



Government Immigration Bill, Bill 133 (Session 2022-23)

House of Lords Committee Day 1, 24 May 2023

On Day 1 of Committee, the two most crucial provisions of this Bill may be considered. These are Clauses 1 and 2. Clause 1 sets the Bill’s singular purpose. Clause 2 is the primary measure by which that purpose is given effect. For reasons explained in this briefing, almost no measure in this Bill can be properly understood without a clear understanding of these two clauses.

Introduction and amendments

The order paper includes notice of opposition to these clauses standing part of the Bill. It also contains an amendment to replace Clause 1 with an express statement that nothing in the Bill requires any act or omission in conflict with specified obligations of the United Kingdom under international law.¹ It is difficult to see what legitimate objection there could be to merely ensuring the Bill **does not require** the Home Secretary (or anyone) to breach these obligations. So, while we strongly support that amendment, it is nonetheless insufficient to fully legitimate this Bill.

Amnesty International is implacably opposed to this Bill. Our reasons are briefly summarised in our [briefing for Second Reading](#).² We, therefore, support opposition to Clauses 1 and 2. Our primary intention by this briefing, however, is to clearly explain these clauses and the effect they would have – including by some brief reference to how some other clauses relate to these.

Clause 1

Paragraph (1) sets out the purpose of the entire Bill. That is to “*prevent and deter*” what is described as “*unlawful migration*”, with particular focus upon “*unsafe and illegal routes*”. Importantly, paragraph (1) does not end there. It is of great significance that it continues:

“...by requiring the removal from the United Kingdom of certain persons who enter or arrive in the United Kingdom in breach of immigration control.”

Prevention and deterrence is, therefore, to be achieved **by requiring removal**. This is this Bill’s purpose: requiring removal, not merely enabling it but mandating it by statute. The people whose removal is to be required include refugees and victims of human trafficking. This includes people with especially strong reason to exercise their right to seek asylum in the UK and no means to do so other than by a journey this Bill treats as unlawful. It

¹ Amendment tabled by Baroness Chakrabarti, Lord Paddick, Lord Etherton and Lord Kirkhope of Harrogate.

² All Amnesty briefings on this Bill are to be found here: <https://www.amnesty.org.uk/resources/government-immigration-bill-session-2022-23-entitled-illegal-migration-bill-1>

includes people whose journey is entirely controlled by others, even violently forced upon them for the purpose of their exploitation.³

Paragraph (2) summarises certain further measures in the Bill that are stated to “*advance that purpose*”. Paragraph (4) summarises other measures in the Bill. Paragraph (5) has attracted a good deal of attention for it removes the application of section 3 of the Human Rights Act 1998 for the purpose of any interpretation of the Bill. It is briefly considered below. Paragraphs (2), (4) and (5) are all significant. However, it is paragraph (3) that requires especial attention. It states:

“Accordingly, and so far as it is possible to do so, provision made by or by virtue of this Act must be read and given effect so as to achieve the purpose mentioned in subsection (1).”

This applies to every provision of this Bill. It also applies to every provision made by virtue of the Bill – such as by regulations made under powers in the Bill. If possible, every provision is to be read to achieve people’s removal.

There is a degree of incongruence arising from paragraphs (1) and (3). On the one hand, they apply throughout the Bill. Yet, on the other, some of the Bill’s provisions – though admittedly very few – have nothing to do with the stated purpose. Clauses 58 and 59, for example, are plainly not for the purpose of anyone’s removal. This incongruence is itself indication of the unsafe haste with which this Bill has been constructed in pursuit of politics, which Lord Garnier rightly, though in our view modestly, described at Second Reading as “*lazy*”.⁴

In any event, the effect of paragraphs (1) and (3) of Clause 1 are effectively to require the entirety of the Bill – at least insofar as it is possible to do so – to be read as for the purpose of removing the people whom its provisions capture. That is why claims are excluded. It is why any grant of leave to enter or remain is excluded. It is why judicial oversight is largely ousted. It is why detention powers are greatly enlarged. This all brings us neatly to Clause 2.

Clause 2

Clause 1 and other provisions describe this provision as a duty. The title of Clause 2 labels it accordingly. This is a profound misnomer – at least as regards any understanding of the word “*duty*” as an obligation to fulfil a moral, or indeed any true legal, responsibility. Paragraph (1) is the primary feature of Clause 2. It states that the Secretary of State:

“must make arrangements for the removal of a person from the United Kingdom”

This applies if the person is caught by the conditions set out in further paragraphs of the clause. Clause 2 is accordingly a statutory requirement on the Home Secretary to remove

³ Amnesty briefings include briefings on [Asylum](#) and on [Modern Slavery](#). The changes made at the last hour in the Commons have not fundamentally altered what is said in those briefings save that they have made more emphatic the exclusion of refugees and victims of human trafficking from legal status, access to justice and any real protection.

⁴ *Hansard* HC, 10 May 2023 : Col 1842

people.⁵ The purpose of this requirement is plainly not to oblige the current Home Secretary to do something she has any reluctance to do. It is plainly not – as, for example, is the case with the statutory duty concerning the welfare of children⁶ – to require her to give consideration, still less effect, to any wider moral obligation or to fulfilling this country’s international law obligations in carrying out her powers and functions.

