

Illegal Migration Bill

THIRD MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Instruction of 27th June 2023, as follows –

Clauses 1 to 5	Schedule 2
Schedule 1	Clauses 15 to 68
Clauses 6 to 14	Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 56

THE LORD BISHOP OF DURHAM
BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
BARONESS BRINTON

156 Clause 56, page 58, line 25, leave out subsection (2)

Member's explanatory statement

This amendment reinstates the right of appeal against age assessments in respect of putative children whom there is a duty to remove under the Bill.

THE LORD BISHOP OF DURHAM
LORD COAKER
BARONESS BRINTON

156A Clause 56, page 58, line 25, leave out subsections (2) to (4) and insert –

- “(2) Subsection (5) applies if P makes an application for judicial review of –
- (a) the decision mentioned in subsection (1), or
 - (b) any decision to make arrangements for the person’s removal from the United Kingdom under this Act which is taken on the basis of that decision.”

Member's explanatory statement

This amendment reinstates the right of appeal against age assessments in respect of putative children whom there is a duty to remove under the Bill, and removes a provision that would prevent a judicial review challenge to an age assessment from serving as a barrier to the putative child's removal from the UK.

THE LORD BISHOP OF DURHAM
BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
BARONESS BRINTON

157 Clause 56, page 58, line 34, leave out subsection (4)

Member's explanatory statement

This amendment removes a provision of the Bill that would prevent a judicial review challenge to an age assessment from serving as a barrier to the putative child's removal from the UK.

LORD MURRAY OF BLIDWORTH

158 Clause 56, page 58, line 37, after “tribunal” insert “must determine the application on the basis that the person’s age is a matter of fact to be determined by the relevant authority; and accordingly the court or tribunal”

Member's explanatory statement

This amendment confirms that, on an application for judicial review of a decision mentioned in Clause 56(3), the court or tribunal must treat a person’s age as a matter of fact to be determined by the relevant authority.

LORD HOPE OF CRAIGHEAD
LORD ANDERSON OF IPSWICH

158A★ Clause 56, page 58, line 37, leave out from “tribunal” to the end of line 3 on page 59 and insert “may grant relief only on the basis that the decision –

- (a) was wrong in law, or
- (b) proceeded on information about the person’s age which was incomplete, misleading or otherwise so seriously misinformed that no reasonable decision-maker would have relied on it.”

LORD MURRAY OF BLIDWORTH

159 Clause 56, page 58, line 38, leave out from “may” to “was” and insert “grant relief only on the basis that the decision”

Member's explanatory statement

This amendment and the amendment in the name of Lord Murray of Blidworth at page 59, line 1 expand the references in clause 56(5) to a court or tribunal quashing a decision to cover all of the kinds of relief that a court or tribunal may grant on an application.

LORD MURRAY OF BLIDWORTH

- 160** Clause 56, page 59, line 1, leave out “quash the decision” and insert “grant relief”

Member's explanatory statement

See the explanatory statement for the amendment in the name of Lord Murray of Blidworth at page 58, line 38.

Clause 57

THE LORD BISHOP OF DURHAM
BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
BARONESS BRINTON

- 161** Clause 57, page 60, line 13, at end insert –

“(2A) The regulations must provide that the consequence mentioned in paragraph (b) of subsection (2) shall not apply if P’s refusal to consent to the use of the specified scientific method was reasonable in all the circumstances.”

Member's explanatory statement

The Bill provides for regulations to be made under which certain putative children may be treated as adults if they refuse to consent to scientific methods of age assessment. This amendment provides that this may not occur if the child’s refusal to consent was reasonable in all the circumstances.

Clause 59

LORD MURRAY OF BLIDWORTH

- 161A★** Clause 59, page 63, line 1, at beginning insert “in England and Wales and Scotland,”

Member's explanatory statement

This amendment, the second amendment in the name of Lord Murray of Blidworth at page 63, line 1 and the amendments in the name of Lord Murray of Blidworth at page 63, line 2 and page 63, line 25 replace the requirement to consult such representatives of district councils in Northern Ireland as the Secretary of State thinks appropriate about regulations under Clause 59(1) with a requirement to consult the Executive Office in Northern Ireland.

LORD MURRAY OF BLIDWORTH

161B★ Clause 59, page 63, line 1, after “authorities” insert “as the Secretary of State considers appropriate,

(aa) the Executive Office in Northern Ireland”

Member's explanatory statement

See the explanatory statement for the first amendment in the name of Lord Murray of Blidworth at page 63, line 1.

LORD MURRAY OF BLIDWORTH

161C★ Clause 59, page 63, line 2, leave out from “bodies” to end of line 3 and insert “as the Secretary of State considers appropriate.”

Member's explanatory statement

See the explanatory statement for the first amendment in the name of Lord Murray of Blidworth at page 63, line 1.

