '[Borders Act to overhaul asylum system becomes law](#)', 28 April 2022.

<sup>37</sup> Home Office, '[Nationality and Borders Bill: A differentiated approach factsheet](#)', 2 March 2022.

<sup>38</sup> Home Office, '[Nationality and Borders Bill: Removal to a safe third country factsheet](#)', 4 December 2021.

<sup>39</sup> Home Office, '[Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement](#)', 6 April 2023.

<sup>40</sup> BBC News, '[Rwanda asylum policy: Migrants granted right to challenge](#)', 16 January 2023.

to halt flights for some individuals under its rule 39 interim measures procedures. The government was critical of the ECtHR's decision.<sup>41</sup>

Rishi Sunak's government has continued the policy of trying to deter asylum seekers from making crossings across the Channel. On 14 November 2022, the government signed a new UK-France agreement intended to reduce such illegal small boat crossings. The government said the deal was part of its "wide-ranging approach to fix the broken asylum system [and] break the business model of people smugglers facilitating these journeys".<sup>42</sup> A further agreement with France, in which the UK agreed to fund enforcement measures, was signed on 10 March 2023. However, this agreement does not enable the UK to return asylum seekers to France.<sup>43</sup>

On 13 December 2022, Prime Minister Rishi Sunak announced a new agreement with Albania. The agreement sought to increase removals of Albanian nationals who arrived by small boat crossings. Measures included guidance to caseworkers emphasising that Albania is considered a safe country and raising the threshold that someone must meet to be considered a modern slave.<sup>44</sup>

On 7 March 2023, the government introduced the Illegal Migration Bill in the House of Commons. The home secretary said that the bill would:

[...] allow us to stop the boats that are bringing tens of thousands to our shores in flagrant breach of both our laws and the will of the British people.<sup>45</sup>

## Read more

- House of Commons Library, '[Irregular migration: A timeline of UK-French co-operation](#)', 22 March 2023
- House of Commons Library, '[Modern slavery cases in the immigration system](#)', 8 March 2023
- House of Commons Library, '[Refusing to process asylum claims: The safe country and inadmissibility rules](#)', 8 February 2023
- House of Commons Library, '[Safe and legal routes to the UK for people seeking protection](#)', 25 January 2023
- House of Lords Library, '[Refugees and asylum-seekers: UK policy](#)', 1 December 2022

<sup>41</sup> House of Commons Library, '[UK-Rwanda migration and economic development partnership](#)', 20 December 2022, p 40.

<sup>42</sup> Home Office, '[More French officers to patrol beaches and tackle small boat crossings](#)', 14 November 2022.

<sup>43</sup> UK in a Changing Europe, '[The Illegal Migration Bill](#)', accessed 25 April 2023.

<sup>44</sup> [HC Hansard, 13 December 2022, col 887.](#)

<sup>45</sup> [HC Hansard, 7 March 2023, col 151.](#)

- House of Lords Library, '[Rwanda policy: Unaccompanied children and age assessments](#)', 15 July 2022

### 3. Bill provisions

As outlined in the explanatory notes:

[...] the purpose of the bill is to create a scheme whereby anyone arriving in the UK will be promptly removed to their home country or to a safe third country to have any asylum claim processed.<sup>46</sup>

The Illegal Migration Bill would impose a statutory duty on the home secretary to arrange for the removal of a person who meets four conditions as detailed in clause 2 of the bill:

- they entered the UK in breach of immigration laws
- they entered the UK on or after 7 March 2023
- they travelled through a safe third country to reach the UK
- they require leave to enter or remain but do not have it

The home secretary is required to remove individuals subject to clause 2 as soon as “reasonably practicable” after the person’s arrival or entry into the UK.

Subsection 11 of clause 2 includes some exemptions to this duty. One exemption is that the home secretary is not required to arrange the removal of an unaccompanied child from the UK until they turn 18 years old. However, the bill’s clause 3 does include a power to remove a child before they reach 18. This power can only be used for certain purposes, for example reunion with the person’s parent.

The bill includes provisions about support and accommodation for those unaccompanied children pending their removal at 18 years old or whilst awaiting removal earlier if the clause 3 power is exercised. Clauses 55 and 56 relate to the use of age assessments where there is disagreement about the age of an individual.

In addition, the bill contains several measures which would apply to those covered, or potentially covered, by the clause 2 duty to remove. These include:

- Automatic inadmissibility of any asylum claims individuals make, in addition to any claim that removal to their country of origin would be a breach of their human rights.

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<sup>46</sup> [Explanatory notes](#), p 3.

- New powers to detain. Detention can be in any place the secretary of state considers appropriate. The bill would disapply statutory limits on the length of detention for families with children and pregnant women detained under these powers. The bill also includes powers to detain unaccompanied children; circumstances justifying the use of detention and time limits on it will be specified in regulations.
- Disqualification of certain provisions of the Modern Slavery Act 2015, such as support and temporary leave to remain and provision of a recovery period.
- Restrictions on ever being granted entry, leave to remain or British citizenship in the future.

The bill would provide powers to:

- make asylum claims and human rights claims made by nationals of safe countries (as defined by the bill) inadmissible
- set an annual cap on the number people to be admitted to the UK through safe and legal routes of migration

The government supported a backbench amendment at report stage in the House of Commons to require the secretary of state to publish a report on safe and legal routes that currently exist and plans for additional routes.

The bill introduces a procedure for individuals subject to removal to challenge their removal by a suspensive claim. The bill defines what would count as a suspensive claim. The government has stated that its intention is that only suspensive cases would delay removal, and all other legal challenges would be non-suspensive and so not delay somebody's removal.<sup>47</sup>

Government amendments at report stage in the House of Commons also gave immigration officers new powers to seize and retain mobile phones and other electronic devices from migrants. The bill would provide that failure to hand over information required to access electronic devices must be treated as damaging to a person's credibility in any asylum or human rights claim.

This section provides an overview of the clauses in the bill as introduced in the House of Lords.<sup>48</sup> It should be read in conjunction with the bill's explanatory notes.<sup>49</sup> Background information on several of the bill's clauses is also available in the House of Commons Library briefing '[Illegal Migration Bill 2022–23](#)' (10 March 2023).<sup>50</sup>

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<sup>47</sup> [HC Hansard, 26 April 2023, col 783.](#)

<sup>48</sup> UK Parliament, '[Illegal Migration Bill](#)', accessed 28 April 2023.

<sup>49</sup> [Explanatory notes.](#)

<sup>50</sup> House of Commons Library, '[Illegal Migration Bill 2022–23](#)', 10 March 2023.

Clause 1 sets out the purpose of the bill and provides an overview of its contents. The clause also disapplies section 3 of the Human Rights Act 1998.

The remaining clauses deal with:

- duty to make arrangements for removal (clauses 2 to 9)
- detention and bail (clauses 10 to 14)
- unaccompanied children (clauses 15 to 20)
- modern slavery (clauses 21 to 28)
- entry, settlement and citizenship (clauses 29 to 36)
- legal proceedings (clauses 37 to 54)
- age assessments (clauses 55 to 56)
- inadmissibility of certain asylum and human rights claims (clause 57)
- safe and legal routes (clauses 58 to 59)
- credibility of claim (clause 60)
- general, including extent, commencement and consequential provisions (clauses 61 to 67)

The bill also includes two schedules. Schedule 1 relates to countries and territories to which a person may be removed and schedule 2 relates to electronic devices.

### **Introduction (clause 1)**

Clause 1 sets out the bill's purpose and an overview of its provisions. Clause 1(5) would exempt the bill from section 3 of the Human Rights Act 1998, which states:

[...] as far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.<sup>51</sup>

### **Duty to make arrangements for removal (clauses 2 to 9)**

Clause 2 places a duty on the secretary of state to arrange for the removal of a person from the UK who meets four conditions:

- the person has come to the UK illegally (as defined by the clause)
- they entered or arrived in the UK on or after 7 March 2023
- they did not come directly to the UK from a country in which

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<sup>51</sup> [Human Rights Act 1998](#).

- their life and liberty were threatened by reason of their race, religion, nationality, membership of a social group or political opinion
- they require leave to enter or remain in the UK but do not have it

The clause details exceptions to the duty to remove including exceptions in relation to unaccompanied children.

Clause 3 provides that the secretary of state does not have a duty to remove unaccompanied children. However, subsection 2 does provide the power to do so. Subsection 3 specifies circumstances under which the power can be exercised. The clause provides the secretary of state with powers to make regulations specifying other reasons why the power could be exercised; these are subject to the affirmative procedure in Parliament. The clause would also provide the secretary of state with powers to make regulations providing for other exemptions from the duty to remove.

Clause 4 provides that the clause 2 duty applies regardless of whether individuals have claimed asylum, made a human rights claim, been assessed as a potential victim of trafficking or applied for judicial review to challenge their removal.

Clause 5 requires the secretary of state to arrange for the removal of a person meeting the conditions of clause 2 “as soon as reasonably practicable after the person’s entry or arrival to the UK”. It specifies details of which country or territory somebody can be removed to, for example where an individual has nationality or citizenship.

The clause 2 duty would also apply “as soon as reasonably practicable” after a previously unaccompanied child reaches 18 years old and to those under 18 who the secretary of state has decided to remove. Provisions about the removal of unaccompanied children are subject to the provisions in clause 3, which specifies the circumstances under which the power could be used. Clause 5 would also extend the number of countries from which asylum claims by its nationals were automatically deemed inadmissible.

Clause 6 provides the secretary of state with the powers to amend the bill’s schedule 1 (which specifies countries to which a person may be removed). Clause 7 outlines the process under which removal may occur. For example, that a person be provided with a notice in writing stating the country that they are to be removed to and their right to make a suspensive claim.

Clause 8 amends legislation to provide that those who fall within the duty to remove but who are not detained receive support on the same basis as those detained. Clause 9 makes other consequential amendments relating to removal.

## Detention and bail (clauses 10 to 14)

Clauses 10 to 14 relate to the powers to detain individuals falling within the scope of clause 2.<sup>52</sup>

Clause 10 would provide powers for the detention of persons subject to, or potentially subject to, clause 2. Clause 10 would amend paragraph 16 of schedule 2 to the Immigration Act 1971 to give immigration officers the power to detain in the following circumstances:

- if the immigration officer suspects that the person meets the four conditions in section 2 of the Illegal Migration Act 2023
- if the immigration officer suspects that the secretary of state has a duty to make arrangements for the removal of the person from the UK, pending a decision as to whether the duty applies.
- if the secretary of state has such a duty, pending the person's removal from the UK

In addition, it would enable an unaccompanied child to be detained either while awaiting removal under clause 3(2) (power to remove) or pending the grant of limited leave to stay by virtue of clause 3(1) (exempting the duty to remove from unaccompanied children). The bill details provisions under which limited leave would be granted.

The clause clarifies that detention must be under the powers in paragraph 2C, rather than the powers provided for elsewhere in paragraph 16 of schedule 2 to the Immigration Act 1971.

Clause 10 would require the secretary of state to only exercise provisions in relation to the detention of an unaccompanied child as specified in regulations. In addition, it would give the secretary of state regulation-making powers about time limits applying to the detention of unaccompanied children. These regulations would be subject to the negative procedure in Parliament.

Paragraph 2H in clause 10 would allow for people of any age to be detained "in any place the secretary of state considers appropriate". Clause 10(6) would provide the secretary of state with the same new detention powers as immigration officers. The clause would remove time limits on the detention in pre-departure accommodation of those detained using these powers. In addition, it would remove time limits that apply to other immigration detention powers, such as in relation to pregnant women.

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<sup>52</sup> More comprehensive background information relating to the detention and removal of migrants is available at House of Commons Library, [‘Illegal Migration Bill 2022–23’](#), 10 March 2023, pp 19–25.

Current Home Office powers to detain are subject to the limitations imposed by the four *Hardial Singh* principles. These are:

- the secretary of state must intend to deport the person and can only use the power to detain for that purpose
- the deportee may only be detained for a period that is reasonable in all the circumstances
- if, before the expiry of the reasonable period, it becomes apparent that the secretary of state will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention
- the secretary of state should act with reasonable diligence and expedition to effect removal.

The principles take their name from an early immigration detention case in which it was decided that the power to detain migrants under the Immigration Act 1971 is subject to limitations imposed by the common law.<sup>53</sup>

Clause 11 would codify the second and third *Hardial Singh* principles, namely:

- a person may only be detained for a period that is reasonable in all the circumstances
- if, before the expiry of the reasonable period, it becomes apparent that the secretary of state will not be able to effect deportation within a reasonable period they should not seek to exercise the power of detention.

