

Briefing

Illegal Migration Bill – Briefing for Parliamentarians for 2nd reading

9th March 2023

Background to the Bill

Since 2018, the number of people crossing the channel in small boats has been rising. In 2022, 45,755 arrived by small boat, a 60% increase on 2021 and numbers crossing are expected to reach 65,000 this year. The Government has legislated through the Nationality and Borders Act and sought to introduce schemes such as the Rwanda Agreement to attempt to reduce the numbers of people crossing by small boat. Last year also saw the backlog of asylum cases reach a high of 160,000 and a continued decline in the number of refugees arriving to the UK through safe routes such as family reunion and resettlement.

In December 2022, the Prime Minister unveiled a ‘five-point plan’ to tackle ‘illegal migration’, announcing a range of measures and the Government’s intention to bring forward new legislation. On 7th March 2023, the Home Secretary introduced the Bill to Parliament, and we are expecting it to progress swiftly, with 2nd reading and Committee stage before Easter recess.

Our key concerns with the Bill

The bill severely limits the ability for men, women and children who have fled violence and persecution to seek asylum in the UK, going against commitments made under the Refugee Convention. It is unworkable, extremely expensive, and will not reduce the number of people crossing the channel in small boats.

New duties to remove and inadmissibility

Clause 2 of the bill places a new duty on the Home Secretary to take steps to remove anyone who arrives after 7 March 2023 into the UK irregularly, without leave to enter or remain, and who did not travel directly from a country they were fleeing. The only exceptions are separated children and some survivors of modern slavery.

Clause 4 of the bill requires that any asylum claim made by someone to whom the new duty to remove applies is automatically “inadmissible” – that means that the UK Government won’t consider the application at all, no matter how strong an application it may be. Separated children who have arrived irregularly, while not covered by the duty to remove, will also have any asylum claim deemed inadmissible.

[Refugee Council have highlighted](#) that half of the people who crossed the channel last year came from just five countries with high asylum grant rates. These people won’t be able to be removed to their country of nationality: it’s not possible to remove an Afghan to Afghanistan, or a Syrian to Syria. They will only be able to be removed to a third country, but there are currently no working arrangements in place. There is currently no agreement with the French Government or the EU and the Rwanda scheme is subject to legal challenges and even if it does start is expected to only allow for the transfer of 200 people a year.

The bill will leave tens of thousands of people, many with very strong asylum claims, in a permanent limbo – unable to be removed, unable to have their asylum claim processed, and unable to reunite with family and get on with their life. They will either be left destitute or will need to be housed and supported indefinitely at taxpayers' expense.

Detention

Under the bill, everyone who is subject to the new removal duty can also potentially be detained, that includes all those whose claims are inadmissible and possibly their family members. During their first 28 days in detention, people will not be able to apply for bail.

Given many people seeking asylum have experienced detention in their home country or after being displaced, this can be a traumatic and very harmful experience.

But the bill also provides no detail on where people will be detained. If everyone who crossed the channel last year had been detained for 28 days, then on **4 September 9,161 people would have been detained**. This is four times the current detention capacity in the UK. It would also be very expensive – it costs £120 to detain someone for one day so **detaining the 65,000 people predicted to cross the channel in 2023 for 28 days would cost £219 million a year**, and that's before the additional costs of building more detention centres.

Lack of safe routes

The bill also does nothing to increase the safe routes available to people. It is only possible to apply for asylum in the UK by being physically present in the country. The bill does not change this. Instead, clause 51 will create an **annual cap** on the number of people able to come to the UK through safe routes. This will be done through an affirmative statutory instrument, and so will not be amendable by MPs. As it is a cap the Government will be under no obligation to meet the number set, no matter how low or high it might be.

Children

The Bill makes a range of changes that will undermine decades of the child protection framework, undermine their rights under the Refugee Convention, and likely to breach the UN Convention on the Rights of the Child. As such, the provisions put forward in the Bill are at odds with the Home Secretary's duty to safeguard and promote the welfare of children in the UK.

A duty to remove applies to adults and **children in families**, and the **power to remove separated children becomes a duty when the child reaches the age of 18**. The powers to detain will apply to children and families. Moreover, separated children and pregnant women can be detained beyond 24 hours with no access to bail before 28 days.

The Bill will undermine the Children Act 1989 by giving the Home Secretary **new powers to provide accommodation and support to separated children**. Such a move is potentially laying down the ground for not just legitimising the use of hotels but opening reception centres for separated children in the future, operated by the Home Office. Furthermore, the Home Secretary will be able to **decide when a child ceases to be looked after** and mandate the move of a child between local authorities as well as **mandate local authorities to provide information** to the Home Secretary in relation to children in their care and in a format requested by her.

The measures in the Bill also seek to **withhold modern slavery protections** under the National Referral Mechanism (NRM), disqualifying children who are survivors of trafficking from accessing specialist support and accommodation.

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We expect the Bill will have a significant negative impact on children's integration and well-being, **some children will be forever prevented from settling in the UK**, i.e. getting any form of leave in the UK and applying for citizenship.

Lastly, there are **concerning proposals regarding the devolved powers** in relation to local authority care concerning children as well as modern slavery and trafficking legislations.

Refugee Council's recommendations for a fairer asylum system

It is clear that key changes are required to make the asylum system fairer and more efficient and to reduce the number of people taking dangerous journeys. None of the provisions in the Bill will achieve this. Instead, the Government should:

- **Expand safe routes:** widen eligibility for refugee family reunion, in particular by allowing refugee children in the UK to be joined by their parents, and to pilot a refugee visa that would allow people to apply for asylum in the UK from close to the country they've fled
- **Tackle the backlog:** the Home Office should make quick decisions on people from high grant countries who are waiting for a decision, as well as unaccompanied children. This will let people get on with their lives and remove the need to use hotels to accommodate people waiting for a decision.
- **Work with the EU:** ensuring people are able to safely access protection and reducing the number of people who are taking dangerous journeys can only be achieved by working in partnership with other governments. This includes working with the French government and other EU member states to create safe ways for people to reach the UK, especially those with family members in the UK, and for people who have applied for asylum in Europe to be returned.

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