

Amnesty International UK

BRIEFING



Government's Immigration Bill (Bill 262) – Second Reading - House of Commons

Amnesty International UK is profoundly concerned at the UK Government's immigration bill published on 7 March 2023. This proposed legislation is yet another huge step towards the UK completely abandoning its responsibilities under international law to respect and protect the universality of human rights. If passed, this Bill would destroy the post-World War II legacy that the UK was so vitally engaged in constructing. The Bill must be dropped in its entirety because if passed, it will among other things:

- **Place the UK as firmly outside international law**, putting us in contradiction to the 1950 European Convention on Human Rights (the European Convention) and radically extending the conflict with the 1950 Convention relating to the Status of Refugees (the Refugee Convention).
- **Create a Charter for human exploitation**, placing many of the most marginalised people firmly in the hands of human traffickers, modern day slavers and other abusers.
- **Further stir-up division and hate against some of the most marginalised in our society**, building on the inhumane and dangerous rhetoric used in the press and by parliamentarians.

It is for these very reasons that we strongly urge the UK Government to reconsider and drop this incredibly harmful Bill. Instead, the focus should be on how we can create a positive and human rights respecting immigration system, that treats everyone it encounters first and foremost as a human being whose life, humanity and rights are clearly recognised in all policy and practice.

Alarming, this Bill is expected to progress through Parliament at an incredibly fast pace. **We therefore urge all MPs to attend Second Reading and oppose this Bill, ensuring it has the intense scrutiny and opposition it requires.**

Breaks the UK's obligations under UK and international law

If passed, this Bill would abandon obligations the UK has freely undertaken as a signatory to both the European Convention and the Refugee Convention – with our promises under the latter wrecked even further beyond the damage done by the Nationality and Borders Act 2022.

The UK has a duty to uphold the universality of human rights. By barring large groups of people – including refugees – from their fundamental rights, the Government is intentionally destroying the very treaties the UK played a pivotal role in drafting decades ago. Not only is this damaging for some of the most marginalised people impacted by this legislation, but it also sends a dangerous signal internationally – making the UK a beacon for abuse rather than respect for human rights and fundamental freedoms.

On 7 March 2023, the Home Secretary told the House, *"I am confident that this Bill is compatible with international law."* This was immediately after she confirmed that she could not make a declaration of compatibility under section 19 of the Human Rights Act 1998. She elsewhere has confirmed that she has been advised that the chances of the Bill being regarded as compatible are less than 50%. Put another way, the Home Secretary has been advised that the Bill will more likely than not be found to breach the European Convention, but she nevertheless told the House that she was confident it was compatible. When the holder of such a vitally important office of state, in which resides considerable power over people's lives, seems incapable of understanding the legal implications or what she says or is set upon deliberately misleading both Parliament and the public, there is a profound problem. The Home Secretary risks not only irrevocable harming

international law and the UK's international reputation but also the fundamental protections on which depend refugees, victims of modern slavery and the lives of many thousands of people.

Exclusion of individual claims, judicial oversight and the rule of law

If passed, the Bill would require the Home Secretary to expel almost anyone who arrives or enters the UK without permission. This is done by the device of a statutory duty. The purpose of this is not to confer some moral or legal responsibility upon the Home Secretary – as for example was done when Parliament obliged the Home Office to have regard to the safety and welfare of children. Rather, the purpose of this device is to shield the Home Secretary from any effective legal or judicial constraint. By asking Parliament to make the Home Secretary required to expel people, the Government intends its attempts at people's expulsion will be put beyond any legal question. This is to be so whatever the personal circumstances of the individual whom the Home Secretary intends to expel.

This so-called statutory duty is found in clause 2. It requires the Home Secretary to expel people without considering their individual circumstances – save for whether they are with the extremely broad category of people for whom her rules have not provided the possibility of coming to the country with permission. Essentially, under this Bill, no asylum or human rights claim can ever be considered. That a person may be identified as a victim of human trafficking or modern slavery is to be irrelevant. The only exception to this is the feeble opportunity provided to some people to make their claim that it would be contrary to their human rights to remove them from the UK after the Home Secretary has expelled them.

