

WHAT DOES THE REFUGEE BAN BILL MEAN FOR PEOPLE'S HUMAN RIGHTS?

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Contact: cmiller@bihr.org.uk

On Monday 13th March, MPs came together to debate and cast their votes for the first time – for or against – the UK Government’s Illegal Migration Bill, better known as the Refugee Ban Bill. MPs voted by a majority of 62 that the Bill should pass to the next stage in the law-making process. [Find out how laws are made.](#)

As a human rights organisation at the forefront of supporting human rights practice for over twenty years, we at the British Institute of Human Rights (BIHR) have serious human rights concerns about the Bill.

- We are concerned about the democratic process, specifically the lack of time for scrutiny as we see the Bill being fast-tracked through Parliament under the guise of emergency legislation.
- We are concerned that the Home Secretary is not able to say that the provisions in the Bill are compatible with domestic and international human rights law.
- We are concerned that the impact of the above, should this Bill become law, will be a removal of vital human rights protections for people in the most vulnerable of situations.

This guide offers a plain language breakdown of our human rights concerns with the Refugee Ban Bill, including our concerns with the process, principles and a right-by-right analysis linked to specific clauses of the Bill.

This guide is for anyone who wants to empower themselves with human rights legal and practical knowledge in order to resist the Refugee Ban Bill including but not limited to:

- People, communities, and human rights campaigners; and
- MPs and Peers (and their staff) looking for plain language explanations of the impact of the Bill’s clauses on human rights law to refer to during the Parliamentary process.

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Part 1: Right-by-Right Analysis

The UK's Human Rights Act takes 16 of the fundamental human rights written into the European Convention on Human Rights and puts them into UK law. This means they can be enforced in UK courts rather than having to go the European Court of Human Rights. Under the Human Rights Act, all public bodies have a legal duty to comply with these 16 human rights. This means the people working for the government, including Home Office staff, as well as local officials like judges and social workers have a responsibility to respect, protect and fulfil all our human rights. This legal duty to comply with people's human rights is also on private bodies and charities that are contracted to provide services, such as transportation and accommodation. If they do not, the people affected can bring a legal case against them. In this guide, we refer to people with legal human rights duties as "the state".

Some of our human rights are absolute, meaning they can never be interfered with. Others are non-absolute, meaning they may be restricted in certain circumstances, but only if the state can show that the restriction is lawful (there is a law allowing it); legitimate (there is a genuine aim or reason for doing it); and proportionate (it's the least restrictive way to meet that aim).



Article 2
The right to life



Article 3
The right to be free from torture and inhuman or degrading treatment



Article 4
The right to be free from slavery and forced labour



Article 5
The right to liberty



Article 6
The right to a fair trial



Article 7
The right not to be punished for something that wasn't against the law when you did it



Article 8
The right to respect for private and family life, home and correspondence



Article 9
The right to freedom of thought, conscience and religion



Article 10
The right to freedom of expression



Article 11
The right to freedom of assembly and association



Article 12
The right to marry and start a family



Article 14
The right to be free from discrimination



Article 1, Protocol 1
The right to peaceful enjoyment of possessions



Article 2, Protocol 1
The right to education



Article 3, Protocol 1
The right to free elections



Article 1, Protocol 13
Abolition of the death penalty

Right to life (Article 2): Absolute Right



Article 2 of our Human Rights Act says the state must take reasonable steps to protect your life when it is at real and immediate risk. In the context of the Refugee Ban Bill, this right means that a person should not be removed from the UK if it would cause a risk of death (real and immediate risk) and the state must have a process for investigating claims of this kind (reasonable steps).

In its human rights memorandum (the document which addresses risks a new Bill presents to people's legally protected human rights), the Government says a risk to life would constitute an "exceptional circumstance" and would prevent people from being removed. However, the Home Secretary can declare someone's human rights claim inadmissible and there is no right to appeal (Clause 4(2) and (3), Page 4 – Line 37). If the person applies for judicial review (a type of legal case which looks at the lawfulness of a decision made by a public body), the Home Secretary still has to make arrangements for their removal regardless. This does not leave time or space for proper investigation into Home Secretary decisions. While the Bill's explanatory notes say judicial review claims will still be considered while the person is out of the country, this approach makes challenges incredibly impractical (which will make it harder to hold the Government accountable for its decisions) and could expose people to harm in the meantime.



By removing judicial oversight and preventing people from lodging their asylum claims, we believe the Bill risks breaching the Article 2 right to life.

Right to be free from torture and inhuman or degrading treatment ("serious harm") (Article 3): Absolute Right



Article 3 of our Human Rights Act says the state must protect you from inhuman or degrading treatment. This has been broadly defined by the ECtHR as "serious harm". For something to constitute serious harm, it must reach "a minimum level of severity." This means there's already a high bar on what constitutes inhuman and degrading treatment. This threshold is relative and depends on all the circumstances of the case, such as:



- how long the treatment went on for; and
- the physical and mental impact on that individual considering the person involved, thinking about their sex, age and state of health including trauma.