The true purpose of the requirement is to licence the Home Secretary to pursue removal no matter any moral, legal, practical, or other individual consideration that may apply to anyone whose removal is required by Clause 2. That licence is to remove the possibility of any effective judicial oversight or constraint upon the exercise of the power to remove the person. It is to do so by enabling – requiring – the Home Secretary to respond to any legal (but also any moral or practical) challenge to her attempt to remove someone:

‘But I cannot help it, Parliament has made or is making me do it.’

This has profound implications for other provisions in this Bill – and indeed to some proposed amendments seeking to temper them. We emphasise the following.

- If seeking to create exceptions, it is necessary to consider very carefully how effective these can be. For example, Clause 3(1) provides unaccompanied children an exception to the requirement to remove – but only until adulthood. This is not truly an exception. It is merely a deferral. The only current amendment to Clause 2 that would achieve a clear and lasting exception is that tabled by Baroness Ritchie. It would mean that no crossing of the Irish land border would be caught by Clause 2.
- If seeking to make exceptions or limitations to other provisions or powers, it is necessary to consider very carefully whether these truly provide the protection that is wanted. For example, amendments have been tabled to lift the Clause 4 ban on any asylum or human rights claim. These amendments would allow unaccompanied children’s claims to be considered;⁷ or allow someone’s claim to be considered if the person had not been removed within a fixed period.⁸ But these amendments do not in themselves affect the requirement in Clause 2. Whether or not the person’s claim is decided and found to be well-founded, the requirement for removal would remain. Even a grant of limited leave would only defer the requirement until such time as that leave expired or was withdrawn.⁹
- When considering the legal proceedings established by Clauses 37 to 54, it is necessary to understand that the suspensive claims and appeals provide no express route to avoiding the requirement in Clause 2. We do not here address how the suspensive claims procedure is largely controlled by the Home Secretary and in any

⁵ The conditions are concerned with how the person came to the UK, to the exclusion of why the person came, what alternatives if any the person had and the legal status and rights (including to asylum) of the person.

⁶ Section 55, Borders, Citizenship and Immigration Act 2009

⁷ Amendment tabled by Lord Dubs, Baroness Meacher and Lord Scriven.

⁸ Amendment tabled by Lord Dubs, Baroness Hamwee and Lord Paddick.

⁹ The deferral is created by the stipulation in Clause 2(6) that the person does not have leave meaning that, for so long as the person has leave, the person falls outside “the fourth condition” in Clause 2.

event an extremely limited form of legal proceedings. But it is stark that, on their face, the proceedings can achieve nothing but a state in which someone remains permanently in limbo in the UK while the Home Secretary casts around for a removal destination.¹⁰

Conclusion

Paragraph (5) of Clause 1 excludes section 3 of the Human Rights Act 1998. This has rightly drawn criticism. Its inclusion belies the sanguine observations by the Minister at Second Reading when suggesting the Bill will be found to be human rights-compliant even if it is not possible to make a declaration that it is.¹¹ With respect, if human rights-compliance were truly sought by those responsible for this Bill, why is it necessary to oust the duty to do nothing more than interpret the Bill in accordance with the Human Rights Act 1998 if the Bill's wording can allow for that?

However, restoring section 3 of the Human Rights Act 1998, by removing paragraph (5) of Clause 1, would not and cannot achieve human rights-compliance. That is, most particularly, because of paragraphs (1) and (3) of Clause 1 together with Clause 2. Making removal this Bill's singular purpose and requiring, by Act of Parliament, the Home Secretary to make arrangements to fulfil that purpose – regardless of any moral, legal, practical, or other consideration that may apply to any individual – is to effectively render human rights-compliance null and void.

There are to be – inadequate and unsafe – limits on the destination to which a person may be removed.¹² But the human rights implications, for example, of condemning someone to an indefinite and potentially permanent state of limbo, merely waiting for a removal and never permitted to get on with living, are awful. As are the human rights implications, even if more moderate, of condemning someone – including a child – who may temporarily escape some aspects of that limbo. This arises from the indefinite and potentially permanent threat of expulsion or limbo at the expiry or withdrawal of any grant of limited leave the child may receive.

Every provision of this Bill requires careful consideration. But it is vital when considering any provision to keep firmly in mind the meaning and effect of Clauses 1 and 2. Moderating or switching off any other provision without more, will not address the impact – even if that impact may be deferred – of the requirement to remove created by these two clauses.

Baroness Meacher began her speech at Second Reading by stating:¹³

¹⁰ The only route to escape is by an acceptance on the part of the Home Secretary, in response to a factual suspensive claim (Clause 42) that the person is not, after all, someone to whom the four conditions in Clause 2 ever applied. There is no express provision for this escape; and there is no escape to be achieved by a serious harm suspensive claim (Clause 41).

¹¹ *Hansard* HL, 10 May 2023 : Col 1921

¹² Clause 7 is the primary provision limiting the destinations to which removal may be attempted. But if a destination proves unsuccessful, any number of others may be attempted and/or any period may be allowed to pass before attempting again.

¹³ *Hansard* HL, 10 May 2023 : Col 1841

“My Lords, this Bill fails to respect our international obligations and will therefore undermine the reputation of this country and our influence across the world. For this reason and others, I believe this House has a moral obligation to prevent this Bill from reaching the statute book unless it is severely amended.”

Amnesty International shares the concern expressed by Baroness Meacher. We must emphasise, however, that unless at least Clause 1 is removed and Clause 2 radically revised and constrained, it is very difficult to see how any other amendment to the Bill – however ‘severe’ it may seem – could ever be thought to address that concern in any significant way.