The effect of this arbitrary requirement to expel is a permanent bar on the person ever being recognised to have any good claim to enter or stay in the UK. It does not matter how strong their connection to the country may be or how devastating their exclusion from it may be. There is the barest minimum of restriction upon where the Home Secretary may expel the person. But even if this prevents expulsion, the person must remain in an indefinite limbo – present but never to be formally recognised, still less permitted to rebuild a life shattered by the experiences of what brought them to the UK and the miserable reception here.

The only restraint on these expulsions comes in two ways. Firstly, the Home Secretary will be prepared to consider claims that she has wrongly identified someone as being within the category of people against whom this extraordinary regime applies if satisfied the person has produced "*compelling evidence*". Secondly, she will be prepared to consider "*compelling evidence*" that someone's expulsion would be so devastating that they would be subjected to "*severe and irreversible harm*" before it was possible to consider and finally decide any human rights claim they were permitted to make after being expelled from the UK. Only the Upper Tribunal is permitted to scrutinise how the Home Secretary decides either of these claims. And if the Upper Tribunal's decisions are intolerable to her, she is given power in this bill to change the meaning of severe and irreversible harm.

To bolster her powers to expel, the Home Secretary seeks licence from this Bill to detain adults and children for up to 28 days with no possibility of bail or judicial review. The decision to detain is "*final and is not liable to be questioned or set aside in any court.*" There are very limited exceptions to this. The first is to permit judicial consideration of whether she or her officials are acting in bad faith or "*in such a procedurally defective way as amounts to a fundamental breach of principles of natural justice.*" The second is that the Bill acknowledges that the ancient right of *habeas corpus* would still be available, but this is a fig leaf that has very little use in modern detention law.

Judicial review is crucial so that the powers of the state, including to expel and detain, can be kept within the bounds of the law and basic human rights standards, including Article 5(4) of the European Convention. To restrict it in these incredibly serious circumstances is an affront to the rule of law and human rights.

Setting up a fight with the European Court on Human Rights

The UK's retention of the Human Rights Act 1998 and membership to the European Convention on Human Rights has long been an area of contention with some politicians and Government ministers.

Until recently, the Government was clear in its position that the UK would remain party to the Convention. However, it is alarming that the Home Secretary is intending to press forward with a Bill that is so clearly incompatible with it that she cannot declare to the contrary. It is all the more alarming that the Bill contains an extraordinary provision to disapply to the Bill and any subordinate legislation made under it the application of section 3 of the Human Rights Act 1998, which requires judges in so far as is possible to interpret legislation in line with Convention rights. The Home Secretary not only knows that what she is doing is against human rights standards; the Bill is deliberately changing the law so those standards cannot be applied by UK courts.

This, accompanied by recent statements from the Prime Minister, suggest this Bill may be intended as a vehicle to create direct conflict with the Strasbourg Court, and ultimately lead to us leaving the European Convention all together. Whether that is the intention or not, that conflict is likely to be the inevitable result of this Bill. It will force people to turn to that court because the Government will, with the sanction of Parliament, have silenced or excluded our own courts. And since it will also prevent the Home Secretary – even if she were minded to do otherwise – from fulfilling her human rights duties by properly and fully considering people's real and individual circumstances, it will be bound to lead to conflict between the Government and the court. In anticipation of that, the Bill includes power for the Home Secretary to interfere with our legal system's respect for the Strasbourg Court's rulings to prevent human rights violations while full consideration is being given by the court. This is intended to free the Home Secretary to expel people before any judicial determination of the legality of that expulsion is made.

The Bill then presents Parliament with a crucial decision. Will it allow governments, now and in the future, to suspend major elements of the country's previously universal human rights protection system when they are targeting a politically unpopular and marginalised group of people? And will it allow governments to drag the country to the precipice of withdrawal from the international human rights protection system in the process?