The new Refugee Ban Bill says people can only challenge removal from the UK if they provide “compelling evidence” of a “real risk of serious and irreversible harm” (Clause 40(5), Page 42 – Line 29) within seven days. However, the Bill says this is not a human rights claim (Clause 39, Page 41 – Line 18) and the Home Secretary gets to decide what is defined as “serious and irreversible harm” (Clause 38, Page 41 – Line 8). This leaves it open to the Home Secretary to set a higher threshold to suit the Government’s will rather than the legal test being assessed on an individual basis, taking into account all the factors involved in each case. This gives the Home Secretary the power to remove protection from people in desperate situations by letting Government decide what is “serious and irreversible harm”.

The Bill also limits the opportunity to challenge. Firstly, it says people can only appeal to the Upper Tribunal within seven days and the Tribunal has to give a decision in 23 working days (Clause 47(1), Page 48 – Line 30). This is an incredibly quick turnaround time, meaning many will miss the opportunity to challenge. Additionally, it seems more likely that mistakes will be made in dealing with the challenges that are brought. Despite this, the Bill says judicial review of Tribunal decisions is only allowed in very limited circumstances (Clause 48(3), Page 49, Line 39).



By making it harder to bring and review cases where people are at risk of serious harm, the Bill risks breaching the Article 3 right to be free from inhuman or degrading treatment.

Issues involving inhuman and degrading treatment can also arise in immigration detention – particularly where children and other vulnerable people such as pregnant women are concerned. For example, the ECtHR has previously found that the right to be free from inhuman and degrading treatment was breached when children were detained for a long time in conditions that were unsanitary, unorganised and unsafe.

The new Refugee Ban Bill widens the type of place the Home Secretary can use to detain people to “any place [she] considers appropriate” (Clause 11(6), Page 16 – Line 40). What a person deems “appropriate” is dependent on the worth and value that person assigns to what (and who) it will be used for. Given reports of the Home Office looking to use facilities such as empty military bases as asylum accommodation, and our concerns that the Government is not respecting the human rights of everyone equally, this therefore raises serious concerns about the standard of accommodation that will be used.



By giving the Home Secretary wide discretion on what type of accommodation to provide vulnerable people, the Bill risks putting people in inhuman or degrading conditions.

Right to be free from slavery or forced labour (Article 4): Absolute Right



Article 4 of our Human Rights Act says the state has to protect you from slavery or forced labour and investigate cases of trafficking. The Government has to have a legal framework in place to prevent trafficking and protect victims.

The UK's framework is the National Referral Mechanism (NRM). This is a system where specific public body workers and charities can refer people to a Home Office department. If the Home Office thinks the person might be a survivor of trafficking or slavery, they will receive social and financial support for a set period of time while the Home Office investigates their claim. They will not be made to leave the UK during this period. At the end of this period, the Home Office will decide whether they think the person is a survivor of trafficking or slavery.

The new Refugee Ban Bill says that even if the Home Office thinks somebody might be a survivor of trafficking, they can remove them out of the UK (Clause 21, Page 25 – Line 15). As Detention Taskforce says, this “will act to empower traffickers, who will have an additional weapon in their arsenal to coerce victims.”



By removing protection from survivors of slavery or forced labour, the Bill breaching the Government's obligations to protect people's Article 4 right to be free from forced labour or slavery. It is hard to see how withdrawal of protection for survivors of trafficking could be considered lawful.

The right to be free from slavery or forced labour also means states have to “assist victims in their physical, psychological and social recovery”.

The new Refugee Ban Bill says that people who are at risk of removal under the Bill will not get the normal assistance and support provided by the NRM – even if the Home Office thinks they might be a survivor of trafficking (Clause 22, Page 27 – Line 9). This discriminatorily prevents some survivors from accessing the welfare support they are entitled to, which is protected under the Article 1, Protocol 1 right to possessions.



By removing support from survivors of slavery or forced labour, the Bill risks breaching the Government's duty to support people under Article 4.



In real life: OOO's Story

Three young Nigerian women trafficked to the UK were abused and forced to work as unpaid servants in people's homes. The police failed to investigate their allegations for over two-and-a-half years, saying it had not been possible to commence an investigation because the three women had not cooperated. However, UK courts rejected this argument and said the police did "nothing to commence an effective investigation". The Court decided the police were liable for failing to investigate these credible reports of slavery or forced labour.

If enacted, the Refugee Ban Bill would enable the Government to remove survivors of trafficking like these women before they have had their claims heard. Victims of trafficking risk being silenced due to fear of removal, and this would grant even more power to their traffickers.

Right to liberty (Article 5): Non-Absolute Right



Article 5 of our Human Rights Act says you cannot be deprived of your freedom except for very good reason. When there is very good reason (for example to protect you or others from harm), that restriction on your liberty must still be lawful and proportionate. Previous legal cases have decided that someone is deprived of their liberty when they:



- are under continuous supervision and control;
- are not free to leave; and
- have not validly consented to the arrangements.

Arbitrary (groundless) immigration detention is unlawful. Article 5(1)(f) allows countries to detain people to prevent them unlawfully entering the country or with a view to removing them. However, UK courts have said the Home Office should only detain people if they intend to deport them and they should only be detained for a reasonable period of time. Without this objective, the detention risks becoming arbitrary and therefore unlawful.

The new Refugee Ban Bill says the Home Secretary can detain people who are liable to be removed under the Bill for any period she considers reasonably necessary to carry out a removal or decision (Clause 12(1)(b), Page 17 - Line 18). It also says she can detain people even where the removal will not be carried out for as long as she considers reasonably necessary to arrange their release (Clause 12(4) and (5), Page 18 - Line 35).



