



---

**Government Immigration Bill 284 (Session 2022-23)**

**House of Commons Report and Third Reading, 26 April 2023**

---

**Government Amendments**

On Thursday and Friday of last week, the Government tabled:

- 9 New Clauses
- 1 New Schedule
- 136 Amendments

Whereas a majority of these 146 Government amendments are stated to be consequential upon others, though even some of these consequential amendments have additional substantive content and, in any event, throw light on the complexity of what is being proposed at this very last minute of the very last stage of what has been an extremely rushed, disordered and inevitably inadequate passage of this Bill.

This Briefing is to assist Parliament to understand the meaning and effect of this mass of Government additions and alterations to its Bill. However, we recognise that Parliament has, thus far, had little real opportunity to understand this Bill given the haste with which Ministers have chosen to force it through the House of Commons. Ministers have enabled themselves, by taking the Bill in a Committee of the whole House, to avoid having to answer any line-by-line and focused scrutiny in the extremely restricted and unfocused time that Government has afforded for formal scrutiny of this Bill.

In summary, the Government's latest changes:

- Remove the direct impact of this Bill upon people who are merely the family member of someone who is brought or comes to the UK on or after 7 March 2023 in the manner prescribed in Clause 2 (**see pp2-3 of this briefing**);
- Remove the disenfranchisement of certain British children born in the UK to their citizenship rights (but still failing to remove that same disenfranchisement of certain British children born overseas) (**see p3 of this briefing**);
- Make provision for legal aid for the highly restricted legal processes the Bill permits to anyone caught by it (**see p4 of this briefing**);
- Make it entirely a matter of Ministers' choice whether to comply with any interim measure of the European Court of Human Rights requiring the Government not to expel someone under the powers in this Bill (**see pp4-5 of this briefing**);
- Make clear that no UK court or tribunal may delay, suspend or prevent the expulsion of anyone under this Bill save via the highly restricted legal process, largely controlled by the Secretary of State, that is created by the Bill (suspensive claims) (**see p5 of this briefing**);
- Significantly narrow the prospect that anyone may be able to secure protection against their expulsion in breach of their human rights by substantive and procedural changes to the already highly restricted legal process the Bill permits for anyone treated as caught by the Bill to seek to challenge that treatment (suspensive claims) (**see pp5-6 of this briefing**);
- Require the Secretary of State to assume that no investigation or prosecution requires the presence of a victim of slavery or human trafficking and so enable the expulsion of such a victim under this Bill even during a period in which the victim is providing cooperation with either (**see pp6-7 of this briefing**);

- Require (as distinct from empower as at present) the exclusion from modern slavery protections of any victim of slavery or human trafficking whom the Secretary of State (or other competent authority) is satisfied is a threat to public order or has claimed to be a victim in bad faith; and extend the people who are to be caught by this exclusion (even without the Bill) to people sentenced in the UK to any term of imprisonment (however short) for any offence (**see pp6-7 of this briefing**);
- Generally extend, complete or make more secure the powers of the Secretary of State under the Bill to ignore children’s best interests, particularly in the exercise of powers to detain and expel children and in relation to disputing the age of a child whom the Secretary of State wrongly treats as an adult (**see pp7-8 of this briefing**);
- Introduce new powers to search and seize electronic devices and access and use information contained upon them (**see pp8-9 of this briefing**);
- Extend existing statutory provisions requiring the credibility of someone seeking asylum to be treated as damaged (an extension that is not focused on the people otherwise targeted by this Bill) (**see p9 of this briefing**);
- Emphasise the shallowness and ultimate irrelevance to the motivations and contents of this Bill of the continuing discussion of so-called “safe and legal routes” (which are used and abused by Ministers as mere excuse for their wicked intention to shut down the UK’s asylum system) (**see pp9-10 of this briefing**); and
- Make new offences, provide for extension of the Bill’s provisions to the Channel Islands and the Isle of Man and make other several other changes to the Bill (**see pp10-11 of this briefing**).