The human cost of an inhumane Bill

The Prime Minister's stated aim is to stop people from crossing the Channel in small boats however, it is far from limited to this ambition. Its cruel and punitive measures are directed towards every person who arrives at or enters the UK on or after 7 March 2023 and does not have but requires permission under rules made by the Home Secretary. This includes people who have a visa but whom the Home Secretary decides have obtained it by deception – for example, they persuaded her to give them a visa to visit or study but she concludes their true purpose is to seek asylum. The sole exception is the refugee who travels directly from the country in which they are at risk of persecution. Those affected have no opportunity to have their claim to stay in the UK considered. They are to be detained indefinitely for the purpose of expelling them either to their own country or a "safe third country" if the former is not possible. If that expulsion is not possible, they are to remain in limbo forever. The Government will thereby solve the problem it has created of ever-increasing asylum backlogs merely by excluding people from the asylum system. The human costs inflicted upon people trapped in this limbo and the financial costs of maintaining it will, however, remain. People affected fall into two groups. There are firstly the people who arrive or enter without permission. These people include:

Refugees are at risk of the most serious human rights violations, including torture and unlawful killing, in the countries from which they have fled. They are entitled to asylum. The UK is obligated, as all other countries, to provide that. However, asylum can only be sought in the UK by someone who is already here. That is longstanding Government policy. The Home Secretary's rules continue to provide no visa for anyone to travel here to make their asylum claim but require visas for any travel to this country by nationals of any country

from which any significant number of people seek asylum. The Bill is, therefore, as the [UN High Commissioner for Refugees \(UNHCR\) has said, a ban on asylum.](#)

Victims of human trafficking/modern slavery are people controlled by violent criminal gangs and other extremely abusive people. People who are trafficked are moved across borders under someone else's control for the purpose of exploiting them for such things as forced sex or labour and organ transplantation. The UK is obligated to protect people from this exploitation, including by providing safety in this country rather than returning someone to a situation in which they are likely to be exploited all over again. The Bill provides a ban on providing that protection.

Survivors of torture and traumatic journeys – refugees, victims of human trafficking and many other people who make journeys controlled by smuggling gangs have endured the gravest human rights abuses in their home country and on their journeys, as well as conditions of profound deprivation and fear before their arrival. People who have endured these abuses and conditions are often physically and psychologically fragile. The UK is obligated to treat them with dignity. The Bill bars that by requiring the Home Secretary to disregard their personal circumstances and vulnerabilities in simply attempting to expel them.

Survivors of domestic violence or domestic slavery have been controlled by their abusers. Some of these people are trafficked to the UK. While some survivors of domestic violence or domestic slavery are permitted entry to the UK, in which case they would not normally fall within the reach of this Bill, some survivors do not have permission and so are within its reach. Moreover, if the Home Secretary decides that the reason why a survivor was granted a visa (for example, to join their partner or work as a domestic servant) was not the true purpose of that person's coming to the UK, the Bill will apply to them. The Bill exacerbates the power of domestic abusers because it hugely escalates the risk to their victims of seeking help with the authorities.

Other people compelled to seek entry without permission – these may include people who seek work or reunion with family members but are excluded by the Home Secretary's rules. Those rules maintain a longstanding bias in favour of privilege – largely based on country of nationality and socio-economic status. Whatever view is taken on the propriety of this bias, it must be recognised that it imposes profound disadvantage upon the people whose need to migrate and vulnerability in doing so is generally the greatest. The Bill simply sets out to permanently bar any consideration of their true circumstances and require their expulsion by whatever means regardless of the human impact of that.