The clause would also specify that it is a matter for the secretary of state to determine what is a “reasonable period” to detain a person. This overturns the current situation where the court decides for itself whether there is sufficient prospect of removal within a reasonable period. The clause would apply the changes above to existing immigration detention powers as well as the new powers provided for in clause 10.

Clause 12 amends schedule 10 of the Immigration Act 2016, which relates to immigration bail. It would provide a power to grant bail to people detained under clause 10. It would also specify that immigration bail cannot be granted by the first-tier tribunal until after 28 days.<sup>54</sup> The first-tier tribunal is

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<sup>53</sup> Joint Committee on Human Rights, '[Immigration detention](#)', 7 February 2019, HL Paper 278 of 2017–19, p 7.

<sup>54</sup> More comprehensive background information relating to immigration detention is available at House of Commons Library, '[Illegal Migration Bill 2022–23](#)', 10 March 2023, pp 19–26.



independent of government and is made up of judges who handle appeals for some Home Office decisions relating to permission to stay and deportation from and entry clearance to the United Kingdom.<sup>55</sup>

Clause 12 would also restrict court powers to review the lawfulness of a decision to detain a person under the new powers in clause 10. Subsection 4 would mean that during the first 28 days of detention an individual would have no ability to challenge their detention by judicial review, except in limited circumstances.

Clause 13 relates to the Independent Family Returns Panel (IFRP), the body that provides advice on the safeguarding and welfare plans for the removal of families with children. The clause would disapply the duty on the secretary of state to consult the IFRP in every family returns cases.

Clause 14 and schedule 2 relate to electronic devices. The clause would give immigration officers new powers to search for, seize and retain electronic devices from migrants. The power would apply to devices such as mobile phones.

### **Unaccompanied children (clauses 15 to 20)**

Clauses 15 to 20 concern accommodation for unaccompanied children.<sup>56</sup> The government has stated that these clauses make provision for the care of unaccompanied migrant children who are subject to the duty either pending their removal when they turn 18, or if it is decided to use the powers to remove children under 18 years of age.<sup>57</sup>

Clause 15 would allow the secretary of state to provide, or arrange for the provision of, accommodation and other support for unaccompanied children in England. Clause 16 would provide for the transfer of children from accommodation which the secretary of state has the power to provide to a local authority in England, and vice versa.

Clause 17 would provide the secretary of state with the power to direct a local authority to provide information about the children in their care. Subsection 3 would allow the secretary of state to make regulations to specify other information subject to this duty. The regulations would be subject to the negative procedure in Parliament.

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<sup>55</sup> Courts and Tribunals Judiciary, '[First-tier tribunal immigration and asylum chamber](#)', accessed 3 May 2023.

<sup>56</sup> More comprehensive background information on the provision of accommodation of support and accommodation to unaccompanied children is available at House of Commons Library, '[Illegal Migration Bill 2022–23](#)', 10 March 2023, pp 56–64.

<sup>57</sup> [Explanatory notes](#), p 4.

Clause 18 would provide a mechanism for the enforcement of the duties on local authorities outlined in clauses 16 and 17. Clause 19 would enable the secretary of state to make regulations to extend the application of clauses 15 to 18 to Wales, Scotland and Northern Ireland. The regulations would be subject to the affirmative procedure in Parliament.

Clause 20 amends the Immigration Act 2016 to allow for the transfer of unaccompanied children from one local authority to another.

### **Modern slavery (clauses 21 to 28)**

Clauses 21 to 28 would disapply elements of the modern slavery protections from those subject to removal. Under the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT), states have certain obligations to a person identified as a potential victim of trafficking. This includes a 30-day recovery and reflection period for potential victims during which they must not be removed from the country.

Section 5 of the Nationality and Borders Act 2022 placed a number of the provisions of ECAT into domestic law. For example, section 61 provides for a recovery period for a potential victim, section 64 outlines assistance and support potential victims would receive in England and Wales and section 65 details the circumstances under which a potential victim would be granted leave to remain. Section 62 specifies that only one recovery period would be provided to a potential victim. Section 63 also allows the secretary of state to disapply some protections from modern slavery, such as the recovery period and leave to remain, in some circumstances. These are where individuals are considered a threat to public order or to have claimed to be a victim of slavery or trafficking in bad faith.

Clause 21 of the Illegal Migration Bill would expand these circumstances to include where a person was subject to clause 2 of the bill. The clause would allow the secretary of state to make exceptions where a person was cooperating with an investigation or criminal proceedings in respect of the relevant exploitation. Clause 21, subsection 5, would require the secretary of state to assume that a person was not required to be present in the UK to provide cooperation unless there were “compelling circumstances”. Guidance about what qualifies as compelling circumstances would be produced by the secretary of state.

Clauses 22 to 24 would disapply the requirements to provide support to potential victims during a recovery period in England and Wales, Scotland and Northern Ireland respectively.

Clause 25 provides that clauses 21 to 24 would expire after two years. The secretary of state could also suspend the clauses earlier, extend them for a further 12 months or revive them if previously suspended. Clause 26

outlines parliamentary procedures that would be followed when making regulations in relation to support for potential victims in Scotland. Clause 27 amends relevant provisions of legislation such as the Modern Slavery Act 2015 to ensure it is subject to clauses 21 to 24.

Clause 28 would extend the definition in section 63 of the Nationality and Borders Act 2022 disapplying modern slavery protections. This would include foreign national offenders subject to a period of imprisonment and those individuals liable to deportation under the Immigration Act 1971.

### **Entry, settlement and citizenship (clauses 29 to 36)**

Clause 29 would provide that people subject to the removal duty (as defined in clause 2) would be barred from securing settlement and from re-entry into the UK following their removal. The clause specifies some exceptions.

Clause 30 defines who would be ineligible for British citizenship by virtue of clause 2. The clause was amended at report stage in the House of Commons so that a child born in the UK to a parent who meets the four conditions in clause 2 would not be barred from citizenship where they meet the other statutory requirements.<sup>58</sup>

Clause 31 would provide that ineligible people would be unable to register or naturalise as a British citizen. Clauses 32 to 34 would close off routes to other forms of British nationality, namely British Overseas Territories citizenship, British overseas citizenship and British subject status.

Clause 35 would provide for an exception to be made under these clauses where the secretary of state considers that the application of them would contravene the UK's obligations under the ECHR. Clause 36 would amend relevant provisions of the British Nationality Act 1981 to ensure that it is subject to clauses 31 to 35.

### **Legal proceedings (clauses 37 to 54)**

Clauses 37 to 54 relate to the rights of legal challenge available to those subject to removal.

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<sup>58</sup> Home Office, '[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)', 24 April 2023, DEP2023-0363, p 2.

The bill sets out limited circumstances in which legal proceedings can suspend the removal of someone who would otherwise be subject to the removal provisions. The bill currently provides for two types of claim that would suspend removal (known collectively as a “suspensive claim”). These are defined as:

- a serious harm suspensive claim, where a person would face a real risk of serious and irreversible harm were they to be removed to the country or territory specified in the removal notice
- a factual suspensive claim, where a person issued with a removal notice asserts that they do not meet the removal conditions and are therefore not liable to removal

The government has noted that its intention is that the only claims which could delay removal are suspensive claims.<sup>59</sup>

Clause 37 would provide a definition of a suspensive claim. Clause 38 provides a list of some things which would be accepted as “serious and irreversible harm”. This list includes death, torture, inhuman or degrading treatment or punishment, persecution as defined by section 31(2) of the Nationality and Borders Act 2022, and onward removal to a country where there is “a real, imminent and foreseeable risk” of any of the examples mentioned above.

The clause also includes a list of examples of harm that do not constitute serious and irreversible harm. This includes, amongst other examples, harm caused by lower standards of healthcare available abroad.

The government has said the list is “non-exhaustive and amendable”.<sup>60</sup> Clause 39 would provide the secretary of state with powers to amend the definition and examples of “serious and irreversible harm”. This regulation-making power would be subject to the affirmative procedure in Parliament.

Clause 40 sets out the process for the submission and determination of serious harm suspensive claims, including time limits for the submission of claims. Clause 41 sets out this process for factual suspensive claims.

Clause 43 details the appeals process for suspensive claims. It would provide that an appeal to the upper tribunal can be made where the secretary of state has refused the suspensive claim but has not certified the claim as clearly unfounded. The clause also sets out what matters the upper tribunal

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<sup>59</sup> [HC Hansard, 26 April 2023, col 783.](#)

<sup>60</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, p 5.

should consider. Clause 44 would provide for permission to seek a decision from the upper tribunal in cases where the secretary of state has certified the claim as clearly unfounded.

Clause 45 makes provision for suspensive claims made after the end of the claim timeframe or out-of-time claims. Clause 46 details what would happen when somebody had made a suspensive claim; namely, removal would be delayed until a decision was reached. Clause 47 would provide for the upper tribunal to consider new information that was not available to the secretary of state when making their decision. These new matters can only be considered where the secretary of state had given consent for the upper tribunal to do so.

Clause 48 would require the tribunal procedure committee to introduce tribunal procedure rules to specify time limits for the appeals. It provides information about what these time limits should be, for example a period of six working days for a claimant to submit an appeal or apply for permission to appeal. Clause 49 outlines that certain decisions by the upper tribunal would be final and could not be reviewed by any other court. It clarifies what these decisions would be and outlines exceptions to this rule.

Clauses 50 and 51 were added at committee stage in the House of Commons. Clause 50 would amend the Tribunals, Courts and Enforcement Act 2007 so that first-tier tribunal judges may act as judges of the upper tribunal. Clause 51 provides for appeals against refusal of a suspensive claim to be heard by the Special Immigration Appeals Commission (SIAC), rather than the upper tribunal. This would happen in circumstances where the secretary of state certifies that the decision was made “wholly or partly” on information which she considers should not be made public.<sup>61</sup>

Clauses 52 to 54 were added at Commons report stage. Clause 52 would restrict the circumstances under which courts could grant an interim remedy to prevent or delay the removal of a person from the UK pending a substantive decision on a judicial review. Immigration Minister Robert Jenrick has argued that the clause would make it “crystal clear” that judicial reviews would be non-suspensive.<sup>62</sup>

Clause 53 relates to interim measures of the ECtHR, including under rule 39 of its Rules of Court. Under rule 39 the ECtHR may indicate interim measures to any state party to the ECHR. Most interim measures relate to requests for the suspension of an expulsion or an extradition. The ECtHR has emphasised that it grants requests for interim measures only on an exceptional basis, when applicants would otherwise face a real risk of serious and irreversible harm.<sup>63</sup>

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<sup>61</sup> [HC Hansard, 27 March 2023, cols 775.](#)

<sup>62</sup> [HC Hansard, 26 April 2023, col 783.](#)

<sup>63</sup> European Court of Human Rights, ‘[Factsheet: Interim measures](#)’, February 2023.

The clause would provide that ECtHR interim measures do not affect the clause 2 duty to arrange removal unless a minister decides that they should. The clause specifies a non-exhaustive list of what the minister should consider when determining whether the interim measures do not apply. Further discussion about the clause can be found in section 4.4 of this briefing.<sup>64</sup>

Clause 54 relates to the provision of legal aid to those who receive a removal notice. The new clause applies to England and Wales only. The government has said that it will discuss making similar provisions in Scotland and Northern Ireland, with the Scottish government and Northern Ireland Department of Justice respectively.<sup>65</sup>

### **Age assessments (clauses 55 to 56)**

Clauses 55 and 56 are new government clauses added during the bill's report stage in the Commons.

Clause 55 would remove the right of appeal for age assessments. Instead, those wishing to appeal an age assessment could judicially review the decision, although this would be a “non-suspensive” challenge and would therefore be able to continue after an individual had been removed from the UK.<sup>66</sup>

Clause 56 would introduce a regulation-making power about age assessments. The regulations would enable an automatic assumption of adulthood where an individual refuses to undergo scientific age assessment. During report stage in the Commons, Robert Jenrick stressed that the regulations would only be made once the government was satisfied “that the scientific models are sufficiently accurate so that applying an automatic assumption will be compatible with the European Convention on Human Rights”.<sup>67</sup>

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<sup>64</sup> Further analysis of the proposed changes introduced by the clause are discussed in House of Commons Library, [‘Illegal Migration Bill: Progress of the bill’](#), 24 April 2023, pp 21–3.

<sup>65</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, pp 5–6.

<sup>66</sup> As above, p 4.

<sup>67</sup> [HC Hansard, 26 April 2023, col 784.](#)

### **Inadmissibility of certain asylum and human rights claims (clause 57)**

Clause 57 would extend the list of countries that could be considered safe and therefore from which asylum claims should generally be considered inadmissible.