If the contents of this Bill did not constitute a serious assault upon profound matters of constitutionality and legality, the process by which this Bill is being forced through Parliament would still constitute an affront to constitutional principle and Parliament. But the contents of this Bill are a serious assault on constitutionality and legality – including by robbing British people of their rights to British citizenship (notwithstanding some Government amendments to remove some of the provisions by which this is to be done), permitting detention without any judicial oversight, significantly ousting judicial authority over questions of legality in executive action, and repudiating the UK’s international law obligations. Accordingly, as stated in our separate briefing for Report/Third Reading:

*“This Bill should never have been introduced – it is entirely unsalvageable and we urge parliamentarians to reject it in its entirety.”*

We turn to Government Amendments (including New Clauses and Schedules). Short explanation and commentary is provided upon groups of these clustered together under distinct subheadings to which the various groups of amendments relate. Under each subheading is a list of the various amendments they addressed.

### **Expulsion and family members**

#### **Gov 79 to 83, Gov 139 to 160, Gov 172 to 173**

##### Explanation:

Gov 79 and Gov 80 are intended to permit a person’s expulsion within the period (8 days) provided by the Bill within which that person may make a suspensive claim against their expulsion. Under Gov 80, this may be done if the person notifies the Secretary of State of their not intending to make such a claim. The new provision includes no safeguards concerning this such as for the person’s notification to the Secretary of State to be express or in writing, to be informed or for the person to have received or had access to legal advice.

Gov 81 and Gov 82 are consequential upon Gov 79 and Gov 80.

Gov 83 removes Clause 8. The removal of Clause 8, and what are described as consequential amendments to Gov 83, means that the Bill is narrowed to only directly affecting people who are brought or come to the UK on or after 7 March 2023 in the circumstances prescribed in Clause 2. Being the family member (partner, child or dependent adult relative) will no longer in itself make a person subject to the Bill.

The remaining amendments clustered in this group are expressed as, and do appear to be, consequential upon Gov 83.

#### Commentary:

The inclusion of family members in the original drafting of this Bill was a vindictive penalty upon a child, partner or adult dependent relative of someone, who fell within the primary target of the Bill, where the family member had not done or had done to them the act (being brought to or coming to the UK in circumstances prescribed in Clause 2) that the Bill makes its primary target. Family members should never have been included.

However, family members will still be severely affected by this Bill. They will suffer the distress of what is done to their parent, partner or the person on whom they are dependent; and in many instances the loss arising from what may be permanent family separation.

### **British citizenship**

#### **Gov 163-171, Gov 123, Gov 103**

#### Explanation:

The purpose of Gov 164 is to remove from the Bill the provision that would otherwise disenfranchise some British children born in the UK of their citizenship rights. The purpose of Gov 168 is to remove from the Bill a similar provision that would otherwise disenfranchise some British children born on a British overseas territory of their citizenship rights.

The purpose of Gov 123 is to further restrict the Secretary of State's power to mitigate the extremity of the various exclusions from citizenship (including exclusions of some British people's rights to it) by confining that power to circumstances in which she considers it necessary to comply with the UK's obligations under the 1950 European Convention on Human Rights.

Gov 103 will commence the provisions relating to exclusion of citizenship (still including rights of some British people to it) immediately that the Bill receives Royal Assent.

The remainder of the group of amendments in this cluster are described as consequential; and that would appear to be the case.

#### Commentary

The amendments – Gov 164 and Gov 168 – are important recognition of the constitutional impropriety of robbing British children of their rights to citizenship. The particular provisions that these remove from the Bill would have excluded children born in the UK who either grow up here to age 10 (and beyond) or whose parent becomes a permanent resident (settled) or a British citizen (or in a relevant overseas territory, a British overseas territories citizen). It was always an extraordinary and wholly improper interference with the constitutional settlement of who is British by virtue of connection to the UK (or to a British overseas territory) by the British Nationality Act 1981 to include provisions to exclude these children of their citizenship rights.

However, recognition of these rights remains inadequate. As we have also explained in joint briefings with the Project for the Registration of Children as British Citizens (PRCBC), the Bill contains other

provisions that exclude the rights to citizenship of some British children born overseas. This includes some children who grow up in the UK having been brought or even trafficked to the UK at a young age, including children in care in the UK. It also includes some children born to British citizens (or British overseas territories citizens). These other exclusions of citizenship rights ought to be removed from this Bill for precisely the same reasons as necessitate the removal of the provisions that Gov 164 and Gov 168 do remove.

