

# Stopping the small boats

**I reproduce below the Home Secretary's letter to all MPs about the small boats legislation**

## **ILLEGAL MIGRATION BILL**

The Illegal Migration Bill will have its remaining Commons stages next Wednesday. The Bill will, with the other measures we are taking, deliver on our commitment to stop the boats. The Bill will send an unambiguous message as to our intent, that if you come to this country illegally you will not be able to stay, instead you will be detained and swiftly removed to your home country if safe, or another safe third country such as Rwanda.

Given the sensitivity and complexity of policy in this area, as reflected in our decision to introduce the Bill with various marker clauses, it was always our intention to draft iteratively with the benefit of ongoing legal, policy, and operational advice. Having completed further work and reflected on the debates in Committee, the Government has now tabled and supported amendments that we believe are necessary for the Bill to function as intended. I wanted to take this opportunity ahead of next Wednesday's debate to explain the key proposed changes.

### Safe and legal routes for those needing protection

The UK has a proud history of providing protection for those who need it through safe and legal routes. Since 2015, we have offered a safe and legal route to the UK for close to half a million people from all over the world via our global routes and our country-specific routes. This includes around 50,000 who have come to the UK on routes open to people from any country in the world, 25,000 on our country-specific routes for Afghanistan and 20,000 from Syria, over 100,000 Hong Kongers, and close to 200,000 from Ukraine.

Clause 53 enables Parliament to set the number of individuals admitted to the UK each year via safe and legal routes with regard to the capacity of local authorities and other local services to provide the necessary accommodation and support.

Having listened to the debate in Committee, I know many colleagues are keen for both greater clarity on our existing safe and legal routes and for quick progress toward the establishment of the regime envisaged by Clause 53.

The Government is therefore happy to support the amendments tabled by Tim Loughton MP which requires the Home Office to launch, within three months of Royal Assent, the consultation on the regulations to be made under clause 53(1) setting the maximum number of persons to be admitted each year using safe and legal routes. In addition, these amendments will require the Home Secretary to lay a report before Parliament within six months of Royal Assent setting out current and any proposed additional safe and legal routes for those in need of protection, to be implemented as soon as practicable and, in

any event, by the end of 2024.

### Unaccompanied children

Under the provisions of the Bill, the duty to make arrangements for removal does not apply to unaccompanied children who arrive illegally from safe countries until they reach adulthood, but there is a power to remove them. In line with current policy and existing legal powers, we have been clear that we only intend to exercise this power in very limited circumstances, principally for the purposes of family reunion or removal to a safe country of origin. I have tabled an amendment to make this clear by listing those circumstances on the face of the Bill. We need to be alert to the people smugglers changing their tactics to circumvent the Bill. Therefore, the amendments also provide a power, by regulations, to extend the circumstances in which it would be possible, on a case-by-case basis, to remove an unaccompanied child. Such regulations will be subject to the affirmative procedure so would need to be debated and approved by both Houses.

I recognise that at Committee stage there were particular concerns from colleagues about the application of the Bill's detention powers to unaccompanied children. While the power to detain children already exists in legislation, this amendment therefore also provides that unaccompanied children may only be detained for purposes prescribed in regulations made by the Secretary of State subject to the negative procedure, such as for the purposes of removal to effect a family reunion (as is currently the case) or for the purposes of age assessment. It also allows the Secretary of State to make regulations specifying time limits to be placed on the detention of unaccompanied children for the purpose of removal if required.

### Age assessments

Given that unaccompanied children will be treated differently to adults under the Bill, and the obvious safeguarding risks of adults purporting to be children being placed with children in the care system, it is important that we do not create an incentive for adults to make spurious claims that they are children so as to delay their removal. Between 2016 and September 2022, there were around 8000 asylum cases where age was disputed and an age assessment was conducted, with around half assessed to be adults.

Our age assessment process seeks to mitigate against the risk that adults are accommodated alongside children and ensure that genuine children can swiftly access the appropriate support. Where there are reasons to doubt age, immigration officers make an initial decision to determine whether an individual is significantly over 18. The threshold is set deliberately high in recognition of the difficulty in assessing age based on appearance and demeanour. Where there remains any doubt they are referred for a comprehensive assessment, and until this assessment is completed they will be accommodated as a child with all the appropriate safeguards. The comprehensive assessment includes social worker led interviews, which must adhere to standards that have been set out by the court. The Nationality and Borders Act 2022 provides powers to use scientific methods to broaden the evidence base available to social workers and for the decision maker to take

a refusal to consent to scientific methods as damaging to that person's credibility.

A new clause will introduce a regulation-making power which would, in certain circumstances, enable (contingent on a robust scientific justification) an automatic assumption of adulthood where an individual refuses to undergo scientific age assessment. For context, we understand that similar policies, are applied by some ECHR signatory countries including the Netherlands, Luxembourg and the Czech Republic.

Our amendment will also disapply the right of appeal for age assessments established in section 54 of the Nationality and Borders Act 2022 for those subject to the Bill's removal duty. Instead, those wishing to challenge a decision on age assessment will be able to judicially review the decision, but this challenge will be 'non-suspensive', which means it will be able to continue after the individual has been removed.