Currently under section 80A of the Nationality, Immigration and Asylum Act 2002 this includes EU nationals. Clause 57 would extend this to other countries, specified in the clause, such as Albania, Iceland, Liechtenstein, Norway and Switzerland. The clause would also give the secretary of state power to make regulations to add or remove countries from this list. In addition, the clause would provide that human rights-based claims, in addition to asylum claims, would now also be inadmissible.

### **Safe and legal routes (clauses 58 to 59)**

Clause 58 would require the secretary of state, following consultation with local authorities and others, to specify the maximum number of people who would be allowed to enter the UK via safe and legal routes. The consultation should be started within three months of royal assent of the act.

Subsection 3 allows for exceptions to the cap where the secretary of state considers it is necessary “as a matter of urgency”. The secretary of state would be required to report to Parliament where this cap was breached.

Clause 59 requires the secretary of state to provide a report to Parliament on safe and legal routes by which a person can enter the UK within six months of royal assent of the act. Subsection 2 specifies what the report should contain. This includes details of current safe and legal routes and proposed new routes and who would be eligible for them.

### **Credibility of claim (clause 60)**

Clause 60 was added by the government at report stage. The clause would amend section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. It would mean that certain kinds of behaviour, such as failure to hand over a mobile phone passcode or the destruction of identity documents, would damage the credibility of a person in any asylum or human rights claim.

### **General, including extent, commencement and consequential provisions (clauses 61 to 67)**

Clause 61 relates to financial provisions for the bill.

Clause 62 provides the secretary of state with the power to make consequential provision for the purposes of the bill, by regulations. This includes through repealing, revoking or otherwise amending primary and secondary legislation.

Clause 63 relates to the power to make regulations under the act by statutory instrument. The clause details where the affirmative procedure would be used when making regulations. These include regulations about the cap on those entering the UK via safe and legal routes, regulations concerning the circumstances under which the secretary of state can remove unaccompanied children, the list of safe third countries, and regulations to amend primary legislation. Where not specified other regulations made under the act would be subject to the negative procedure.

Clause 64 contains defined expressions for various terms referred to in the bill.

Clause 65 outlines the territorial extent of each of the bill's clauses. As immigration is a reserved matter, most of the bill's provisions apply across the UK. A breakdown of the territorial extent and application of the bill is available in annex B of the explanatory notes.<sup>68</sup>

Clause 66 details when different sections of the act would come into force. The following provisions come into force on the day of royal assent:

- sections 29 to 36 (entry, settlement and citizenship)
- section 50 (judges of first-tier tribunal and upper tribunal)
- sections 61 to 65 (general provisions)
- section 66 (commencement)
- section 67 (short title)

The clause details other provisions which would come into force on royal assent. These include regulations about the power to remove unaccompanied children and the interpretation of suspensive claims.

Other provisions would come into force “on such a day as the secretary of state may by regulations appoint”.

Clause 67 contains the short title of the bill.

## **Schedules**

Schedule 1 contains a list of third countries that would be considered safe to

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<sup>68</sup> [Explanatory notes](#), p 54.



remove people to (clause 57 specifies safe countries of origin).

Schedule 2 contains details concerning new powers for immigration officers to seize and retain electronic devices such as mobile phones.

## 4. House of Commons bill scrutiny

### 4.1 First reading

The bill was introduced into the Commons on 7 March 2023.<sup>69</sup> In a statement about the bill made the same day, Home Secretary Suella Braverman argued that the bill fulfilled the “promise” made by the prime minister to detain and swiftly remove anyone entering the UK illegally, arguing “it will allow us to stop the boats”.<sup>70</sup>

Shadow Home Secretary Yvette Cooper was critical of the bill. She described it as a “government gimmick” and a “con”.<sup>71</sup> The home secretary took questions on the bill for almost two hours. Many of the criticisms about the legislation foreshadowed points made at second reading and at later stages of the bill.<sup>72</sup>

### 4.2 Second reading

The bill’s second reading in the House of Commons took place on 13 March 2023. Opening the debate, Suella Braverman said that stopping individuals entering the UK in small boats was her top priority.<sup>73</sup> She argued that the crossings were “unsafe, unnecessary and unlawful”, and stopping them would stop the deaths of individuals in the Channel.<sup>74</sup>

The home secretary claimed that those entering the UK in small boats had “overwhelmed” the asylum system and criticised what she described as “spurious accusations of bigotry” by “out-of-touch lefties”.<sup>75</sup> The bill, she argued, was supported by the British people who recognised “that border security is national security, and that illegal migration makes us all less safe”.<sup>76</sup>

Ms Braverman emphasised the UK’s “proud and extensive tradition” of

<sup>69</sup> [HC Hansard, 7 March 2023, col 196.](#)

<sup>70</sup> [HC Hansard, 7 March 2023, col 151.](#)

<sup>71</sup> [HC Hansard, 7 March 2023, col 154.](#)

<sup>72</sup> [HC Hansard, 7 March 2023, cols 151–82.](#)

<sup>73</sup> [HC Hansard, 13 March 2023, col 573.](#)

<sup>74</sup> [HC Hansard, 13 March 2023, col 575.](#)

<sup>75</sup> [HC Hansard, 13 March 2023, cols 574–5.](#)

<sup>76</sup> [HC Hansard, 13 March 2023, col 573.](#)

offering refuge,<sup>77</sup> highlighting current country-specific routes and committing to expanding safe and legal routes, “when we stop the boats”.<sup>78</sup> However, she argued that the UN Refugee Convention did not require protection for those seeking refuge to be provided within the UK. Instead, “if people are truly in need of protection, they will receive protection in Rwanda”.<sup>79</sup> She emphasised that the partnership with Rwanda was uncapped, and that the country had the capacity “to resettle tens of thousands of people if necessary”.<sup>80</sup> While conceding that the “bill’s measures are novel and legally untested”, the home secretary said there were “good arguments” for the bill’s compatibility with the ECHR and the statement did not mean that the bill was unlawful.<sup>81</sup>

In response, Yvette Cooper moved an amendment which would have declined to give the bill a second reading. Ms Cooper claimed the asylum system was “in chaos” and described the bill as “a con that makes the chaos worse”. She said the bill would “rip up our long-standing commitment to international law” and make it harder to reach international return agreements.<sup>82</sup> Ms Cooper was critical of the powers of detention the bill would give to the government, meaning it could “lock everyone up before they are returned”, including children, unaccompanied teenagers, torture victims and pregnant women.<sup>83</sup> She claimed the bill’s provisions would exclude those making small boat crossings from modern slavery protections and would act as a “traffickers’ charter”.<sup>84</sup>

Speaking for the SNP, Alison Thewliss condemned the bill as “an abhorrent dog whistle”, which was being “rushed through with no proper impact assessment”. She described the bill’s provisions about children as “disturbing”.<sup>85</sup> She argued that for claimants unable to be returned “the bill will create an underclass of people stuck in immigration limbo indefinitely”.<sup>86</sup>

Former prime minister Theresa May expressed concern about the implications of the bill for modern slavery legislation.<sup>87</sup> Her concerns were echoed by the chair of the Home Affairs Committee, Dame Diana Johnson. In addition, Dame Diana highlighted the lack of pre-legislative scrutiny of the bill and the lack of impact assessments accompanying it.<sup>88</sup>

<sup>77</sup> [HC Hansard, 13 March 2023, col 576.](#)

<sup>78</sup> [HC Hansard, 13 March 2023, col 578.](#)

<sup>79</sup> [HC Hansard, 13 March 2023, col 576.](#)

<sup>80</sup> [HC Hansard, 13 March 2023, col 581.](#)

<sup>81</sup> [HC Hansard, 13 March 2023, col 580.](#)

<sup>82</sup> [HC Hansard, 13 March 2023, col 584.](#)

<sup>83</sup> [HC Hansard, 13 March 2023, col 587.](#)

<sup>84</sup> [HC Hansard, 13 March 2023, col 590.](#)

<sup>85</sup> [HC Hansard, 13 March 2023, cols 594–5.](#)

<sup>86</sup> [HC Hansard, 13 March 2023, col 598.](#)

<sup>87</sup> [HC Hansard, 13 March 2023, col 593.](#)

<sup>88</sup> [HC Hansard, 13 March 2023, cols 602–3.](#)

Joanna Cherry, the SNP chair of the JCHR, felt that the bill was “designed to set the UK on a deliberate collision course with the European Court of Human Rights”. Former lord chancellor Sir Robert Buckland also expressed concerns the bill was being used to make a wider political point about the validity of the European convention. He said “the European convention is not the problem in this case”.<sup>89</sup> Tim Loughton (Conservative MP for East Worthing and Shoreham) argued that the bill required greater definitions about safe and legal routes and greater safeguards for vulnerable children.<sup>90</sup>

In contrast, Sir Edward Leigh (Conservative MP for Gainsborough) supported the bill arguing “the only way we are going to stop these boats is the government plan”.<sup>91</sup> Sir John Hayes (Conservative MP for South Holland and The Deepings) claimed that “our kingdom’s borders are being breached day after day with impunity” and declared “it is time to stop the boats”.<sup>92</sup>

Sir William Cash (Conservative MP for Stone) argued that the bill required a “notwithstanding” formula to be added to ensure that “the courts cannot simply apply the arrangements currently in operation”. He expressed his support for the bill by concluding:

The Labour Party will never sort this out. The unelected Lords will oppose this bill. The bill, as amended by this elected House, must therefore be made subject to the Parliament acts and must receive royal assent before the general election.<sup>93</sup>

The opposition amendment to block the legislation was defeated on division by 312 votes to 249.<sup>94</sup> The bill passed its second reading by 312 votes to 250.<sup>95</sup>

A programme motion which provided for the bill to be considered in a committee of the whole house (CWH) passed by 312 votes to 248.<sup>96</sup> A division was also held on a money resolution for the bill, which was agreed by 310 votes to 246.<sup>97</sup>

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<sup>89</sup> [HC Hansard, 13 March 2023, cols 602.](#)

<sup>90</sup> [HC Hansard, 13 March 2023, col 597.](#)

<sup>91</sup> [HC Hansard, 13 March 2023, col 588.](#)

<sup>92</sup> [HC Hansard, 13 March 2023, col 604.](#)

<sup>93</sup> [HC Hansard, 13 March 2023, col 614.](#)

<sup>94</sup> [HC Hansard, 13 March 2023, cols 644–7.](#)

<sup>95</sup> [HC Hansard, 13 March 2023, cols 648–51.](#)

<sup>96</sup> [HC Hansard, 13 March 2023, cols 653–6.](#)

<sup>97</sup> [HC Hansard, 13 March 2023, cols 657–60.](#)

### 4.3 Committee stage

The bill was considered in a CWH on 27 and 28 March 2023. Amendments to the bill were tabled on both days.<sup>98</sup>

The Institute for Government (IFG) criticised using CWH for the bill as “a format poorly suited to detailed scrutiny” leading to less in-depth consideration, discussion and decision-making. The CWH, the IFG argued, “is suited to wide-ranging debate, speech-making and—frankly—grandstanding”.<sup>99</sup> Dame Diana Johnson was amongst several members who criticised the timeframes for examining the bill and the lack of an impact assessment accompanying it.<sup>100</sup> On the second day of committee Immigration Minister Robert Jenrick said that an impact assessment would be published “in due course”.<sup>101</sup>

Government amendments were made to the bill during committee stage. These Mr Jenrick described as “essentially technical in nature”.<sup>102</sup> In addition, two further government clauses were added to the bill.<sup>103</sup>

Unsuccessful divisions were held on amendments and new clauses concerning:

- safe and legal routes to enter the UK (new clauses 6 and 24)
- modern slavery (amendment 288)
- exempting Afghan nationals from removal (amendment 189)
- expanding the definition of suspensive claims (amendment 76)
- powers of detention (clause 11 stand part)
- international agreements (new clause 25)
- organised immigration crime enforcement (new clause 21)
- consulting with local authorities about accommodating asylum seekers in their area (new clause 27)

The minister also gave assurances on several issues raised by Conservative MPs such as disapplying additional sections of the Human Rights Act 1998 from the bill, providing that the measures in the bill should operate ‘notwithstanding’ any order of the ECHR or any other international body, and ensuring suspensive claims were the only way to prevent a person’s removal.

<sup>98</sup> Amendment papers for CWH on [27 March 2023](#) and [28 March 2023](#) are available on the UK Parliament website.

<sup>99</sup> Hannah White, ‘[Illegal Migration Bill highlights how expectations of legislative scrutiny have plummeted](#)’, Institute for Government, 13 March 2023.

<sup>100</sup> [HC Hansard, 27 March 2023, col 720.](#)

<sup>101</sup> [HC Hansard, 28 March 2023, col 957.](#)

<sup>102</sup> [HC Hansard, 28 March 2023, col 954.](#)

<sup>103</sup> [HC Hansard, 27 March 2023, col 775.](#)

The divisions and assurances are discussed in more detail in the following sections of this briefing.

