

Safety of Rwanda (Asylum and Immigration) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, have been ordered to be published as HL Bill 41—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Sharpe of Epsom has made the following statement under section 19(1)(b) of the Human Rights Act 1998:

I am unable to make a statement that, in my view, the provisions of the Safety of Rwanda (Asylum and Immigration) Bill are compatible with Convention rights, but the Government nevertheless wishes the House to proceed with the Bill.

Safety of Rwanda (Asylum and Immigration) Bill

[AS BROUGHT FROM THE COMMONS]

CONTENTS

- 1 Introduction
- 2 Safety of the Republic of Rwanda
- 3 Disapplication of the Human Rights Act 1998
- 4 Decisions based on particular individual circumstances
- 5 Interim measures of the European Court of Human Rights
- 6 Consequential provision
- 7 Interpretation
- 8 Extent
- 9 Commencement and transitional provision
- 10 Short title

[AS BROUGHT FROM THE COMMONS]

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B I L L

TO

Make provision about the removal of certain migrants to the Republic of Rwanda.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Introduction

- (1) The purpose of this Act is to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by enabling the removal of persons to the Republic of Rwanda under provision made by or under the Immigration Acts. 5
- (2) To advance that purpose—
 - (a) the Rwanda Treaty has been laid before Parliament under section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) with a view to ratification by the United Kingdom, and 10
 - (b) this Act gives effect to the judgement of Parliament that the Republic of Rwanda is a safe country.
- (3) The Government of the Republic of Rwanda has, in accordance with the Rwanda Treaty, agreed to fulfil the following obligations—
 - (a) that any person removed to the Republic of Rwanda under the provisions of the Treaty (a “relocated individual”) will not be removed from Rwanda except to the United Kingdom; 15
 - (b) that any relocated individual is to be made available for return to the United Kingdom following a request from the Government of the United Kingdom; 20
 - (c) that the system for the processing of protection claims by relocated individuals is to be improved;
 - (d) that relocated individuals are to be treated equally, irrespective of the status that they are granted in the Republic of Rwanda;
 - (e) that relocated individuals are to be provided with legal assistance for the purposes of their protection claims and any appeals relating to such claims; 25

- (f) that the obligations mentioned in paragraphs (a) to (e) are to be independently monitored and subject to a form of binding dispute settlement.
- (4) It is recognised that—
- (a) the Parliament of the United Kingdom is sovereign, and 5
 - (b) the validity of an Act is unaffected by international law.
- (5) For the purposes of this Act, a “safe country” —
- (a) means a country to which persons may be removed from the United Kingdom in compliance with all of the United Kingdom’s obligations under international law that are relevant to the treatment in that country of persons who are removed there, and 10
 - (b) includes, in particular, a country —
 - (i) from which a person removed to that country will not be removed or sent to another country in contravention of any international law, and 15
 - (ii) in which any person who is seeking asylum or who has had an asylum determination will both have their claim determined and be treated in accordance with that country’s obligations under international law.
- (6) For the purposes of this Act, “international law” includes — 20
- (a) the Human Rights Convention,
 - (b) the Refugee Convention,
 - (c) the International Covenant on Civil and Political Rights of 1966,
 - (d) the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, 25
 - (e) the Council of Europe Convention on Action against Trafficking in Human Beings done at Warsaw on 16 May 2005,
 - (f) customary international law, and
 - (g) any other international law, or convention or rule of international law, whatsoever, including any order, judgment, decision or measure of the European Court of Human Rights. 30

2 Safety of the Republic of Rwanda

- (1) Every decision-maker must conclusively treat the Republic of Rwanda as a safe country.
- (2) A decision-maker means — 35
- (a) the Secretary of State or an immigration officer when making a decision relating to the removal of a person to the Republic of Rwanda under any provision of, or made under, the Immigration Acts;
 - (b) a court or tribunal when considering a decision of the Secretary of State or an immigration officer mentioned in paragraph (a). 40
- (3) As a result of subsection (1), a court or tribunal must not consider a review of, or an appeal against, a decision of the Secretary of State or an immigration officer relating to the removal of a person to the Republic of Rwanda to the

extent that the review or appeal is brought on the grounds that the Republic of Rwanda is not a safe country.

- (4) In particular, a court or tribunal must not consider—
- (a) any claim or complaint that the Republic of Rwanda will or may remove or send a person to another State in contravention of any of its international obligations, including in particular its obligations under the Refugee Convention, 5
 - (b) any claim or complaint that a person will not receive fair and proper consideration of an asylum, or other similar, claim in the Republic of Rwanda, or 10
 - (c) any claim or complaint that the Republic of Rwanda will not act in accordance with the Rwanda Treaty.
- (5) Subsections (3) and (4) apply notwithstanding—
- (a) any provision made by or under the Immigration Acts,
 - (b) the Human Rights Act 1998, to the extent disappplied by section 3 (disapplication of the Human Rights Act 1998), 15
 - (c) any other provision or rule of domestic law (including any common law), and
 - (d) any interpretation of international law by the court or tribunal.

