Illegal Migration Bill 2023 – Online Briefing for Peers

Wednesday 3 May 2023, 09.30-11.30

Agenda

09.30 – 09.35 **Welcome** – *Chair (Baroness Chakrabarti)*

09.35 – 09.40 **Overview of Bill** **–** *Adrian Berry, Patron, Immigration Law Practitioners Association; Barrister, Garden Court Chambers*

09.40 – 09.45 **Perspective of experts by experience** – *"S. A.", Volunteer, Refugee Action*

09.45 – 09.55 **Rule of law / human rights issues and international obligations** – *Phil Armitage, Administrative and Public Lawyer, JUSTICE*

09.55 – 10.05 **Inadmissibility and removal** – *Jon Fearon, Chief Policy Analyst, Refugee Council*

10.05 – 10.15 **Immigration detention** **–** *Theresa Schleicher, Casework Manager, Medical Justice*

10.15 – 10.25 **Implications for children** **–** *Laura Durán, Head of Policy, Advocacy and Research, ECPAT UK / Refugee and Migrant Childrens Consortium*

10.25 – 10.35 **Implications for modern slavery/trafficking victims** – *Peter Wieltschnig, Policy & Networks Officer, Focus on Labour Exploitation (FLEX)*

10.35 – 10.40 **Entry, settlement and citizenship** – *Adrian Berry, Patron, Immigration Law Practitioners Association; Barrister, Garden Court Chambers*

10.40 – 10.45 **Further perspectives of experts by experience** **–** *Agnes Tanoh, Spokesperson Facilitator, Women for Refugee Women*

10.40 – 11.25 **Q & A**

11.25 – 11.30 **Thanks and close** - *Chair*

Attendees

Chair:
Baroness Shami Chakrabarti

Guests:
The meeting was attended by a number of Peers and their staff members, as well as representatives from the following organisations:

Anti-Slavery International
Asylum Reform Initiative (ARI) / Together With Refugees
ATLEU
Bail for Immigration Detainees
British Red Cross
CARIS Haringey
CFAB (Protecting Children and Uniting Families Across Borders)
Citizens UK
Coram
Detention Action
ECPAT UK /
European Network on Statelessness
Focus on Labour Exploitation (FLEX)
Freedom from Torture
Garden Court Chambers
Helen Bamber Foundation
Hestia
Human Rights Watch
Immigration Law Practitioners' Association (ILPA)
JCWI
JRS UK
JUSTICE
Liberty
Medical Justice
MiCLU, Islington Law Centre
Migrants Rights Network
NACCOM (The No Accommodation Network)
Rainbow Migration
Refugee Action
Refugee and Migrant Childrens' Consortium (RMCC)
Refugee Council
Safe Passage
Scottish Refugee Council
South East and East Asian Centre (SEEAC)
The Children's Society
UNHCR
Women for Refugee Women

Notes

1. Welcome

Chair (Baroness Chakrabarti): Welcome everyone. Unfortunately this is not a happy meeting, but it is a very important one. This is a briefing from a whole coalition of expert NGOs on the Illegal Migration Bill.

Second Reading of that Bill is in a week's time, and the deadline for signing up to speak is this Friday. I suspect that anybody who has come on this call has signed up already, but if not, that's the deadline.

We will circulate notes of this meeting afterwards, and of course NGOs will be briefing throughout passage of the Bill. There are a great many NGOs involved for obvious reasons in this coalition. I won't introduce them all now because we really want to get started. If anybody is not giving a presentation, please put your name and organisation in the chat so that House of Lords colleagues can see.

We are grateful to all speakers today, and in particular to SA, who has asked to remain anonymous, from Refugee Action, and to Agnes Tanoh from Women for Refugee Women. They have direct experience of the asylum system so we are particularly grateful to them because it must be particularly upsetting to have to talk about that in the context of this awful Bill.

Time is very tight. We know that the House is now sitting at 11 so we are going to be as punchy as possible. Speakers, please try to stick to 5 minutes or less if at all possible, and I may gently nudge you if we seem to be running overtime.

Now I am going to ask Adrian Berry of ILPA and Garden Court Chambers to begin with a brief overview of the Bill. Thanks Adrian.

2. Overview of Bill – Adrian Berry, Garden Court Chambers

Adrian Berry: Thank you Shami, I'm sitting in for Stephanie Harrison KC who was due to do this but is unwell today.

The headnote for understanding this Bill is that it attacks the ability of people to come to the UK irregularly and claim asylum or make human rights claims. It shuts them out and imposes a duty of removal. In the absence of agreements on removal or re-admission to their home or third countries, the people will remain in the UK without status, either in detention – potentially for indefinite periods of time – or supported at public expense because they are unable to work. It manufactures a growing and effectively permanent population of people in the UK who are, for all practical purpose, unremovable and who are a burden on the public purse. It is ineffective and breaches international treaty commitments.

The Bill contains a number of things that disrupt the established relationship between the government and the courts. For example, it revises the ability to seek liberty from being unlawfully detained. It also removes protection from people who are victims of trafficking, in order that they may be treated as irregular arrivals as well.