### Government amendments

During committee stage two new government clauses were added to the bill without division. These sought to:

- amend the Tribunals, Courts and Enforcement Act 2007 so that first-tier tribunal judges may act as judges of the upper tribunal (new clause 11)
- 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 certified that the decision was made “wholly or partly” on information which she considered should not be made public (new clause 12)<sup>104</sup>

Consequential amendments arising from the new clauses were also approved.<sup>105</sup>

### Safe and legal routes

Several MPs expressed concern about the availability of safe and legal routes for migrants to use to reach the UK; numerous amendments and clauses on the subject were tabled.

Speaking for the Labour Party, shadow immigration Stephen Kinnock described it as a “simple fact of life” that those fleeing war and persecution would come by unauthorised routes if safe and legal routes to do so were unavailable.<sup>106</sup> Mr Kinnock was critical of the cap on the number of entrants using safe and legal routes that clause 51 contained. The clause, he argued, contained no detail of what a “safe and legal route” was, how one would work, who would be consulted and when measures might be introduced.<sup>107</sup>

He proposed new clause 24, which would have required the secretary of state to change immigration rules to provide for safe and legal routes for unaccompanied asylum-seeking children with close family members in the UK. The secretary of state would have been required to make the changes within three months of the act coming into force and the rules would need to be, “as far as is practicable”, in line with rules previously observed by the UK as part of the Dublin III regulation, or Dublin system.

<sup>104</sup> [HC Hansard, 27 March 2023, cols 784–5.](#)

<sup>105</sup> House of Commons Library, [‘Illegal Migration Bill: Progress of the bill’](#), 24 April 2023, pp 10–11.

<sup>106</sup> [HC Hansard, 27 March 2023, col 704.](#)

<sup>107</sup> [HC Hansard, 27 March 2023, col 703.](#)

The issue of safe and legal routes was also taken up by the Liberal Democrats, who proposed new clause 6. The clause would have required the secretary of state to set up a safe passage pilot scheme. The scheme would have permitted people from certain defined countries to enter the UK to claim asylum. It would have to come into operation within three months of the act being passed and would have remained in operation for at least 12 months. Tim Farron (Liberal Democrat MP for Westmorland and Lonsdale) described the provisions as “measured, small and not all that ambitious”.<sup>108</sup>

Former children and families minister Tim Loughton (Conservative MP for East Worthing and Shoreham) described safe and legal routes as the “obvious antidote” to the problem of crossings in small boats. Mr Loughton argued that additional routes were required for those unable to access country-specific routes, such as those operating in Afghanistan, Syria, Ukraine and Hong Kong.<sup>109</sup> He proposed two new clauses on the issue. New clause 13 would have required the secretary of state to set out what safe and legal routes exist and who was eligible to use them. New clause 19 would have required the secretary of state to make provision for refugee family reunion, with regulations on the subject laid before Parliament within two months of the act being passed.

Mr Loughton argued that a family reunion scheme was something the UK had previously run and should be adapted to reflect the UK being outside of the Dublin system. In addition, he proposed amendments that would have delayed the bill’s commencement until regulations establishing safe and legal routes were made. He argued that the government should not bring in “tough measures” and subsequently come up with safe and legal routes. Mr Loughton stated “[...] that is not good enough. The two sides of the bill must be contemporaneous”.<sup>110</sup>

Responding for the government, Immigration Minister Robert Jenrick committed to engage with colleagues ahead of report stage. This could include, he said:

[...] bringing forward further 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.<sup>111</sup>

Mr Jenrick also committed to launch the local authority consultation on safe and legal routes at the same time as the commencement of the bill. Mr Loughton did not push his amendments to a division. Speaking on the second

<sup>108</sup> [HC Hansard, 27 March 2023, col 730.](#)

<sup>109</sup> [HC Hansard, 27 March 2023, col 710.](#)

<sup>110</sup> [HC Hansard, 27 March 2023, col 713.](#)

<sup>111</sup> [HC Hansard, 27 March 2023, col 777.](#)

day of committee, he warned that he had given the government “the benefit of the doubt” but needed to see “some fairly convincing and robust action” before report stage of the bill.<sup>112</sup>

Divisions were held on two proposed new clauses:

- new clause 6 (safe passage pilot) moved by Tim Farron (Liberal Democrat) was defeated by 307 votes to 67.<sup>113</sup>
- New clause 24 (safe and legal routes: family reunion for children) moved by Stephen Kinnock (Labour) was defeated by 301 votes to 248.<sup>114</sup>

## Modern slavery

The bill includes provisions that would remove existing protections and entitlements to assistance and support which are available to victims of modern slavery from those subject to removal under the terms of the act.

Former prime minister Theresa May said that the bill’s provisions would drive a “coach and horses through the Modern Slavery Act”, which she described as “world leading”.<sup>115</sup> Mrs May argued that as well as denying support to those who needed it, it would make it much harder to catch and stop traffickers.<sup>116</sup> She was also critical of government claims of a link between the number of people coming on small boats and those making a modern slavery claim, saying there was no evidence to support it. While not proposing any amendments, she stressed that “I want to sit down with the government and find a way through that does not deeply damage the Modern Slavery Act”.<sup>117</sup>

Former leader of the Conservative Party Sir Iain Duncan Smith proposed delaying the commencement of the bill’s modern day slavery provisions until a specific threshold of false modern day slavery claims, and an increase in those claims, is reached “as demonstrated by the evidence”.<sup>118</sup>

Shadow Immigration Minister Stephen Kinnock echoed Theresa May’s concerns about a lack of an evidence. He proposed amendment 288, which would have removed the bill’s restrictions on the provision of modern slavery support to those subject to removal.<sup>119</sup> He also called for delays to

<sup>112</sup> [HC Hansard, 28 March 2023, col 941.](#)

<sup>113</sup> [HC Hansard, 27 March 2023, cols 787–9.](#)

<sup>114</sup> [HC Hansard, 27 March 2023, cols 790–3.](#)

<sup>115</sup> [HC Hansard, 28 March 2023, col 886.](#)

<sup>116</sup> [HC Hansard, 28 March 2023, col 886.](#)

<sup>117</sup> [HC Hansard, 28 March 2023, col 888.](#)

<sup>118</sup> [HC Hansard, 28 March 2023, col 894.](#)

<sup>119</sup> [HC Hansard, 28 March 2023, col 892.](#)

the changes in the bill until a new independent anti-slavery commissioner had been appointed and consulted.<sup>120</sup>

Joanna Cherry also tabled a series of amendments on the issue, which she stressed was in her capacity as chair of the JCHR. These amendments sought to ensure that the disapplication of modern slavery protections would only occur in line with the Council of Europe’s convention on action against trafficking.<sup>121</sup> However, Ms Cherry noted that she would not be pressing the amendments to a vote as the committee had only just commenced its legal scrutiny of the bill.<sup>122</sup>

Responding for the government, Robert Jenrick argued that evidence supporting the bill’s modern day slavery provisions did exist. He drew attention to the higher number of referrals made in relation to modern slavery than anticipated by the Modern Slavery Act impact assessment. Mr Jenrick said this suggested that “a very large number” would put forward modern day slavery claims if they were subject to removal from the UK.<sup>123</sup> Pressed to consider the issue again before report stage of the bill he concluded:

I look forward to listening and engaging with him [Sir Iain Duncan Smith] and like-minded colleagues. However, we come to this issue with a serious concern that there is mounting evidence of abuse of the system, and we want to ensure that the scheme we bring forward works and does the job.<sup>124</sup>

Stephen Kinnock (Labour) pushed amendment 288 to a division which was defeated by 299 votes to 248.<sup>125</sup>

### **Exempting Afghan nationals from removal**

Opening the debate on day two of the CWH, shadow SNP spokesperson on home affairs Alison Thewliss proposed a series of amendments which she said would “humanise this brutal bill” by making a range of exemptions to the list of those required to be removed.

Of these, only amendment 189 was divided on. Amendment 189 proposed exempting Afghan nationals facing a real risk of persecution or serious harm if returned to Afghanistan from being the subject of removal. Ms Thewliss argued that while a process for Afghan nationals to claim asylum did exist, it

<sup>120</sup> [HC Hansard, 28 March 2023, col 891.](#)

<sup>121</sup> [HC Hansard, 28 March 2023, col 931.](#)

<sup>122</sup> [HC Hansard, 28 March 2023, col 928.](#)

<sup>123</sup> [HC Hansard, 28 March 2023, col 960.](#)

<sup>124</sup> [HC Hansard, 28 March 2023, col 961.](#)

<sup>125</sup> [HC Hansard, 28 March 2023, cols 977–80.](#)



took too long. She said people should not be penalised for reaching the UK by other means:

If they manage to get out, if they cross continents, step in a dingy and get across the Channel, or even if they fly here via Pakistan on a visit visa obtained by pretending they will go back, the UK government will not hear their case. They will put them on a flight to Rwanda.<sup>126</sup>

Responding to the SNP's amendments, Robert Jenrick argued that the SNP amendments would leave the scheme "so riven with holes, exceptions and get-out clauses as to make the whole bill unworkable".<sup>127</sup>

Amendment 189 was pushed to a vote by Alison Thewliss but was defeated by 309 votes to 242.<sup>128</sup>

### Expanding definition of suspensive claims

The bill as introduced in the Commons set out limited circumstances in which legal proceedings could suspend the removal of someone who would otherwise be subject to the removal provisions. The bill provided for two types of claim: a serious harm suspensive claim and a factual suspensive claim.

Amendment 76, tabled by the SNP, sought to expand the definition of a serious harm suspensive claim to mean a protection claim, a human rights claim, or a claim to be a victim of slavery or a victim of human trafficking. Speaking to the amendment, the SNP's spokesperson on immigration, asylum and border control, Stuart McDonald, argued the bill left an individual's ability to access rights and protections "decimated" by limiting the grounds for a suspensive claim.<sup>129</sup> He argued this should be expanded:

[...] that is basically how things have been until now, that is how it should be, and that is generally what is required to live up to our obligations under international law. We also believe it is a requirement of simple common humanity.<sup>130</sup>

Mr McDonald also criticised other aspects of the suspensive claim framework as outlined in the bill, such as the timescales involved and the potential for a lack of access to legal advice. He expressed concern that the bill allowed the secretary of state to define "serious and irreversible harm".<sup>131</sup>

<sup>126</sup> [HC Hansard, 28 March 2023, col 878.](#)

<sup>127</sup> [HC Hansard, 28 March 2023, col 954.](#)

<sup>128</sup> [HC Hansard, 28 March 2023, cols 968–71.](#)

<sup>129</sup> [HC Hansard, 27 March 2023, col 715.](#)

<sup>130</sup> [HC Hansard, 27 March 2023, cols 715–16.](#)

<sup>131</sup> [HC Hansard, 27 March 2023, cols 716–17.](#)

Although criticising the “swathe of amendments tabled by the Scottish National Party”, Immigration Minister Robert Jenrick did not respond to the specific proposals in amendment 76. Instead, he criticised the SNP for adding to “the already excessive forest of legal challenges that we find”.<sup>132</sup>

Amendment 76 was defeated at division by 308 votes to 244.<sup>133</sup>

### **Detention: New powers**

Clause 11, as introduced in the Commons, dealt with powers of detention (now clause 10 of the bill). It included provisions that would allow the detention of those liable to removal under clause 2 of the bill. The bill as introduced also contained a duty to remove the family members of those subject to removal. As introduced, clause 11 also included powers to detain and remove unaccompanied children in some circumstances.

Numerous amendments were tabled on the clause. While these amendments were wide-ranging, key areas of contention were the detention of children and vulnerable groups and changes to statutory limitations on the amount of time a person could be detained.