By leaving it up to the Home Secretary to decide how long it is "reasonable" to detain people for – even where there is no prospect of removing them – the Bill risks breaching the Article 5 right to liberty by approving arbitrary detention.

The right to liberty also says that if you're detained (forced to stay somewhere, like an Immigration Centre), you have the right to bring a case to court to decide if it's legal. While there's no absolute rule on how quickly you have to have access to a court when you're detained, UK courts have previously said, "it is impossible to say that the ECHR organs neither could have nor should have any concern about a 28 day detention without judicial review" – meaning that not being able to access a court for 28 days at least raises questions under the right to liberty.

The new Refugee Ban Bill prevents courts from granting bail to people detained under the Bill for **at least 28 days** (Clause 13(3)(b), Page 21 – Line 3). It prevents judicial review of detention decisions except where they're made in "bad faith" or so fundamentally wrong they breach natural justice (Clause 13(4)(3)(b), Page 21 – Line 31). This is an incredibly high bar to meet.

The Bill's human rights memorandum says people can instead rely on habeas corpus – an ancient type of legal proceeding which means anyone who is detained can ask a court to decide whether it's legal or not.

As the Immigration Law Practitioner's Association points out, "it is difficult to see how the writ of habeas corpus can assist – habeas corpus is traditionally a remedy for situations where there is no detention power; it does not generally assist where there is a power that is being used unlawfully."

The Bill also says the Home Secretary's detention decision "is final and is not liable to be questioned or set aside in any court" (Clause 13(4)(2), Page 21 – Line 24). This contradicts the idea that habeas corpus would be effective in any event.



By preventing bail or judicial review, the Bill risks removing important safeguards against potentially unlawful detentions.

The right to liberty also requires that there are additional safeguards to protect vulnerable people such as children and pregnant women. Detaining vulnerable people will breach the right to liberty if the same aim could be achieved through a less harmful measure.

The Bill says unaccompanied children (Clause 11(2)(d), Page 13 – Line 19) and family members (including children) of people caught by the Bill (Clause 11(6)(2B), Page 15 – Line 44) can be detained in the same way as everyone else.



By failing to take into account individual circumstances, the Bill risks breaching the right to liberty of people already in very vulnerable positions. This also raises issues under the right to be free from discrimination (Article 14) and the right to be free from inhuman or degrading treatment (Article 3).



In real life: JN's Story

JN is an Iranian national who was detained by the Home Office pending deportation. However, the Home Office was unable to deport him because of a lack of proper documentation. He was temporarily released from detention but was required to report regularly to immigration authorities. He was detained during one reporting visit and kept in detention for over a year, during which time he was diagnosed with "reactive depression". He then said he would sign the disclosure required for his return and go back to Iran if he was compensated for the period of detention but the Home Office refused. He applied for bail on multiple occasions but was refused. The court found that because the Home Office did not act with "reasonable diligence and expedition" to deport JN, his detention became unlawful as it couldn't be said that it was for the purposes of deporting him.

If the Refugee Ban Bill is enacted, the Home Secretary will have the power to determine how long it is "reasonable" to detain someone for, even if there is no prospect of deportation. People like JN could be held in detention indefinitely with no real purpose and no prospect of resolution despite the obvious impact on mental and physical health.

No punishment without law (Article 7): Absolute Right



Article 7 of our Human Rights Act says you can't be punished for committing a criminal offence if it wasn't a crime at the time you did it. For example, the Government couldn't pass a law today making it illegal to drive through a yellow light and announce that they're going to prosecute everyone who did so yesterday.

The Government put the duty to declare asylum claims "inadmissible" in the Nationality & Borders Act 2022 – a recent law that the Government said it was introducing to "tackle illegal migration, reform the asylum system and control the UK borders." The Nationality & Borders Act says people who pass through a "safe third country" and could reasonably have been expected to have made a claim there but didn't will not have their asylum claim heard in the UK and can be removed to "any safe third country".

The new Refugee Ban Bill is slightly different because it doesn't consider whether somebody could reasonably have been expected to have made a claim in a "safe third country" – only whether they've passed through it (Clause 2(4), Page 3 - Line 10). By considering whether somebody could have reasonably been expected to make a claim, the Nationality & Borders Act at least allows for some examination of a person's individual circumstances – because what is reasonable for one person is not reasonable for another. The Refugee Ban Bill gets rid of this option.

The Bill also makes a significant change by giving the Home Secretary power to remove partners, children, parents (if they are a child) and adult dependant relatives if they are not British or Irish citizens and do not have permission to be in the UK.

As the Immigration Law Practitioner’s Association points out, “the definition of family member (Clause 8) is far wider than in other immigration contexts – wider even than for criminal deportation of the most serious offenders”. This could mean people whose asylum or human rights claims have not been decided could be removed based on the way their relatives entered the country rather than on the basis of their own case.

Clause 2(3) (Page 3 – Line 8) says these new rules on admissibility and removal would apply to everyone who entered or arrived in the UK on or after 7th March 2023 – despite the Bill not being law. In fact, it had not even been published at the start of that date.



By changing the rules on admissibility and removal for people who have already entered the country, the Bill risks breaching the right to no punishment without law under Article 7.

