

# Illegal Migration Bill

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Clause 1**

LORD HOPE OF CRAIGHEAD

Clause 1, page 1, line 7, at end insert –

“(za) defines “illegal” and “unlawful” migration for the purpose of this Act;”

***Member's explanatory statement***

*This amendment, and another to Clause 2 in the name of Lord Hope of Craighead, seek, in the interests of legal certainty, to provide a definition of what amounts to illegal migration at the outset of this Bill.*

**Clause 2**

LORD HOPE OF CRAIGHEAD

Clause 2, page 2, line 40, at end insert –

“(A1) References to “unlawful” or “illegal” migration in this Act mean migration by a person that meets the four conditions in this section.”

BARONESS HAMWEE

Clause 2, page 3, line 41, at end insert –

“(7A) Where the Secretary of State has decided that a person meets the four conditions in this section, that person must be given notice in writing by the Secretary of State or an immigration officer stating –

- (a) that the Secretary of State has a duty to remove them, and
- (b) details of any evidence relied upon by the Secretary of State that the person meets the four conditions.”

***Member's explanatory statement***

*This amendment would require the Secretary of State or an Immigration Officer to inform people when it has been decided that the duty to remove applies to them. This would include providing details of any evidence relied upon to make that decision.*

**Clause 3**

BARONESS HAMWEE

Clause 3, page 5, line 14, at end insert –

- “(6A) The Secretary of State must by regulations make provision for exceptions where the Secretary of State has been unable to comply with the duty to make arrangements for the removal of a person under section 2(1) either –
- (a) within six months after the person’s entry or arrival in the United Kingdom, or,
  - (b) where the person has ceased to be an unaccompanied child, within six months after the person has ceased to be an unaccompanied child.”

***Member's explanatory statement***

*This probing amendment would require the Secretary of State to make an exception for anyone previously subject to the duty to remove from the duty if the Secretary of State has been unable to make arrangements for removal within 6 months. This would prevent the Secretary of State from having failed to comply with the duty.*

**Clause 4**LORD EHERTON  
LORD CARLILE OF BERRIEW

Clause 4, page 6, line 6, leave out paragraph (d)

***Member's explanatory statement***

*This amendment is consequential to the amendment to clause 1 tabled by Baroness Chakrabati and would enable an application for judicial review to be made while the applicant is in the UK regarding an act or omission in conflict with the obligations specified there.*

LORD HOPE OF CRAIGHEAD  
LORD ANDERSON OF IPSWICH

Clause 4, page 6, line 8, leave out subsections (2) and (3)

***Member's explanatory statement***

*This amendment seeks to explore the reasoning behind subsections (2) and (3), which have significant implications for the rule of law.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Clause 4, page 6, line 26, leave out subsection (6)

***Member's explanatory statement***

*This amendment is consequential to the amendment removing subsection 4(1)(d).*

**Clause 5**

BARONESS HAMWEE

Clause 5, page 7, line 20, leave out paragraph (b)

***Member's explanatory statement***

*This amendment removes a subjective power of the Secretary of State to determine that there are "exceptional circumstances" to prevent a removal.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 5, page 8, line 13, at end insert –

- “(10A) Where a country or territory in Schedule 1 is qualified by a description of person, P may not be removed to that country or territory if P falls outside the description of persons who may be removed there.
- (10B) A description for the purposes of subsection (10A) may refer to one or more of the matters in section 6(3).”

***Member's explanatory statement***

*These amendments to clause 5 are to be read with the other amendments tabled to Schedule 1 in the name of Lord Etherton, which exclude from a listed country or territory persons of a certain description who would have a well founded fear of persecution in the territory or country (the legal test laid down in HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31, [2011] 1AC 596).*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 5, page 8, line 15, leave out “and 10” and insert “, (10), (10A) and (10B)”

***Member's explanatory statement***

*This amendment is consequential to the amendment inserting new subsections (10A) and (10B).*

**Schedule 1**LORD ETHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 67, line 9, at end insert “(in respect of persons other than trans men and women)”

***Member's explanatory statement***

*Trans people have a well founded fear of persecution in Brazil.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 67, line 19, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Gambia.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 67, line 21, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Ghana.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 67, line 28, at end insert “(in respect of persons other than LGBT persons)”