### **Legal Aid** **Gov NC20**

#### Explanation:

The purpose of Gov NC20 appears to be to ensure that legal aid scope is extended to specific legal proceedings to which the Bill relates. Subparagraph (2) of the New Clause concerns judicial review of the person's removal to a country other than the person's country of origin or nationality. Subparagraphs (3), (4) and (5) of the New Clause concerns the suspensive claims procedure, which is intended to be the only means by which someone may seek to question their expulsion prior to their being expelled.

#### Commentary:

The extension of legal aid is both necessary and inadequate. While legal aid may ensure that some few people are able to secure the rights – for example people who may be wrongly treated by the Secretary of State as falling within the scope of the Bill – what is to be done by this Bill (as we have explained in other briefings) is in itself unjust and unlawful. Such injustice and unlawfulness cannot be rectified by provision of legal aid. Moreover, what is intended to be done and the processes by which it is to be done are so much in haste and under the Secretary of State's control that even people who are wrongly treated as within the Bill's scope may well find legal aid is insufficient for them to establish the Secretary of State's error and prevent their unlawful expulsion.

### **European Court: interim measures** **Gov NC26, Gov 185 to 189**

#### Explanation:

The purpose of Gov NC26 is to make it entirely a matter of choice for Ministers whether to comply with any interim measure of the European Court of Human Rights that requires the Government not to expel someone pending further judicial consideration of the lawfulness of the person's proposed expulsion.

Gov 185 to Gov 189 appear to be consequential upon the New Clause. Gov 186 removes what was Clause 51, the 'placeholder' clause that had previously empowered the Secretary of State to make regulations concerning such interim measures.

#### Commentary:

Gov NC26 is a direct challenge to the authority of the European Court of Human Rights. It makes compliance with decisions of that Court, requiring the suspension of a person's expulsion pending judicial consideration of the lawfulness of that person's expulsion, entirely a matter of ministerial choice. Paragraph (2) of the New Clause states that a Minister may "determine" to comply with the Court's binding decision, but equally may choose not to. Paragraphs (4) and (5) set out certain factors the Minister may consider, but equally may not or may not limit consideration to. Paragraphs (6) and (7) prohibit the Secretary of State, an immigration officer, a court or tribunal from considering the Court's binding decision if the Minister chooses not to comply with it (or indeed makes no determination one way or the other). Paragraph (9) permits the deferral of an expulsion pending a determination by the Minister on whether to comply, but equally does not even require that deferral.

The degree to which this New Clause exposes blatant disregard for legality and respect for law is, accordingly, quite extraordinary. It is, accordingly, much in keeping with the general motivations and contents of this Bill; and it is, at least on its face, designed to produce conflict with the European Court and Convention and stir further hostility towards human rights, respect for human rights and anyone who seeks to defend these.

### **Domestic courts: interim measures**

#### **Gov NC22**

##### Explanation:

The purpose of Gov NC22 is to ensure that no UK court or tribunal can delay, suspend or prevent expulsion of anyone under this Bill, save as is provided for by the extremely limited legal process of suspensive claims, which this Bill creates and which are largely controlled by the Secretary of State. The New Clause is included to complete the effective judicial ouster – of both domestic courts (including the Supreme Court and all higher courts) and the European Court.

### **Serious harm suspensive claims**

#### **Gov NC17, Gov 33 to 43**

##### Explanation:

The primary purpose of Gov NC17 is to introduce a relative complex, and restrictive, interpretation of what is “serious harm” for the purposes of a “serious harm suspensive claim”. The New Clause identifies certain types or levels of harm that are to be treated as serious harm for these purposes. It also identifies certain types that are not to be treated as such harm; and also a certain type that is stated to be “unlikely” to constitute such harm. The critical effect of this interpretation is to limit the risk of “serious harm” that may be considered prior to expelling someone from the UK pursuant to the requirement in Clause 2, or the power in Clauses 3 or 8, of the Bill to a country other than the person’s country of origin or nationality. That limitation is generally to harm that would either violate Article 3 of the 1950 European Convention on Human Rights (the prohibition on torture, inhuman or degrading treatment or punishment); or persecution under the 1950 UN Refugee Convention, but only to the extent that such persecution is harm of a level falling within the narrowed definition proscribed by section 31 of the Nationality and Borders Act 2022.