In the media, you will see that the motivation is the so-called problem created by people arriving and crossing the English Channel in boats. But in reality, the Bill affects all people arriving irregularly. It

also extends to human rights claims made by EU citizens in the UK, and that can affect their family life and private life rights. This will create an additional problem in our relationship with EU member states.

The government know the Bill is unlawful because they have not confirmed a Section 19 of the Human Rights Act certificate, to say it is compatible with the provisions of the Human Rights Act. In fact, the government advertise that it is not compatible, on the face of the Bill.

So, for all these reasons, and in the detail we are about to hear, there is much to understand and much to oppose.

I'm now going to hand over to SA who is a volunteer for Refugee Action.

Chair: Thank you so much Adrian. SA do say a few words now.

3. The perspective of experts by experience – "S. A.", Volunteer, Refugee Action

SA: I'm an asylum seeker and a volunteer at Refugee Action.

We have discussed this Bill in our meetings at Refugee Action, and when I first heard about the Bill, personally, I started to shiver, and think is it going to be me who will suffer more with this Bill. I am not sure what is going to happen to me. I suffered with that. My previous experiences in the past were not very pleasant or safe. I had to logically convince myself that this is not happening now, and that I will be safe.

This was my personal experience of what happened when I learned in detail about the Bill.

Chair: Thank you. I think it is important to bear that in mind as we get into the technical detail. I think it is also important to remember that this Bill, even the iconography of it, even the rhetoric about it, even the politics of it, is sending a pretty unpleasant signal to people who are already in this country and dealing with a great deal of trauma. Thank you for trusting us with that.

[From chat]: Elspeth Macdonald: SA's biography: SA is seeking asylum in the UK and has been in the system from last 3 years, awaiting a decision from Home Office.

She was awarded her Master's Degree in peacebuilding from the University of Bradford. She received a scholarship for the degree as she does not have right to get a loan for education. She completed her degree and then again went back to waiting for a decision on her asylum claim as she is not allowed to work.

SA is a single mum, trying to survive in the UK's hostile environment. She volunteers at different organisations in different roles. She is a certified interpreter and is now doing a counselling skills course to register herself as a counsellor.

Chair: I'm now going to turn to Phil Armitage who is a lawyer at JUSTICE. He is going to talk about the rule of law and international human rights implications of this proposed legislation.

4. Rule of law / human rights issues and international obligations – Phil Armitage, JUSTICE

Phil Armitage: I'm going to talk about a few of the concerning aspects of this Bill from a rule of law perspective.

I'll start with Clause 52 which is about interim remedies. It says that no domestic court can grant an interim remedy in a deportation judicial review. We would say that this is an attack on the common law right of individuals to fully access the court. The only procedure would be a suspensive claim. But there are considerable problems and lack of safeguards in that process. It is quite an extraordinary power to prevent any court, even when a judicial review is allowed to go ahead, from having an interim remedy that prevents removal.

Moving on to interim measures of the European Court of Human Rights (ECtHR), which have come to light in the Rwanda decision. Those are binding on the UK and international law, as demonstrated by the fact that the UK complied with the previous Rwanda decision. This would give a presumption that a UK government minister would breach international law unless they actively intervened to comply with it. There has been a lot of talk about reforming the interim measures procedure. However, we would say that unilaterally breaching an interim order is not any way to seek legitimate reform of the ECtHR.

On human rights law, the Bill disapplies Section 3 of the Human Rights Act 1998 and it is the first piece of legislation to do so. This means that the courts would not be required to read the legislation as compatible with Convention rights where it is possible to do so.

This is especially concerning given the government's Human Rights Act Section 19 statement that they cannot confirm that the Bill is compatible with the European Convention. They have followed that statement by also saying that they do not want the courts to read the legislation as compatible where it is possible to do so. This raises a serious question in our view about how they would respond to a Section 4 declaration of incompatibility under the Human Rights Act and whether they would seek to then amend that legislation.

On the wider rule of law issues, there is a general lack of accountability within the Bill preventing a series of safeguards for individuals to hold the government accountable for decisions in the deportation context. There are considerable powers of regulation on the Secretary of State that limit the oversight of parliament, from the detention provisions to an ability to pass regulations amending primary and secondary legislation of devolved parliaments.

Finally, we want to emphasise a general rule of law issue with the fact that the Bill is retrospective meaning that it applies to anyone who arrived on or after the 7 March of this year. From a legal certainty point of view, it is important that individuals know what their rights are and how they can be enforced. That is especially important when human rights are at stake, including Article 2 (right to life) and Article 3 (right to not be tortured). A number of vulnerable individuals, going forward, who are in the system now will be affected by this Bill even though it has not yet been passed to law.

I'm happy to take any questions.

Chair: Thank you Phil, that was super succinct. You will all notice that I deliberately did not ask SA whether she had come before or after the 7 March and do not intend to ask her. But the point is that there are people who are already in this country and came to this country in good faith to seek asylum and they are already in the clutches of this awful proposal.

I'm now going to go to Jon Featonby of the Refugee Council to talk about inadmissibility and removal under the Bill.