***Member's explanatory statement***

*LGBT persons have a well founded fear of persecution in Jamaica.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 67, line 29, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Kenya.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 67, line 32, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Liberia.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 68, line 4, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Malawi.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 68, line 7, at end insert “(in respect of persons other than LGBT persons)”

***Member's explanatory statement***

*LGBT persons have a well founded fear of persecution in Mauritius.*

LORD EHERTON

Schedule 1, page 68, line 12, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Nigeria.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 68, leave out line 19

***Member's explanatory statement***

*This amendment removes Rwanda from the list on the grounds that the legality of the arrangements for removal of refugees from the UK to Rwanda is currently the subject of Court proceedings.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 68, line 19, at end insert “(in respect of persons other than LGBT persons)”

***Member's explanatory statement***

*LGBT persons have a well founded fear of persecution in Rwanda.*

LORD EHERTON  
LORD CARLILE OF BERRIEW

Schedule 1, page 68, line 21, after “men” insert “other than gay, bisexual and trans men”

***Member's explanatory statement***

*Gay, bisexual and trans men have a well founded fear of persecution in Sierra Leone.*

**Clause 6**

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 6, page 9, line 18, leave out “have regard” and insert “apply relevant decisions of courts and tribunals operating in the United Kingdom, and have regard to decisions of the European Court of Human Rights and”

***Member's explanatory statement***

*This amendment requires the Secretary of State to apply relevant decisions of UK courts and tribunals and to have regard to decisions of the European Court of Human Rights concerning the risk of persecution in any country or territory.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 6, page 9, line 24, at end insert “, or

- (c) have the effect that a description of person is excluded.”

***Member's explanatory statement***

*This amendment would enable a description of person to be expressly omitted from a country or territory in Schedule 1.*

**Clause 7**

BARONESS HAMWEE

Clause 7, page 9, line 36, at end insert “and,

- (c) the Secretary of State has published guidance regarding what criteria will be used to determine the order in which individuals who the Secretary of State is required by section 2(1) to make arrangements for removal will be removed from the United Kingdom.”

***Member's explanatory statement***

*This is a probing amendment regarding the process the Home Secretary will put in place to determine the order in which individuals will be removed from the UK once the duty to remove is in force.*

**After Clause 8**

BARONESS HAMWEE  
LORD SCRIVEN

After Clause 8, insert the following new Clause –

**“Repeal of asylum seeker accommodation regulations**

The Houses in Multiple Occupation (Asylum-Seeker Accommodation) (England) Regulations 2023 are repealed on the day on which this Act is passed.”

***Member's explanatory statement***

*This amendment provides for the repeal of the Houses in Multiple Occupation (Asylum-Seeker Accommodation) Regulations 2023.*

**Clause 10**

LORD GERMAN

Clause 10, page 15, line 13, at end insert –

“(2IA) But paragraph (2H) does not authorise the detention of a person under sub-paragraph (2C) otherwise than in a place directed by the Secretary of State under paragraph 18(1).”

***Member's explanatory statement***

*This amendment, and Lord German’s amendments to page 15, line 21 and page 16, line 45 limit the place of detention in the Bill to those that are presently authorised for detention.*

LORD GERMAN

Clause 10, page 15, line 21, at end insert –

“(3A) After paragraph 18(1A), insert –

- “(1B) Save as otherwise provided by or under any other Act, a direction may not be given in respect of a place under paragraph (1) unless it is
- (a) a removal centre;
  - (b) a short-term holding facility;
  - (c) pre-departure accommodation;
  - (d) a prison, a young offender institution or a remand centre;
  - (e) a place used by an immigration officer for the purposes of their functions at the port at which that person is seeking leave to enter or to enter or has been refused leave to enter, as the case may be, or in a control zone or supplementary control zone, or a control area designated under paragraph 26 of Schedule 2 to the Immigration Act 1971;
  - (f) a place specifically provided for the purpose of detention –