##### Commentary

A “serious harm suspensive claim” is one of only two ways by which a person may seek to prevent their being expelled to a particular destination specified by the Secretary of State in a removal notice required by Clause 7. The other is limited to where the Secretary of State has erred in fact in identifying the person as subject to expulsion under the powers in this Bill.

A particular target for exclusion from serious harm for these purposes is harm that results from a need for healthcare that cannot be provided in the place to which it is proposed to expel the person. This is the target of subparagraphs (5)(c), (6) and (7) of the New Clause.

Notwithstanding the very high threshold for serious harm – thresholds, which if met, would immediately constitute a violation of the UK’s international law obligations – Clause 38 remains in the Bill. That Clause permits the Secretary of State, by regulations, to impose an even more restrictive interpretation of “serious harm” for these purposes if she decides that the interpretation given by Parliament is intolerable to her in practice.

The remaining amendments in this group are each described as consequential upon the New Clause. That appears to be an accurate description, though the linguistic effect of Gov 33 and Gov 37 seems strained.

## **Upper Tribunal** **Gov 18 to 32**

### Explanation:

The primary purpose of Gov 18, Gov 19 and Gov 21 is to remove some of the bureaucracy upon the Secretary of State of the legal proceedings governing suspensive claims that are to be introduced by this Bill. This is done by introducing a statutory period within which the Secretary of State may consent to the Upper Tribunal considering what is said to be a “new matter” on any appeal to that tribunal against the Secretary of State’s refusal of a claim that she has agreed to treat as a suspensive claim – i.e. she has agreed to consider for the purposes of considering whether her intended expulsion of the person to the destination she has specified is or is not within what is permitted by this Bill (either because she has made a factual error in identifying the person as subject to the Bill or because the expulsion would lead to the person being seriously harmed).

The time period is 3 days. If Secretary of State may, therefore, consent to the new matter being considered by the Upper Tribunal if she does so within that period; or she is to be taken as not consenting. In this way, if the Secretary of State is incapable or incompetent in managing the legal proceedings to be instituted by this Bill, all the risk of that is to fall on the individual. If she does not consent (or if she is taken to not consent by her failure to consider this or give notice of any decision), the individual is left to persuade the Upper Tribunal that there were “compelling reasons” why the details of the matter said to be new were not put to the Secretary of State within the 8 days in which the Bill requires any suspensive claim to be to the Secretary of State following her issue of a removal notice under Clause 7.

### Commentary:

The remaining amendments in this group are each described as consequential. That does appear to be the case.

As we have previously described, the legal proceedings to which these amendments relate is extremely limited and improperly controlled by the Secretary of State in ways which entail serious risk of human rights abuse and entail improper interference with judicial functions. The amendments in this group are together designed to relax the bureaucracy upon the Secretary of State to no advantage, and possibly to some harm, to the individual subject to these proceedings.

## **Modern Slavery** **Gov 95 to 102, Gov 111 to 121**

### Explanation:

The purpose of Gov 95, Gov 96 and Gov 97 is to require the Secretary of State to assume that a victim of trafficking’s cooperation with any investigation or prosecution does not require the victim’s presence in the UK. Gov 98 to 102 are expressed as and appear to be consequential upon this.

The purpose of Gov 114 and consequential amendments is to change the regime under Nationality and Border Act 2022 (only commenced on 30 January 2023) to require exclusion of victims of slavery and human trafficking from protections in circumstances where the existing (and very new) regime currently empowers but does not require their exclusion. This is to be on the basis that the Secretary of State or other competent authority is satisfied that that the victim is a threat to public order or has claimed to be a victim in bad faith.

The purpose of Gov 115 appears to be to amend the circumstances set out in the Nationality and Borders Act 2022 (only commenced on 30 January 2023) in which a person is to be designated a

threat to public order to include a person who is not a British citizen and is convicted of any offence in the UK for which the person is sentenced to any period (however short) of imprisonment.

Commentary:

We have explained in other briefings the extreme risk of this Bill in creating a environment, particular in the UK, in which human exploitation may thrive – a Charter for Modern Slavery. These amendments all serve to enlarge that risk still further. The amendments on who is to be treated as a threat to public order and excluded from modern slavery protections are not, on their face, restricted to people who are brought or come to the UK on or after 7 March 2023. The amendments to enable and encourage the Secretary of State to expel victims of slavery and human trafficking during any cooperation on their part with an investigation or prosecution are limited to people who are brought or come on or after that date.

