



10 July 2023

## ILLEGAL MIGRATION BILL: COMMONS CONSIDERATION OF LORDS AMENDMENTS

Dear Colleague,

Ahead of the Illegal Migration Bill returning to the Commons tomorrow, I am writing to you to set out the Government's position on the amendments made in the House of Lords.

The Government remains committed to passing this legislation as soon as possible and believes that it is essential to stop the boats. We have respectfully listened to the arguments and evidence put forward in the upper House. But we note that not a single intervention by Labour, Liberal Democrat or Crossbench peers set out a credible alternative to this legislation, nor have peers proposed an alternative plan to meaningfully reduce the number of small boats crossing the Channel and putting lives at risk. It is not fair nor right to permit people smuggling to continue, nor to encourage people to come to the UK illegally ahead of those who play by the rules.

This legislation will succeed in stopping the boats if it is unambiguously clear to illegal migrants and people smugglers that if they travel here illegally, they will not be able to remain and build a life in the UK. That is why the Bill is clear on its face that illegal entry will lead to detention and swift return to a home country or removal to a safe third country. It is only by undermining the incentive to make dangerous journeys that we will deter people from making them. Many of the non-government amendments passed by the Lords fundamentally undermine that central principle, adding exceptions, exclusions, and qualifications that will be targeted by migrants seeking to prevent removal, making the scheme unworkable.

We have always maintained the fundamental fairness of our approach. I am pleased that the Court of Appeal recently unanimously confirmed that removing asylum-seekers to a safe country is entirely consistent with the Refugee Convention, including Article 31 and affirmed the Home Office's processes for identifying cohorts for removal. The Court also made clear that Rwanda itself is safe. We are seeking leave to appeal the Court of Appeal's ruling that there is a risk of refoulement (that is, return) to *other countries* from Rwanda, on which there was disagreement between the judges. We remain resolute in delivering on our commitment to stop the boats and with this Bill on the statute book, and working in partnership with Rwanda, we will do just that.

As a result, we intend to invite the House to overturn the majority of non-government amendments agreed during the Lords stages of the Bill in order to protect the integrity of the Bill and ensure it delivers for communities, taxpayers and migrants themselves.

The Lords agreed a number of Government amendments which will further improve the Bill. These were mainly of a technical nature but, amongst other things, they would:

- Replace “factual suspensive claims” with “removal conditions suspensive claims” which would enable a person issued with a removal notice to make any claim that they do not meet the removal conditions.
- Enable the Lord Chancellor, rather than the Tribunal Rules Committee, to make the first set of tribunal procedure rules required in connection with the Bill.
- Make provision for legal aid in Northern Ireland.

However, the Lords also agreed a number of other non-government amendments which the Government cannot support, at least not in their current form.

### **Legal proceedings**

The Government takes its international obligations very seriously and there is nothing in this Bill which requires the Government to act incompatibly with those obligations. Lords amendment 1 is therefore simply unnecessary.

In addition, it would remove the clear statement of the purpose of the Bill in clause 1 – to prevent and deter unlawful migration – and undermine longstanding constitutional arrangements whereby we treat international law as separate to our domestic law. International law is only incorporated into domestic law by Parliament through legislation such as the Human Rights Act 1998; the effect of Lords amendment 5 would be to incorporate the Refugee Convention and the other instruments listed in the amendment into UK law by the backdoor, enabling them to be the foundation for legal challenges to removal in the UK courts.

If the Bill is to achieve its objective of swiftly removing illegal migrants from the UK we must end the cycle of repeated, late and spurious legal challenges. Lords amendments 7, 90 and 93 would fundamentally undermine the Bill by providing for judicial review challenges, including in relation to disputed age assessment, to suspend removal. The Bill includes bespoke provision for suspensive claims so that there are already adequate remedies for those who wish to challenge their removal either on the basis that they don't meet the removal conditions in clause 2 or on the basis that they would face a real risk of serious and irreversible harm if removed to a specified third country.

Lords amendment 95 on judicial review challenges to an age assessment is unnecessary as the Bill already provides that the court may grant relief only on the basis that the decision was wrong in law (Clause 55). This already covers circumstances where the court concludes that the decision was so unreasonable that no reasonable authority could have come to such a decision (the *Wednesbury* unreasonableness test).

Lords amendment 73 would significantly expand the scope of serious harm suspensive claims. We recognise, however, the concern that the power to amend the meaning of “serious and irreversible harm” is broad and have therefore brought forward a government amendment in lieu to ensure that the power can't be used to remove the examples of harm that constitute serious and irreversible harm (the examples include death, torture and refoulement).