For the opposition, Stephen Kinnock criticised the “exceptionally broad” scope of provisions on detention and removal. He claimed the government was “proposing to do away with virtually all the existing safeguards”.<sup>134</sup> Mr Kinnock was among several MPs who proposed amendments to retain the current statutory time limits for the detention of pregnant women and remove proposals to give the secretary of state new powers to remove unaccompanied children.<sup>135</sup>

Alistair Carmichael (Liberal Democrat MP for Orkney and Shetland) was highly critical of clause 11, particularly in relation to provisions which would allow for the detention of children:

We have all tabled dozens—hundreds, some of us—of amendments, but this piece of the bill has simply to be excised [...] There is no way we can polish and improve on something that is so fundamentally removed from the way we would tolerate our own children being treated.<sup>136</sup>

Dame Diana Johnson, chair of the Home Affairs Committee, tabled amendments on the protection of refugee children which, she said, had the

<sup>132</sup> [HC Hansard, 27 March 2023, col 777.](#)

<sup>133</sup> [HC Hansard, 27 March 2023, cols 780–3.](#)

<sup>134</sup> [HC Hansard, 28 March 2023, col 890.](#)

<sup>135</sup> [HC Hansard, 28 March 2023, cols 890–1.](#)

<sup>136</sup> [HC Hansard, 28 March 2023, col 904.](#)

full support of the Children’s Commissioner for England.<sup>137</sup> Her proposals included amendments to remove the mandatory removal of unaccompanied children when they reached 18 and to increase the circumstances in which asylum claims could be considered.<sup>138</sup>

Former children and families minister Tim Loughton also proposed amendments that sought to prevent the bill from applying to unaccompanied children and to maintain safeguards on the detention of children. Mr Loughton expressed concerns about clause 12 (now clause 11) which he stated “severely restricts court scrutiny” of whether the length of detention was reasonable. He argued “surely that cannot be right for children”. Mr Loughton concluded:

I want to ensure that we are offering safe passage and safe haven to genuinely vulnerable children. I do not want them to be penalised by the wording of the bill in the way that they could be. I am happy to take assurances, but if I do not get them by report, I do not think that I will be alone in wanting to press various amendments to force those assurances into the bill.<sup>139</sup>

Edward Timpson (Conservative MP for Eddisbury) was among several MPs who queried provisions in the bill that would allow the Home Office to remove unaccompanied children from local authority care. He thought that the home secretary did not have powers and responsibilities under the Children Act 1989 in the same way as local authorities did.<sup>140</sup>

Sir John Hayes (Conservative MP for South Holland and The Deepings) sought to introduce a scientific age assessment to “ensure that those under 18 who need to seek shelter can do so” and to find “those over 18 who lie to cheat our rules”. He argued similar age assessments were used in many European countries.

Responding for the government, Robert Jenrick claimed that the number of unaccompanied children coming to the UK had quadrupled and said that the bill sought to address the issue in “the most sensitive manner we can”.<sup>141</sup> He argued that the duty to make arrangements for removal did not apply to unaccompanied minors under 18 and that “nothing in the bill disapplies the Children Act”.<sup>142</sup> The power to remove unaccompanied children would, he said, “be exercised only in very limited circumstances”.<sup>143</sup>

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<sup>137</sup> Aletha Adu, ‘[Children’s commissioner for England expresses “deep concern” over Illegal Migration Bill](#)’, Guardian, 14 March 2023.

<sup>138</sup> [HC Hansard, 28 March 2023, col 937.](#)

<sup>139</sup> [HC Hansard, 28 March 2023, col 946.](#)

<sup>140</sup> [HC Hansard, 28 March 2023, col 956.](#)

<sup>141</sup> [HC Hansard, 28 March 2023, col 955.](#)

<sup>142</sup> [HC Hansard, 28 March 2023, col 956.](#)

<sup>143</sup> [HC Hansard, 28 March 2023, col 956.](#)

Responding to Edward Timpson, Mr Jenrick outlined that the power to remove children from a local authority would be used in “the very small number of judicious cases in which we set out to remove a child”. He provided the examples of reuniting a child with relatives in another country or removing a child to a safe country.<sup>144</sup> He said that powers to detain unaccompanied children would only be used where there is a dispute about a person’s age, and to decide whether they qualify as a minor.<sup>145</sup>

In relation to the amendment proposed by Sir John Hayes, Mr Jenrick argued that the UK was one of the very few European countries that did not use scientific age assessments. He said the government was “considering carefully how we should proceed in this regard” and hoped to say more at report stage.<sup>146</sup>

A division took place on whether clause 11 should stand as part of the bill. The government won the division by 302 votes to 242.<sup>147</sup>

### **International agreements**

Shadow Immigration Minister Stephen Kinnock outlined amendments that aimed to set out “how Labour would approach these matters if they were in government”. Amongst these was new clause 25 which he explained would require the secretary of state to produce an “overarching and multifaceted strategy for securing agreements with our international partners”.<sup>148</sup> He argued that the new clause “would actually put some flesh on the bones of something that might work, rather than chasing headlines and doing government by gimmick”.<sup>149</sup>

The government did not comment specifically on new clause 25. Speaking generally about the Labour Party’s approach, Robert Jenrick, the immigration minister, argued that Labour did not “have a plan, because it does not think there is a problem”.<sup>150</sup>

Stephen Kinnock (Labour) pushed new clause 25 to a division. It was defeated by 306 votes to 196.<sup>151</sup>

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<sup>144</sup> [HC Hansard, 28 March 2023, col 957.](#)

<sup>145</sup> [HC Hansard, 28 March 2023, col 957.](#)

<sup>146</sup> [HC Hansard, 28 March 2023, col 957.](#)

<sup>147</sup> [HC Hansard, 28 March 2023, cols 972–5.](#)

<sup>148</sup> [HC Hansard 27 March 2023, col 702.](#)

<sup>149</sup> [HC Hansard, 27 March 2023, col 704.](#)

<sup>150</sup> [HC Hansard, 27 March 2023, col 778.](#)

<sup>151</sup> [HC Hansard, 27 March 2023, cols 795–8.](#)

## Organised immigration crime enforcement

New clause 21 was proposed by Stephen Kinnock. The clause would have amended the Crime and Courts Act 2013 to give the national crime agency (NCA) specific legal responsibilities for tackling organised immigration crime across the Channel. It would also have required the NCA to man a specific unit to undertake work related to that responsibility.

Outlining the purpose of the new clause, Mr Kinnock said that it formed part of package of new approaches which were intended “to strengthen the government’s hand in securing the detection, prosecution and conviction of those guilty of people smuggling”.<sup>152</sup>

New clause 21 was defeated by 301 votes to 249.<sup>153</sup>

## Consulting with local authorities about accommodating asylum seekers in their area

Stephen Kinnock proposed new clause 27. It would have added a statutory duty on the Home Office and contracted accommodation providers to consult with the relevant local authorities when arranging for the provision of accommodation for asylum seekers. Emphasising the importance of this accommodation provision, Mr Kinnock recognised “strong feelings about this issue on both sides of the committee”, saying he hoped for cross-party support for the clause.<sup>154</sup>

When pushed about potential support for consulting with local authorities as suggested by new clause 27, Immigration Minister Robert Jenrick noted:

The bill says, for the very first time, that before we create a safe and legal route we will consult with local authorities. We should all see that as a good step forward.<sup>155</sup>

As part of the government’s approach to safe and legal routes, rather than accommodation for asylum seekers more generally, the immigration minister said:

[...] we will accelerate the process of launching the local authority consultation on safe and legal routes at the same time as the commencement of the bill.<sup>156</sup>

<sup>152</sup> [HC Hansard, 28 March 2023, col 891.](#)

<sup>153</sup> [HC Hansard, 28 March 2023, col 982–5.](#)

<sup>154</sup> [HC Hansard, 28 March 2023, col 890.](#)

<sup>155</sup> [HC Hansard, 27 March 2023, col 778.](#)

<sup>156</sup> [HC Hansard, 27 March 2023, col 777.](#)

The amendment was defeated by 301 votes to 248.<sup>157</sup>

### **Suspensive claims, the ECHR and Human Rights Act: Amendments 128 to 136**

Sir William Cash (Conservative MP for Stone) spoke to amendments he proposed or supported. While praising the bill as being “emphatically going in the right direction”, Sir William outlined the purpose of these “constructive amendments” which, he said, were supported by a growing number of backbenchers.<sup>158</sup>

The amendments were tabled by various Conservative MPs, including Danny Kruger (Conservative MP for Devizes) and Jonathan Gullis (Conservative MP for Stoke-on-Trent North). These sought to:

- ensure suspensive claims were the only way to prevent a person’s removal (amendments 133 and 134)
- restrict the use of hotels by those subject to removal (amendment 136)
- block domestic courts from ordering individuals to be returned to the UK (amendment 135)
- replace the terms “deport” and “deportation” with “remove” and “removal” in the bill and consistently across all relevant existing UK law (amendments 129 and 130)
- remove clause 49, which refers to interim measures of the ECtHR (amendment 128)
- ensure that provisions of the bill should operate “notwithstanding” any orders of the ECtHR or any other international body (amendment 131)
- disapply sections 4, 6 and 10 of the Human Rights Act 1998 in relation to provisions made by the act (amendment 132)

Sir William argued that these amendments would remove:

[...] the unintended and unexpected legal consequences of the Human Rights Act and the courts’ rules in respect of illegal migration in small boats [...] My amendment [133] would ensure that what Parliament intends actually happens.<sup>159</sup>

He claimed that the amendments were supported by legal experts, such as Professor Richard Ekins, professor of law and constitutional government at

<sup>157</sup> [HC Hansard, 28 March 2023, cols 986–9.](#)

<sup>158</sup> [HC Hansard, 27 March 2023, col 696.](#)

<sup>159</sup> [HC Hansard, 27 March 2023, col 699.](#)

the University of Oxford, and former first parliamentary counsel Sir Stephen Laws in their Policy Exchange report.<sup>160</sup>

Simon Clarke (Conservative MP for Middlesbrough South and East Cleveland) tabled amendment 132. This was needed, he argued, as “Tony Blair’s Human Rights Act will otherwise act to frustrate the will of Parliament”. In support, Mr Clarke also cited the recommendations of the Policy Exchange paper.<sup>161</sup>

Danny Kruger (Conservative MP for Devizes) tabled amendments 128 and 131. Mr Kruger was highly critical of what he described as “pyjama injunctions” issued by the ECtHR “in the middle of the night” to stop flights to Rwanda.<sup>162</sup> He argued his amendments would “actively block the frustration of the removals policy”, stressing “primary responsibility for managing asylum rests with the nation state”.<sup>163</sup> He concluded “I know that the government share my view, and I look forward to working with them ahead of report to make the bill watertight”.<sup>164</sup>

In contrast, Joanna Cherry, chair of the JCHR, proposed amendment 122. This sought to amend the bill to ensure that the UK was bound to comply with interim measures issued by the ECtHR. While noting that it would be reasonable to reform the system for granting interim measures, Ms Cherry argued that concerns about the system did not justify “our ignoring either obligations or the convention that we have signed up to”.<sup>165</sup> She said her amendment would not be pressed to a vote, as the JCHR was in the process of scrutinising of the Illegal Migration Bill.<sup>166</sup>

Several MPs referred to the amendments and the issues raised in them. Laura Farris (Conservative MP for Newbury) noted that she “understood the impulse” of amendments 131 and 132. However, she challenged the legal expertise of Professor Richard Ekins and Sir Stephen Laws because “neither are practitioners, and it shows in their writing that they are not regularly in court”.<sup>167</sup> John Howell (Conservative MP for Henley) called on the government to seek an opinion from the European Commission for Democracy through Law on whether and how the bill was compliant with the UK’s obligations as a party to the ECHR.<sup>168</sup>

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<sup>160</sup> Policy Exchange, ‘[How to legislate about small boats](#)’, 11 February 2023.

<sup>161</sup> [HC Hansard, 27 March 2023, col 719.](#)

<sup>162</sup> [HC Hansard, 27 March 2023, col 724.](#)

<sup>163</sup> [HC Hansard, 27 March 2023, col 723.](#)

<sup>164</sup> [HC Hansard, 27 March 2023, col 726.](#)

<sup>165</sup> [HC Hansard, 27 March 2023, col 737.](#)

<sup>166</sup> [HC Hansard, 27 March 2023, col 735.](#)

<sup>167</sup> [HC Hansard, 27 March 2023, col 740.](#)

<sup>168</sup> [HC Hansard, 28 March 2023, col 897.](#)

Responding for the government, Immigration Minister Robert Jenrick noted:

I am keen to give them an undertaking that I will engage with them and other colleagues who are interested in these points ahead of report.<sup>169</sup>

The amendments were not pushed to a vote.

#### 4.4 Report stage and third reading

The bill received report stage and third reading on 26 April 2023. No impact assessment was published prior to report stage. The government published a supplementary ECHR memorandum on 25 April 2023 to reflect its new amendments.<sup>170</sup>

Immediately before report stage the SNP leader at Westminster, Stephen Flynn, called for an emergency debate on the scrutiny of the bill.<sup>171</sup> He highlighted the large number of amendments being considered and the limited time to do so. Mr Flynn was also critical of the lack of pre-legislative scrutiny of the bill. Speaker of the House of Commons Sir Lindsay Hoyle did not grant an emergency debate, but noted:

I do wish to make it clear that I found merits in the application. I sympathise with members who are trying to scrutinise a very large number of amendments to an already densely drafted bill, and I wish to make it clear to the government and to the House that my decision on any future such application regarding the way in which the government invite the House to legislate might well be different.<sup>172</sup>

Several government amendments were published prior to report stage, all of which passed without division. The government provided an overview of their amendments in a letter to Stephen Kinnock on 24 April 2023.<sup>173</sup> The proposals included amendments and new clauses about:

- the definition of “serious and irreversible harm” (new clause 17, amendments 33 to 43)
- interim measures of the ECtHR (new clause 26, amendments 185 to 189)
- age assessments (new clause 24, new clause 25)

<sup>169</sup> [HC Hansard, 27 March 2023, col 776.](#)

<sup>170</sup> Home Office, [‘Illegal Migration Bill: Supplementary European Convention on Human Rights memorandum’](#), 25 April 2023.

