



THE JOINT COUNCIL
for THE WELFARE
OF IMMIGRANTS

“Illegal Migration” Bill 2023 Briefing

April, 2023

Introduction

The so-called ‘Illegal Migration Bill’¹ is an extraordinarily dangerous piece of legislation which flies in the face of international human rights law and will have a devastating impact on people seeking safety in the UK. The Bill will increase the number of people taking dangerous journeys across the Channel, and will lead to more tragic and avoidable deaths, both at sea and in the UK. It represents an effective ban on asylum and completely undermines the principle of refugee protection in the UK, which was already on shaky ground after the Nationality & Borders Act came into force in 2022. It will strip survivors of trafficking, pregnant people and children of essential protections and support, vastly expand the detention estate and make thousands more people undocumented and vulnerable to ‘Compliant Environment’ policies. In addition, it will further reduce access to justice for those who need it most. To create an asylum system based on compassion instead of cruelty, the Bill must be scrapped in its entirety, and the Government must immediately introduce safe routes to the UK for people seeking safety here.

Puts a ban on asylum

The Bill effectively puts a ban on the right to claim asylum in the UK. **Clause 4** goes even further than the Nationality & Borders Act. Under this Clause, any person who does not travel directly from the country they are fleeing would have their asylum claim deemed inadmissible, and their immediate deportation would be sought. Under this Bill, people whose claims are deemed inadmissible would *never* have their asylum claims assessed in the UK, be granted any form of leave to remain or become British citizens. This would also apply to their children and family members. According to the [UN Refugee Agency](#), this legislation ‘would amount to an asylum ban – extinguishing the right to seek refugee protection in the UK for those who arrive irregularly.’ There is no right of appeal against a decision of inadmissibility. This decision can be subject to a judicial review, but this would not prevent someone being removed. Instead, they would be expected to challenge the decision *after* their removal, a wholly unrealistic and dangerous option.

You must be on UK soil to be able to apply for asylum in the UK, but there is currently [no way for people to travel safely](#) to the UK in order to claim asylum here, or to claim asylum from abroad. There are a limited number of resettlement schemes, but these are not fit for purpose, and account for only a fraction of the people seeking safety in the UK. As of April 2023, only [22 people](#) have been resettled in the UK under pathway 2 of the Afghan Citizens Resettlement Scheme (ACRS), launched in January 2022. This is currently the only open route for resettlement for Afghans not already in the UK, other than the Afghan Relocations and Assistance Policy (ARAP), for those who worked with British security forces in Afghanistan. Recent [figures](#) show that for every one person accepted under ARAP, five are rejected.

This means that the vast majority of people seeking refuge are forced to travel by irregular means and pass through ‘safe third countries’ in order to reach the UK. The lack of safe routes to the UK does not stop people coming here, but forces already vulnerable people to make extremely dangerous and life-risking journeys across the Channel. In recent years, the reduction of safe routes to the UK has caused an [upswing](#) in the number of people entering the UK via ‘small boats’, as well as the number of border-related deaths.

¹ We at JCWI entirely reject the name of this Bill and its attempt to characterise seeking asylum as unlawful. The right to seek asylum is an inalienable human right, and it is not unlawful under international law to travel to the UK irregularly in order to seek protection under the Refugee Convention.

Seeks to make it easier to remove people

Clauses 5-6 allow the Secretary of State to decide whether to remove a person claiming asylum to a country in which they fear persecution based on a “general” assessment. There is a misconception that all refugees are fleeing war zones and high levels of indiscriminate violence. The government has relied on and fuelled this misconception in its demonisation of Albanian migrants, frequently referring to Albania as a safe and peaceful country, and wrongly claiming that their claims are therefore inherently bogus. This fails to recognise that while there may not be a state of “general risk” in Albania, there are groups of people who are recognised as facing significant risk, for example trafficked women. Across the asylum system, vast numbers of people fear persecution not based on the general situation in their country of origin, but based on their “particular characteristics”, including sexuality or gender identity. By prioritising general assessments of risk over case-by-case assessments, the Government is putting these claimants at further risk.

These clauses would allow people to be returned to countries where they would face torture, cruel, inhuman or degrading treatment (also known as refoulement). This breaches the Refugee Convention, whether or not their status as a refugee has been officially recognised. Refoulement would also put the UK in breach of numerous other international and regional human rights instruments as well as international customary law. For those removed to a third country, there is no requirement for the receiving country to have an effective asylum procedure, creating the risk of indirect refoulement (that a claimant could be removed from the UK to a third country deemed ‘safe,’ and then removed from that country to one in which they face torture). While the Bill prevents removal in the case of “exceptional circumstances”, these circumstances are extremely limited, and **Clause 5(1)** outlines that there is no obligation for this to be interpreted in line with the Human Rights Act.