5. Inadmissibility and removal – Jon Featonby, Refugee Council

Jon Featonby: For us at the Refugee Council, the core part of the Bill that we are really concerned about is the bit that the UNHCR has described as being a ban on asylum. This is around the duty to remove that is placed on the Home Secretary, the connected inadmissibility of asylum and certain human rights claims, and also the removal of those people from the UK.

The duty to remove that the Bill creates apply if someone meets four conditions. Those conditions are, broadly speaking:

1. When a person has entered the UK in breach of immigration rules;
2. If they enter on or after the 7 March 2023;
3. Where that person requires leave to remain or enters the UK and does not have it; and
4. That person did not travel directly from a country from which they are fleeing from.

To give a sense of the retrospective nature of this already, as of 1 March 2023, just over 3,000 people have already crossed the Channel in small boats. Since the 7 March, they will be impacted by the Bill now when it comes into force. And of course, that number will continue to grow.

Although this Bill is being framed by the government as being a response to small boats, those four conditions will cover an awful lot of other people. Pretty much anybody who comes to the UK to claim asylum, anybody who is forcibly trafficked into the UK, will all likely meet those four conditions.

There are some exemptions from the duty to remove, including:

- a separated child before they reach the age of 18;
- somebody who has leave to remain and is a survivor of modern slavery and needs to be in the UK because they are assisting the police with an investigation or criminal proceedings connected to their exploitation

Clause 3 does give a power to the Home Secretary to remove unaccompanied children before they reach the age of 18. So, although children are exempt from the duty to remove, there is still a power to remove children contained within the Bill. This is important to note.

Connected to the four conditions, Clause 4 of the Bill sets out that asylum claims, or human rights claims on the basis that removal to a person's country of origin would breach their human rights, of anybody who meets those four conditions, whether they are exempt from the duty to remove or not, will be deemed inadmissible. So, the Home Office is never going to look at the claims, no matter how strong or weak they might be.

This is quite a move on from the current inadmissibility process, which came into force after the UK left the European Union and after we left the Dublin regulations. At the moment, the Home Office can declare a claim to be inadmissible where someone travelled through a safe country or could have and should have in the view of the Home Office, applied for asylum in another country. But, they can only actually declare that claim inadmissible once the removal agreement is in place. Roughly under the guidance, the Home Office has about 6 months to get that removal agreement in place.

We know that that does not happen very often. Since those rules came in at the beginning of 2021, only 21 removals have taken place out of over 18,000 claims that have gone through that process.

What this Bill does, is it makes the inadmissibility decision automatic. So as soon as the Home Office knows that the duty to remove applies, any claim is then inadmissible. Clause 4 then sets out that that inadmissibility is permanent. There is no way back for that person into the asylum system at any one time.

Moving on to removals, once the duty to remove is in place, Clause 5 of the Bill sets out where to and how those people can be removed. Broadly speaking, it depends on where the individual is from. If somebody is from one of the 27 EU Member States, or from one of five other countries – Switzerland, Iceland, Lichtenstein, Norway or importantly, Albania – that person can be sent back to their country of origin. Anybody who does not fall into one of those countries can only be removed to a safe third country, in the view of the Home Office. The list of "safe third countries" is found in Schedule 1 to the Bill and most importantly, includes Rwanda.

The problem is that, as Adrian mentioned, there are not many of those removal agreements in place.

As the Home Office has not yet produced an Impact Assessment of the Bill, the Refugee Council produced our own. Looking at the Home Office figures already and at the inadmissibility statistics, we are predicting that within 3 years, somewhere between 160,000 and 193,000 people will have had their claim declared inadmissible in the UK but will not then have been removed. So, they will be stuck in a limbo, no matter how strong or weak their claim might be.

Chair: Thank you very much. That is a pretty stark message and very succinctly put. Theresa Schleicher from Medical Justice please to talk about detention under this Bill.

6. Immigration detention – Theresa Schleicher, Medical Justice

Theresa Schleicher: There are a lot of people from other detention NGOs here today which is great. Hopefully when there are questions at the end, others will be able to chip in as well.

Detention, particularly indefinite detention, is highly damaging to health for everyone and we know there are particular groups who are most at risk including children, pregnant women, people with histories of trauma and trafficking and pre-existing mental health issues. That has been the clear conclusion from all the available studies and there have been concerns raised from a large number of expert groups and Royal Colleges. Already now the powers to detain for immigration purposes are very wide and automatic judicial oversight is pretty limited. Yet despite this, the Bill proposes to vastly increase powers of detention and reduce judicial oversight and safeguards to a level that has not been seen before.

I'll run through the provisions quite quickly. Clause 10 introduces new powers to detain people who are covered by the duty to remove, or who the Home Secretary suspects are covered by the duty to remove, for any period of time that the Home Secretary considers reasonable. This includes children with their families or on their own who are protected currently by safeguards: unaccompanied children can only be detained for 24hours; children with their families and pregnant women, for a maximum of 7 days. The Bill will do away with these important safeguards and also do away with the duty to consult the independent family returns panel before families are detained.