- (i) at any port;
  - (ii) at any place used by an immigration officer for the purposes of their functions;
  - (iii) in a control zone or a supplementary control zone;
  - (g) a vehicle which has been specifically designed or adapted for use as a mobile detention facility and approved by the Secretary of State for such use;
  - (h) a hospital;
  - (i) in respect of a person under 18, a place of safety.
- (1C) If the Secretary of State proposes to give a direction in respect of any place mentioned in sub-paragraph (1B)(a) to (c), they must consult residents of the area of the local authority in which the place is situated.
- (1D) In sub-paragraphs (1B) and (1C)–
- “control zone” has the same meaning as in the Channel Tunnel (International Arrangements) Order 1993 and includes a control zone within the meaning of the Channel Tunnel (Miscellaneous Provisions) Order 1994 and the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003;
- “hospital” has, in England and Wales, the same meaning as in the Mental Health Act 1983, in Scotland, the same meaning as in the Mental Health (Care and Treatment) (Scotland) Act 2003, and in Northern Ireland, the same meaning as in the Mental Health (Northern Ireland) Order 1986;
- “local authority” means –
- (a) in England, a district council, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly;
  - (b) in Wales, a county council or a county borough council;
  - (c) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
  - (d) in Northern Ireland, a district council;
- “place of safety” –
- (a) in England and Wales, has the same meaning as in the Children and Young Persons Act 1933;
  - (b) in Scotland, has the same meaning as in the Children’s Hearings (Scotland) Act 2011; and
  - (c) in Northern Ireland, means a home provided under Part VII of the Children (Northern Ireland) Order 1995, any police station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18;
- “removal centre”, “short-term holding facility” and “pre-departure accommodation” have the meanings given by section 147 of the Immigration and Asylum Act 1999;



“supplementary control zone” and “tunnel system” have the same meanings as in the Channel Tunnel (International Arrangements) Order 1993.””

***Member's explanatory statement***

*This amendment, and Lord German's amendments to page 15, line 13 and page 16, line 45 limit the place of detention in the Bill to those that are presently authorised for detention.*

LORD GERMAN

Clause 10, page 16, line 45, at end insert –

“(2GA) But subsection (2G) does not authorise the detention of a person under subsection (2A) or (2B) otherwise than in a place directed by the Secretary of State under paragraph 18(1) of Schedule 2 to the Immigration Act 1971.”

***Member's explanatory statement***

*This amendment, and Lord German's amendments to page 15, line 13 and page 15, line 21 limit the place of detention in the Bill to those that are presently authorised for detention.*

LORD ETHELTON  
LORD CARLILE OF BERRIEW

Clause 10, page 17, line 19, at end insert –

“(12) The conditions under which persons are detained pursuant to this section must comply with United Nations High Commissioner for Refugees Detention Guidelines.”

***Member's explanatory statement***

*This amendment provides that the living conditions of those who are detained shall at a minimum comply with UNHCR Detention Guidance.*

**Clause 21**

LORD ALTON OF LIVERPOOL

Clause 21, page 25, line 31, at end insert –

“(A1) No provision of this Act is to be interpreted or applied in a manner which would result in incompatibility with or in contravention of the UK's obligations under the Council of Europe European Convention on Action against Trafficking, or the EU Anti Trafficking Directive, or the European Convention on Human Rights or is to be taken as authorising decisions or policies which would have this result.”

***Member's explanatory statement***

*This amendment ensures compliance with relevant international anti-trafficking legislation.*

## LORD HUNT OF KINGS HEATH

Clause 21, page 25, line 36, leave out subsection (b)

***Member's explanatory statement***

*This amendment, combined with another to clause 21 in the name of Lord Hunt of Kings Heath, seeks to amend that a person who receives a positive reasonable grounds decision may remain within the named referral system in the UK and receive subsequent modern slavery support as subject under section 50A of the Modern Slavery Act.*

LORD RANDALL OF UXBRIDGE  
LORD MCCOLL OF DULWICH

Clause 21, page 26, line 9, after “if” insert “either –

(za) the relevant exploitation took place in the United Kingdom, or”

***Member's explanatory statement***

*This amendment is intended to exempt people who have been unlawfully exploited in the UK from provisions which would otherwise require their removal during the statutory recovery period and prohibit them being granted limited leave to remain.*

## LORD HUNT OF KINGS HEATH

Clause 21, page 26, line 18, at end insert –

“(d) a decision has been made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking (a “positive reasonable grounds decision”).”