Secondly, there are the family members of the people just described – particularly partners, children, parents of children and dependent adult relatives - who have not necessarily arrived or entered without permission on or after 7 March 2023. While the Bill's extension to family members is restricted to those who are now without permission, this includes people put in that situation by a decision to withdraw their permission or refuse to extend it. However, the most shocking aspect of this is the inclusion of British people born in this country without citizenship immediately at their birth but whose connection has been so firmly established that Parliament has identified them as British with statutory entitlement to that citizenship. The Bill seeks to permanently strip these people of their citizenship rights – established by such events as their having grown up in the UK for at least 10 years or their other parent having become a British citizen – for something done by someone before they were even born.

A Charter for Modern Slavery - The people caught by this Bill, long disadvantaged by the Home Secretary's rules, are in future to be compelled to live in the shadows of society because this Bill is to effectively jettison even the capacity of the Home Office to treat them with any respect or care.

It is remarkable that the governing party that had sought acclaim as latter-day Abolitionists has less than a decade after passing the Modern Slavery Act 2015 reduced itself to stripping people of vital legal protections and thus risks their further exploitation – not merely on journeys to the UK but throughout this country too.

Failures of the UK's Immigration system - It has been the continued practice of the Government to shirk responsibility for the on-going collapse of the asylum system. The policy of refusing to determine asylum claims has predictably created a staggering increase in the backlog of asylum claims. At the end of 2022, nearly 110,000 people were still awaiting an asylum decision after more than 6 months; and the total outstanding number of people awaiting a decision stood at more than 160,000. This ever-rising trend began long before the UK experienced any increase in the number of new claims being received. It has continued through periods in which the number of new claims has fallen. This harmful legislation will only result in thousands more people being locked up in immigration detention or made socially excluded by an indefinite limbo. It will reduce the figures identified above – but not because anything is fundamentally changed, rather only because the people now placed in limbo and either permanent dependence on the Home Office or driven into the dangerous margins of society will no longer be counted.

Deterrence – Government asylum policy has pursued deterrence as a primary aim for years. The very idea that “deterrence” by a suite of punitive asylum measures is effective has been undermined by [research carried out by the Home Office themselves](#), whose findings include that there is very little evidence that people seeking asylum have any detailed knowledge of UK immigration or asylum policies or procedures prior to their arrival. However, it is equally well established that oppressive policies and practices empower abusers by deterring people under their influence or control from seeking help and support from the authorities or anyone who may report the person to the authorities.

UK's international role – The UK continues to receive and protect a disproportionately small number of the world's refugees – whether compared to its European neighbours or far poorer countries elsewhere who undertake by far the greater share of such responsibilities, such as Lebanon or Jordan. By mid 2022, the UNHCR had identified there to be more than 26 million refugees in the world and nearly 5 million more people seeking asylum. These figures exclude the more than 5 million Palestinian refugees most of whom hosted by Jordan, Lebanon and Syria. At that same time, the UK – one of the richest countries in the world – was host to 231,597 refugees with a population of people seeking asylum of 127,421 people. Its nearest neighbour France continued to receive more people into its asylum system each year than the UK, hosting to 613,272 refugees. The Bill seeks to hugely escalate the degree to which the UK refuses to play its part in a global responsibility by simply shutting its asylum system down.

Safe and legal routes – That anyone is compelled to attempt a dangerous journey, whether by a small boat or otherwise, to access safety in the UK is dreadful. However, these journeys are only made by people without **any safer option** and there is no other way for the people who do to seek asylum in this country. The Home Secretary has restricted her immigration rules to providing visas to Ukrainian refugees who have family or someone else to sponsor and accommodate them in the UK, to Afghans who are at risk for having worked with and for the UK – most particularly the British Army – in Afghanistan and to the partners and children of people granted asylum in the UK. The last of these measures, however, could become increasingly irrelevant because the Government is determined to ensure nobody is granted asylum in the UK. The Government makes limited places available, mostly through UNHCR, for refugee resettlement. The only potentially substantial scheme – for Afghans – is barely functioning. None of these schemes are means for anyone to make an application for asylum to the UK. Home Secretaries have for years held out but never fulfilled the promise of opening more such schemes. Inevitably, people with real connection to the UK, therefore, make their own journeys and some people who are stuck in situations of neglect and abuse in neighbouring countries attempt to seek safety here. Smuggling gangs and human traffickers will remain in control of all of this unless and until the Government creates safe routes.