In reality, these plans are unworkable, due to the lack of returns agreements between the UK and so-called ‘safe third country’ governments. Further, removals to Rwanda, under the abhorrent Rwanda scheme, are currently stalled due to ongoing legal challenges. Instead of granting people seeking refuge in this country the chance to live safely and put down roots in their communities, this Bill will make thousands more people undocumented and vulnerable to cruel ‘compliant environment’ policies. Under these, undocumented people have no right to work, rent accommodation, access state support or get free healthcare. They will be pushed to the margins of society, forced to live in legal limbo, at great risk of exploitation, abuse and destitution.

Case study

John is an Albanian survivor of torture who arrived in the UK via lorry. He had been tortured by police while detained, which led him to flee the country. He fears repeat torture if he is removed, and has a human rights claim regarding the risk of mental health breakdown if he is removed to the situation of his previous torture. Under the Illegal Migration Bill, John would not be able to challenge his detention and the Home Office would be obliged to remove him to Albania without considering if this would put him at risk of real harm, simply due to his mode of travel to the UK. Both men and women from Albania have valid asylum and human rights claims and must be given access to a fair asylum process in the UK.

Removes essential protections for survivors of trafficking and modern slavery

The Bill stops survivors of trafficking and modern slavery who enter the UK irregularly from accessing life-saving protection and support, which breaches international obligations under [ECAT](#). **Clauses 21**

to 28 bar survivors of trafficking from protection against removal during the 30-day reflection period. These clauses also stop them from claiming asylum or accessing leave even if they are recognised as confirmed victims of trafficking, and place them at risk of detention and removal. As a result, they will face exponentially greater risk of workplace exploitation and of falling back into the hands of their traffickers. The only narrow exception is for people who cooperate with the police on investigations relating to their exploitation, where the Home Secretary deems it necessary for them to be in the UK. This exception is extremely concerning, tying a person's chances of safety on their ability to collaborate with state police, who many survivors will be too afraid to engage with and could face removal if they do.

The majority of survivors of trafficking in the UK are migrants, many of whom have been brought here by their traffickers via 'irregular routes' and live in the UK without status. To access protection, they can at present be referred to the National Referral Mechanism (NRM), the system designed to identify and protect survivors. In many cases, survivors of trafficking are recognised as refugees because of the risk of being re-trafficked if returned to their country of origin. The two systems are inextricably linked, and to deny survivors of trafficking and slavery the right to asylum extinguishes their right to safety in the UK.

Expands the detention estate and removes safeguards for marginalised groups

The Bill will vastly expand the UK's detention estate, and exponentially increase the number of people being detained indefinitely. It creates sweeping new powers for the Secretary of State to place people in immigration detention, removes judicial scrutiny of government decision-making and strips away essential safeguards for vulnerable groups, including survivors of slavery and trafficking, pregnant people and children. **Clauses 11-13** allow people to be detained based on their method of entry to the UK, which breaches Article 31 of the Refugee Convention. **Clause 12** allows someone to be detained for as long as the Home Secretary believes is necessary to remove that person. By requiring greater deference to the Secretary of State, this clause will further reduce judicial scrutiny in an area of law where it is absolutely crucial, which will cause standards of decision making to fall further still and make it harder for people to challenge these decisions.

In addition, **Clause 13** makes it almost impossible to apply for release via immigration bail or judicial review during the first 28 days of detention. Judicial review provides a vital tool to people in immigration detention, allowing the Court to assess whether detention is compliant with the [Adults at Risk policy](#), which stops vulnerable people being detained. While the Bill preserves a separate system for applying for release (known as habeas corpus), this remedy is rarely known or used and extremely limited in its scope. Denying almost all access to the courts will lead to an unprecedented and extremely worrying deprivation of liberty for people in immigration detention.

There is [clear evidence](#) of the devastating impact detention has on the mental health of detainees, [particularly](#) after 30 days. Under [UK law](#), detention should only ever be used as a last resort and should not be used as punishment, in place of a criminal sentence or as a 'deterrent'. However, the UK is the only country in Europe where indefinite detention is lawful, which has been [described](#) as amounting to a 'form of torture'. Detention powers are routinely misapplied, and the detention estate causes untold harm and even death. In April 2023 a man died by suicide in Colnbrook Detention Centre, which reportedly prompted several more detainees to attempt suicide.