***Member's explanatory statement***

*This amendment, combined with another to clause 21 in the name of Lord Hunt of Kings Heath, seeks to amend that a person who receives a positive reasonable grounds decision may remain within the named referral system in the UK and receive subsequent modern slavery support as subject under section 50A of the Modern Slavery Act.*

## BARONESS BUTLER-SLOSS

Clause 21, page 26, line 30, leave out subsections (5) and (6) and insert –

“(5) The Secretary of State may by regulations make provision about the circumstances in which it is necessary for a person to be present in the United Kingdom to provide cooperation of the kind mentioned in subsection (3)(a).”

***Member's explanatory statement***

*This amendment intends to remove the presumption for the purposes of clause 21(3)(b) that it is not necessary for a person to be present in the United Kingdom to cooperate with an investigation or criminal proceedings unless there are compelling circumstances which require the person to be present for that purpose. It also removes the related requirement for the Secretary of State to have*

*regard to guidance in determining whether there are compelling circumstances and replaces the regulation-making power regarding circumstances in which it would be deemed necessary for a victim to remain in the UK to cooperate with investigations or criminal proceedings.*

**Clause 38**

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 41, line 12, leave out “before the end of the relevant period,”

***Member's explanatory statement***

*This amendment, combined with another in the name of Lord Etherton to line 13, would make a serious harm suspensive claim, following a removal notice, directed to the single substantive question whether the country or territory specified in the notice is safe for the claimant, rather than an issue of interim relief.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 41, line 13, leave out “and irreversible”

***Member's explanatory statement***

*This amendment, combined with another in the name of Lord Etherton to line 12, would make a serious harm suspensive claim, following a removal notice, directed to the single substantive question whether the country or territory specified in the notice is safe for the claimant, rather than an issue of interim relief.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 41, line 16, leave out “and irreversible”

***Member's explanatory statement***

*This amendment relates to the amendments in the name of Lord Etherton to Clause 38, page 41, lines 12 and 13.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 41, line 30, leave out “and irreversible”

***Member's explanatory statement***

*This amendment relates to the amendments in the name of Lord Etherton to Clause 38, page 41, lines 12 and 13.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 41, line 38, leave out paragraph (c)

***Member's explanatory statement***

*This amendment would allow a human rights claim pursuant to Article 3 of the European Convention on Human Rights and/or a protection claim pursuant to the Refugee Convention based on a disability or a serious medical condition (such as the proposed removal of gay men living with HIV/AIDS to a country or territory where there is no access to medication and/or there is discrimination amounting to persecution based on their disability).*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 41, line 42, leave out subsection (6)

***Member's explanatory statement***

*This amendment relates to the amendment in the name of Lord Etherton to Clause 38, page 41, line 38.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 42, line 1, leave out subsection (7)

***Member's explanatory statement***

*This amendment relates to the amendment in the name of Lord Etherton to Clause 38, page 41, line 38.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 38, page 42, line 17, leave out subsection (9)

***Member's explanatory statement***

*This amendment relates to the amendments in the name of Lord Etherton to Clause 38, page 41, lines 12 and 13.*

**Clause 39**

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 39, page 42, line 27, leave out “and irreversible”

***Member's explanatory statement***

*This amendment relates to the amendments in the name of Lord Etherton to Clause 38, page 41, lines 12 and 13.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 39, page 42, line 30, leave out “and irreversible”

***Member's explanatory statement***

*This amendment relates to the amendments in the name of Lord Etherton to Clause 38, page 41, lines 12 and 13.*

LORD ETHERTON  
LORD CARLILE OF BERRIEW

Clause 39, page 42, line 31, leave out “and irreversible”

***Member's explanatory statement***

*This amendment relates to the amendments in the name of Lord Etherton to Clause 38, page 41, lines 12 and 13.*

**After Clause 60**

LORD COAKER

After Clause 60, insert the following new Clause –

**“Negotiating objective: cross-border police cooperation**

- (1) It must be a negotiating objective of His Majesty’s Government to negotiate with relevant States formal agreements which facilitate cross-border police cooperation enabling the identification and detaining of persons suspected of modern slavery and human trafficking offences, for the purposes of preventing and deterring illegal migration.
- (2) Relevant international partners include (but are not limited to) the States listed in section 57.
- (3) Within the period of one month beginning with the day on which this Act is passed, and every three months thereafter, the Secretary of State must –
  - (a) publish a report outlining the status of negotiations with relevant States on the establishment of formal agreements which facilitate cross-border police cooperation enabling the identification and detaining of persons suspected of modern slavery and human trafficking offences, for the purposes of preventing and deterring illegal migration, and
  - (b) lay the report before both Houses of Parliament.”