A couple of amendments were added by the government at Report Stage concerning the detention of unaccompanied children. However, the amendments are not very reassuring because the Bill still does away with important safeguards that are currently in statute and proposes to replace them with unspecified protections that may be in Regulations.

Clause 11 radically reduces judicial oversight and expands the government's power of administrative detention. These changes would apply to everyone detained and not just people detained under the new powers. Currently the role of the courts is to review detention on application and to consider whether it is reasonable in the circumstances for the purposes of removal or deportation, as required by Article 5 of the European Convention of Human Rights (right to liberty and security/protection from unreasonable detention). The Bill proposes to do away with this role for the courts and instead allow detention for any period that the Home Secretary considers reasonable and not just for the purpose of removal but also as long as the Home Secretary considers it appropriate to detain someone for the purpose of arranging their release. Given that we are talking about depriving people of their liberty for an unlimited amount of time, and given that we know how many unlawful detention cases currently happen, that is really terrifying.

Clause 12 removes or severely limits the key avenues for people to challenge their detention. Under the Bill, the First Tier Tribunal will not be able to grant bail during the first 28 days and the High Court's jurisdiction in judicial review proceedings would be limited to situations where the Home Office have acted in bad faith or in such procedurally defective ways that it amounts to a fundamental breach of the principles of natural justice. There will be limited ways of challenging detention by applying for a writ of habeas corpus or for damages. In terms of applying for damages, the process for this is unclear; however presumably, while it may be possible to apply for damages later on, doing so will not get the person out of detention at the time. So, for instance, a torture survivor could be detained in breach of Home Office guidance suffering from Post Traumatic Distress Disorder causing them to relive their trauma in detention. They could ask the Home Office to exercise their discretion to release them, for instance, based on medical evidence. But if the answer is no, there could potentially be nothing they can do to challenge that situation.

In summary, the Bill proposes to widen the powers to detain, remove the key safeguards, do away with the role of the court in supervising the amount of time that someone is detained for and remove the avenues for the individual to challenge their detention.

Happy to answer any questions.

Chair: Thank you so much Theresa and for putting so much so succinctly. And now I'm turning to Laura Durán from the Refugee and Migrant Childrens Consortium and from ECPAT UK and she is going to talk about the implications for children.

7. Implications for children – Laura Durán, ECPAT UK / Refugee and Migrant Childrens Consortium

Laura Durán: As Jon mentioned, I think one of the biggest issues that this Bill presents for all children is in Clause 2 of the Bill around the duty to remove and inadmissibility in subsequent clauses. This will mean that accompanied and unaccompanied children will not have their asylum claims considered.

For those who are under 18, if unaccompanied they are not subject to the duty to remove but they may be removed under powers that the Home Secretary is giving herself under this Bill in what Ministers have said are limited conditions. Those are clarified subsequently in the latest government

amendments to the Bill as being such as for the purposes of family reunion or for removal to a "safe" country.

The biggest issue for children under 18 in this Clause will be for Albanian unaccompanied children who will be considered to be from a "safe" country, and they may be removed back to Albanian into the care of social services there. It is worth flagging that Albanian children accounted for the second most common nationality of those identified as potential victims of trafficking last year and they have consistently featured as one of the three most common nationalities of child trafficking for the past five years.

For unaccompanied children, once they turn 18, they will then be subject to the duty to remove. That means that, as Jon mentioned, they will just remain in perpetual limbo without their asylum claims considered, effectively waiting for this removal from the government. They will be subject to detention in what are very sweeping powers undermining the government's 2010 commitment to end the detention of children. This Bill means that thousands of children could be indefinitely detained.

The government has tabled an amendment setting out that they will clarify the instances in which they can detain children in subsequent regulations, but we remain very concerned about this provision to detain children indefinitely.

The government is also seeking to grant themselves powers to accommodate unaccompanied children directly. As some of you may have known, since 2021 the Home Office has taken steps to accommodate children in hotels. Those children remain outside of the care of local authorities. Technically, they should be considered looked after children by a local authority and be able to access all of their entitlements under part 3 of the Children Act, but effectively these children are in limbo accommodated in these Home Office hotels, at really significant risk of harm with over 200 children who went missing and remain missing to this day.

The Home Office, under Clauses 15-17, have also given themselves powers to remove children from the care of local authority to accommodate them themselves. They say this is to effect the removal of unaccompanied children under the age of 18, and we remain increasingly concerned about the way that the Home Office intends to use these provisions.

Finally, the provisions for trafficking which were mentioned at the beginning by Adrian, disqualifies potential victims of trafficking from accessing the National Referral Mechanism. They are subsequently subject to the duty to remove under Clause 2. This includes accompanied children, and the children of victims of trafficking who otherwise would have been able to access, along with their family members, safe house accommodation and financial support as potential victims while awaiting their trafficking determination. This will also affect unaccompanied children once they turn 18, leaving many children extremely vulnerable to re-trafficking in the absence of any effective protection.

I want to wrap up quickly with a comment from one of our youth group members over the weekend when we held a youth advisory group. As we were going through the provisions of this Bill, they said "if it was me and this had happened when I was being trafficked to the UK I would have never fled and talked to a police officer about what was happening to me because it would have meant that I would have just been removed from the country and unable to seek protection".

