



Joint briefing on Amendment 5 to the Illegal Migration Bill for Report Stage in the House of Lords, June 2023 (compliance with international obligations)

1. The Illegal Migration Bill poses a singular and catastrophic threat, not only to the rights of migrants, including refugees and survivors of trafficking and modern slavery, but to the rule of law, the UK's continued ability to comply with its international obligations, and its very ability to provide international protection. Roundly condemned by cross-party parliamentarians, the UNHCR, the Council of Europe, numerous UN Special Rapporteurs, the governments of the devolved nations, the Children's Commissioner for England and Wales, faith leaders, and countless civil society groups, the Bill embodies the UK Government turning its back on those in search of safety, protection and a better life.
2. As a coalition of 57 organisations working across the UK, we reject the Illegal Migration Bill – and its fundamental assault on human rights – in its entirety.
We urge Parliamentarians to support Amendment 5 to mitigate its worst effects.

Amendment 5 in the names of Baroness Chakrabarti, Lord Paddick, Lord Ehernton, and Lord Kirkhope of Harrogate

Leave out Clause 1 and insert the following new Clause—

“Introduction

Nothing in this Act shall require any act or omission that conflicts with the obligations of the United Kingdom under—

- (a) the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (b) the 1951 UN Convention relating to the Status of Refugees including the Protocol to that Convention;
- (c) the 1954 and 1961 UN Conventions on the Reduction of Statelessness;
- (d) the 1989 UN Convention on the Rights of the Child;
- (e) the 2005 Council of Europe Convention on Action against Trafficking Human Beings.”

Briefing

3. **Clause 1 of the Illegal Migration Bill is an extreme, provocative, and highly unusual interpretative provision.** It requires any and all measures in the Bill, and secondary legislation made under it, to be interpreted and applied in light of the requirement placed

on the Home Secretary to remove people, including children and victims of trafficking. This is the case even where removal violates human rights and international law.

4. **Clause 1 also disapplies section 3 of the Human Rights Act 1998 (HRA).** Section 3 of the HRA places a duty on courts and public bodies to interpret laws where possible in ways that respect human rights – it is an essential tool for the legal protection of human rights in the UK.¹ Disapplying section 3 HRA for those affected by the Bill is an unprecedented and alarming proposal that would undermine the universality of human rights. It would create a two-tiered system of human rights protection, whereby laws will not be required to be read compatibly with human rights for people impacted by this Bill.
5. Amendment 5 would remove and replace clause 1. **Removing clause 1 is a necessary condition for making other positive amendments to the Bill.** If other amendments to the Bill are made without also removing clause 1, clause 1 will likely require such amendments to be read in a way which prioritises the Home Secretary’s powers of removal above all else. Clause 1 may thus render ineffective the intended positive impact of any such amendments.
6. **The replacement proposed for clause 1 will ensure that the Bill would not require the UK to renege on its international obligations** under the European Convention on Human Rights (ECHR), the Refugee Convention, the UN Conventions on Statelessness, the UN Convention on the Rights of the Child, and the Council of Europe Convention on Action against Trafficking. Established in the aftermath of the Second World War, these conventions are the cornerstone of our domestic and global protections for human rights and specifically for refugees, stateless people, children, and victims and survivors of trafficking.
7. **Compliance with international obligations is a fundamental requirement of any state seeking to uphold the rule of law.**² However, the UK Government has made a section 19(1)(b) HRA statement, stating that it cannot confirm if the Illegal Migration Bill is compatible with the ECHR. Numerous legal experts, parliamentary committees, and academics have further illustrated the myriad ways the Illegal Migration Bill will put the UK in breach of its international obligations under the conventions listed in Amendment 5 as well as many others as a result of its treatment of refugees, migrants, victims and survivors of trafficking and modern slavery, and British people,³ and its erosion of access to justice (including giving Ministers the power to ignore interim measures of the European Court of Human Rights). The UK signed up to the aforementioned international conventions freely, in recognition of its role in the international rules-based system and its responsibility to protect human rights. In supporting this Amendment, Parliament would be reaffirming this important, historic position.

¹ Paragraph 90, JCHR, Legislative Scrutiny: Illegal Migration Bill, 6 June 2023: <https://committees.parliament.uk/publications/40298/documents/196781/default/>

² Tom Bingham, *The Rule of Law* (Penguin, 2010).

³ PRCBC and Amnesty International, *Government Immigration Bill, Session 2022-23 (HL Bill 133) House of Lords Committee (June 2023) British citizenship*: <https://www.amnesty.org.uk/files/2023-06/Final%20Briefing%20-%20Lords%20Committee%20Citizenship%20Bill%20Final%20%20June%202023.pdf?VersionId=.NKHGKHiDSIWGI4xt5pcSZNFUV9Q2.rk>

8. It is important to note that simply reinstating section 3 HRA for the purpose of the Bill is not enough to mitigate the harms of clause 1. This is because, regardless of whether clause 1(5) is removed, the overriding express statutory purpose of removal in clause 1(1) would still apply, with the potential to result in widespread and severe violations of human rights and international law. Therefore, clause 1 must be removed in its entirety.

9. For the above reasons, we urge Parliamentarians to support Amendment 5.

This briefing is supported by:

Amnesty UK

Anti-Trafficking and Labour Exploitation Unit (ATLEU)

Article 39

Asylum Aid

Asylum Matters

Bail for Immigration Detainees (BID)

Become

British Institute of Human Rights (BIHR)

Children's Rights Alliance for England (CRAE)

The Children's Society

Committee on the Administration of Justice (CAJ)

Detention Action

East European Resource Centre (EERC)

ECPAT UK

Equally Ours

The End Violence Against Women Coalition (EVAW)

Fair Vote

Focus on Labour Exploitation (FLEX)

Freedom from Torture

Friends of the Earth

Helen Bamber Foundation

Here NI

Hope for Justice

House of Rainbow CIC

Human Rights Consortium Northern Ireland

Human Rights Consortium Scotland

Human Rights Watch

Immigration Law Practitioners Association (ILPA)

International Bar Association's Human Rights Institute (IBAHRI)

Joint Council for the Welfare of Immigrants (JCWI)

Just Fair

Justice

KIND UK

Latin American Women's Rights Service (LAWRS)

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Medical Justice

Migrants' Rights Network

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Muslim Council of Britain

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North Wales Regional Equality Network

Participation and the Practice of Rights (PPR)

The PILS Project

Prisoners' Advice Service

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Refugee and Migrant Forum of Essex & London (RAMFEL)

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Women for Refugee Women