<sup>171</sup> [HC Hansard, 26 April 2023, col 751.](#)

<sup>172</sup> [HC Hansard, 26 April 2023, col 752.](#)

<sup>173</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363.



- unaccompanied children (amendments 134 to 37 and 174 to 180)
- legal aid (new clause 20)
- electronic devices and identity documents (new clause 19, new clause 23, amendments 77, 78 and 133)
- modern slavery (amendments 95 to 102)
- foreign national offenders (amendments 111 to 121)
- ban on re-entry settlement and citizenship (amendments 92, 103 to 105, 122, 123 and 164 to 71)

In addition, the government supported two new clauses proposed by Conservative backbenchers on:<sup>174</sup>

- safe and legal routes (new clause 8) originally proposed by Tim Loughton
- interim remedies (new clause 22) credited to Danny Kruger

The government also removed:

- clause 8 of the bill which related to the removal of family members of those subject to clause 2
- clause 51 of the bill as amended at committee, which related to interim measures of the ECtHR and was superseded by other government amendments

There were five divisions on non-government amendments, but none were successful. The amendments and new clauses concerned:

- consulting with local authorities about accommodating asylum seekers in their area (new clause 9)
- expediting asylum claims from specified countries (new clause 10)
- removal of suspected terrorists (new clause 15)
- exempting unaccompanied children, families with dependent children or pregnant women from the bill's detention provisions (amendment 2)
- interpreting the bill in line with the UK's international obligations (amendment 45)

Immigration Minister Robert Jenrick's opening remarks at report stage included assurances on time-limits under which "genuine" children could be detained for the purposes of removal.<sup>175</sup> Mr Jenrick also voiced hopes that

<sup>174</sup> Home Office, '[New measures to stop the boats in Illegal Migration Bill](#)', 21 April 2023.

<sup>175</sup> [HC Hansard, 26 April 2023, col 779](#).

MPs, such as Theresa May and Iain Duncan Smith, would continue to work with the government on modern slavery provisions. He stated a desire to “get the balance right” to continue to support “genuine victims of modern slavery” whilst preventing abuse of the system.<sup>176</sup>

This section of the briefing outlines some of the amendments made, debated and divided upon during report stage.

#### **4.4.1 Report stage: Government amendments**

##### **Definition of “serious and irreversible harm”**

The bill as introduced set out limited circumstances in which legal proceedings could suspend the removal of someone who would otherwise be subject to the removal provisions. The bill provided for two types of claim: a serious harm suspensive claim and a factual suspensive claim.

As introduced, the bill did not include a definition of “serious and irreversible harm” and instead included a placeholder clause (clause 51 in the bill as amended in committee) which would have allowed the secretary of state to make regulations to define it.

The government tabled new clause 17 “to limit the ability of individuals to delay removal with spurious claims”. The clause sets out “non-exhaustive and amendable lists” of matters which would not constitute serious harm.<sup>177</sup> Mr Jenrick argued that the provisions would be “helpful to the courts” by providing them with guidance. However, he noted, that “ultimately the judgment will be for the upper tribunal, to be taken on a case-by-case basis”.<sup>178</sup>

The clause also provides that serious and irreversible harm must be “imminent and foreseeable”, which the minister argued was much more in line with “Strasbourg practice”.<sup>179</sup>

The government also amended the bill to remove the placeholder clause (clause 51 in the bill as amended in committee).

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<sup>176</sup> [HC Hansard, 26 April 2023, col 839.](#)

<sup>177</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, p 5.

<sup>178</sup> [HC Hansard, 26 April 2023, col 786.](#)

<sup>179</sup> [HC Hansard, 26 April 2023, col 786.](#)

## Interim measures of the ECtHR

New clause 26 relates to interim measures of the ECtHR, including under rule 39 of its ‘Rules of Court’. Under rule 39, the ECtHR may indicate interim measures to any state party to the ECHR. The Council of Europe has said that:

Interim measures are urgent measures which, according to the Court’s well-established practice, apply only where there is an imminent risk of irreparable harm.<sup>180</sup>

The ECtHR has noted that the measures are only granted in exceptional circumstances and that the majority relate to requests asking for the suspension of an expulsion or an extradition.<sup>181</sup>

The clause would provide that interim measures of the ECtHR do not affect the clause 2 duty to arrange removal unless a minister determines that they should. The clause specifies a non-exhaustive list of what the minister should consider when deciding whether the interim measures do not apply.

The government has said that it is “currently engaged in constructive dialogue” with the ECtHR on possible reforms to the process by which it considers requests for interim measures. The government has argued that the new clause means the minister may suspend removal in response to a rule 39 interim measure “but is not required to as a matter of UK law”. Instead, the clause gives the minister “broad discretion” for the minister to have regard to any factors when considering whether to disapply the duty.<sup>182</sup>

Responding to the proposed new clause, former attorney general Sir Geoffrey Cox argued:

A minister always has the ability to ignore an indication under rule 39, because there is no obligation under the convention for the government to heed one—it is an indication. Why, then, does it need legislation if what is not in fact being asked is that this House should approve, quite consciously and deliberately, a deliberate breach of our obligations under the convention?<sup>183</sup>

Chair of the Home Affairs Committee Dame Diana Johnson described herself as “disturbed that the government are hardening their stance on the

<sup>180</sup> European Court of Human Rights, ‘[Factsheet: Interim measures](#)’, February 2023.

<sup>181</sup> As above.

<sup>182</sup> Home Office, ‘[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)’, 24 April 2023, DEP2023-0363, p 3.

<sup>183</sup> [HC Hansard, 26 April 2023, col 785](#).

ECHR”. She said she strongly opposed the new clause “which I believe will breach international obligations”.<sup>184</sup>

Joanna Cherry, chair of the JCHR, argued that the new clause “introduces a presumption that the UK government will breach international law” when interim measures are handed down by the ECtHR.<sup>185</sup>

Robert Jenrick disputed this analysis, claiming:

The clause does not mandate a minister to ignore rule 39 indications; it says clearly, to ensure that there is no doubt whatsoever, that the minister has the discretion to do so.<sup>186</sup>

The new clause was supported by Sir John Hayes (Conservative MP for South Holland and The Deepings) and Danny Kruger (Conservative MP for Devizes) who had proposed amendments on interim measures at committee stage.<sup>187</sup>

The new clause and amendments were passed without a division.

### **Age assessments**

New clauses 24 and 25, proposed by the government, related to age assessments. This issue was raised by Sir John Hayes (Conservative MP for South Holland and The Deepings) during committee stage with the immigration minister stating that he hoped to say more at report stage.<sup>188</sup>

The government has expressed a desire to avoid creating false incentives for adults “to make spurious claims that they are children so as to delay their removal”.<sup>189</sup> The safeguarding risks this posed were reiterated by Robert Jenrick at report stage.<sup>190</sup>

New clause 24 would remove the right of appeal for age assessments. Instead, those wishing to appeal an age assessment could judicially review the decision. However, this would be a “non-suspensive” challenge and would therefore be able to continue after an individual has been removed.<sup>191</sup>

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<sup>184</sup> [HC Hansard, 26 April 2023, col 811.](#)

<sup>185</sup> [HC Hansard, 26 April 2023, col 785.](#)

<sup>186</sup> [HC Hansard, 26 April 2023, col 785.](#)

<sup>187</sup> [HC Hansard, 26 April 2023, col 836.](#)

<sup>188</sup> [HC Hansard, 28 March 2023, col 957.](#)

<sup>189</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, p 4.

<sup>190</sup> [HC Hansard, 26 April 2023, col 777.](#)

<sup>191</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, p 4.

New clause 25 would introduce a regulation-making power about age assessments. The regulations could enable an automatic assumption of adulthood where an individual refuses to undergo scientific age assessment. The immigration minister stressed:

I can assure the House that we will make such regulations only once we are satisfied that the scientific models are sufficiently accurate so that applying an automatic assumption will be compatible with the European convention on human rights.<sup>192</sup>

The government has highlighted similar policies used in countries such as the Netherlands and Luxembourg.<sup>193</sup>

Speaking for the SNP, Alison Thewliss was critical of the “highly contentious” nature of age assessments, citing criticisms from the British Dental Association and the Royal College of Paediatrics and Child Health.<sup>194</sup> Olivia Blake (Labour MP for Sheffield Hallam) accused the government of “proposing bogus scientific assessments” to “discredit and dehumanise children”.<sup>195</sup>

The new clauses were added without division.

## Unaccompanied children

During committee stage several MPs sought clarity about the government’s use of proposed powers to detain and remove unaccompanied children.

The government had previously said that the powers to remove would only be used in “very limited circumstances”.<sup>196</sup> Government amendment 174 listed the circumstances under which the power might be used in the bill itself. Circumstances include purposes of family reunion or removal to a safe country of origin. The amendment included a power to extend, by regulation, the circumstances under which removal might be possible. Regulations made under this power would be subject to the affirmative procedure. The immigration minister said that this was “future proofing the bill” against changing tactics of people smugglers.<sup>197</sup>

Further government amendments related to the detention of

<sup>192</sup> [HC Hansard, 26 April 2023, col 784.](#)

<sup>193</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, p 4.

<sup>194</sup> [HC Hansard, 26 April 2023, col 803.](#) See, Royal College of Paediatrics and Child Health, [‘Illegal Migration Bill and age assessments \(report stage\)’](#), April 2023.

<sup>195</sup> [HC Hansard, 26 April 2023, col 831.](#)

<sup>196</sup> [HC Hansard, 28 March 2023, col 956.](#)

<sup>197</sup> [HC Hansard, 26 April 2023, col 778.](#)

unaccompanied children. These would provide the secretary of state with the power to make regulations specifying time limits for the detention of unaccompanied children. In addition, they would provide the secretary of state with the power to make regulations specifying the circumstances under which an unaccompanied child might be detained.

Immigration Minister Robert Jenrick noted concerns from several MPs about the detention of unaccompanied children. He committed to work with Conservative backbench MPs to set out new timescales for the detention of “genuine children” and confirmed “it is our intention that, where there is no age dispute, children are not detained for any longer than is absolutely necessary”.<sup>198</sup>

Alison Thewliss, for the SNP, argued that the time limits and circumstances for such detention should be put on the face of the bill. She pointed to limitations in amending statutory instruments, noting “I have real problems trusting the government [...] we do not trust them to do the right thing”.<sup>199</sup>

Mr Loughton did not move his own amendments about detention but noted:

[...] the measures as they stand do not differentiate between children and adults in detention terms. They ride roughshod through the safeguards on child detention [...] and the government have not even offered to put the maximum detention times for children in this bill. That is a must when it comes to any amendments that the minister can bring forward in the House of Lords.<sup>200</sup>

## Legal aid

The government’s new clause 20 related to the provision of legal aid to those who received a removal notice. Introducing the proposed clause, Robert Jenrick argued that appropriate legal advice was important “to help them to navigate this process”. Mr Jenrick also argued that provision of legal aid would reduce the opportunities for challenges and speed up removals.<sup>201</sup>

The new clause would apply to England and Wales only. The government has said that it will discuss making similar provisions in Scotland and Northern Ireland, with the Scottish government and Northern Ireland Department of Justice respectively.<sup>202</sup>

<sup>198</sup> [HC Hansard, 26 April 2023, cols 779–80.](#)

<sup>199</sup> [HC Hansard, 26 April 2023, col 804.](#)

<sup>200</sup> [HC Hansard, 26 April 2023, col 818.](#)

<sup>201</sup> [HC Hansard, 26 April 2023, col 785.](#)

<sup>202</sup> Home Office, ‘[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)’, 24 April 2023, DEP2023-0363, pp 5–6.

The amendment was welcomed by Dame Diana Johnson as a “positive step forward”.<sup>203</sup> The new clause was added without a division.

### **Foreign national offenders**

The government proposed amendments related to foreign national offenders (FNOs). The bill as introduced included a marker clause that would allow the secretary of state to strengthen rules about foreign national offenders and their access to some modern slavery protections, such as a recovery period.