Thank you and happy to answer your questions.

Chair: Thank you Laura for again putting that so briefly but powerfully. Now I am going to ask Peter Wieltschnig of FLEX, Focus on Labour Exploitation, to say a few words about implications for modern slavery and trafficking victims.

8. Implications for modern slavery/trafficking victims – Peter Wieltschnig, Focus on Labour Exploitation (FLEX)

It is important to highlight the context behind the Bill. This Bill contravenes the UK's international obligations regarding victims and survivors of human trafficking. The group of experts on Action against Trafficking have said that this Bill, if adopted, would run contrary to the UK's obligations under the ECAT (European Convention on Action against Trafficking). This is recognised as part of a wider backtracking on the UK's previous attempt to be a world leader in the action against trafficking, with the Nationality and Borders Act being passed only last year, which already caused the UK to breach its international obligations.

This Bill threatens to create a situation where people are driven into exploitation. And those who are already in exploitation are impeded from exiting their situation out of fear of removal, as Laura has just highlighted.

The Bill forces victims of modern slavery to choose between remaining in a situation of exploitation, being in prolonged and traumatising detention, or facing removal. Again, it is taking place in a campaign from the government to delegitimise victims and survivors of trafficking, targeting certain groups such as Albanian men and boys.

Whilst doing this, the government is also refusing to provide evidence to support their claims despite being challenged on this by the Office for Statistic Regulation, the Independent Chief Inspector of Borders and Immigration, and a number of UN Special Rapporteurs. So, this is an opportunity for the Lords to hold the government to account and provide real scrutiny. The Independent Anti-Slavery Commissioner's position has been left vacant by the government for over a year at this stage.

What does this Bill do? Laura has already highlighted some of the key points. The Bill blocks anybody who entered or arrived in the UK by a route that the Home Office deems irregular, from benefitting from the modern slavery protections. It allows people to be detained and removed from the UK in violation of international law. The Bill also allows for people to be removed while a decision is being made on their case and during their reflection and recovery period which is required under ECAT.

It is also important to recognise that this Bill does not just harm victims of trafficking by blocking them from being able to access modern slavery protections. It is also an attack on the wider protections that victims of trafficking have had to rely on to be able to move on with their lives and to recover.

The Helen Bamber Foundation have previously said that 93% of the people they engaged with in relation to human trafficking, also had an ongoing asylum claim too. Part of the reason for this is the collapse of the National Referral Mechanism (NRM). There has been an increase in the amount of people who are actively refusing to go into the National Referral Mechanism, which is the UK's anti-trafficking framework, because of the limited protections and the limited support it offers. This is something that the Nationality and Borders Act 2022 exacerbated. For instance, there were issues with regards to long waiting times with people being in limbo whilst a decision is being made on their case, people not having the right to work except for some very limited exemptions, poor accommodation provisions, and issues with regard to referral in the first place.

Just having access to the NRM is not the one thing that we would be looking for; the wider protections that being attacked by this Bill must also be taken into account as well.

We need a preventative approach, and this Bill does the exact opposite. It creates new vulnerabilities to trafficking. It creates an environment where people are going to be incredibly worried about coming forward. Again, this is a situation where if somebody gets legal advice on this issue, something which is incredibly difficult to do at present, it might become clear to them quite quickly, that £30 for 15 hour a day weeks in a car wash with regular threats and beatings is a "better" option for them than being in indefinite detention or being removed to a country where they have no connections. So, it is really important that the responses to this Bill are universal. Happy to answer any questions.

Chair: Thank you so much Peter for that. That is very punchy and very clear. I am now going to return to Adrian to say a few words on entry, settlement and citizenship.

9. Entry, Settlement and Citizenship – Adrian Berry, Garden Court Chambers

Adrian Berry: There are two aspects of the long-term solutions which are precluded for people who arrive irregularly and are subject to the duty to remove under Clause 2.

Firstly, they cannot be given permission to enter or remain in the UK, subject to narrow exceptions for unaccompanied children and victims of modern slavery. They also cannot be given permission to travel, by way of entry clearance or electronic travel authorisation.

There is an exceptional circumstances Clause that allows the Home Secretary to disapply those provisions where a person, having been removed, seeks to travel to the UK, or where it would be incompatible with human rights to refuse it. But these exceptions are very narrowly drawn. Similar exceptions regarding a ban or time limit on conferring permission to remain in the UK thereafter also apply.

There is a ban on securing indefinite leave. Again, this is subject to compatibility with the human rights convention.

That is capped off with a ban on applying for British citizenship and other forms of British nationality, either whether available by entitlement (for example in the cases of some children's rights, for example under Section 3(2) of the British Nationality Act), or whether at discretion (for example where an adult applies for naturalisation at discretion). Again, there is a very narrow discretion conferred on the Home Secretary to nonetheless go on and process and grant the application where to do so would be incompatible with human rights.