The right to no punishment without law also says that you shouldn’t be subjected to a heavier punishment than was applicable at the time you committed a crime. For example, the maximum punishment for watching TV service programmes without a TV licence in England and Wales is currently a £1,000 fine. If the Government changes the law tomorrow to make the maximum fine £10,000, they can’t make you pay this for a programme you watched yesterday.

In the new Refugee Ban Bill, Clause 29(3) (Page 34 – Line 1) says that anybody who has ever met the conditions to be removed under the Bill and their family members (as defined above) can’t be given permission to enter the UK at any point in the future, except in very limited circumstances.



By imposing such a significant burden on people based on how they arrive in the UK, the Bill risks breaching the Article 7 right not to be given a heavier punishment than was applicable at the time an act was done.



In real life: The Nationality & Borders Act

In 2019, the Government issued an order that took away D’s citizenship but did not tell her. Instead, they put a note on her Home Office file (which she did not have access to) and said this was enough to constitute “written notice”. In 2021, the UK Supreme Court said this was unlawful. The Court also said any other previous orders that took away people’s citizenship in the same way were also unlawful.

Through Clause 9 of the Nationality & Borders Act, the Government tried to change the rules to say those orders were valid. This would have retroactively changed the law, so the House of Lords voted it down and the clause was taken out of the Bill.

The right to private and family life (Article 8): Non-Absolute Right



Article 8 of our Human Rights Act says the state must not interfere with your right to private and family life, home and correspondence except for a very good reason. It is particularly important that the state protects this right for children and other people in vulnerable positions.

The new Refugee Ban Bill removes the obligation to consult an Independent Family Returns Panel (a panel set up to advise on how to best protect children's welfare in removal cases) before removing or detaining families (Clause 14, Page 22, Line 12).

The Bill's human rights memorandum says, "P's family members may be removed along with P (clause 8) and so there is an argument that P's Article 8 rights in relation to family life may not be infringed." As well as completely failing to see the human impact of removing entire families from the UK, this clause takes no account of the fact that those family members may have been in the UK their whole lives. It also does not apply to family members who have citizenship or permission to stay.



By removing important means of safeguarding children and risking removal of family members, the Bill risks breaching the Article 8 right to family life.

The ECtHR has also said that "arbitrary denial of citizenship" can sometimes breach Article 8 because of the impact it has on a person's private life.

Clause 30(4) (Page 35 – Line 34) prevents children born in the UK on or after 7th March 2023 to a parent who is subject to removal under the Bill from registering as British citizens. Only one parent need meet the criteria – meaning the other might well legally acquire citizenship later but the child will still not be able to apply.



By denying children the chance to obtain citizenship based on how one of their parents entered the UK, the Bill risks breaching their right to private life and their right to be free from discrimination.

UK courts have previously found that when deciding if someone's Article 8 rights have been breached, the courts have to consider all the circumstances and decide what weight to give them. Despite the Government previously claiming otherwise, Article 8 can be breached even if there aren't any "exceptional circumstances".

The new Refugee Ban Bill says people can be removed to certain countries unless they have a human rights or protection claim and there are exceptional circumstances preventing their removal (Clause 5(4), Page 6 – Line 8).



By trying to reintroduce an “exceptional circumstances” test that has already been found inapplicable, the Bill risks breaching Article 8, causing confusion and creating more legal cases.



Not the first time

The Rights Removal Bill: The Government is already trying to remove the right to private and family life of people at risk of removal through its Rights Removal Bill. Not only does it completely remove the right to family life for people being deported, it sets the threshold incredibly high for that person’s children and dependents. [Read our briefing on what this would mean for people’s everyday lives.](#)



In real life: S's Story

S was brought to the UK from Jamaica at the age of four. Although he was entitled to register as a British citizen after 10 years, the fees were too high and his family could not afford it. He lived with his mother and helped her care for his younger siblings, acting as a father-figure to his younger brother.

In 2018, S was convicted of possession with intent to supply cannabis. He was sentenced to 15 months in prison and was going to be deported to Jamaica afterwards. However, the Court noted that S’s younger brother suffered while S was in prison and exhibited behavioural problems that were resolved when S returned home. S’s mother’s mental health had also suffered as a result of being separated from S and the Court found she would be unable for S’s younger siblings without his support.

The Court also heard that S had made significant efforts at rehabilitation, including stopping using cannabis, and he was considered to be at low risk of reoffending. On this basis, S’s deportation order was successfully overturned so he could stay in the UK with his family to protect his Article 8 right to private and family life.

If the Refugee Ban Bill is enacted, it will be much more difficult for people like S and his family to rely on the right to family life to prevent deportation and the resulting impact on family ties, mental health and children.

The right to freedom of thought, conscience and religion (Article 9): The manifestation of this right is non-absolute



The right to freedom of expression (Article 10): Non-Absolute Right



Article 9 of our Human Rights Act says that you have the absolute right to hold your own beliefs (the state must not interfere with what you believe) and that any interference with the way you act on those beliefs should be lawful, for a legitimate aim and proportionate. This means that we can believe whatever we want but if someone was to act on that belief in a way that abuses other people's rights, for example, the state could intervene.



Similarly, Article 10 of our Human Rights Act says that you have a right to express – or not express – opinions and the state should not intervene except for a very good reason.

In a case about Christian bakers who refused to make a cake that said "Support Gay Marriage", the UK Supreme Court said that business owners could "be entitled to refuse...to express a message with which they disagree". The bakers in this case believed that same-sex marriage was inconsistent with the Bible's teaching. In the same way that we cannot be forced to believe in something, we also cannot be forced to express a belief we don't hold.