### **Detention**

It is a necessary part of the scheme provided for in the Bill that the duty on the Home Secretary to make arrangements for removal is accompanied by strong detention powers. We know from experience that once a person is released from detention the prospects of being able to effect removal are significantly reduced because they typically abscond. That is why the Bill restricts (but does not exclude) judicial challenges within the first 28 days of detention – so that illegal migrants can be

processed and removed rather than simply absconding on arrival. These powers exist for family groups as well as individuals to prevent a perverse incentive for people smugglers and migrants to co-opt unaccompanied children into bogus family groups to avoid detention, putting children at risk in the process.

I do, however, acknowledge the concerns raised in the Lords about the detention of unaccompanied children and pregnant women. Recognising the health concerns around the detention of pregnant women and the particular vulnerability of unaccompanied children, I have brought forward amendments in lieu which will set a maximum 72-hour limit on the detention of pregnant women and enable the First-tier Tribunal to grant immigration bail after eight days for unaccompanied children, rather than the 28-days provided for in the Bill. In the case of unaccompanied children, this change will apply where an unaccompanied child is detained for the purpose of removal (and aligns with the eight-day period for making a suspensive claim). This approach will ensure that we can continue to detain a person who we suspect to be an adult but who claims to be a child pending the outcome of an age assessment. We have published a fact sheet on the age assessment process at: [Illegal Migration Bill: factsheets - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/illegal-migration-bill).

### **Retrospection**

The duty to make arrangements for removal applies to persons who entered the UK illegally on or after 7 March 2023 which is the date the Bill was first introduced. Lords amendment 2 seeks to remove this retrospective application of the duty. We acknowledge the concern that the retrospective application of the duty will lead to a large cohort of people who will be caught by the duty in the period between 7 March and the date of commencement. That said, as we get closer to implementation the risk that the people smugglers will organise a fire sale will significantly grow and we could see a significant spike in these dangerous and unnecessary crossings once the Bill receives Royal Assent. To guard against this, we have brought forward amendments in lieu which moves the application of the duty from 7 March to the date of Royal Assent. This will mean that those who arrive between those dates and who are potential victims of modern slavery will continue to benefit from support through the National Referral Mechanism (see below).

### **Modern slavery**

It is an essential part of the scheme in the Bill that we remove the opportunities for people to misuse the protections afforded to genuine victims of modern slavery. The Bill does this by providing that a modern slavery claim cannot prevent removal in line with the public order disqualification explicitly provided for in the Council of Europe Convention Against Trafficking (ECAT), the relevant international treaty to which the UK is a signatory. This is subject to the exception where it is necessary for a potential victim of modern slavery to remain in the UK for the purpose of cooperating with a law enforcement agency in connection with the investigation of a trafficking offence. The provisions in the Bill disapplying modern slavery protections will not apply to British nationals, unaccompanied children, or those unlawfully in the UK because they have overstayed their leave to enter or remain. In addition, the change we are making to remove the retrospective application of the duty to remove will omit all those who arrived between 7 March and the date of Royal Assent from the scope of these provisions, considerably reducing any risk that those who have previously arrived illegally and subsequently been placed in modern slavery in the UK will be caught by the Bill's provisions.

The Lords amendments would effectively nullify these provisions by going beyond the public order disqualification provisions of ECAT by preventing removal until a conclusive grounds decision has been taken through the National Referral Mechanism (the process by which potential victims of modern slavery are identified and

supported). Such decisions currently take, on average, over 500 days. We are committed to setting out in statutory guidance that caseworkers must have particular regard to the fact that any exploitation took place in the UK when deciding whether it is necessary for them to remain in the UK to cooperate with a law enforcement agency.

### **Inadmissibility of asylum and human rights claims**

In order that illegal migrants can be swiftly removed, the Bill provides for any asylum claim or human rights claim (relating to a person's home country) to be declared inadmissible. Lords amendments 8 and 9 would respectively limit this inadmissibility rule by excluding claims by unaccompanied children and by persons who are not removed within six months. Lords amendment 8 would incentivise people smugglers to prioritise unaccompanied children putting more young lives at risk and splitting families apart. Lords amendment 9 is unnecessary as the aim of the Bill is to remove illegal migrants quickly back to their home country or a safe third country. In any case, it is not clear why illegal migrants should be made eligible for asylum on the basis of how long they can frustrate their removal from the UK.

