

'Illegal Migration' Bill

House of Lords, Committee Stage

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 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.

We have serious concerns over the health and human rights implications of the Government's 'Illegal Migration' Bill and urge peers to oppose the Bill on medical and ethical grounds and to support amendments to remove its most damaging clauses:

- **Removal Duty** – Clause 2 places a duty on the Secretary of State to remove people who have come to the UK seeking asylum illegally, including via small boats. This would further expand the Government's offshoring programme risking 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 raising concern over the health implications of the Government's offshoring policy and calling on him to abandon 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 expressing its "grave concern" at the proposals.
- **The BMA encourages peers to support Lord German's motion to remove Clause 2 from the scope of the Bill.**
- **Detention** – The BMA believes the use of immigration detention should be revised out and that, where it is used, this should only be done with clear time limits on the length of detention. As it stands, the Bill 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.
- **The BMA supports Lord German's motion to remove Clause 10 from the Bill.**

- Short of the Clause being removed, we strongly urge peers to support [Amendments 59, 60, 64, 65, and 67](#) that would retain existing time and location restrictions on the detention of unaccompanied children, and [Amendment 63](#) that would retain existing limits on the detention of children.
- The BMA joins organisations including RCOG, RCM and Women for Refugee Women in [calling on peers to support Amendment 68](#) to reinstate the existing 72-hour time limit on the detention of pregnant women.
- The BMA also supports [Amendment 73](#) to ensure that children cannot be held in asylum accommodation at any time and place a limit on the length of time that an adult may be held in asylum accommodation.

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 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.

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.

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 a full 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](#)

Forced removal of asylum seekers arriving ‘illegally’ including by small boats

Clause 2 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 with very limited exceptions.

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”.

In the UK, clinicians have found that the prospect of removal to Rwanda has exacerbated the mental health conditions (including post-traumatic stress disorder and depression) of the men, women and age-disputed children threatened with removal, causing increased risks of self-harm and suicide. Pregnant women may be subject to removal under the Government's offshoring policy, putting at risk women's access to safe antenatal, intrapartum and postnatal care, and will ultimately lead to poorer outcomes for women and their babies.

The Government has made assurances around the level of healthcare it says will be available at detention centres in Rwanda, including that the country has agreed to *provide accommodation that is "adequate to ensure the health, security and wellbeing" of those relocated*. However, maternal mortality rates in Rwanda remain high at 259 deaths per 100,000 live births. This is higher than both the global maternal mortality rate estimated at 223 maternal deaths per 100,000 live births and the UK estimated figures with 10 maternal deaths for every 100,000 babies born.

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 their remains scope for the Secretary to use regulations to further specify circumstances where children can be removed to unsafe countries.

Despite evidence of the policy's health implications, Government amendments made at Report Stage in the House of Commons would allow the Secretary of State to ignore Rule 39 orders and prevent ECHR judges injunctioning deportation flights where relocation is deemed to present "real, imminent and foreseeable risk of serious and irreversible harm" – this could include where a person is at risk of persecution, torture or death due to a medical condition such as AIDS.

Instead, the Home Secretary will have the sole power to decide whether a threshold for 'serious and irreversible harm' has been met when deporting/detaining people. The World Medical Association has [condemned](#) the Government's plans, warning in an emergency motion passed 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 (72 hours), families with children (72 hours) and unaccompanied children (24 hours).

The BMA's 2017 report '[Locked up, locked out: health and human rights in immigration detention](#)' highlights the significant physical and mental health implications of immigration detention. It calls for the use of immigration detention to be phased out and replaced with alternate more humane means of monitoring individuals facing removal from the UK.

Detention can be especially detrimental to the health of more vulnerable individuals (including children, pregnant women, victims of torture, and those with serious mental illness) who should only be detained in exceptional circumstances. As long as the practice continues, however, we believe that there should be a

clear limit on the length of time that people can be held in detention, with a presumption that they are held for the shortest possible time.

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.

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.”

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 both families with children and unaccompanied children in detention.

Legal status and citizenship

Clauses 29 to 36 of the Bill 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 uncertainty created by the provisions of the Bill will hugely [contribute to poor health](#). 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. 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](#). The prospect of never gaining legal status in the UK and of removal will likely exacerbate all of the above.

Human rights implications

As [warned by the EHRC](#), the Bill “risks breaching international obligations to protect human rights and exposing individuals to serious harm”. 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 bill 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.

Asylum application backlog

The Home Office is dealing with an unprecedented backlog of asylum applications, with over 143,000¹ 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 work. 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.

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¹ 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/>