THE LORD BISHOP OF DURHAM
BARONESS LISTER OF BURTERSETT
BARONESS STROUD
BARONESS BRINTON

162 Clause 59, page 63, line 17, at end insert –

“(6A) The Secretary of State may not make regulations under subsection (1) specifying any limit on the number of persons who arrive under the following schemes –

- (a) the Ukraine Sponsorship Scheme,
- (b) the Ukraine Family Scheme,
- (c) the Afghan Relocations and Assistance Policy, and
- (d) the Hong Kong British National (Overseas) routes.”

Member's explanatory statement

This amendment would exclude the schemes for those displaced from Ukraine, the Afghan Relocations and Assistance Policy (ARAP) and the Hong Kong BN(O) routes from the safe and legal routes cap. None of these schemes are currently capped.

LORD MURRAY OF BLIDWORTH

162A★ Clause 59, page 63, line 25, leave out from “1994” to end of line 26

Member's explanatory statement

See the explanatory statement for the first amendment in the name of Lord Murray of Blidworth at page 63, line 1.

After Clause 59

LORD ALTON OF LIVERPOOL
LORD CASHMAN

163 After Clause 59, insert the following new Clause –

“Safe and legal route for persons persecuted for their protected characteristics

- (1) The Secretary of State must make regulations specifying a new safe and legal route for people persecuted because of their protected characteristics, and for their dependants under the age of 22, or older if those dependants cannot support themselves due to mental or physical conditions.
- (2) The Secretary of State may by regulations place a cap on the number of people granted asylum under subsection (1) in any given calendar year, within the cap imposed for all arrivals under section 59 (cap on number of entrants using safe and legal routes).
- (3) For the purposes of this section, “protected characteristics” has the meaning given in section 4 of the Equality Act 2010.”

BARONESS STROUD
LORD KIRKHOPE OF HARROGATE
BARONESS HELIC
LORD KERR OF KINLOCHARD

164 After Clause 59, insert the following new Clause –

“Duty to establish safe and legal routes

- (1) The Secretary of State must, within two months of the publication of the report required by section 60(1), make regulations specifying additional safe and legal routes.
- (2) In subsection (1), a “safe and legal route” means a route which allows relevant persons to come to the United Kingdom lawfully from abroad.
- (3) In subsection (2), a “relevant person” is –
 - (a) a person who, if they were in the United Kingdom, would be a refugee within the meaning of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention,
 - (b) a person who, if they were in the United Kingdom, would be eligible for a grant of humanitarian protection in accordance with the immigration rules, or
 - (c) a person who, if they were in the United Kingdom, could not lawfully be removed from the United Kingdom by virtue of Article 3 or 4 of the Human Rights Convention.”

LORD PURVIS OF TWEED

165 After Clause 59, insert the following new Clause –

“Safe and legal route: protection claim

- (1) On an application by a person (“P”) to the appropriate decision-maker for entry clearance, the appropriate decision-maker must grant P entry clearance if satisfied that P is a relevant person.
- (2) For the purposes of subsection (1), P is a relevant person if –
 - (a) P intends to make a protection claim in the United Kingdom,
 - (b) P’s protection claim, if made in the United Kingdom, would have a realistic prospect of success, and
 - (c) there are serious and compelling reasons why P’s protection claim should be considered in the United Kingdom.
- (3) For the purposes of subsection (2)(c), in deciding whether there are such reasons why P’s protection claim should be considered in the United Kingdom, the appropriate decision-maker must take into account –
 - (a) the extent of the risk that P will suffer persecution or serious harm if entry clearance is not granted,
 - (b) the strength of P’s family and other ties to the United Kingdom,
 - (c) P’s mental and physical health and any particular vulnerabilities that P has, and
 - (d) any other matter that the decision-maker thinks relevant.
- (4) For the purposes of an application under subsection (1), the appropriate decision-maker must waive any of the requirements listed in subsection (5) if satisfied that P cannot reasonably be expected to comply with them.
- (5) The requirements are –
 - (a) any requirement prescribed (whether by immigration rules or otherwise) under section 50 of the Immigration, Asylum and Nationality Act 2006 (procedure), and
 - (b) any requirement prescribed by regulations made under section 5, 6, 7 or 8 of the UK Borders Act 2007 (biometric registration).
- (6) No fee may be charged for the making of an application under subsection (1).
- (7) An entry clearance granted pursuant to subsection (1) has effect as leave to enter for such period, being not less than six months, and on such conditions as the Secretary of State may prescribe by order.
- (8) Upon a person entering the United Kingdom (within the meaning of section 11 of the Immigration Act 1971) pursuant to leave to enter given under subsection (7), that person is deemed to have made a protection claim in the United Kingdom.
- (9) In this section –

“appropriate decision-maker” means a person authorised by the Secretary of State by rules made under section 3 of the Immigration Act 1971 to grant an entry clearance under subsection (1);