Checks and balances on granting leave to enter or remain already exist, in cases where refusal is warranted on grounds of character, conduct or association. They also exist for naturalisation, where there is a good character test. So, none of this is necessary, it just requires the application of judgement to a scenario.

There is also the question of compatibility with the best interests of children, as articulated in the Convention on the Rights of the Child, and as mediated in domestic laws though section 55 of the Borders, Citizenship and Immigration Act and through compatibility with the Convention on the Reduction of Statelessness from 1961 which has been embraced in domestic law in the British Nationality Act.

Overall, it seeks to make rigid things which are subject to discretion at present and to predetermine a ban on re-entry, entry and on permission to remain, and on the grants of citizenship - subject to extremely narrow exceptions.

Chair: Thank you Adrian. With huge thanks to all our experts and before we move to questions from Peers, I want to give the final word in this section to Agnes Tanoh, a refugee from Women for Refugee Women.

10. Further perspectives of experts by experience – Agnes Tanoh, Women for Refugee Women

Agnes Tanoh: Good morning, everyone. I'm here to share my experience as an asylum seeker. I want to speak to the Lords who are going to vote for the Bill. I found myself as an asylum seeker, which I did not plan.

I was arrested when I went to report, and I was put in a detention centre in Yarl's Wood. This detention is a prison, and no-one wants to end up in a prison when you come for safety. It is what happened to me. I want to tell the Lords that detention is harmful. The isolation of people and their children is traumatising people. I went through a civil war. Even now, 10 years after, I am still going through some mental health issues.

This Bill is going to expand again detention when we know that detention harms a lot of people, including pregnant women.

I am here to speak for people who are going through this asylum process. The asylum system should treat people as human beings not numbers.

There are many reasons for people as we heard to seek asylum. I had never planned to be an asylum seeker. But one day it happened to me.

Many other people had not planned to be an asylum seeker, but now they are here. What do we do with people fleeing Sudan, for example – return them to Sudan? This is not a good thing to do. So, I am asking the Lords not to vote for this Bill. They should treat people with compassion and kindness by giving them hope for the future. People come to the UK to ask for safety. Let them have safety, let them be safe in this country.

They are not guilty to be punished in the way the Bill is going to. I ask the Lords to speak out, and not to vote for this Bill, because it will create more misery for people who need safety and security. Thank you for having me. If there are any questions on my experience, I am here to answer.

[From chat] Elspeth Macdonald: Agnes' biography: Agnes Tanoh fled her country Ivory Coast because of civil war in 2010-2011. She fled after being released from prison, with her daughter, UN forces on 21 April 2011. Because she was a member of the defeated political party and a staff member of the First Lady, she could not leave via a 'legal' route, despite her diplomatic passport. Instead, she travelled through the forest, from Lagune to Accra, after which she came to the UK because her children were studying here and they were her only family living abroad.

Agnes claimed asylum in 2011. Following this she was arrested when she went to her usual weekly reporting with the Home Office, and was detained in Yarl's Wood for over three months. After her release she was destitute for six years, without recourse to public funds. Agnes received refugee status

in 2018. She is now the Spokesperson Facilitator at Women for Refugee Women, coordinating the Spokesperson Network, through which women with experience of the asylum process receive training and support to tell their story, share their views and campaign for a fairer asylum system. Agnes wants to speak on behalf of women going through what she experienced.

Chair: Thank you so much Agnes. And once more, thank you to all those who spoke and have done so, so quickly to allow more time for Peers' questions. But particular thanks once more to our anonymous witness SA and to Agnes Tanoh who we have just heard from.

We have had that overview with quite a lot of detail form our experts. I think that in addition to the cruelty of the Bill, we have seen them set out in very clear terms an attack on the rule of law, the international and domestic rule of law, in the form of the Refugee Convention, the ECHR and HRA, the European Trafficking Convention, the UN Convention on the Rights of the Child. We have seen the Strasbourg court's and domestic courts' wing clipped, or an attempt to clip their wings with this Bill. And there is also retrospection in relation to who it applies to and considerable regulation-making powers for the Secretary of State.

Now I'm going to ask Lords colleagues if they would like to pose any questions to our collection of experts.

11. Q & A

Questions were asked about:

- How best to strategise on the Bill and divide up amendments amongst Peers who want to oppose the Bill?
- What are the legal arguments underpinning the position that retrospectivity is "bad"?
- Whether it is correct that under the Bill judicial reviews can be pursued, but that there will be no remedy?
- Further details about the re-entry and citizenship ban for children?
- Whether it is correct that, under the Refugee Convention, the government cannot return someone to their own country without a refusal, and to give a refusal, there has to be an assessment of the case? If the person cannot be sent to a third country – difficult due to the lack of returns agreements – will they simply be left in limbo?
- What could most usefully be done on age assessments at Committee Stage in the Lords?
- What the dates are for Committee Stage?
- Whether it is known which Conservative and crossbench peers – particularly lawyers and ex-judges – were considering opposing the Bill and if so, which aspects of it? And whether any organisations are working with them?
- Which Bills tabled under the previous Labour government were not compliant with the ECHR?
- Tim Loughton MP and others achieved some government amendments on children and safe route, but they are rather weak. Were the MPs satisfied with the amendments or are they looking to Peers to achieve something stronger?