Under the Nationality and Borders Act 2022, individuals with certain specific convictions, or those posing a national security risk to the UK, may not benefit from certain modern slavery protections. Known as a public order disqualification, this currently applies to FNOs given a custodial sentence of 12 months or more. The amendments would replace the marker clause with a statutory presumption that the public order disqualification applies to FNOs sentenced to an immediate custodial sentence of any length.<sup>204</sup>

The amendment was passed without a division.

### **Electronic devices and identity documents**

New clause 23 and new schedule 1, proposed by the government, would give immigration officers new powers to search for, seize and retain electronic devices from migrants. The power would apply to devices, such as mobile phones. A further new clause proposed that a person’s credibility should be damaged where they make an asylum claim but refuse to disclose information such as a mobile phone passcode or identity document.<sup>205</sup> The amendment was added without division.

### **Modern slavery**

The government proposed several amendments about modern slavery. Amendments were also proposed on the subject by the SNP, Labour Party and by Conservative backbenchers. Government amendment 95, which related to whether it was necessary for a victim of slavery to remain in the UK to cooperate with a criminal investigation about slavery or trafficking, received the most debate.

Former prime minister Theresa May argued the amendment meant that the

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<sup>203</sup> [HC Hansard, 26 April 2023, col 812.](#)

<sup>204</sup> Home Office, [‘Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April’](#), 24 April 2023, DEP2023-0363, p 2.

<sup>205</sup> As above, p 6.

secretary of state must assume that a person cannot stay in the UK unless there were compelling circumstances. Mrs May described it as “a slap in the face for those of us who actually care about victims of modern slavery and human trafficking”.<sup>206</sup>

Former Conservative Leader Iain Duncan Smith also expressed concern about the amendment which he described as a “disastrous attempt to make it almost impossible for anyone in the country to feel confident before they give evidence”.<sup>207</sup> He argued that provisions about protections for victims of modern slavery needed to be looked at again noting “it may well be necessary for the other place to rectify that because it sends a terrible signal to anybody who is being exploited”.<sup>208</sup>

Sir Chris Bryant (Labour MP for Rhondda) argued that the government amendment should not be moved. Mr Bryant said he did not “think the House is in favour of it, and it will end up being removed in the House of Lords”.<sup>209</sup>

Robert Jenrick said that proposed non-government amendments to modern day slavery clauses could “create exemptions that could lead to abuse of modern slavery protections”. He argued that this could undermine the purpose of the bill.<sup>210</sup> Mr Jenrick emphasised that modern slavery provisions in the bill were time-limited and would expire two years after commencement unless renewed.<sup>211</sup> Winding up the debate, Mr Jenrick signalled that he wished to continue supporting “genuine victims” of modern slavery, particularly those:

[...] who have been in the United Kingdom for a sustained period of time and who have been the subject of exploitation here, rather than in the course of their passage, whether in a small boat or otherwise. While it is clear that we will not be able to settle the matter today, I hope that my right hon. Friends—as they kindly said in their remarks that they would—will work with the government throughout the continued passage of the bill to ensure we get the balance right.<sup>212</sup>

Government amendments on modern slavery were passed without division.

<sup>206</sup> [HC Hansard, 26 April 2023, col 808.](#)

<sup>207</sup> [HC Hansard, 26 April 2023, col 800.](#)

<sup>208</sup> [HC Hansard, 26 April 2023, cols 798–9.](#)

<sup>209</sup> [HC Hansard, 26 April 2023, col 839.](#)

<sup>210</sup> [HC Hansard, 26 April 2023, col 780.](#)

<sup>211</sup> [HC Hansard, 26 April 2023, col 781.](#)

<sup>212</sup> [HC Hansard, 26 April 2023, col 839.](#)



## Ban on re-entry, settlement and citizenship

The bill as introduced contained a ban on settlement and, following removal, re-entry for those subject to the clause 2 duty. It also excluded those individuals from registering or naturalising as British citizens. Under the bill's provisions, the secretary of state could waive each of the bans in specific circumstances.

The government proposed a series of amendments which sought to narrow the circumstances under which the secretary of state might waive the bans. Other government amendments provided that a child born in the UK to a parent who meets the four conditions in clause 2 would not be barred from citizenship where they meet the other statutory requirements.<sup>213</sup>

While welcoming this amendment, Dame Diana Johnson urged that a ban on future citizenship for children brought into the UK by their parents (but not born in the UK) should be removed.<sup>214</sup>

The amendments were passed without a division.

## Safe and legal routes

Concerns about how migrants could access safe and legal routes to the UK were the subject of debate at committee stage. Mr Jenrick had committed to engage with colleagues:

[...] 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.<sup>215</sup>

At report stage of the bill the government indicated its support for Tim Loughton's new clause 8, stating it recognised "need for greater clarity about the safe and legal routes available to those seeking refuge in the UK".<sup>216</sup>

Mr Loughton's new clause would require the Home Office to start, within three months of the bill's royal assent, a consultation on the regulations to set the maximum number of persons to be admitted each year using safe and legal routes. In addition, the home secretary would be required to lay a report before Parliament within six months of royal assent, setting out current and any proposed additional safe and legal routes for those in need

<sup>213</sup> Home Office, '[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)', 24 April 2023, DEP2023-0363, p 2.

<sup>214</sup> [HC Hansard, 26 April 2023, col 813.](#)

<sup>215</sup> [HC Hansard, 27 March 2023, col 777.](#)

<sup>216</sup> [HC Hansard, 26 April 2023, col 774.](#)

of protection. It would require safe and legal routes to be implemented as soon as practicable and, in any event, by the end of 2024.

Explaining this amendment, Mr Loughton stated:

It is essential that the immigration minister consults local authorities about capacity, but he also needs to consult refugee organisations and others about the type of schemes with which we will come forward. How will they operate? Who will qualify for them? How will people access them? Let us make sure that those schemes are in place sooner rather than later in 2024, although I would have liked them to be contemporaneous. We have a deal on safe and legal routes, but we need to see some real workable details in the coming months and as the bill goes through the Lords.<sup>217</sup>

The amendment was passed without division.

Summing up the debate, Robert Jenrick welcomed “a high degree of unity—certainly on the government benches, but perhaps more broadly” on the issue.<sup>218</sup>

### **Interim measures: Domestic courts**

The government indicated its support for new clause 22, tabled by Danny Kruger (Conservative MP for Devizes). Mr Jenrick said the amendment would make it “crystal clear” that judicial reviews would be non-suspensive. The amendment would also prevent the court from granting interim remedies that have the effect of blocking removals pending a substantive decision on a judicial review.<sup>219</sup> The amendment was passed without a division.

### **Other government amendments**

The government removed two clauses from the bill as amended at committee: clause 8 and clause 51.

Clause 8 of the bill placed a duty on the secretary of state to make arrangements for removal of the family members of those subject to clause 2. The government explained:

Any family member who entered the UK unlawfully on or after 7 March 2023 will automatically be subject to the duty to make

<sup>217</sup> [HC Hansard, 26 April 2023, col 817.](#)

<sup>218</sup> [HC Hansard, 26 April 2023, col 838.](#)

<sup>219</sup> [HC Hansard, 26 April 2023, col 835.](#)

arrangements for removal in clause 2 [...] we do not consider it necessary to capture other family members in the bill. Such persons may, for example, include those who entered the UK lawfully and subsequently overstayed.<sup>220</sup>

In addition, a further 30 consequential amendments were tabled which the government said were necessitated by the change.

The government also removed clause 51 of the bill as amended at committee, which related to interim measures of the ECtHR and was superseded by other government amendments.

Other amendments the government tabled were outlined in further depth in the immigration minister's letter to Stephen Kinnock of 24 April 2023.<sup>221</sup>

#### 4.4.2 Report stage: Divisions

##### **Consulting with local authorities about accommodating asylum seekers in their area**

New clause 9 was proposed by Shadow Immigration Minister Stephen Kinnock. The clause would have required the government to consult local authorities when arranging accommodation for migrants.

The new clause was almost identical to the new clause proposed and divided on during committee stage, but also applied to hotel accommodation and accommodation provided on military sites and sea vessels. Mr Kinnock argued that:

Bad decisions on the location of accommodation means that the process then slows down due to legal challenges and the whole system gets even more clogged up. It would be far better to consult local authorities early in the process.<sup>222</sup>

The amendment was defeated by 285 votes to 233.<sup>223</sup>

<sup>220</sup> Home Office, '[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)', 24 April 2023, DEP2023-0363, p 9.

<sup>221</sup> Home Office, '[Letter dated 24/04/2023 from Robert Jenrick MP to Stephen Kinnock MP and others regarding the government amendments tabled for report stage of the Illegal Migration Bill on 26 April](#)', 24 April 2023, DEP2023-0363. See also, House of Commons Library, '[Illegal Migration Bill: Progress of the bill](#)', 24 April 2023.

<sup>222</sup> [HC Hansard, 26 April 2023, col 794.](#)

<sup>223</sup> [HC Hansard, 26 April 2023, cols 848–50.](#)

## **Expediting asylum claims from specified countries**

Introducing his proposed new clause 10, Stephen Kinnock argued that it was necessary to ensure that the government “get on with expediting asylum processing” for the countries listed in the schedule to the bill. The clause would have required the secretary of state to use regulations to establish a process for expediting these claims. He argued:

[...] there are a number of countries with very low grant rates and that must therefore be where we triage and put them into a category where the processing can be expedited. However, all the processing must be done on an individual, case-by-case basis, in line with our treaty obligations.<sup>224</sup>

New clause 10 was defeated by 290 votes to 231.<sup>225</sup>

## **Removal of suspected terrorists**

New clause 15 was proposed by the opposition. It would have required the secretary of state to remove suspected terrorists to whom clause 2 applied. Alternatively, it would have required the secretary of state to consider imposing terrorism prevention and investigation measures (TPIMs) where removal was not possible.

Immigration Minister Robert Jenrick argued that the clause was unnecessary as the duty to remove already applied across the board, except for unaccompanied children. In addition, there were already existing powers concerning terrorism prevention and investigation measures to use where deportation or prosecution was not possible.<sup>226</sup>

New clause 15 was defeated by 284 votes to 219.<sup>227</sup>

## **Powers of detention: Exemptions**

Chair of the Home Affairs Committee Dame Diana Johnson proposed amendment 2, which would have meant that powers of detention in the bill would not apply to:

- unaccompanied children
- those with at least one dependent child
- pregnant women

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<sup>224</sup> [HC Hansard, 26 April 2023, col 794.](#)

<sup>225</sup> [HC Hansard, 26 April 2023, cols 852–4.](#)

<sup>226</sup> [HC Hansard, 26 April 2023, col 782.](#)

<sup>227</sup> [HC Hansard, 26 April 2023, cols 856–9.](#)

Dame Diana argued that the bill “abolishes necessary safeguards” on the duration of detention put in place by previous Conservative governments. Dame Diana noted concerns raised by the Equality and Human Rights Commission, the Children’s Commissioner for England and the Refugee Council about the current provisions on detention.<sup>228</sup> She stated:

Limits on detention deliver essential safeguards for the most vulnerable people who arrive on our shores, ensuring that while we process their claims we keep them safe, we treat them with care and we do no further harm. The UK has been a stalwart of that decency, but these specific detention measures are a major step backwards for families, for children and for pregnant women.<sup>229</sup>

Dame Diana also pointed to the cross-party support which her amendment had received, including from the chairs of both the JCHR and the House of Commons Women and Equalities Committee.

Amendment 2 was defeated by 286 votes to 231.<sup>230</sup>

### **Interpreting the bill in line with the UK’s international obligations**

The SNP’s home affairs spokesperson Alison Thewliss moved amendment 45. It would have required the courts to interpret the act, so far as possible, in accordance with the UK’s international obligations contained in several international treaties. These included the Refugee Convention, the Council of Europe Convention on Action Against Trafficking in Human Beings, and the UN Convention on the Rights of the Child.

Ms Thewliss argued it was “utterly bizarre and reprehensible” that she needed to introduce the amendment.<sup>231</sup> She cited criticisms from several bodies about the bill’s impact on the UK meeting its international obligations.

The amendment was defeated by 290 votes to 231.<sup>232</sup>

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<sup>228</sup> Equality and Human Rights Commission, [‘Statement on Illegal Migration Bill ahead of House of Commons report stage’](#), 24 April 2023; Children’s Commissioner for England, [‘Statement from the Children’s Commissioner on the Illegal Migration Bill’](#), 3 May 2023; and Refugee Council, [‘UK government’s new asylum bill threatens to lock up thousands of refugee children who come to the UK alone: Refugee Council and Barnardo’s joint release’](#), 24 April 2023.