### **Removal of LGBT persons**

Lords amendment 23 would prevent LGBT people being removed to certain countries listed in Schedule 1 to the Bill. The amendment is simply unnecessary as the Bill already protects LGBT people from persecution and provides for the Upper Tribunal to prevent removal on the basis of risk of serious and irreversible harm. To give an example, a Ghanaian national who claims asylum cannot under the Bill be returned to Ghana and we would instead seek to remove them to a third country as listed in Schedule 1. Should that person fear that they would be at real risk of suffering serious and irreversible harm if removed to the Schedule 1 country specified in the removal notice they can make a serious harm suspensive claim and they won't be removed until the claim, and any appeal, has been determined by the courts. If the open expression of a person's sexual orientation would prevent them from living in a specified third country without being at real risk of serious and irreversible harm, they would meet the threshold for a serious harm suspensive claim as outlined in clause 38 of the Bill.

### **Accommodation of unaccompanied children**

Clause 16 facilitates the transfer of an unaccompanied child from accommodation provided by the Home Office to a local authority and also enables the Secretary of State to direct a local authority to transfer a child into Home Office accommodation. Lords amendment 50 would limit this so-called "vice versa" power such that it could only be exercised where it was in the best interests of the child. The amendment is unnecessary as the Secretary of State is already required, under section 55 of the Borders, Citizenship and Immigration Act 2009, to have regard to the need to safeguard and promote the welfare of the child when making a decision to exercise the "vice-versa" power. Moreover, we expect this power to be used in only limited circumstances, for example, in advance of returning an unaccompanied child to a parent in their home country.

### **Safe and legal routes**

Clause 59 requires the Secretary of State, within six months of Royal Assent, to prepare and publish a report on the safe and legal routes by which persons may enter the UK. The report must contain details of any proposed additional safe and legal routes. Lords amendment 102 would require the Secretary of State to make regulations specifying such additional safe and legal routes within two months of the publication of the clause 59 report. Again, this amendment is unnecessary. At Report stage of the Bill, Minister Jenrick committed to implement additional safe and legal routes as proposed in the report to be published under clause 59 as "soon as

practicable and in any event by the end of 2024” (Official Report, 26 April 2023, column 774). We will continue to work with the UNHCR and other partners on the introduction of any proposed additional routes and to develop these in line with the needs of those seeking protection in the UK, in the wider context of our existing safe and legal routes, as well as considering the capacity of the UK to support arrivals.

### **Functions of the National Crime Agency (NCA)**

Lords amendment 103 would confer an explicit statutory function on the NCA to combat organised immigration crime connected to illegal entry into the UK via the Channel and require the NCA to maintain a “Cross-Border People Smuggling Unit”. This amendment amounts to legislative grandstanding; under section 1 of the Crime and Courts Act 2013 the NCA’s functions already extend to combating all types of organised crime, including Organised Immigration Crime. The amendment also undermines the operational independence of the Director General of the NCA by mandating a particular form of organisational structure within the Agency, which is tantamount to interfering with the operational independence of policing. Following the pledge made by the Prime Minister last December to stop the dangerous small boats crossings, we have doubled the funding for the next two years for the multi-agency organised immigration crime taskforce, of which the NCA is a leading component.

### **10-year strategy to tackle refugee crises and people trafficking**

The Government shares the Archbishop of Canterbury’s aims, through Lords amendment 104, to complement the provisions of the Bill with longer-term efforts to tackle refugee crises and human trafficking to the UK. The Government is already working with the UN High Commission for Refugees and other international fora to this end and since November the Prime Minister has secured agreements with France, Italy, Albania and the EU to work together to address illegal migration through a combination of operational, diplomatic and development-led interventions. There are early signs that this approach is working, with a considerable fall in Albanian arrivals in particular. Strategies have their place in focusing and coordinating actions to address a particular issue, but we are unpersuaded of the case for statutory provision in this instance. We will continue to keep the case for such a strategy under review as we focus on delivering practical international cooperation to address illegal migration in the coming months.

I hope you will join me on 11 July in agreeing Lords amendments 3 to 5, 10, 11, 13 to 19, 21, 24 to 29, 68 to 72, 75 to 89, 91, 92, 94, 96 to 101, 105, 106 and 108 to 114 and disagreeing with Lords amendments 1, 2, 6 to 9, 12, 20, 22, 23, 30 to 67, 73, 74, 90, 93, 95, 102 to 104 and 107 (but agreeing the Government amendments in lieu of certain Lords amendments).

Yours sincerely,



**Rt Hon Suella Braverman KC MP**  
**Home Secretary**