Annual cap - The final substantive provision of this Bill provides for an annual cap on the UK's receipt of people by what are styled “safe and legal routes” with no definition. The Home Secretary is licensed not merely to impose the cap but to extend the definition of whom is to be included within its compass. British nationals granted visas to settle in the UK on the strength of their financial circumstances can, for example be included, whether or not there is any evidence to indicate that they in particular are, for example, at risk of any

persecution. Amnesty supports the visa scheme for British nationals from Hong Kong, but we cannot accept the presentation by ministers of this scheme as an asylum scheme. That false claim is used as political cover for attempting to shut down the asylum system. We remain concerned how this provision could and would be used to exacerbate rather than alleviate the existing bias of immigration policy and rules to the detriment of those already most deprived of safety, opportunity and autonomy.

The UK-Rwanda Deal – The Government’s Rwanda deal seriously undermines international refugee law and rides roughshod over the rights of people seeking asylum in the UK. Transporting people to Rwanda - a country with its own serious asylum and human rights challenges is expensive, unjust and deeply cruel. We continue to urge the UK to abandon the Rwanda scheme in its entirety. We share the UNHCR’s concerns over Rwanda’s shortcomings in its asylum process, including its capacity to deal with any significant number of people and their claims, arbitrary denial of access to asylum procedures, the risk of detention and deportation of undocumented asylum seekers, discriminatory access to asylum procedures that LGBTIQ+ individuals face and lack of legal representation. As UNHCR expressed, in a legal analysis published in June 2022, the UK-Rwanda arrangement “does not meet the requirements necessary to be considered a lawful and / or appropriate bilateral transfer arrangement.” The High Court’s ruling, which is being appealed, was limited to a conclusion that UK law allowed the Government to pursue someone’s expulsion to Rwanda under the scheme, but to reach this conclusion the court accepted an argument put by the Government side that said that the obviously serious limits on Rwanda’s capacity were not a consideration that the Court could take into account when making that decision. This, the argument said, was because the court should proceed on the basis that the two governments would not expel more people than Rwanda could properly cope with.

Moving away from divisive rhetoric

At Amnesty International our goal is for everyone one of us to be treated with dignity and respect. That must apply regardless of our status in immigration or nationality law. It requires our rights to be accessible and for the humanity of each of us to be recognised and respected. Any fair and effective immigration and asylum system would ensure this. Rather than focusing on humane and effective ways to fix the system that it has broken, the UK Government has sought to blame their failures on others, including, France, “Europe”, human rights laws, lawyers and, most atrociously, the very people who most suffer from its failures and the stigmatizing way that it has chosen to treat them.

The current Home Secretary has previously claimed that it was her “dream” to expel refugees to Rwanda, and described the arrival of refugees via the English Channel as an “[invasion](#)”. People held in one of her reception centres were the subject of a firebomb attack in the very same month. This language of invasion has been repeated in headlines across the UK. Filippo Grandi, United Nations High Commissioner for Refugees, observed, “language that stigmatizes refugees, migrants and other people on the move, gives legitimacy to a discourse of racism, hatred, and xenophobia.”

Only last month we saw fifteen people, including a 13-year-old boy, arrested after violent clashes outside a Merseyside hotel accommodating asylum seekers. These acts of violence are the inevitable result of decades of hostile policies and hateful language towards people fleeing persecution and people who come to the UK for other reasons. This disproportionately affects the most marginalised, and divisive language from the Home Secretary and others is used in a cynical bid to turn people against each other for political gain.

During this important debate we would urge all Parliamentarians, including the Home Secretary, to put an immediate stop to this harmful rhetoric; rhetoric which not only harms communities across the UK and refugees and migrants but also risks legitimizing racism and racist attacks and undermines community cohesion.