



Government Immigration Bill (Session 2022-23)

Lords Consideration of Commons Message (12 July 2023)

Summary:

We generally supported the amendments peers sent back to the Commons, albeit we recognised these in themselves to be of very modest impact. There are four matters that we consider to be the barest minimum to achieving any of the ambition of peers from across the House in respect of compassion, legality or practicality. These are addressed below and relate to:

- Clause 1 (the bill’s governing purpose);
- retrospective application;
- requiring a time limit upon the limbo to be imposed on refugees; and
- respecting and securing the constitutional role of UK courts

Briefing:

On Monday, before giving this Bill its Third Reading, Lords strongly endorsed the clear message from the Conservative backbenches – expressed by Lord Cormack in immediate response to the Minister’s opening remarks – of the need to ensure that “*kindness, compassion and concern*”¹ were not made absent by this Bill.

We are deeply concerned that the Bill, even as passed from the Lords’ House to the other place, is profoundly incapable of delivering on Lord Cormack’s call for it to be “*made more human and more humane*”.² We say this not because we underestimate the importance of the discrete provisions added to the Bill, including to safeguard children and pregnant women against prolonged, indefinite and harmful detention or permit the claims of unaccompanied children seeking asylum and victims of trafficking to be decided.³

We say this because this Bill’s core – as identified in our earlier joint briefing with the Immigration Law Practitioners’ Association (ILPA)⁴ – is largely unaffected by these provisions. That core is to require removal, bar consideration of the person’s claim and bar the person from any permission to be in the UK. Even provisions, added by the Lords, to permit consideration of the claims of unaccompanied children and trafficking victims do not lift either the requirement to remove or the bar on grants of leave. The deeply unkind, uncompassionate and unconcerned heart of this Bill therefore remains – demanding either indefinite limbo or expulsion whatever the person’s circumstances, strength of claim and connection to the UK or any other consideration.

¹ *Hansard* HL, Third Reading, 10 July 2023 : Col 1522

² *ibid*

³ Our understanding of the measures proposed and introduced in lieu of Lords’ amendments is that these do retain existing safeguards on the detention of pregnant women.

⁴ See <https://www.amnesty.org.uk/files/2023-06/Illegal%20Migration%20Bill%20FINAL.pdf?VersionId=JEF153sXwkipzKCvuSNmJE38KBcXicGf>

This is why **we strongly urge that peers should insist**:

- either to retain the modest Amendment that was tabled cross-party by Baroness Chakrabarti, Lord Etherton, Lord Paddick and Lord Kirkhope of Harrogate to replace Clause 1 with a stipulation that the Secretary of State is merely not required to violate international human rights law; OR
- make some similar amendment to strengthen the prospect that the Secretary of State is not required by this ‘novel and untested’ Bill to act incompatibly with the UK’s international obligations.

For similar reasons, **we equally strongly urge that peers should insist**:

- either to retain the modest Amendment that was tabled by Lord German and Lord Kerr of Kinlochard to secure an end to this Bill’s application where the Secretary of State has been unable, or otherwise failed, to secure a safe place to which to remove a refugee within 6 months of that person’s claim for asylum having been made to her; OR
- make some similar amendment that secures an end to the limbo the Bill will otherwise impose on refugees in the UK (we emphasise, it is not sufficient to merely provide for admission of a refugee’s asylum claim to be determined if that person remains caught by the obligation to expel them and the bar on any grant of leave to them).⁵

We also strongly urge that peers should insist on removing Clause 53 (on domestic court’s interim measures). What is sought to be excluded by Clause 53 is nothing more than the constitutional role of the judiciary to effectively ensure that the executive’s exercise of its powers – particularly as these relate to removal from the UK – are pursued and exercised in accordance with the law as made by Parliament. It is wholly improper for ministers to seek parliamentary approval for a proposal to exempt them from this basic constitutional principle.⁶

As regards the other matters coming back from the Commons, we have taken especial note of the Government’s concession on the Bill’s retrospective effect (the subject of the Lords’ amendment tabled by Lord Carlile of Berriew, Lord Etherton and Baroness Hamwee). This would be welcome if the concession is made effective. Currently, the concession is made by amendments that include express retention of the same retrospective effect (i.e. application to people arriving on or after 7 March 2023) in the Bill’s provisions for barring leave or citizenship. We have seen the letter that ministers made available to their backbenches prior to the Commons debate.⁷ It is entirely silent about this retention of the retrospective impact; and inevitably does not even attempt justification for it. **We urge peers, therefore, to reject that part of the Government compromise that appeared on the paper before the Commons as Gov (j), (k), (l) and (m) – i.e. that part which amends Clauses 29 and 30.**

⁵ Lord German and Lord Kerr’s amendment both revised subsection (3) of and inserted subsection (3A) to Clause 4. Each part of this amendment is vital to securing the effect of the amendment. The first part without the second would merely permit a refugee’s asylum claim to be decided even though the person remained barred from permission to stay and subject to the obligation to expel them.

⁶ See the ILPA briefing here: <https://ilpa.org.uk/wp-content/uploads/2023/07/Illegal-Migration-Bill -Briefing-on-the-Removal-of-the-Interim-Remedies-Clause-for-Consideration-of-Lords-Amendments-in-the-House-of-Commons.pdf>

⁷ Letter of Rt Hon Suella Braverman to colleagues of 10 July 2023 (re: Illegal Migration Bill: Commons Consideration of Lords Amendments)