**Removal and detention: unaccompanied children**  
**Gov 84, Gov 134 to 138, Gov 174 to 180**

Explanation:

The purpose of Gov 84 is to extend the exclusion, to be made by this Bill, of the Family Returns Panel from removal procedures under this Bill. The extension is to bring unaccompanied children within this exclusion of the Panel.

The purpose of Gov 134 to Gov 138 is to empower the Secretary of State to make regulations, by the negative procedure, to govern her use of powers under this Bill to detain unaccompanied children.

The purpose of Gov 174 to Gov 180 is to regulate the destination to which an unaccompanied child, who falls within Clause 2 and to whom Clause 3 applies, may be expelled. Gov 174 introduces paragraph (2A) to Clause 3, specifying that the child may only be expelled for the purpose of reunion with the child's parent, to a country or territory specified in the paragraph or "in such other circumstances as may be specified in regulations made by the Secretary of State". Gov 178 makes this regulation-making power subject to the affirmative procedure. The other amendments in this group are stated to be and appear to be consequential.

Commentary:

The Family Returns Panel was created to ensure that the removal process, including the use of detention, was overseen by a panel of child welfare experts to ensure the safety, wellbeing and best interests of the child were properly considered and catered for in that process. This is intended to be a vital child safeguarding and welfare measure. The exclusion of this Panel is one of several demonstrations of the extraordinary degree to which children's best interests are to be sacrificed in the pursuit of the ambitions motivating this Bill.

The statutory bar on detention of unaccompanied children was intended to be a fulfilment of the Conservative and Liberal Democrat coalition. It was introduced by legislation sponsored by the Rt Hon Theresa May and the Rt Hon Damian Green. It was intended to be a vital child safeguarding and welfare measure. While Gov 134 to Gov 138 are presented as limiting the powers of the Secretary of State to interfere with or effectively erase this measure, the reality is that these amendments merely continue her ability to do precisely that but require that she underpin this with regulations that she may make to which the negative procedure applies. This remains, therefore, another of several demonstrations of the extraordinary degree to which children's best interests are to be sacrificed in the pursuit of the ambitions motivating this Bill.

It is especially concerning to see the inclusion of an extremely wide regulation making power to specify additional circumstances in which or territories to which the Secretary of State may expel an

unaccompanied child. This is further demonstration of the extraordinary degree to which children's best interests are to be sacrificed in the pursuit of the ambitions motivating this Bill.

### **Age disputes and assessment** **Gov NC24 and Gov NC25**

#### Explanation:

The purpose of Gov NC24 is to severely constrain any judicial scrutiny of age disputes of a person who is brought or comes to the UK on or after 7 March 2023 in a way that is caught by Clause 2. Appeals against an age assessment done under the Nationality and Borders Act 2022 (a regime that is yet to even be commenced) are to be excluded. A person seeking to challenge the assessment of their age will be left with only a remedy of judicial review; and paragraphs (4) and (5) of the New Clause are to mean that the person may nonetheless be removed while that judicial review remains pending and that, on the hearing of it, the judge may not quash the age assessment on the basis that it is wrong in fact.

The purpose of Gov NC25 is to severely aggravate the degree to which any person whose age is disputed may be compelled to submit to what is referred to as a scientific method of age assessment. This is to be done by permitting the Secretary of State to make regulations concerning any refusal to consent to these methods as introduced under the Nationality and Borders Act 2022 (a regime that is yet to even be commenced). Paragraph (2) of the New Clause permits the Secretary of State to simply provide that if consent is not given, the person is to be treated as an adult – no matter what the reasons or circumstances in which consent was withheld.

#### Commentary:

These New Clauses provide further demonstration of the extraordinary degree to which children's best interests are to be sacrificed in the pursuit of the ambitions motivating this Bill. They provide similar demonstration of the degree to which this Bill is being pursued even despite the regime introduced by its predecessor being barely commenced, or in the instance to which these New Clauses apply not even commenced.

### **Local authorities: unaccompanied children** **Gov 124 to 131**

#### Explanation:

At this time, we are unable to say whether the consequences of these amendments are of any greater significance than is stated on the order paper by way of 'Member's explanatory statement', particularly as regards what is there stated in relation to Gov 124 and Gov 125.

