

'Illegal Migration' Bill

House of Lords, Second Reading

May 2023

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Key points

The BMA has serious concerns over the health and human rights implications of the Government's 'Illegal Migration' Bill and urges peers to oppose the Bill on medical and ethical grounds and to support amendments to remove its damaging clauses.

- As [warned by the EHRC](#), the Bill “risks breaching international obligations to protect human rights and exposing individuals to serious harm”.
- It would place a duty on the Secretary of State to remove people who have come to the UK seeking asylum by ‘illegal’ routes, including via small boats. That duty would apply whether a person makes a protection claim, human rights claim or as a victim of modern slavery or human trafficking. It will also remove almost all protections for victims of human trafficking and modern slavery with very limited exceptions. The duty to remove is engaged where four conditions are met¹ and the person entered or arrived in the UK on or after 7 March 2023.
- The Bill would give the Secretary of State a follow up duty to deny people arriving by ‘illegal’ routes access to the asylum system and to permanently deny them legal status in the UK, this includes leave to remain and citizenship. This is extended to children born in the UK to parents who fall within the scope of the bill. We are seriously concerned that when the bill goes through there will be no assessment of who is a genuine refugee and in need of protection.
- The Government has said the Bill would crack down on illegal boat operations, however, there is no evidence that such deterrence mechanisms reducing the number of people seeking asylum.
- Instead, the Bill seeks to further expand the Government’s offshoring programme that risks leaving people who are vulnerable, fleeing dangerous situations and who have often experienced trauma, subject to an environment where they are re-traumatised and unable to access the medical attention many desperately need.
- **The BMA, medical royal colleges, MSF, Medical Justice and more than 840 individual healthcare professionals have [signed an open letter to](#) Prime Minister Rishi Sunak expressing grave concerns about the health implications of the Government’s offshoring policy and calling on him to abandon it.**

¹ The person must have entered in breach of normal immigration laws; entered or arrived in the UK on or after 7 March 2023; travelled through a safe third country and requires leave to enter or remain but does not have it.

- **We are further concerned at new measures in the Bill that would allow ministers to ignore Rule 39 orders to stop deportations.**
- **The World Medical Association has criticised the Government's plans, [unanimously passing an emergency motion on Saturday \(22 April 2023\)](#) expressing its "grave concern" at the proposals.**
- It risks further harming already vulnerable and at-risk populations by giving the Secretary of State wide-ranging powers to decide where and for how long people arriving to the UK 'illegally' are detained. This would effectively place the indefinite detention of children, pregnant women or other vulnerable groups in institutional accommodation centres, such as [Manston](#), on a statutory basis, which, as the BMA has [previously raised](#) are associated with significant negative health implications.
- Beyond the ethical and medical arguments against the Bill, it is difficult to see how the Government anticipates the proposals will work. The UK immigration estate currently accommodates 600 people. In the absence of safe routes, or agreements in place to remove people at scale to a 'safe' third country, the Government will need to hugely expand capacity to accommodate the expected level of people arriving by 'illegal' means including by small boats. The Government has already announced plans to house 500 asylum seekers on a berthed vessel, the Bibby Stockholm whilst their asylum claims are processed.
- The Home Office should be concentrating their efforts on clearing the asylum application backlog instead of diverting resources away to push through this unworkable Bill which will cause immeasurable harm to vulnerable people seeking refuge in the UK.
- **The BMA supports the development of a single, fair, humane and effective refugee system, in keeping with our obligations under international humanitarian and human rights law, including rights to necessary and appropriate health care irrespective of an individual's route into the UK.**
- Given the significant equality and human rights implications of the Bill, it is further worrying that the Government is pushing the Bill through parliament at speed without the Home Office having published its impact assessment. This falls short of ensuring adequate parliamentary scrutiny and means MPs and peers are debating the Bill with inadequate information about its impact on people and public spending. The Government's programme for the Bill will also result in inadequate parliamentary scrutiny.

[Health implications of the Bill](#)

Those who arrive after the 7 March 2023 and fall within the scope of the Bill face being permanently denied access to the asylum system and denied legal status in the UK, such as leave to remain or citizenship.