The new Refugee Ban Bill says the Home Secretary can order the owners or agents of ships, planes, trains or vehicles to make arrangements to remove people from the UK (Clause 7(4) – Page 8, Line 37) and to detain them (Clause 7(8), Page 9 - Line 11). This raises serious concerns given that airlines have previously refused to conduct unethical deportation flights.



By forcing transport owners to participate in removals and deportation, the Bill risks breaching their rights to freedom of thought and freedom of expression.

Right to an effective remedy (Article 13): Absolute Right



Article 13 of the European Convention on Human Rights says you should be able to get justice when your human rights are put at risk. Unlike the right to a fair trial (Article 6), Article 13 does apply to asylum procedures. In particular, it applies to whether countries' legal processes respect human rights or put people at risk of refoulement (when a person seeking asylum is returned to a country where they are likely to be subject to persecution).

The new Refugee Ban Bill says that people who meet the criteria will have their asylum claims declared “inadmissible” rather than “refused” – because there is no way to appeal an inadmissibility decision (Clause 4(2) and (3), Page 4 – Line 37). It also says that the Home Secretary has to make arrangements to remove people even if they have made an application for judicial review (Clause 4(1)(d), Page 4 – Line 35). This will likely make it harder for people to get justice in UK courts, and it is hard to see how it could be intended to do so.



By reducing the ways people can have their case heard in UK courts, the Bill risks breaching the right to an effective remedy.



Not the first time

The Rights Removal Bill: The Government is already trying to make it harder for people to bring human rights claims through its Rights Removal Bill, which would introduce an unnecessary and obstructive “permission stage” before a person could even bring a case to court. [Read our Need-to-Know explaining how this would impact people across the UK.](#)

To avoid refoulement, the Council of Europe says [applicants should be given a chance to demonstrate that a third country is not safe in their particular case.](#)

The new Refugee Ban Bill says people from certain countries have to meet a higher bar to prevent them being removed (Clause 5(4), Page 6 – Line 8). This could discriminate against some people based on their nationality by putting them at higher risk of refoulement.

As pointed out by Luke Pollard MP during [the Bill’s introduction](#) and Joanna Cherry MP at the [Second Reading](#), LGBT+ people are not protected from discrimination in Rwanda, which has been designated a “safe third country” by the UK. The Home Secretary relied on the High Court’s recent judgment that the Rwanda policy is legal to suggest this is not a concern (although this case is currently [subject to appeal](#)). This ignores the fact the Court said, “[all relevant individual circumstances must also be considered](#)”. The case did not deal with anyone making a claim for protection based on gender identity or sexuality so it can’t provide an answer on this point. It did, however, find that human rights were breached by a number of the individual decisions.



By requiring people to demonstrate there are “exceptional circumstances” that prevent them being removed to certain countries, the Bill risks subjecting people to further persecution.

The right to be free from discrimination (Article 14): Non-Absolute Right



Article 14 of our Human Rights Act says the state should not treat your human rights with less respect than other people's in the same situation because of something about you like a characteristic or status. Any difference in treatment has to be for a very good reason.

The new Refugee Ban Bill says the Home Office should treat people unfavourably because of how they arrived in the UK (Clause 2, Page 2 – Line 31). This is likely to negatively impact their right to private and family life (Article 8). As well as undermining the key principle of universality (that human rights belong to everyone), this discriminates against people in very vulnerable situations. While in the Rwanda case the Court said it's justifiable to discriminate against people based on how they arrived in the UK, it did so on the assumption that any removal decisions will still be consistent with a person's human rights. As seen throughout this guide, there are many reasons to believe the new Refugee Ban Bill is not consistent with human rights.

The Bill also says that the Home Office can remove unaccompanied children seeking asylum from the Local Authority's care and put them in designated accommodation (Clause 16(5), Page 23 – Line 14). This discriminates against children based on how they arrived in the UK and denies children who have likely been through serious trauma important safeguards and protections. As well as impacting their right to private and family life, being out of local authority care could negatively impact their right to education (Article 2, Protocol 1) in light of reports of the Home Office failing to arrange school places for children seeking asylum.



By segregating adults and children from their peers based on how they arrived in the UK, the Bill risks breaching their right to be free from discrimination.

The right to non-discrimination also says the state should treat you differently to other people when treating everyone the same would lead to a worse outcome for you. For example, a school might have a rule that no-one can wear jewellery in classes, but this could be particularly upsetting for somebody who wears a cross necklace as part of their religion. The school might decide not to apply the rule to that person because it would have a particularly bad impact on them compared to other people. However, because the right to non-discrimination is non-absolute, public bodies can interfere with it if it's the only way to achieve a legitimate aim (such as making everyone remove their jewellery for sports classes for safety reasons).

The new Refugee Ban Bill applies detention powers to children in the same way as adults (Clause 11(2)(d), Page 13 – Line 19, and Clause 11(6)(2B), Page 15 – Line 44).



By failing to recognise the particular vulnerability of children and instead treating them like adults, the Bill puts children at particular risk of harm.

The right to be free from discrimination also covers discrimination by association (where someone is treated unfairly based on their connection to someone else with a certain characteristic).