### **Electronic devices** **Gov NC23, Gov NS1, Gov 133**

#### Explanation:

Gov NC23 introduced Gov NS1. The New Schedule is for the purposes of search and seizure of electronic devices; and access, copy and use of information stored on those devices. The New Schedule only applies to people entering or arriving in the UK in the circumstances identified in Clause 2(2) of the Bill on or after the day the Schedule is commenced. The New Schedule must be read with the New Clause to understand its limitation to electronic devices and information stored on them.

#### Commentary:

Much of the New Schedule consists of the various powers to search, seize, access, copy and use. Paragraph 10 of the New Schedule permits the Secretary of State to make regulations concerning



articles that contain, or may contain, items subject to legal privilege. This paragraph gives no indication of how the Secretary of State will or may exercise this regulation-making power; or that the Secretary of State has as yet given much if any thought to the matter of legal privilege. Gov 133 applies the affirmative resolution process for the purposes of this regulation-making power.

Paragraph 11 of the New Schedule permits the Secretary of State to extend the powers in the New Schedule to persons other than immigration officers. This regulation-making power is to be exercised according to the negative resolution process.

Adding this entirely new set of powers to this Bill at this stage highlights just how ineffective is the process for this Bill's passage for the purpose of any real scrutiny of what is intended or what will be its effect.

## **Credibility** **Gov NC19, Gov 78**

### Explanation:

The purpose of Gov NC19 is to extend the circumstances in which statute requires a person seeking asylum (or who makes a claim that their removal would violate their human rights) to be treated as of damaged credibility. The New Clause extends these circumstances – set out in section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – in two ways. Firstly, the current statutory provision applies to, amongst other things done or not done by the person seeking asylum, failure to produce a passport, production of an invalid passport or destroying, disposing of or altering a passport. These various acts or omissions are to be extended to include any identity document. Secondly, failure to provide information needed to access an electronic device that an immigration officer or the Secretary of State finds in the possession of the person or believes to have been in that person's possession is to be added.

This purpose is not within the original aims or title of the Bill. Hence Gov 78 is necessary to amend the Bill's long title.

### Commentary:

This New Clause has far wider application than in relation to people whose claims and circumstances are currently within the scope of this Bill. It is, significantly, not restricted to the people who arrive on or after 7 March 2023 who are caught by Clause 2. Given the effect of Clause 4 to bar such people's asylum and human rights claims, the intended effect of the New Clause seems likely to be more significantly directed to other people, particularly people seeking asylum who arrive on a direct flight from the country in which they face persecution.

Making such a direct journey from a country in which the person is at risk of persecution – particularly where the persecutor is the State or agent of the State – may require the person not to travel on or with documentation which would identify them if they presented that documentation or were searched in seeking to pass through an airport in that country. This New Clause seems largely intended, therefore, to aggravate the underlying hostility in UK Government asylum policy to the prospect that the UK will in future receive and protect refugees.

The extension of section 8 of the 2004 Act to identity documents raises further questions concerning the potential for arbitrary and oppressive abuse of powers. Currently, it is clear that the relevant provisions apply to one type of document – a passport. The New Clause allows the relevant provisions to apply to several types of document cumulatively, not merely separately. So, an oppressive immigration officer, may notwithstanding the production of one of these types insist also on another,

with the increased risk that the individual's credibility is treated as damaged even though, for example, one type of document has been produced.

### **Safe and legal routes**

#### **Gov NC8, Gov 11**

##### Explanation:

Gov NC8 requires the Secretary of State to publish a report on what are referred to as "safe and legal routes".

Gov 11 requires that the first consultation, required under Clause 53, upon the annual cap to be set for the number of people to be permitted to enter the UK under what are referred to as "safe and legal routes", is to be started within 3 months of the Bill's enactment.

##### Commentary:

As Amnesty has emphasised in other briefings, the discussion of "safe and legal routes" is being improperly used as a device for shielding against criticism or otherwise seeking to justify the almost wholesale shutting down of the UK's asylum system. This New Clause and additional Government amendment serve only to emphasise the paltry worth of what the Government is prepared to commit to, perhaps even contemplate, by way of creating such routes. In any event, even were the Government to be compelled to make some real commitment on this matter, it could not justify shutting down the asylum system and the harm – to refugees, legality, wider international respect for human rights and to public funds – that this will do.