“entry clearance” has the same meaning as in section 33(1) of the Immigration Act 1971;

“persecution” is to be construed in accordance with its meaning in the Refugee Convention;

“protection claim” in relation to a person, means a claim that to remove them from or require them to leave the United Kingdom would be inconsistent with the United Kingdom’s obligations –

- (a) under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention (“the Refugee Convention”),
- (b) in relation to persons entitled to a grant of humanitarian protection, or
- (c) under Article 2 or 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950 (“the European Convention on Human Rights”);

“serious harm” means treatment that, if it occurred within the jurisdiction of the United Kingdom, would be contrary to the United Kingdom’s obligations under Article 2 or 3 of the European Convention on Human Rights (irrespective of where it will actually occur).”

Member's explanatory statement

This amendment provides for a safe and legal route to allow a person to be granted entry clearance into the UK if they intend to make a protection claim in the UK and that claim would have a realistic prospect of success.

After Clause 60

BARONESS KENNEDY OF THE SHAWES

166

After Clause 60, insert the following new Clause –

“Emergency visas for human rights defenders

- (1) The Secretary of State must, within six months of the day on which this Act is passed, amend the immigration rules in order to ensure that human rights defenders at particular risk are entitled to enter the United Kingdom and be provided with temporary accommodation.
- (2) For the purposes of this section, “human rights defenders at particular risk” means individuals who –
 - (a) act to promote or protect human rights in a peaceful manner including, but not limited to, lawyers and journalists, and
 - (b) are at an imminent risk because of their work, as evidenced by credible direct threats to their life or personal safety.”

Member's explanatory statement

This new Clause would allow human rights defenders at particular risk to be able to be provided with safety in the UK.

BARONESS LUDFORD

167 After Clause 60, insert the following new Clause –

“Refugee family reunion

- (1) The Secretary of State must, within 6 months of the day on which this Act is passed, lay before Parliament a statement of changes in the rules (the “immigration rules”) under section 3(2) of the Immigration Act 1971 (general provisions for regulation and control) to make provision for refugee family reunion, in accordance with this section, to come into effect after 21 days.
- (2) The statement laid under subsection (1) must set out rules providing for leave to enter and remain in the United Kingdom for family members of a person –
 - (a) with protection status,
 - (b) resettled through pathways 1 or 3 of the Afghan Citizens Resettlement Scheme, or
 - (c) who is permitted to enter the UK through a safe and legal route specified in regulations made under section 59(1) (see also subsection (7) of that section).
- (3) The rules under subsection (1) must –
 - (a) lay down no practice which would be contrary to the 1951 Convention relating to the Status of Refugees and the Protocol to that Convention, and
 - (b) apply equally in relation to persons granted any protection status or resettled through the Afghan Citizens Resettlement Scheme.
- (4) For the purposes of this section “protection status” has the same meaning as in the immigration rules.
- (5) In this section, “family members” include a person’s –
 - (a) parent, if the person was under the age of 18 at the time they made an application for protection status or when they were resettled under pathways 1 or 3 of the Afghan Citizens Resettlement Scheme, including adoptive parent;
 - (b) spouse, civil partner or unmarried partner;
 - (c) child, including adopted child, who is either –
 - (i) under the age of 18, or
 - (ii) over the age of 18 and dependent on the person;
 - (d) sibling, including adoptive sibling, who is either –
 - (i) under the age of 18, or
 - (ii) under the age of 25, but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum; and

- (e) such other persons as the Secretary of State may determine, having regard to—
 - (i) the importance of maintaining family unity,
 - (ii) the best interests of a child,
 - (iii) the physical, emotional, psychological or financial dependency between a person granted protection status or resettled under pathways 1 or 3 of the Afghan Citizens Resettlement Scheme and another person,
 - (iv) any risk to the physical, emotional or psychological wellbeing of a person granted protection status or resettled under pathways 1 or 3 of the Afghan Citizens Resettlement Scheme, including from the circumstances in which the person is living in the United Kingdom, or
 - (v) such other matters as the Secretary of State considers appropriate.
- (6) For the purpose of subsection (5)—
 - (a) “adopted” and “adoptive” refer to a relationship resulting from adoption, including de facto adoption, as set out in the immigration rules;
 - (b) “best interests” of a child is to be read in accordance with Article 3 of the 1989 UN Convention on the Rights of the Child.”

Member's explanatory statement

This new Clause would make provision for leave to enter or remain in the UK to be granted to the family members of refugees and of people granted humanitarian protection.