### Restricting interim relief

One of the core aims of the Bill is to prevent late and repeated legal challenges to removal. The Bill does this by providing for two kinds of suspensive claims – factual suspensive claims and serious harm suspensive claims – and by making it clear that all other legal challenges to removal, including by way of judicial review, are non-suspensive. Given this approach, courts would be unable to grant interim relief temporarily blocking removal pending a judgment on the substantive judicial review.

As Sir William Cash, Danny Kruger and others indicated in Committee, this intention could be made clearer on the face of the Bill. We are therefore pleased to support the new clause tabled by Danny Kruger which makes it clear that interim relief, including injunctions, is not available and the only way of preventing removal is by making a "suspensive claim" as defined in the Bill itself.

We have also tabled an amendment regarding interim measures of the European Court of Human Rights including under Rule 39 of its Rules of Court. Interim measures blocked the Government from removing individuals to Rwanda last summer. The Government is currently engaged in constructive dialogue with the Strasbourg Court on possible reforms to the process by which it considers requests for interim measures. The new clause will create a discretion for a Minister of the Crown to suspend the duty to remove a person where an interim measure has been indicated. That discretion must be exercised personally by a Minister of the Crown. This means the Minister may suspend removal in response to a Rule 39 interim measure but is not required to as a matter of UK law. The clause provides a broad discretion for the Minister to have regard to any factors when considering whether to disapply the duty. The clause provides a non-exhaustive list of considerations that the Minister may have regard to when considering the exercise of that discretion.

### Clarifying the meaning of "serious and irreversible harm"

One of the suspensive claims provided for in the Bill is where a person

claims that they would be at real risk of serious and irreversible harm were they to be removed to a specified third country. The Bill enables the Secretary of State, by regulations, to make provision about the meaning of "serious and irreversible harm". To limit the ability of individuals to delay removal with spurious claims we have tabled a new clause to augment this regulation-making power with substantive provision on the face of the Bill which sets out non-exhaustive and amendable lists of matters which would or would not constitute serious and irreversible harm. The amendments also make it clear that the serious and irreversible harm must be "imminent and foreseeable", which will bring the provision more closely into alignment with relevant Strasbourg practice.

#### Legal aid

It is important that those persons who received a removal notice under the Bill have access to appropriate legal services. A new clause provides for the provision of legal aid in relation to removal notices under the Bill. The new clause will bring certain civil legal services for recipients of removal notices under the Bill into the scope of legal aid, enabling them to access legal services in relation to the removal notice, without the application of the merits criteria. These provisions will help ensure appropriate access to justice is in place within the timeframes set by the Bill.

#### Foreign National Offenders

Under section 63 of the Nationality and Borders Act 2022, individuals with specific serious criminal convictions, terrorism offences and measures, or those who have been assessed as otherwise posing a national security risk to the UK, may not benefit from certain protections available to potential victims of modern slavery including receiving a recovery and reflection period. The public order disqualification currently applies to FNOs given a custodial sentence of 12 months or more.

The Bill includes a marker clause (clause 28(3) and (4)) to strengthen the application of the public order disqualification to FNOs. The amendments to clause 28 replace the marker clause so that there is a statutory presumption that the public order disqualification applies to FNOs sentenced to an immediate custodial sentence of any length.

#### Ban on re-entry, settlement and citizenship

Under the provisions of the Bill, those who meet the conditions for the duty to make arrangements for removal are also subject to permanent bans on re-entry, settlement and citizenship. As part of these provisions, the Bill provides the Secretary of State with powers to waive each of the bans in certain limited circumstances. Our amendments tighten the operation of these provisions by narrowing the circumstances in which a waiver of the bans can be sought or provided for. We are also providing for these clauses to come into force on Royal Assent.

#### New powers in relation to electronic devices and identity documents

Alongside the core provisions in the Bill, it is important to ensure that we have the necessary powers to tackle illegal migration more broadly. Mobile phones and other electronic devices may contain a wealth of information which can directly or indirectly facilitate the confirmation of a person's identity and an understanding of their activities. This can assist in determining a person's immigration status or right to be in the UK, as well as in developing the intelligence picture on illegal migration and providing evidence which could be used in criminal prosecutions.

We have therefore brought forward amendments to confer new powers on immigration officers to search for, seize and retain electronic devices (such as mobile phones) from illegal migrants, which appear to contain information relevant to the discharge of their functions, including but not limited to a criminal investigation.

We are also amending section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to put beyond doubt that a person's credibility should be damaged where they make an asylum or human rights claim but refuse to disclose information, such as a passcode, that would enable access to their mobile phone or other electronic device; or fail to produce, destroy, alter or dispose of any identity document without reasonable explanation, or produce a document which is not a valid identity document as if it were.

With the exception of the new clause on legal aid (which would apply to England and Wales), the amendments addressed in this letter would apply UK wide.

Minister Jenrick and I look forward to debating these issues further as the Bill progresses.

**Rt Hon Suella Braverman KC MP**