### **Offences**

#### **Gov 90 to 91**

These amendments create new offences of (i) permitting a person to disembark from a ship, aircraft, train or vehicle when required under the Bill to prevent that; and of (ii) failing to make arrangements for the removal of someone when required under the Bill to do so. The targets for these offences are the captains, managers, drivers, owners and agents of ships, aircraft, trains and vehicles.

### **Detention**

#### **Gov 85 to 88**

##### Explanation:

Gov 85 seeks to ensure that the bar upon any judicial scrutiny of the power to detain for up to 28 days, newly provided by this Bill, is to be complete. The words "or tribunal" are to be added to ensure that no court or tribunal judge can consider the legality or reasonableness of the exercise of the power in those 28 days.

Gov 86 to Gov 88 make additional amendments to the Bill's complex powers concerning detention. At this time, we are not able to say whether these add significantly to the already alarming expansion of the Secretary of State's freedom to exercise detention powers that is to be done by this Bill.

### **The requirement to expel: exceptions**

#### **Gov 106 to 110**

##### Explanation:

Our current understanding of Gov 106 to Gov 110 is that these amendments are to clarify and complete the power of the Secretary of State to make, by regulations, further exceptions to the requirement

under Clause 2(1) to expel someone caught by the Bill (specifically by falling within that Clause); and to amend the Bill accordingly.

Commentary:

Currently, Clause 3 provides the only exception. It applies to someone who is an unaccompanied child. It applies for so long as that person remains an unaccompanied child. It does not, however, except the person from the power to expel them; or from other requirements, exclusions and powers in this Bill – including barring their asylum or human rights claim.

The inclusion of a general power for the Secretary of State to create exceptions tends to expose the irrationality of a statutory requirement to expel people, whom she is in any event empowered to expel and apparently has every desire to do so. As we have highlighted in other briefings, the statutory requirement is nothing more than a device to attempt to shield the Secretary of State from any effective accountability to law and judicial scrutiny of her exercise of expulsion powers.

**Requirement to expel: travel bans**

**Gov 89**

Explanation:

The purpose of Gov 89 is to extend the application of the Bill to people arriving or entering the UK, on or after 7 March 2023, in breach of a ban upon their travel where that ban is imposed by UN Security Council, the Council of the European Union or by the Government under section 1 of the Sanctions and Anti-Money Laundering Act 2018.

**Permanent exclusion of leave to enter or remain**

**Gov 92, Gov 103 to 105, Gov 122**

Summary explanation and commentary:

The effect of Gov 92 appears on its face to be of little consequence. The bar to the grant of leave to enter or remain is not altered by it.

Gov 103 will commence the provisions relating to exclusion of leave to enter or remain immediately that the Bill receives Royal Assent.

The purpose of Gov 104 and Gov 105 is to further restrict the already severely constrained circumstances in which the Secretary of State is to be permitted to granted leave to enter or remain to someone otherwise excluded by this Bill. The critical change to be made by these two amendments is to replace “compelling circumstances” with “exceptional circumstances”.

The purpose of Gov 122 is to further restrict the already severely constrained circumstances in which the Secretary of State is to be permitted to granted indefinite leave to remain to someone otherwise excluded by this Bill. The critical change to be made by this amendment to remove the power to do so where it would be necessary to grant indefinite leave to remain to comply with any international agreement to which the UK is a party – save for the European Convention on Human Rights, the need to comply with which is to be made the sole permitted basis for the exercise of the Secretary of State’s power to grant indefinite leave to remain.

The effect of these various amendments appears to be relatively limited. Nonetheless, they emphasise the extraordinary degree to which this Bill is to shield the Secretary of State against any legal or judicial challenge to her permanent exclusion of people who are brought or come to the UK, on after 7 March 2023, in the circumstances caught by the Bill; including babies and children. It remains striking that even when it is necessary for compliance with her international law duties, the Secretary of State is no

more than enabled to rescind the exclusion of the person; and with these amendments only where those international law duties fall under the European Convention on Human Rights.

### **Islands**

#### **Gov 93, Gov 94**

##### Summary explanation:

These amendments are generally intended to enable the extension of any of the provisions of the Bill to apply to the Channel Islands and the Isle of Man.