Points were made about:

- The lack of right to work for people seeking asylum, despite job vacancies in the UK. It is very stigmatising and fuels antagonism towards them.
- A briefing for peers is being run by the Children's Commissioner next Wednesday. Peers to email Baroness Lister for details.
- The Joint Committee on Human Rights is carrying out scrutiny of the Bill. All written submissions to the Committee are available here.

- Opposition to the Bill from Conservative benches will be important.
- At Second Reading there is little time to do more than flag issues.
- That organisations with proposed amendments should share them with Peers as soon as possible – do not wait until after Second Reading.
- Committee Stage is 24 May, 5, 7, 12, 14 June. The minimum time has been given between Second Reading and Committee. There will be a Monday/Wednesday pattern for two weeks until 14 June. Report Stage will almost certainly follow a week later, again with the minimum time between.
- That the Bishops feel very strongly about the Bill, and the Archbishop of Canterbury will speak at Second Reading.
- Tim Loughton MP and others expressed concerns around children, and safe and legal routes in the Commons. They achieved some government amendments, but these are rather weak. The question is now whether they are satisfied or are looking to Peers to achieve something further.

Chair: on retrospectivity – it is a very fundamental philosophical principle of the rule of law, that you do not change the rules as you go along to people's detriment. It is partly about clarity, partly about fairness. There is a specific provision about criminal retrospection in Article 7 of the ECHR, and it has been applied at common law for many years. But retrospectivity goes further than just the criminal law – it is based on the idea that people are entitled to know what the law is, and not to have the law changed when it is too late to protect themselves.

Phil Armitage: I can send more details on this. But in general, the common law presumption is that everyone has a right to know what the law is, what their entitlements are and act accordingly. In this case it will be someone who arrives in March – they are entitled to make an asylum claim under the law as it is now i.e. the Nationality and Borders Act 2022. This Bill once passed would then rip this up. This is where there is a fundamental concern.

There are other troubling provisions. For example, the provision that allows the Secretary of State to unilaterally revoke leave that was previously legitimately granted under the Nationality and Borders Act 2022. This is totally unfair.

Adrian Berry: On judicial review and remedies more generally, the Bill is an attack on irregular migrants, but it is also an attack on the doctrine of the separation of powers, on the role of judges to consider the interpretation and application of legislation. You can yoke that together in terms of the ouster clauses in the Bill, which builds on what happened last year in the Nationality and Borders Act, in terms of creating an even stricter regime. Effectively what is being done – whether it is in terms of attenuation of statutory appeals or interrupting the ability to use interim remedies and prohibiting it in certain contexts – is to take away judicial power and accrue power to the government at the expense of the judiciary.

Something that may be more resonant in the Lords is that disruption of the constitutional order – it is something that lawyers and ex judges in the House can properly understand. If you yoke it together with the changes to judicial scrutiny, together with measures to restrict interim measures from the ECtHR, and the reduction in judicial powers over detention, what you get is a package that, without warrant or evidence, takes away the trust in the judges and accrues it to the government.

This is very much a rule of law issue and something which could perhaps be the subject of a discrete briefing to those peers with an interest, beyond those interested in migration rights.

Laura Duran: On citizenship – perhaps the only helpful government amendment was around the citizenship provisions for children. The amendment removed another Clause in the Bill that banned children born in the UK to people subject to Clause 2 (duty to remove) from being able to obtain citizenship.

Adrian Berry: On re-entry – the theory is that some people who have been removed under the Clause 2 duty to remove will seek to come back to the UK. We of course preface that with the fact that, in practice, removal to a country other than your own, is unlikely given the lack of return agreements.

But return would be possible in one of two circumstances: 1) where to refuse entry would breach the ECHR and 2) in so-called – and it will be a statutory term – "exceptional circumstances". This term is, on one reading, wider, and on another reading narrower, than human rights compliance.

So, there is discretion on re-entry. But the idea is that the ordinary immigration rules for family reunion, for example, will no longer apply. Instead the assessment of human rights criteria will be foregrounded from the outset – rather than that being a safety net, once the immigration rules have been applied. The power to reach that judgement is vested in the Secretary of State in the first instance.

Chair: I think perhaps the question about qualified people not being able to work was a rhetorical point. We've all heard the government talk about "pull factors" – they are very open about being as nasty as possible to refugees and asylum seekers, however illogical that is for the economy, because they want to send signals and avoid pull factors and so on.

Elspeth Macdonald: there will be written notes from the meeting and also a recording. We will circulate both as quickly as possible. There is also a cross-sector written briefing being finalised on the whole of the Bill that will be circulated later this week in advance of Second Reading.

[From chat]: Peter Wieltschnig: Just to add, the briefing will also include a list of thematic issues and NGO contact points for each of these areas. Hopefully that will be useful for Peers to decide which areas they would like to cover and who to speak to.