***Member's explanatory statement***

*This new Clause would require the Government to seek formal police cooperation agreements with other states, including Albania and EU member states, and to report regularly to Parliament on the status of those negotiations.*

**Clause 66**

LORD GERMAN

Clause 66, page 65, line 29, after “subsections” insert “(2A),”

***Member's explanatory statement***

*This amendment is consequential on Lord German's amendment to page 65, line 32.*

LORD GERMAN

Clause 66, page 65, line 32, at end insert –

- “(2A) Regulations under subsection (1) may not be made until –
- (a) the Chairman of the Inquiry has notified the Secretary of State under section 14(1)(a) of the Inquiries Act 2005 that the Inquiry has fulfilled its terms of reference,
  - (b) the report of the Inquiry has been laid before Parliament under section 26 of that Act, and
  - (c) a Minister of the Crown has laid before Parliament a statement setting out how they propose to implement the recommendations of the Inquiry.”

***Member's explanatory statement***

*This amendment and consequential amendments would prevent the provisions of the Bill from being brought into force until the Brook House Inquiry has fulfilled its terms of reference.*

LORD GERMAN

Clause 66, page 65, line 35, leave out paragraph (a)

***Member's explanatory statement***

*This amendment is consequential on Lord German's amendment to page 65, line 32.*

LORD MORROW

Clause 66, page 66, line 15, at end insert –

- “(4A) The Secretary of State may not make regulations under subsection (1) to bring sections 21 to 28 into force until –
- (a) the Secretary of State has published an assessment of the impact of Part 5 of the Nationality and Borders Act 2022;

- (b) the Secretary of State has published an impact statement with regards to this Act on—
- (i) the costs of detention and removal under sections 21 to 28,
  - (ii) the estimated number of persons who will not receive assistance and support under sections 22 to 24,
  - (iii) the estimated number of persons who will receive an exemption under sections 21, 23 or 24 because they are cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation,
  - (iv) the anticipated impact on the number of persons likely to be referred to a competent authority under sections 21, 23 and 24,
  - (v) the anticipated impact on the well-being of persons to whom sections 21 to 28 apply, and
  - (vi) the anticipated impact of sections 21 to 28 on the number of prosecutions for offences connected to modern slavery across the United Kingdom.”

***Member's explanatory statement***

*This amendment is intended to delay the entry into force of the Bill's provisions on modern slavery until such time as the Secretary of State has assessed the impact of Part 5 of the Nationality and Borders Act 2022 and published an impact statement on the effects of the clauses on modern slavery.*

LORD MCCOLL OF DULWICH

Clause 66, page 66, line 15, at end insert—

- “(4A) The Secretary of State may not make regulations under subsection (1) bringing into force the provisions in sections 21 to 28 until after an Independent Anti-Slavery Commissioner has—
- (a) been appointed,
  - (b) been consulted by the Secretary of State on the potential implications of the relevant sections, and
  - (c) published an assesment of the Bill.”

***Member's explanatory statement***

*This amendment is intended to delay the entry into force of the Bill's provisions on modern slavery until such time as the Secretary of State has appointed and consulted with a new Independent Anti-Slavery Commissioner.*

LORD GERMAN

Clause 66, page 66, line 17, at end insert—

- “(6) In this section “the Inquiry” means the inquiry announced by Priti Patel MP on 5 November 2019, pursuant to the provisions of the Inquiries Act 2005, into the decisions, actions and circumstances surrounding the mistreatment of detainees

broadcast in the BBC Panorama programme ‘Undercover: Britain’s Immigration Secrets’ on 4 September 2017.”

***Member's explanatory statement***

*This amendment is consequential on Lord German's amendment to page 65, line 32.*





# Illegal Migration Bill

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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*19 May 2023*

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