The new Refugee Ban Bill allows the Home Secretary to detain (Clause 11(6)(2B), Page 15 – Line 44) and remove (Clause 8, Page 9 – List 26) people based on how their partner, parent (if they're a child) or minor child arrived in the UK. This astounding and wide-reaching power denies people the chance to have their own case heard – instead judging them on the actions of family members that may have taken place even before they were born.



Not the first time

The Rights Removal Bill: The Government is already trying to create a two-tier system of human rights through its Rights Removal Bill by tying the damages people receive for human rights breaches to their “conduct”. [Read more about how this undermines the fundamental principle of universal human rights in our Need-to-Know.](#)



In real life: SK's Story

SK came to the UK with a three-year-old son and was allowed to stay as a refugee. She then got pregnant and applied for the Sure Start Maternity Grant (a £500 payment to help with the costs of a new baby). She was refused because the grant was only available to people having their first child, on the assumption that people having their second child would already have baby items. There are a few exceptions to this rule, but SK did not fit into any of them. However, SK argued that refugees who had a child before they came to the UK are unlikely to have brought baby items with them. They are in a different situation to most pregnant women, so not making an exception for them was a breach of Article 14 as it was a discriminatory interference with their Article 8 right to family life. The Court agreed and women in SK's situation can now claim the grant.

The new Refugee Ban Bill fails to respect the fact that women and children targeted by the Bill are particularly vulnerable and should therefore be treated differently.

Part 2: Process & Principles

Here we examine the broader human rights issues raised by the Refugee Ban Bill. These concerns don't fall under any specific right but rather under key sections of the Human Rights Act and the general principles required of human rights law, such as accountability and universality.



BIHR's human rights concern:

The Government admits its Refugee Ban Bill does not meet the test of being compatible with people's human rights (Section 19 Statement)

Section 19 of our Human Rights Act says Ministers introducing a law must either make a statement that it (a) complies with people's legally protected human rights or (b) the Government cannot say it complies with human rights but wish to proceed anyway. As explained by the Joint Committee on Human Rights, this "drive[s] a process within government that ensures human rights concerns are taken seriously."

The new Refugee Ban Bill has a Section 19(1)(b) statement – an extraordinary choice that has only been made once before when introducing the Communications Act 2003 (which banned broadcast political advertising).



The Government has said, "Our approach is robust and novel" but actually the approach takes us backwards and damages the UK's international reputation. If the Bill is not compatible with the ECHR, it's not compatible with all the UK's international obligations.



Not the first time

The Rights Removal Bill: The Government is already trying to get rid of Section 19 statements for all laws through its Rights Removal Bill – despite advice from its own Independent Human Rights Act Review Panel that Section 19 statements have "had a major, transformational and beneficial effect on the practice of Government and Parliament in taking account of human rights issues when preparing and passing legislation".

BIHR's human rights concern:

The Bill undermines the fundamental principle of universality (Section 3, Human Rights Act)

Section 3 of our Human Rights Act says all UK laws must be applied in a way that respects human rights wherever possible. Section 3 doesn't allow UK courts to change the meaning of the law being looked at; they can only interpret laws in a rights-respecting way if they can do so while respecting Parliament's "intention".

This duty applies to courts but also public bodies, like the Home Office. This helps other laws work well in practice and makes sure our laws continue to respect human rights as society changes. It also ensures the fundamental principle of universality (that human rights apply to us all equally) is protected in situations where we might find ourselves at our most vulnerable.

The new Refugee Ban Bill disapplies Section 3 of our Human Rights Act to one group of people, based on how they arrived in the UK (Clause 1(5), Page 2 – Line 28). **This is not how human rights work; no government gets to pick and choose who is deserving of rights and who is not.**

The Government has not explained why, if the Bill complies with the UK's international obligations (which include compliance with human rights), it would object to the Bill being interpreted compatibly with human rights.



By saying this law, unlike all others, doesn't have to comply with human rights law, the Bill would lead to uncertainty for public body workers and inequality for the people it affects.



"[T]he Human Rights Act has given us a legal, objective, decision making framework, provided by no other law or policy, to ensure rights are protected and people and staff are safe" – Sarah, an NHS worker

Section 3 also means people are able to challenge decisions that breach human rights, such as through judicial review. The European Court of Human Rights (ECtHR) found "insufficient powers of judicial review exercised by the courts" may violate the Article 13 right to an effective remedy.

If there is no obligation to interpret the Bill in-line with human rights, people cannot bring a legal challenge on this basis. This eliminates a critical way people can hold the state accountable in the UK and would create a disparity between the ways rights are protected in the UK versus at the European Court of Human Rights (ECtHR).



The Government has said that the "the disapplication of Section 3 of the Human Rights Act...sends a message to the judiciary" but what it actually does it stop people from bringing challenges in UK courts. The Bill would weaken accountability of the Government for human rights violations, and lead to more people having to go to the ECtHR because they're unable to bring challenges in UK courts.



Not the first time

The Rights Removal Bill: The Government is already trying to get rid of Section 3 of the Human Rights Act for everybody through its Rights Removal Bill. [Read our briefing on why this section matters for people in their everyday lives.](#)



In real life: CSM's Story

CSM contracted HIV as a child and needs to take antiretroviral medications every day. He claimed asylum in the UK in 2019 and attended a screening interview, after which he was detained for 22 days. Staff wanted to take him to an Immigration Removal Centre straight after the interview but couldn't take him there unless he had his HIV medication with him. They were unable to get medication until the next day and CSM wasn't given it until two days later. The Court found that the delay in getting CSM his medication and the lack of staff training and guidance on working with detainees with HIV breached the Home Office's duties.