Laura Duran: on age assessments – the government tabled two amendments. The first one was a provision to amend the Nationality and Borders Act's Section on scientific age assessment deeming that young people who are requested to undertake such an assessment and refuse, will automatically be assumed to be adults. It is worth noting that the government did produce independent advice around scientific age assessments. This found that the assessments could only be used in conjunction with traditional age assessment processes by children's social care. It also found that there is absolutely no silver bullet to determine someone's age.

The second amendment included is perhaps one of the most harmful. Maybe one of the positive things of the National and Borders Act 2022 was that it provided for children to be able to appeal an age determination through a proper appeals process, rather than having to rely on judicial review. This Bill now backtracks on that provision, and eliminates the right of appeal. Even more worryingly it makes age disputed children subject to removal even whilst they have a judicial review about their age determination ongoing.

Kamena Dorling from the Helen Bamber Foundation has done an excellent briefing on this, particularly challenging the disinformation on the statistics around age disputes that the government keeps using.

Chair: Can any additional briefings mentioned in the call be shared with all peers?

Elspeth Macdonald: Yes

Kamena Dorling: The briefing on age assessment processes was pulled together very quickly because the amendment by the government was unexpected. There is information in it about the misuse of data by the government to suggest that the problem of adults posing as children, to use their term, is greater than it is – which is harmful.

The government is also being very clear about its intention to use the detention of children for the purposes of age assessments.

In the most recent Report Stage debate, we started to hear about this idea of a two-tiered system – ie that the government do not want to detain children who are "genuine" children, but that it is apparently fine to detain them for the purposes of assessing their age. We know that this approach is incredibly problematic. It is a very harmful additional bit of rhetoric that we are starting to hear.

Chair: We look forward to reading the briefing.

On previous Bills that were not ECHR compliant – I imagine one was the Anti-Terrorism, Crime and Security Act 2001 because it contained a derogation. Perhaps we can check that?

Laura Duran: We were very pleased to hear opposition from some Conservative backbenchers, particularly Theresa May and Ian Duncan Smith, around the modern slavery provisions. I would just flag that unfortunately the amendments they tabled in the Commons were more limited than we would have wanted to see – they just seek to exclude those who are exploited in the UK from the modern slavery provisions in the Bill. However, we know that a large number of children are exploited enroute to the UK – many suffer horrific exploitation in Libya, Italy, Greece. So we would really welcome the consideration by any Peers seeking to table amendments to think about ways that we can press the government a little more on these issues, so as to include a wider cohort of victims.

Phil Armitage: On the previous Labour Acts – one was the Communications Bill. This was about a ban on political advertising. It had considerable pre-legislative scrutiny before, and was a very narrow issue. The ECtHR also changed their position on it subsequently.

There was also an issue around Section 28 in an early Labour Bill, but that was subsequently repealed anyway.

[From chat]: Phil Armitage: See para 17 of our Commons Report Stage briefing.

[From chat]: Zoe Bantleman: Per our second reading briefing: The Local Government Bill 2000, which sought to reaffirm the 'Section 28' ban on promotion of lesbian, gay, and bisexual relationships in schools, was introduced with such a statement, as was the House of Lords Reform Bill, which was withdrawn on 3 September 2012. The ban on political advertising in the Communications Bill 2003 was also subject to such a statement – because of a lack of clarity in the law at the time in question – but it was found by the House of Lords (as it then was) that there was no such breach of the Convention.

Jon Featonby: On Conservative opposition – the Refugee Council has been working with Tim Loughton MP. On safe routes, some of the Conservative MPs who raised this appear to be relatively happy with where the government got to on it. I think we would disagree – the government amendments are quite vague/loose: they just need to publish a report. There is nothing about additionality.

Chair: On safe routes – as a matter of general principle, safe routes are not, and should not be, an alternative to the Refugee Convention. They are an additional matter. The Refugee Convention has its roots in what happened during WW2 ie. where some people were given safe passage while others were not. We all know what the consequences of that approach were.

Jon Featonby: On child detention – I think MPs are expecting the government to do more on this in the Lords and will look to Peers to really push Ministers on it. They are going to continue conversations with Ministers as the Bill goes through.

Chair: Members may wish to work on this directly though, rather than leaving it to the government.

Agnes Tanoh: I want to speak about safe routes. For me, as someone seeking safety, there is no "safe" route. When I had to leave my country, I had a diplomatic passport – but I could not take a legal route. I had to go through a forest, passing by a lake, to reach another country. So, when people talk about "safe" routes, they should think about this. We do not have a choice when we flee a country. We do not have a choice.

Chair: I agree. I think what the government wants is a choice. So it can choose which refugees it finds attractive at a particular moment.

[From chat]: Alexa Moore: Not sure if it is been covered but just wanted to pop our briefing on issues particular to Northern Ireland & the land border in Ireland. My email is alexa@humanrightsconsortium.org if anyone wishes to discuss further. Illegal Migration Bill - Joint Briefing - Human Rights Consortium

12. Thanks and close – Chair

Thank you to everyone who has presented. There is a lot of work for everyone to do – including finalising the Second Reading briefing, working on draft amendments, and answering by way of supplementary briefing on points of detail as has been promised on a number of topics.

Thank you all for coming and look forward to being in touch with everyone in the group.