Given the lack of returns agreements with third countries, under this Bill the Home Secretary will not be able to remove people from detention. As such, the Detention Taskforce has [stated](#) 'we expect tens

of thousands of individuals will be indefinitely detained in immigration detention facilities, with the current already overstretched detention estate being unable to hold anywhere near the numbers anticipated.'

Reduces access to justice and legal aid

This Bill further reduces access to justice for people seeking refuge. Legal aid advice is an essential component in ensuring the right of access to justice, particularly for people making asylum or other human rights claims. Without this vital support, most people will simply be unable to access safety and the opportunity to rebuild their life in the UK.

However, this Bill does not secure the right to free legal advice and contains no explicit provision or clarity on access to legal aid, which is already at an all-time low following a decade of austerity and severe cuts to legal aid services. Legal aid [rates now are lower](#) than they were in 2009. Further, [Government figures](#) suggest that around half of asylum-seekers do not have access to legal aid advice, with legal aid deserts in large parts of the country outside London. Fewer and fewer legal aid providers offer asylum advice, meaning that access to legal advice is impossible in any meaningful sense. Most asylum seekers, who often do not speak English and are likely to be suffering the psychological effects of trauma, are not well placed to represent themselves.

In addition, this Bill would make asylum law even more complicated and heavily litigated than it currently is. It goes further than the Nationality & Borders Act, transforming previously straightforward asylum claims – such as those of Syrian nationals – into legally complex and time-consuming cases. Fair and effective decision-making in asylum and human rights claims, which are often a matter of life or death, is vital. However, there is [clear evidence](#) that the Home Office has an extremely poor track-record on decision-making, evidenced in part by the vast backlog of asylum claims.

To make matters worse, the Bill severely reduces a person's ability to challenge removals to so-called 'safe countries'. **Clause 40** means that applicants only have an 8-day window in which to secure legal representation and challenge removal to a so-called 'safe country.' This creates a wholly unrealistic requirement on individuals to immediately secure legal representation and have compelling evidence of their claim available. There are strong and legitimate reasons why people seeking safety may delay revealing their experiences or coming forward with evidence. This may be due to trauma, distrust of authorities, or fear they will face continued persecution. Further, it is unrealistic to expect that people fleeing persecution will come armed with extensive evidence. These difficulties will only be exacerbated if the person is detained during the process. This will result in extremely vulnerable people being removed simply due to unnecessary timing constraints, putting them at high risk of harm and in some cases death.

Conclusion and Recommendations

The 'Illegal Migration Bill' is a dangerous and senseless piece of legislation, which will cause untold harm and suffering to thousands of people and breach international human rights laws. It will do absolutely nothing to address the 'small boats problem,' and will instead lead to more dangerous journeys, and more avoidable deaths in the Channel. It will make tens of thousands of people undocumented and vulnerable to hostile immigration policies and vastly expand the detention estate. It will also strip survivors of modern slavery, pregnant people and children of protection, and remove essential access to justice and legal aid. This Bill should never have been introduced and must be abandoned in its entirety.

To create a fair and effective asylum system, based on compassion instead of cruelty, the Government must:

- 1. Protect the right to claim asylum upon entry for all people seeking refuge in the UK without penalisation, regardless of their mode or route of entry.**
- 2. Introduce safe routes to ensure people can travel to the UK safely without resorting to dangerous journeys across the channel.**
 - Introduce a system of humanitarian visas so that people can be granted a safe route of entry to the UK in order to claim asylum on arrival, including providing [travel documents](#) for people living in Northern France seeking to come to the UK to have their claim assessed.
 - Ensure resettlement schemes are fully functioning and expanded to accommodate all those who need them.
 - Expand eligibility for family reunion, including for people seeking to join UK-resident non-refugees.
- 3. Champion European-wide solidarity and a system for collaborating and cooperating on our responsibilities to people seeking safety.**
- 4. Ensure all people seeking safety have access to a fair hearing and quick and effective decision-making, regardless of how they travelled to the UK.**
- 5. Reinststate the right to work for asylum-seekers in the UK, so they can support themselves and their families and become active members of their communities.**
- 6. Provide safe, decent community-based accommodation for everyone in the asylum process.**
- 7. Properly fund legal aid to ensure all people seeking safety have access to free legal advice and representation.**
- 8. Abolish indefinite detention and switch to community-based alternatives to immigration detention.**
- 9. Row back all externalisation of the UK border and resist any offshoring of our asylum system.**
- 10. Repeal all "Compliant Environment" policies.**

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JCWI is an independent charity campaigning for justice and fairness in immigration, nationality and asylum policy since 1967.

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