



Government Immigration Bill (Session 2022-23)
Ping Pong (July 2023)

On Monday, 17 July 2023, the business of each House includes consideration of this Bill, with time set aside on the following Tuesday and Wednesday for further consideration. This briefing addresses critical outstanding matters; and why it is vital that peers should insist on, and MPs should accede to, important but modest amendments from the Lords relating to these.

Those critical matters and amendments are:¹

- **Clause 1 and Lords' Amendment 1B** (passed with cross-party support in the Lords by an increased margin of 217 votes to 151). What is at stake is whether there should be any modest safeguard against the prospect of the executive violating the UK's international obligations in a Bill that Ministers have made clear they cannot vouch for its compatibility with such obligations because, in their view, it is too novel and untested to evaluate.
- **Clause 2 and Lords' Amendment 9B** (passed with wide support in the Lords by an increased margin of 212 votes to 151). What is at stake is whether there should be any end point to a policy position of refusing to take responsibility for asylum claims, which position the legislation seeks to make mandatory and inflexible, even though it has already proved catastrophic by rapidly creating a hugely expensive and harmful asylum backlog.
- **Clause 52 and Lords' Amendment 90D** (passed without vote in the Lords as consequential upon earlier motions). What is at stake is the basic constitutional proposition that it is courts and not the executive itself that act as the ultimate guarantor of executive compliance with the laws made by Parliament.

In strongly urging parliamentarians to, at minimum, support these amendments (or some similar revision to the Bill), we have had careful regard to the following considerations:

1. Ministers have formally declared that they cannot vouch for the human rights compatibility of this Bill.² They have explained their inability to do so is not because they intend or believe it to be incompatible, but rather that they cannot adequately evaluate its compatibility due to it being, in their words, "*novel*", "*ambitious*" and "*untested*".³
2. The 'untested novelty' is not the Bill's underlying policy and purpose to refuse to take responsibility for large numbers of asylum claims on the basis that people making these claims

¹ Lords' Amendments in Lieu as at 14 July 2023 are here: <https://publications.parliament.uk/pa/bills/cbill/58-03/0353/220353.pdf>

² Statements made under section 19(1)(b) of the Human Rights Act 1998

³ *Hansard* HC, Second Reading, 13 March 2023 : Col 580 *per* Rt Hon Suella Braverman (*novel and ambitious*); and *Hansard* HL, Second Reading, 10 May 2023 : Col 1921 *per* Lord Murray of Blidworth (*novel and untested*)

have arrived without prior permission. That has been policy for some years.⁴ It has caused a huge backlog of claims with consequential harm to refugees and taxpayer costs. Rather, this ‘novelty’ is to make this policy a statutory obligation⁵ meaning the Home Secretary will have no choice but to stick with it even if making it a statutory obligation does not have the intended deterrent effect or has other unintended or harmful consequences – including backlogs and costs; but also increased vulnerability to modern slavery.⁶

3. That ‘novelty’ is supplemented by a raft of measures in this Bill that oust, or seek to oust, the UK’s higher courts from performance of their constitutional role to ensure the exercise of executive powers is within the law as made by Parliament.⁷
4. While ministers have criticised Lords’ Amendment 1B as incautious, the reality is that it is ministers who are being incautious – both in rushing their Bill without adequate or effective scrutiny (particularly but not only in the Commons) and by designing their Bill around an ‘untested’ statutory obligation from which they will not be able to resile or deviate if the effect is not as they anticipate or is otherwise undesirable.⁸
5. In those circumstances, Amendment 1B is extremely modest in only requiring regard to be had to specified international obligations. It is the barest minimum that should be included to safeguard against violation of those obligations and the consequences of that. Amendment 9B is similarly modest. It provides a long backstop against the prospect that what the Home Secretary will be obligated to do proves not to be possible (with all the same disastrous consequences as the existing policy only made worse for being inescapable). The modesty of Amendment 90D is clear on its face. It builds in additional guarantees for the Home Secretary to guard against any unwanted and improper delay to the policy she intends to pursue.

Amnesty International broadly supports other Lords’ amendments. However, none of these addresses the fundamental problem at the heart of this Bill, as it is proposed by Ministers. That problem is, in summary, the undermining of both constitutional principle and human rights respect by legislation that has been inadequately considered yet has built into it an inflexible barrier to any correction should anything go wrong. Our fundamental criticism and objection to this Bill remain.⁹ However, if Ministers will not now relent, all that is left to mitigate this Bill and the risks that arise from it are the Lords’ amendments. Parliament should adopt them, especially the three to which we draw attention in this briefing.

⁴ Since at least the commencement on 31 December 2020 of inadmissibility rules introduced by the previous Home Secretary, Priti Patel, about which Amnesty International warned the Home Office immediately after their being laid: <https://www.amnesty.org.uk/resources/amnesty-uk-letter-immigration-minister-ministers-reply-regarding-immigration-rules>

⁵ See joint Amnesty International and Immigration Law Practitioners’ Association (ILPA) analysis: <https://www.amnesty.org.uk/resources/amnesty-international-uk-immigration-law-practitioners-association-ilpa-analysis-illegal>

⁶ See joint Amnesty International and Migrant Voice briefing: <https://www.amnesty.org.uk/resources/amnesty-international-uk-and-migrant-voice-modern-slavery-briefing-house-commons>

⁷ See the ILPA briefing: 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

⁸ See also the joint Liberty, Freedom from Torture, Hope for Justice, ILPA and Amnesty International briefing: <https://www.amnesty.org.uk/resources/joint-briefing-amendment-1b-governments-immigration-bill-compliance-international>

⁹ All Amnesty International briefings on this Bill are available here: <https://www.amnesty.org.uk/resources/government-immigration-bill-session-2022-23-entitled-illegal-migration-bill-1>