The uncertainty created by the provisions of the Bill will hugely contribute to poor health.² Increasing the uncertainty under which people who have fled violence and trauma live will only increase their psychological distress, with the potential to create or compound underlying physical conditions linked to chronic stress, anxiety and depression.³ Clinicians who care for refugees and asylum seekers also sight concern about family members left behind as a substantial source of poor mental health, and reducing the already limited rights of refugees in this regard would be detrimental.⁴ The prospect of never gaining legal status in the UK and of removal will likely exacerbate all of the above.

Forced removal of asylum seekers arriving 'illegally' including by small boats

² Haroon, S. (2008) 'The Health Care Needs of Asylum Seekers', Faculty of Public Health, Briefing Statement; Scottish Refugee Council (2013) [In Search of Normality, Refugee Integration in Scotland](#)

³ British Red Cross (2017) [Can't stay. Can't go. Refused asylum seekers who cannot be returned](#)

⁴ All Party Parliamentary Group on Refugees (2017) [Refugees welcome? The experience of new refugees in the UK](#)

Clauses 2 to 9 of the Bill would place a duty on the Secretary of State to remove people who have come to the UK seeking asylum illegally, including via small boats. That duty would apply whether a person makes a protection claim, human rights claim or as a victim of modern slavery or human trafficking.

The BMA has repeatedly [raised concern](#) at proposals for the offshoring of asylum seekers and the impact it will have on the health, well-being and safety of already extremely vulnerable people. These concerns are further outlined in an [open letter](#) to Prime Minister Rishi Sunak, signed by the BMA, Royal Colleges, MSF, Medical Justice and more than 840 individual healthcare professionals expressing grave concerns about the health implications of the Government's offshoring policy and calling on him to abandon it.

The use of offshoring has previously led to asylum seekers being accommodated in countries where they are unable to access medical care they may need and has had a detrimental impact on the mental health of those removed. This is evident in problems created by Australia's offshoring of asylum seekers to countries like Manus Island in Papua New Guinea, which the UN has declared "violates the convention against torture" and the ICC prosecutor has described "unlawful".

The policy risks leaving people who are vulnerable, fleeing dangerous situations and who have often experienced trauma subject to further situations where they are re-traumatised and unable to access the medical attention they desperately need.

Furthermore, there is currently no agreement in place to return asylum seekers to a third country – the agreement with Rwanda will not be in place until legal challenges are finalised and even if the government is successful the first flights are not expected to take off until the end of 2023 and early 2024 and even then, the country has only agreed to take 200 asylum seekers. It is, therefore, difficult to see how the Government envisages the policy working without it resulting in adding to the current backlog of asylum applications, which currently sits at 160,000, and resulting in more people in detention centres in the UK. The current detention estate can accommodate 600 asylum seekers at any one time and implementing this bill will require huge expansion of the immigration detention estate.

The Government's policy of 'offshoring' people to 'safe' countries, as evidenced by the Rwanda initiative, is hugely expensive and ineffective. The Government has so far spent £140 million on the Rwanda scheme and it will cost an additional £12,000 per refugee for processing costs, yet the country has only agreed to accommodate 200 asylum seekers.

The Government has argued that the Bill and proposed measures will serve to deter people from crossing the Channel and seeking sanctuary in the UK. However, according to human rights and refugee groups, there is [evidence to suggest](#) that asylum deterrence policies do not impact numbers of asylum applications. Correspondingly, the measures outlined in the bill may not deter people from entering the UK via irregular routes but instead are likely to lead to an increase of people being detained. People seeking safety will turn to ever more dangerous and risky routes, which may place them at serious risk of injury, abuse, and potentially death. It is likely that given the volume of expected arrivals, asylum seekers will be released into the community and be at risk of destitution and exploitation.

Despite evidence of the policy's health implications and ineffectiveness, Government amendments made at Report Stage in the House of Commons would allow Minister to ignore Rule 39 orders and prevent ECHR judges injunctioning deportation flights unless the risk to migrants is deemed to present "real, imminent and foreseeable risk of serious and irreversible harm". This definition would exclude cases where harm or distress is caused to an individual due to a lower standard of healthcare being available in the third country, or lack of access to medical treatments they would have received in the UK.