If the Refugee Ban Bill was in place, the Home Office could have said they didn't have to apply their detention powers in ways that are compatible with human rights. This would have made it hard for CSM to bring a judicial review claim and important steps may not have been taken to improve staff awareness and understanding of HIV medication.



BIHR's human rights concern:

The Bill sets conditions on how the UK will decide when to comply with its international obligations (Rule 39)

Rule 39 sets out the power of the ECtHR to make interim measures ordering countries to take (or not take) certain steps while a legal case is ongoing. This is not written into the ECHR itself but in the Rules of Court. When the UK signed up to the Convention, it agreed to follow these rules to make sure the ECtHR can function as intended.

The ECtHR has confirmed countries signed up to the Convention must comply with interim measures unless there is “an objective impediment which prevented compliance and...the Government took all reasonable steps to remove the impediment and to keep the Court informed”.

In 2022, the ECtHR issued interim measures saying the UK Government could not send people to Rwanda until UK courts had decided whether the policy is legal. Contrary to the Government’s rhetoric, the ECtHR was acting to protect the UK’s rule of law and ensure the Government did not remove people whilst UK courts were deciding the lawfulness of the policy itself. To allow such removals in the middle of people’s cases clearly prevents justice from being done.

The new Refugee Ban Bill says the Home Secretary can set conditions for when the UK will follow interim measures including (but not limited to) when making removal decisions (Clause 49(1), Page 50 – Line 16). Domestic legislation, like this Bill, can’t change international law, which is agreed to by a number of countries through organisations like the Council of Europe. The UK Government cannot say that it will remain within a system of human rights protection like the Convention whilst also unilaterally changing the rules on when it will and will not comply with those international obligations.



By ignoring interim measures, the Bill risks setting a precedent for other countries to do the same and facing backlash from the ECtHR.

The decision to order interim measures is not based on the likelihood of a person winning their case but on whether there is risk of “serious and irreversible harm”. This typically means a risk to life or a risk of inhuman or degrading treatment but can in some cases involve a risk to the right to a fair trial, a risk to private and family life or a risk to freedom of expression.

The Refugee Ban Bill leaves it up to the Home Secretary to define “serious and irreversible harm” (Clause 38, Page 41 – Line 8). This could mean the UK has a different definition (and fewer protections), which may mean more people are likely to have to take their case to the ECtHR to get justice.



By ignoring interim measures, the Bill risks people being subject to irreversible harm without a fair hearing. By separating the UK’s definition of serious harm from the ECtHR’s, it risks jeopardising the UK’s reputation and relationship with other countries signed up to the Convention.



Not the first time

The Rights Removal Bill: The Government is already trying to avoid its responsibility to follow interim measures through its Rights Removal Bill, which tells courts not to have any regard to them. Given that the Government never consulted on this issue, the Joint Committee on Human Rights asked whether this clause was introduced in reaction to the Rwanda case and shows “a disregard for our international obligations”.



In real life: Shaun & Aiden's Story

Shaun Pinner and Aiden Aslin are British citizens and were members of the Armed Forces of Ukraine. They surrendered to Russian forces and were sentenced to death. The ECtHR issued interim measures saying the death penalty should not be carried out and that the Russian Government provide information to show what steps had been taken to protect Shaun and Aiden's human rights. The ECtHR said there was an ongoing legal case between Russia and Ukraine and both had to refrain from taking actions such as military action while it was ongoing.

Shaun and Aiden have since been released and have returned home to their family and friends in the UK.

The Refugee Ban Bill risks undermining respect for essential measures like these – not just in the UK but in other states signed up to the ECHR. It could mean people like Aiden and Shaun are denied this life-saving protection.



BIHR's human rights concern:

The Bill sets the UK up for deliberate collision with the ECtHR

In 2022, just four judgments by the ECtHR concerned the UK and two found violations. By describing the ECtHR as “interventionist” and introducing this Bill that undermines important shared principles, the Home Secretary is setting the UK on an unnecessary but deliberate collision course with the ECtHR that could damage the UK's relationship and reputation with the Council of Europe.

The Government seems to be relying on the margin of appreciation (where the ECtHR recognises each country's flexibility to decide how best to protect human rights in their own laws, particularly where there isn't a consensus across countries within the Convention) to sanction both this and its Rights Removal Bill. However, this does not mean the UK Government can fundamentally change the legal obligations set out in the Convention; **this is not how international obligations work and will only lead to judgments against the UK by the ECtHR.**

The ECtHR plays a vital role in upholding the rule of law and ensuring that nobody, including the Government, is above the law. As Lord Neuberger, former President of the UK Supreme Court, said, "unless a right to...protection against abuses or excesses of the state...is enforceable, it might as well not exist."



By removing routes of challenge and expanding its own authority, the Bill undermines the rule of law by awarding itself power at the expense of the people.



BIHR's human rights concern:

The Government will not allow proper scrutiny of the Bill

The Bill passed its Second Reading on Monday 13th March 2023 and looks set to be fast-tracked through the Parliamentary process to becoming law. Find out how laws are made.