<sup>229</sup> [HC Hansard, 26 April 2023, col 812.](#)

<sup>230</sup> [HC Hansard, 26 April 2023, cols 868–71.](#)

<sup>231</sup> [HC Hansard, 26 April 2023, col 801.](#)

<sup>232</sup> [HC Hansard, 26 April 2023, cols 860–3.](#)

### 4.4.3 Third reading

The bill passed third reading stage by 289 votes to 230.<sup>233</sup>

### 4.5 Other parliamentary scrutiny

The JCHR started its legislative scrutiny of the Illegal Migration Bill on 16 March 2023. It has held two evidence sessions on the bill and heard from a range of individuals, including the UN Refugee Agency (UNHCR) and the Refugee Council, whose reactions to the bill are discussed in further detail in section 5 of this briefing. They also heard from Sir Stephen Laws, from Policy Exchange.<sup>234</sup>

## 5. Reaction and comment

The bill has drawn comment from a range of organisations and bodies. Most of those responding have identified principles and areas of concern.

The UN refugee agency (UNHCR), has described itself as “profoundly concerned” by the bill, arguing:

The legislation, if passed, would amount to an asylum ban—extinguishing the right to see protection in the United Kingdom for those who arrive irregularly, no matter how compelling their claim may be.<sup>235</sup>

The UNCHR has provided the UK government with formal legal observations on the bill. It has also produced a range of factsheets on safe and regular routes to the UK for asylum-seekers, arrivals to the UK over the Channel, and why the UK Illegal Migration Bill is as asylum ban.<sup>236</sup> It reiterated its calls for UK authorities to improve processing times and make faster decisions through streamlined and tailored asylum procedures. It has also been critical of the UK’s bilateral agreement with Rwanda.<sup>237</sup>

The Council of Europe’s group of experts on action against trafficking in human beings (GRETA) has also expressed concern. It claimed that the legislation would be “a significant step backwards” in the fight against modern slavery and was not compliant with core elements of the Council of Europe Convention on Action Against Trafficking in Human Beings. GRETA

<sup>233</sup> [HC Hansard, 26 April 2023, cols 887–90.](#)

<sup>234</sup> Joint Committee on Human Rights, ‘[Legislative scrutiny: Illegal Migration Bill](#)’, accessed 29 April 2023.

<sup>235</sup> UNHCR, ‘[UK asylum and policy: Illegal Migration Bill](#)’, accessed 11 April 2023.

<sup>236</sup> As above.

<sup>237</sup> UNHCR, ‘[Explainer: Why the UK Illegal Migration Bill is an asylum ban](#)’, accessed 11 April 2023.

urged the UK government to reconsider the relevant provisions of the bill and to continue to “uphold its international obligations”.<sup>238</sup>

The Institute for Government (IFG) argued that it was highly likely that appeals would be lodged with the ECtHR about whether the bill met the UK’s international legal obligations. It also noted that the UK lacked returns agreements which might allow the removal of those people arriving on small boats:

Without increased capacity to remove people, it is likely tens of thousands of people will arrive in the country by small boat, be detained and declared inadmissible for asylum in the UK, but with little prospect of removal from the country. The government should urgently clarify its approach to these cases [...] what will the home secretary’s responsibility be to these people?<sup>239</sup>

The IFG also queried where all individuals subject to removal would be detained and how the government would pay to do so.

Commenting on the bill prior to its report stage in the Commons, the Equality and Human Rights Commission argued that the bill risked “breaching international obligations to protect human rights and exposing individuals to serious harm”.<sup>240</sup> While welcoming the government’s commitment to increase safe, regular routes to the UK, it expressed concern that the bill:

- undermines the core principle of the universality of human rights
- removes protections for victims of trafficking and modern slavery
- risks breaching the Refugee Convention by restricting the right to asylum and penalising refugees
- risks breaching human rights protections under the ECHR and the principle of non-refoulement
- includes broad provisions for detention, including of children and pregnant women
- insufficiently considers the impact for different groups with certain protected characteristics

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<sup>238</sup> Council of Europe, “[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.

<sup>239</sup> Institute for Government, ‘[The Illegal Migration Bill: Seven questions for the government to answer](#)’, 10 March 2023.

<sup>240</sup> Equality and Human Rights Commission, ‘[Statement on Illegal Migration Bill ahead of Commons report stage](#)’, 24 April 2023.

The Law Society also expressed concern that the bill:

[...] may be incompatible with our international obligations, will fundamentally reduce the oversight of our courts, and will diminish access to justice for everyone caught by its provisions.<sup>241</sup>

The Law Society argued that the bill would do significant damage to the UK's international reputation. It said the bill made no provision for access to legal advice to those given a notice of removal, instead individuals must seek legal advice on their own. The Law Society argued this, coupled with the short timeframes outlined in the bill, would deny individuals access to justice by leaving individuals unable to bring a claim in time, prepare a case or seek out any sort of legal advice. It also questioned the workability of the bill, for example due to the UK's lack of returns' agreements and detention facilities.<sup>242</sup>

The Bar Council was also critical of proposals, which passed at report stage, to allow ministers the power to ignore interim injunctions from the ECtHR, stating:

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.<sup>243</sup>

The legality of the bill is discussed in greater depth by Joshua Rozenberg.<sup>244</sup> While noting potential issues, Mr Rozenberg also points to "a number of deliberate exceptions and concessions" in the bill. For example, the fact that the bill does not attempt to exclude the power of the courts to grant the common law remedy of habeas corpus. He argues that this "loophole" is not an accidental oversight and the government believes this will make it compliant with article 5 of the Human Rights Act 1998. Mr Rozenberg concluded:

If the government wants this bill to deter illegal migrants, it must hope they won't read the small print.<sup>245</sup>

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<sup>241</sup> Law Society, '[Parliamentary briefing: Illegal Migration Bill—second reading](#)', 10 March 2023.

<sup>242</sup> Law Society, '[Parliamentary briefing: Illegal Migration Bill—committee stage](#)', 27 March 2023.

<sup>243</sup> Bar Council, '[Illegal Migration Bill amendment undermines rule of law](#)', 20 April 2023.

<sup>244</sup> Joshua Rozenberg, '[An illegal bill: Not quite—there's always habeas corpus](#)', 8 March 2023.

<sup>245</sup> As above.



The Refugee Council described the Illegal Migration Bill as “draconian legislation” which “stains our country’s reputation for fairness in the face of adversity”.<sup>246</sup> It produced an impact assessment on the consequences of the first three years of the implementation of the Illegal Migration Bill.

Based on the Home Office being able to remove 30,000 people to Rwanda, detaining people for an average of 28 days, and being able to accommodate those not detained in dispersal-style accommodation, the Refugee Council estimated that if the bill becomes law:

- In the first three years of the legislation coming into effect, between 225,347 and 257,101 people will have their asylum claims deemed inadmissible. This includes between 39,500 and 45,066 children.
- At the end of the third year, between 161,147 and 192,670 people will have had their asylum claims deemed inadmissible but not have been removed. They will be unable to have their asylum claims processed, unable to work and will be reliant on Home Office support and accommodation indefinitely.
- In total, between £8.7bn and £9.6bn will have been spent on detaining and accommodating people impacted by the bill in the first three years of its operation.
- The bill will do nothing to expand safe routes available to people who are trying to reach the UK.<sup>247</sup>

The Immigration Law Practitioners’ Association (ILPA) described the bill as “an assault on the rights of migrants and on the rule of law”.<sup>248</sup> Amongst its criticisms the association cited the “vast number of provisions” in the bill which would have retrospective effect, arguing “retrospective law-making undermines the rule of law”.<sup>249</sup>

It argued that the bill would create “a large and permanent population of people [...] living in limbo at public expense for the rest of their lives” and was critical of the “wide new discretionary powers as to where people are detained and how long they are detained”.<sup>250</sup> The association argued that the new powers relating to unaccompanied children “fundamentally undermine the legal protections of the Children Act 1989”.<sup>251</sup>

The Local Government Association (LGA) called for discussions with the

<sup>246</sup> Refugee Council, ‘[Nearly 200,000 people could be locked up or forced into destitution, new report on asylum bill reveals](#)’, 22 March 2023.

<sup>247</sup> Refugee Council, ‘[Illegal Migration Bill: Assessment of impact of inadmissibility, removals, detention, accommodation and safe routes](#)’, accessed 4 May 2023.

<sup>248</sup> ILPA, ‘[ILPA briefing on Illegal Migration Bill for second reading in the House of Commons on 13 March 2023](#)’, 12 March 2023, p 2.

<sup>249</sup> As above, p 2.

<sup>250</sup> As above, p 3.

<sup>251</sup> As above, p 4.

government about how provisions on the powers of detention, accommodation and support of unaccompanied children, and consultation on the resettlement cap would impact councils. Amongst its concerns, the LGA questioned how provisions on removal of unaccompanied children when they turn 18 was compatible with the Children Act 1989.<sup>252</sup>

Children’s Commissioner for England Dame Rachel de Souza has stated that she is “deeply concerned” about the impact of the bill on children arriving in the UK to seek safety and refuge. In addition to producing a briefing for second reading in the House of Commons, she also called for:

- greater clarity on how local authorities will retain all their duties under the Children Act 1989 towards every child
- an increase in the number of safe and legal routes for children and their families
- accompanied and unaccompanied children to be excluded from the provisions in the bill which would make their claims to asylum inadmissible.
- the exclusion of children and their families from the duty to remove
- excluding unaccompanied children from the power to remove, and from the duty to remove following their 18th birthday
- changes so that the Home Office is not provided with a legal power to accommodate children
- Modern Slavery Act protections to continue to apply to children and parents<sup>253</sup>

The Refugee and Migrant Children’s Consortium (RMCC) describes itself as a group of NGOs working collaboratively to ensure that the rights and needs of refugee and migrant children are promoted, respected and met. Membership includes Barnardo’s, the NSPCC, the Children’s Society, and UNICEF UK. In a briefing produced by the RMCC prior to committee stage in the Commons, the consortium described itself as “profoundly concerned” by the bill. It argued that the bill is “an affront” to the protections that the UK should provide children and families under the Refugee Convention, the UN Convention on the Rights of the Child and the Children Act 1989:

[...] the proposals will leave children locked out of claiming refugee protection; detained; removed; if unaccompanied, accommodated by the Home Office outside the established care system; if a victim of trafficking or child of such a victim, unprotected; and denied their citizenship rights. Children will be left in limbo for years, unable to access any form of status or to rebuild their lives. The RMCC opposes the bill in its entirety.

<sup>252</sup> Local Government Association, ‘[Illegal Migration Bill: Committee stage](#)’, 27 March 2023.

<sup>253</sup> Children’s Commissioner, ‘[Illegal Migration Bill: Unaccompanied children seeking asylum](#)’, 11 April 2023,

Amongst a range of suggestions, it proposed:<sup>254</sup>

- Changes to ensure all unaccompanied children are excluded from the duty to remove at 18 and provisions in the bill which would make their claims inadmissible.
- Children and those with parental responsibility for them should be excluded from provisions withholding modern slavery protections.
- Amendments to prevent the “indefinite detention of children [...] anywhere the secretary of state considers appropriate”.
- Changes to proposals to allow the Home Office to provide “a segregated system of care” for refugee and migrant children. The RMCC pointed to provisions in the Children Act 1989 which require local authorities to promote the welfare of all children “regardless of nationality, ethnicity or immigration status”.
- Amendments to protect children with an entitlement to British citizenship from loss of their citizenship rights for anything done by or done to one of their parents when that parent entered or arrived in the UK.

In contrast, Migration Watch UK has argued that the bill has “many of the right ingredients to solve the Channel crisis”. However, it warned that the bill should not be “neutered” as it went through Parliament, stating “only tough and unambiguous legislation will stand any chance of succeeding”.<sup>255</sup> It was supportive of amendments proposed during committee stage in the Commons which would have imposed a statutory block on interim relief and on return, and would have disapplied sections 4, 6 and 10 of the Human Rights Act.<sup>256</sup>

Sir Stephen Laws from Policy Exchange has also been positive. Giving evidence to the JCHR he commented:

Looking at how laws work, the bill has a chance of contributing to reducing the number of people using unsafe and illegal routes across the channel [...] The broad approach seems to be right. If the use of these routes is going to be diminished, it is essential to reduce the attraction and to attack the demand side of the illegal trade that is bringing people across.<sup>257</sup>

<sup>254</sup> Refugee and Migrant Children’s Consortium, ‘[Illegal Migration Bill: Committee stage—amendments to safeguard children](#)’, March 2023.

<sup>255</sup> Migration Watch UK, ‘[Response to the small boats bill](#)’, 7 March 2023.

<sup>256</sup> Migration Watch UK, ‘[Migration Watch UK responds to Illegal Migration Bill amendments](#)’, 28 March 2023.

<sup>257</sup> Joint Committee on Human Rights, ‘[Oral evidence: Legislative scrutiny: Illegal Migration Bill \(HC 1241\)](#)’, 29 March 2023.

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