The World Medical Association has [condemned](#) the Government's plans, warning in an emergency motion passed at its Council meeting Nairobi on Saturday that:

“Human Rights are only meaningful and effective if they are applied equally to everyone. Given the key role of the United Kingdom in drafting the European Convention on Human Rights, this creates a dangerous precedent that other nations might seek to follow.”

Detention

Clauses 10 to 14 make provision for the detention of people subject to removal in Clause 2 with no recourse to immigration bail or judicial review within the first 28 days. The Bill provides a much broader list of types of detention people can be held in and removes existing statutory time limits on detention of pregnant women and families with children.

As a result, the Bill would give the Secretary of State wide-ranging powers to decide where people arriving illegally, including by small boat, are detained and for how long. This would effectively place the indefinite detention of children, pregnant women or other vulnerable groups in institutional accommodation centres, such as [Manston](#), on a statutory basis, which, as the BMA has [previously raised](#) are associated with significant negative health implications. This type of accommodation is also inappropriate for people seeking asylum, many of whom will have experienced torture, exploitation and abuse, and are at risk of severe psychological distress and re-traumatisation.

The BMA [believes that](#) detention policies should be revised out to address the significant health effects indeterminate detention can have on individuals. The very opposite of what this Bill sets out. The Home Office should consider more humane means of monitoring individuals facing removal from the UK by replacing the routine use of detention with alternate, more humane means.

Detention should be reserved for those individuals who pose a threat to public order or safety. Where individuals are detained, there should be a clear limit on the length of time that they can be held in immigration detention, with a presumption that they are held for the shortest possible period.

Conversely, this Bill proposes extending indefinite detention to vulnerable people, including families with children, pregnant women, victims of torture and those with serious mental illness, for whom we know detention can be especially detrimental to the health of – these individuals should only ever be detained in exceptional circumstances. As the Royal College of Midwives has said: ‘The detention of pregnant asylum seekers increases the likelihood of stress, which can risk the health of the unborn baby.’ The BMA, alongside Women for Refugee Women, the Royal College of Midwives, RCOG and others is [calling on](#) peers to oppose proposals to remove the 72 hour time limit on the detention of pregnant women.

There are also significant safeguarding concerns over the use of hotel accommodation for unaccompanied children, with [recent reports](#) showing hundreds of children having gone missing from such centres since July 2021. The BMA notes Governments amendments passed in the House of Commons that limit powers to detain children so they can only be used in circumstances specified by the Secretary of State, and to give the Secretary of State powers to make regulations specifying time-limits on the detention of unaccompanied children. Despite these amendments, the Secretary of State would still have the power to determine when powers of detention should be used and to specify time-limits on detention via regulations. The risk remains that the Bill will result in an increase in the numbers of unaccompanied children in detention.

Unaccompanied children

The BMA echoes concerns expressed by the [Refugee and Migrant Children's Consortium](#) that the proposals contained in this Bill will have “severe consequences for the welfare and physical and mental health of

extremely vulnerable children who have fled conflict, persecution and other unimaginable harms and are in desperate need of support, stability and protection.”

As well as enabling the detention of unaccompanied children, the Bill would give powers to the Secretary of State to remove unaccompanied children from the UK. The Government has amended the Bill to limit the circumstances under which unaccompanied children can be removed from the UK, including for the purposes of family reunion or where removal is to a safe country of origin, where the person has not made a protection claim, or in other circumstances specified in regulations made by the Secretary of State. Whilst this goes some way to strengthening protections for unaccompanied children, the Bill would still see unaccompanied children removed from the UK and their remains scope for the Secretary to use regulations to further specify circumstances where children can be removed to unsafe countries.

The BMA is also concerned that this Bill coincides with plans to press ahead with imaging techniques for age assessments. We have [previously raised](#) concerns over the ethics and accuracy of the Home Office’s use of age assessments of unaccompanied asylum-seeking children. There is a real risk of children being misidentified as adults and a separate risk of children being removed from the UK to countries that are not safe.