Before Bills are presented to Parliament, there is an option for 'pre-legislative scrutiny'. This is when Parliamentary committees look at a draft of the bill, think about how it will work and what its impact will be, and allow for changes to be made before it is formally 'introduced' to Parliament. There can also be the opportunity for open public discussion and consultation on what the Bill says.

The Bill would then ordinarily be presented to a Public Bill Committee who would have extensive opportunity to scrutinise the Bill and take evidence from the public.

The Government has not allowed for pre-legislative scrutiny and chosen to present its new Refugee Ban Bill to a Committee of the Whole House with just three days to push the Bill through the House of Commons and no accompanying impact assessment.

This is of serious concern to the democratic process. There must be appropriate time to scrutinise the human rights risks of new legislation. This is especially important when laws, like this one, are seen as emergency legislation. We are now all too plainly seeing the devastating impact on people and families across the UK of the rushed emergency Coronavirus legislation this time three years ago.

As well as failing to submit the Bill for pre-legislative scrutiny, the Government has failed to consider the will of the public; there has been no public consultation on the provisions of this Bill.



By rushing its new Refugee Ban Bill through Parliament without time for proper scrutiny, the Government is attempting to dodge the democratic process.



Not the first time

The Rights Removal Bill: The Government similarly evaded legislative scrutiny of its Rights Removal Bill and disregarded the responses to its Consultation that showed no public support. [Read our briefing on our concerns with the inaccessible and opaque Human Rights Act reform process.](#)



Find out more and take action

- The JCHR is conducting legislative scrutiny of the Refugee Ban Bill. [The Committee's call for evidence is now open and you can submit your views to it by 6 April 2023 here.](#)
- **Get in touch with your MP and tell them your views on the Bill. [Find out who your MP is and their email address here.](#)**
- **Find out more about the Bill on [Amnesty UK](#) and [Refugee Action's](#) websites.**

BIHR is not responsible for the content of external sites or organisations.

Part 3: Human Rights Recommendations

Here we set out what we believe needs to happen to address our serious human rights concerns with the Refugee Ban Bill.

- Human rights require accountability. The Bill must be given proper scrutiny and not rushed through the law-making process.
- For human rights to be real in practice, laws must be compatible with human rights on paper. This Bill must not go ahead without a statement of compatibility with human rights.
- The UK cannot pick and choose which international human rights obligations to comply with and when. The Bill must not allow the UK to ignore interim measures.
- All UK laws must be applied in a way that respects human rights. The Bill must not discriminatorily disapply Section 3 of the Human Rights Act to a group of people based on how they arrived in the UK
- Deciding what constitutes inhuman and degrading treatment should take into account each individual's circumstances. The Bill must not let the Home Secretary unilaterally define "serious and irreversible harm".
- Human rights are there to protect all of us, especially those in vulnerable situations. The Bill must not remove protection and support for survivors of trafficking.
- The right to private and family life is there to protect us, not to be used against us. The Bill must not allow the discriminatory removal and detention of people's family members.
- When things go wrong and rights are not upheld, victims require an effective remedy. The Bill must not prevent the UK from accepting human rights claims and the Bill must not limit judicial review.
- Any restriction on a person's right to liberty must be lawful, for a legitimate aim and proportionate. The Bill must not let the Home Secretary arbitrarily detain people without bail, including children.

Glossary

European Convention on Human Rights (ECHR): International treaty the UK helped create, referred to in the Refugee Ban Bill as the “Human Rights Convention”.

European Court of Human Rights (ECtHR): Court responsible for upholding the ECHR with judges from every Member State (including the UK). It can only hear cases that have exhausted all options in national courts.

(Writ of) Habeas corpus: A petition to have your case heard by a court if you think the state has illegally detained you. It goes back to 1166 and, while still in the rules of court, it is rarely used today.

Human Rights Act (HRA): The UK law protecting 16 rights in the ECHR so cases can be heard in UK courts.

Human rights memorandum / ECHR memorandum: An explanation (sometimes included in the Explanatory Notes) of how the Minister has decided whether a Bill respects human rights.

Judicial review: When a court decides if an act or decision by a public body was lawful.

National Referral Mechanism (NRM): The framework under which people can receive support if the Home Office thinks they might be a survivor of trafficking (known as a “positive reasonable grounds decision”)

Rights Removal Bill: The Justice Secretary’s “Bill of Rights” that would get rid of the Human Rights Act and make it harder to enforce rights in the UK. Second Reading has been postponed but the Bill remains on the timetable.

Removal (versus deportation): Removal is when somebody who does not have leave to remain in the UK is forced to leave the country. This includes where somebody has not committed any crimes. Deportation is a specific type of removal of somebody who is not a British citizen and has been convicted of a criminal offence.

Rwanda policy: Agreement for the UK to send people seeking asylum to Rwanda to have their claim processed there if they have: made a claim in another country; they were in a safe country and there were no “exceptional circumstances” preventing them making a claim there; or they have a connection to another country and it would be “reasonable” to return them there.

Rule 39 / Interim Measures: A rules of the ECtHR that the UK has agreed to follow. The ECtHR can tell states to take or not take an action while waiting for a legal case to finish to avoid “irreversible harm” in the meantime.

Section 19 (S19) statement: A statement saying whether a suggested law complies with human rights. Every Government Bill has to have a Section 19 statement under the Human Rights Act.

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