After Clause 61

LORD COAKER

168 After Clause 61, insert the following new Clause—

“Organised immigration crime enforcement

- (1) The Crime and Courts Act 2013 is amended as follows.
- (2) In section 1 (the National Crime Agency), after subsection (10) insert—
 - “(10A) The NCA has a specific function to combat organised crime where the purpose of that crime is to enable the illegal entry of a person into the United Kingdom via the English Channel.
 - (10B) The NCA must maintain a unit (a “Cross-Border People Smuggling Unit”) to coordinate the work undertaken in cooperation with international partners in pursuit of the function mentioned in subsection (10A).”

Member's explanatory statement

This new Clause would give the National Crime Agency a legal responsibility for tackling organised immigration crime across the Channel, and to maintain a specific unit to undertake work related to that responsibility.

THE LORD ARCHBISHOP OF CANTERBURY
LORD BOURNE OF ABERYSTWYTH
LORD BLUNKETT
BARONESS KENNEDY OF THE SHAWS

168A After Clause 61, insert the following new Clause—

“Ten-year strategy on refugees and human trafficking

- (1) The Secretary of State must prepare a ten-year strategy for tackling refugee crises affecting migration by irregular routes, or the movement of refugees, to the United Kingdom through collaboration with signatories to the Refugee Convention or any other international agreement on the rights of refugees.
- (2) The strategy must also include provisions for tackling human trafficking to the United Kingdom.
- (3) The Secretary of State must make and lay before Parliament a statement of policies for implementing the strategy.
- (4) The first statement must be made within twelve months of the passing of this Act; and a subsequent statement must be made within twelve months of the making of the previous statement.
- (5) A Minister of the Crown must, within 28 sitting days of a statement under this section being laid before Parliament, move a motion in each House for the approval of the statement.
- (6) “Ten-year strategy” means a strategy for the period of ten years beginning with the day on which preparation of the strategy is completed.
- (7) “The Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (8) A “sitting day”, in relation to each House of Parliament, means a day on which that House begins to sit.”

Member's explanatory statement

This amendment would require the Secretary of State to have a ten-year strategy for collaborating internationally to tackle refugee crises affecting migration by irregular routes, or the movement of refugees, to the United Kingdom and for tackling human trafficking to the United Kingdom.

LORD SWIRE

168AZA★ After Clause 61, insert the following new Clause—

“Illegal migration in the UK

- (1) The Secretary of State must, one year after the passing of this Act, and annually after that, lay before each House of Parliament a report on illegal migration in the UK.
- (2) The report must provide statistics for each reporting year on the number of—

- (a) illegal immigrants in the UK;
- (b) illegal immigrants that have been removed from the UK, and to which countries, each year;
- (c) foreign national offenders that arrived in the UK illegally and are in prison in the UK;
- (d) foreign national offenders that qualify for removal from the UK; and
- (e) foreign national offenders that have been removed from the UK.”

Clause 64

LORD HOPE OF CRAIGHEAD
LORD ANDERSON OF IPSWICH

168AA Clause 64, page 66, line 6, at end insert—

“(fa) regulations under section 57 (age assessments: power to make provision about refusal to consent to scientific methods),”

Clause 67

LORD PADDICK

168AB Clause 67, page 68, line 6, leave out “(3) and” and insert “(2A) to”

LORD ALTON OF LIVERPOOL

168B Clause 67, page 68, line 6, after “(4)” insert “and to section (*Requirement to assess and report on the impact of this Act on modern slavery and human trafficking*)”

LORD PADDICK

168BA Clause 67, page 68, line 9, at end insert—

“(2A) No section of this Act except for this section may come into force until the appeal announced by the Prime Minister on 29 June 2023 regarding the Court of Appeal’s decision in *AAA and others v. The Secretary of State for the Home Department* has concluded.”

LORD COAKER

168BAA★ Clause 67, page 68, line 9, at end insert—

“(2A) Schedule 1 may not come into force in relation to any country or territory which, at the time at which the Schedule otherwise comes into force, has been found by a United Kingdom court not to be a safe third country under the relevant provisions of the Immigration Rules, and may come into force in relation to such a country

or territory only after any such decision has been overturned on appeal to the Supreme Court.”

LORD PADDICK

168BB Clause 67, page 68, line 10, at beginning insert “Subject to subsection (2A),”

THE LORD ARCHBISHOP OF CANTERBURY
LORD BOURNE OF ABERYSTWYTH
LORD BLUNKETT
BARONESS KENNEDY OF THE SHAWS

168C Clause 67, page 68, line 13, at end insert –

“(ba) section (*Ten-year strategy on refugees and human trafficking*) (ten-year strategy on refugees and human trafficking).”

Member's explanatory statement

This amendment would provide for the new clause after Clause 61 proposed in another amendment in the name of the Lord Archbishop of Canterbury to come into force on the day on which the Act is passed.

LORD PADDICK

168D Clause 67, page 68, line 17, at beginning insert “Subject to subsection (2A),”

LORD MURRAY OF BLIDWORTH

169 Clause 67, page 68, line 29, leave out paragraph (h)

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 19.

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