The BMA is further concerned that the Bill has been amended so that a person who did not consent to use of a scientific method for an age assessment would be assumed to be an adult. This is concerning given that the Age Estimation Science Advisory Committee concluded that “there may be many reasons why an unaccompanied child asylum seeker may choose not to give consent for biological age assessment that is not linked to concealment of chronological age”. The proposals in the Bill would apply a pressure to take part in age assessments, impacting the voluntariness of participation, and could result in children being treated as adults.

Human rights implications

The BMA is profoundly concerned that the Home Secretary is unable to assert whether the Bill will be in keeping with the UK’s international obligations under the European Convention of Human Rights. This could include incompatibility with ECHR rights that cover life, torture, slavery, a fair trial, detention, family and private life, discrimination, and the right to a remedy.

Article 14 of the Universal Declaration of Human Rights (1948) provides that “everyone has the right to seek and enjoy in other countries asylum from persecution”. Building on these fundamental rights, the Refugee Convention (1951) does not require a person to claim asylum in the first safe country they reach – rather, they can apply to a country that is a signatory of the Convention. On this basis, those attempting to cross the Channel can legitimately claim asylum in the UK if they reach it.

The Bill seemingly undermines the refugee protection system and "[opts the UK out of the global asylum system as we know it](#)". The UN’s High Commissioner for Refugees has unequivocally condemned the “asylum ban” and has [warned](#) that the Bill is in clear breach of the refugee convention and would “undermine a longstanding humanitarian tradition of which the British people are rightly proud”.

Asylum seekers risk crossing the Channel because there are very few, if any, safe and lawful ways to reach the UK. For the most part, those fleeing persecution or violence are unlikely to hold proper documentation and restrictive border policies force refugees to resort to irregular migration channels. At least six out of ten (60%) of all those who made the dangerous channel crossing to the UK in small boats last year would be recognised as refugees through the asylum process.

Rights of appeal

The legislation effectively abolishes the asylum system – meaning applications from asylum seekers arriving via ‘illegal’ routes will be deemed ‘inadmissible’ - whether they would have previously met the evidential threshold for refugee status or not. Under the proposed system, shortly after arrival they will be issued with a notice of removal to a third country and under the provisions of the bill⁵ the only right to appeal will relate to the destination of removal. Applicants will only have 8 days to submit a claim and the Home Office has a further 4 days to make a decision. These timescales are wholly unrealistic for people who have endured traumatic journeys and will not provide enough time for them to gather compelling evidence. The Bill worryingly provides no right to legal advice for those wishing to put forward an appeal and there is no provision to provide such advice for those in detention. It is also concerning there is no mention of legal aid within the bill which means asylum seekers will be forced to navigate the process unrepresented which will inevitably lead to those with legitimate human rights claims to not be sent to a particular country falling through the gaps.

Asylum application backlog

The Home Office is dealing with an unprecedented backlog of asylum applications, with over 143,000⁶ people awaiting a decision with many of those having waited over six months and at risk of being pushed into destitution as a result of not being allowed to work⁷. If this Bill passes, the Home Office will have to identify those who arrived ‘illegally’ including by small boats into the UK on or after 7 March 2023. This parallel system will likely cause chaos.

Asylum applications are complex and the Home Office should be concentrating their efforts on clearing that backlog instead of diverting resources away to push through this unworkable Bill which will cause immeasurable harm to vulnerable people seeking refuge in the UK.

For further information on the BMA’s view, please contact:

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⁵ The applicant will have a limited time in which to bring a claim based on a real risk of serious and irreversible harm arising from their removal or a factual error being made <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/en/220262en.pdf>

⁶ In 2022, there were only 16,400 initial decisions made, with 117,400 applications outstanding, relating to 143,377 people. Of those individuals, 97,717 have been waiting more than six months for a decision. <https://freemovement.org.uk/asylum-backlog-hits-150000-and-net-migration-hits-500000/>

⁷ <https://commonslibrary.parliament.uk/research-briefings/sn01908/> - with permission granted in exceptional circumstances - Shortage occupation list after 12 months awaiting a decision.