

'Illegal Migration' Bill

House of Lords, Committee Stage

June 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.

Summary

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.
- This concern is evident across the medical profession. BMA, medical royal colleges, MSF, Medical Justice and more than 840 individual healthcare professionals [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 any amendment that would remove the removal duty in its entirety or prevent it from applying to the most vulnerable. This includes Amendment 10 in the name of Baroness Butler-Sloss that would ensure a child could not be removed from the UK unless it was in their best interest to do so.**
- **We also support Baroness Chakrabati's amendment to remove Clause 53, which gives the Secretary of State the power to ignore Rule 39 orders, from the Bill.**
- **Detention** – The BMA believes the use of immigration detention should be phased 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 urges peers to support any amendments to remove provisions re. indefinite detention from the Bill, including Amendments 77, 78 and 79 in the name of Baroness Ludford and Lord Anderson that would remove Clause 11 and parts of Clause 12 with the effect of retaining the current [Hardinal Singh principles](#).**
- **Short of the Clauses being removed, we strongly urge peers to support Amendments 51, 57, 59 and 63 in the name of Conservative peer Baroness Mobarik to retain existing limits on the detention of unaccompanied children and children.**
- **We have joined with other leading medical organisations, [calling](#) for an emergency meeting with the Home Secretary and Health Secretary on the serious harms and risks to children’s health under the measures in the Bill.**
- **The BMA also joins organisations including RCOG, RCM and Women for Refugee Women in [calling on](#) peers to support Baroness Lister’s Amendment 65 to reinstate the existing 72-hour time limit on the detention of pregnant women.**
- **Age assessments** – The BMA has [previously raised concern](#) over the ethics of doctors being asked to carry out a medical procedure that poses a risk [from x-ray exposure] to individuals forced to undergo the procedure. We are concerned at provisions in the Bill that would result in the automatic assumption that a person who did not consent to use of a scientific method for an age assessment is an adult. This is troubling given that the Government’s own 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”, “in cases of refusal, the applicant should not be automatically considered an adult” and that: “the consequences of refusal should not be so disproportionately adverse as to bias the applicant towards consent”. The proposals in the Bill ignore this advice and would apply a pressure to take part in age assessments, impacting the voluntariness of participation.
- **In line with the Government’s own advisory Committee’s advice, the BMA would support any amendment to remove the automatic assumption that a person who refuses an age assessment is an adult.**
- **Human rights** – The human rights implications of the Bill have been widely condemned, including by the [ECHR](#), the [UN High Commissioner](#) for Refugees, the [World Medical Association](#) and most recently by Parliament’s own [Joint Committee on Human Rights](#), which concluded that “the Bill would result in the UK “turning its back on the vast majority of refugees, in breach of a number of binding international human rights obligations”. The UN Committee for the Rights of the Child’s has also [called for](#) urgent amendment of the Bill, and concluded that it “lacks consideration of the principle of the best interests of the child and would violate children’s rights under the Convention on the Rights of the Child”.
- **The BMA adds its voice to calls for the urgent repeal of all draft provisions that would have the effect of breaching international human rights obligations.**

Beyond the ethical and medical arguments against the Bill, it is difficult to see how the Government anticipates the proposals will work. 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 the UK’s accommodation estate 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 is already dealing with an unprecedented backlog of asylum applications, with over [161,000 people](#) awaiting a decision with many at risk of being pushed into destitution as a result of not being allowed to work. The Home Office should be concentrating its efforts on clearing the asylum 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.

We are further concerned that the Government is pushing the Bill through parliament at speed without having published adequate assessments of the impact of the Bill on vulnerable groups. This is particularly troubling given the Women and Equalities Committee's recent inquiry into equality and the asylum process concluded that the Home Office's "inadequate management of risks of harm to asylum seekers with protected characteristics, including women, LGBT people, children and disabled people", adding that "alarmingly, these risks will increase under the Government's recent and planned reforms".

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.

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.

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 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."

Pregnant women

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.

Unaccompanied children

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. Despite Government amendments to limit the circumstances under which unaccompanied children can be removed from the UK, the Secretary of State will retain the power to specify circumstances where children might be removed to unsafe countries.

The Women and Equalities Committee’s report on equality and the asylum process concludes that plans to detain and remove child asylum seekers must be abandoned, stating that “the risk of harm to children outweighs any perceived damage to the effectiveness of the Government’s policy agenda.”

The BMA has joined with other leading medical organisations, [calling](#) for an emergency meeting with the Home Secretary and Health Secretary on the serious harms and risks to children’s health under the measures in the Bill. We echo 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.” We further note the UN Committee for the Rights of the Child’s call for urgent amendment of the Bill including to prevent their removal and prolonged detention.

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 of vulnerable individuals

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. Whilst 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.

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 [reports](#) showing hundreds of children having gone missing from such centres since July 2021.

Commenting on detention measures within the Bill, Dr Jan Wise, BMA ethics committee chair, has said:

“Evidence is clear that immigration detention is unsafe for children. While no time in detention is safe, placing children in indefinite detention can have a catastrophic impact on their development and psychosocial health. Many of these children have already endured a traumatic migration journey and detention risks exacerbating any ongoing issues they may have. For medical and humanitarian reasons, it is essential that these children and young people are spared detention and provided with appropriate care and treatment.”

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.

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 cite 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.

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

Leah Miller, Senior Public Affairs Officer

E: lmiller@bma.org.uk