3 Disapplication of the Human Rights Act 1998 20

- (1) The provisions of this Act apply notwithstanding the relevant provisions of the Human Rights Act 1998, which are disappplied as follows.
- (2) The relevant provisions are—
- (a) section 2 (interpretation of Convention rights),
 - (b) section 3 (interpretation of legislation), and 25
 - (c) sections 6 to 9 (acts of public authorities).
- (3) Section 2 does not apply where a court or tribunal is determining a question relating to whether the Republic of Rwanda is a safe country for a person to be removed to under any provision of, or made under, the Immigration Acts.
- (4) Section 3 does not apply in relation to this Act. 30
- (5) Sections 6 to 9 do not apply in relation to—
- (a) a decision taken on the basis of section 2(1) of this Act (decision-makers to treat Rwanda as safe),
 - (b) a decision as to whether to grant an interim remedy on the basis of section 4(4) of this Act (interim remedies: serious and irreversible harm), or 35
 - (c) a decision taken on the basis of section 4(1) of this Act (decisions based on particular individual circumstances)—
 - (i) under section 42(2), 44(6)(a) or 45(3) of the Illegal Migration Act 2023 (serious and irreversible harm) in relation to the removal of a person under that Act to the Republic of Rwanda, or 40

- (ii) under section 44(6)(a) of the Illegal Migration Act 2023, as applied by section 2AA of the Special Immigration Appeals Commission Act 1997 (appeals to the Special Immigration Appeals Commission: serious and irreversible harm), in relation to the removal of a person under the Illegal Migration Act 2023 to the Republic of Rwanda. 5

4 Decisions based on particular individual circumstances

- (1) Section 2 does not prevent—
- (a) the Secretary of State or an immigration officer from deciding (under any applicable provision of, or made under, the Immigration Acts) whether the Republic of Rwanda is a safe country for the person in question, based on compelling evidence relating specifically to the person’s particular individual circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general), or 10
- (b) a court or tribunal considering a review of, or an appeal against, a relevant decision to the extent that the review or appeal is brought on the grounds that the Republic of Rwanda is not a safe country for the person in question, based on compelling evidence relating specifically to the person’s particular individual circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general). 15
- (2) But subsection (1) does not permit a decision-maker to consider any matter, claim or complaint to the extent that it relates to the issue of whether the Republic of Rwanda will or may remove or send the person in question to another State in contravention of any of its international obligations (including in particular its obligations under the Refugee Convention). 20
- (3) Where a court or tribunal is considering a review or an appeal as mentioned in subsection (1)(b), any power of the court or tribunal to grant an interim remedy (whether on an application of the person in question or otherwise) is restricted as follows. 25
- (4) The court or tribunal may grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person to the Republic of Rwanda only if the court or tribunal is satisfied that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm if removed to the Republic of Rwanda. 30
- (5) Subsections (4) to (8) of section 39 of the Illegal Migration Act 2023 (examples of serious and irreversible harm) apply (with any necessary modifications) for the purposes of subsections (3) and (4) as they apply for the purposes of that Act. 35
- (6) Subsections (3) and (4) do not apply to any review or appeal relating to a decision to remove a person to the Republic of Rwanda under the Illegal Migration Act 2023 (see instead section 54 of that Act). 40

- (7) In this section—
- “interim remedy” means any interim remedy or relief however described (including, in particular, an interim injunction or interdict);
- “relevant decision” means a decision taken by the Secretary of State or an immigration officer (under any applicable provision of, or made under, the Immigration Acts) that the Republic of Rwanda is a safe country for the person in question.

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5 Interim measures of the European Court of Human Rights

- (1) This section applies where the European Court of Human Rights indicates an interim measure in proceedings relating to the intended removal of a person to the Republic of Rwanda under, or purportedly under, a provision of, or made under, the Immigration Acts.
- (2) It is for a Minister of the Crown (and only a Minister of the Crown) to decide whether the United Kingdom will comply with the interim measure.
- (3) Accordingly, a court or tribunal must not have regard to the interim measure when considering any application or appeal which relates to a decision to remove the person to the Republic of Rwanda under a provision of, or made under, the Immigration Acts.
- (4) In this section—
- (a) a reference to “the Immigration Acts” does not include the Illegal Migration Act 2023 (see instead section 55 of that Act);
- (b) a reference to a Minister of the Crown is to a Minister of the Crown acting in person.

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6 Consequential provision

- (1) In section 61(2) of the UK Borders Act 2007 (meaning of “the Immigration Acts”)—
- (a) omit the “and” at the end of paragraph (m), and
- (b) after paragraph (n) insert “, and
- (o) the Safety of Rwanda (Asylum and Immigration) Act 2023.”
- (2) In section 39 of the Illegal Migration Act 2023 (serious harm suspensive claims: interpretation), after subsection (4) insert—
- “(4A) But see sections 2 and 4 of the Safety of Rwanda (Asylum and Immigration) Act 2023 (safety of the Republic of Rwanda).”

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7 Interpretation

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- (1) In this Act—
- “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (whether or not in relation to a State that is a party to the Human Rights Convention);
- “decision” includes a purported decision;

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- “decision-maker” has the meaning given in section 2(2);
- “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950, as it has effect for the time being in relation to the United Kingdom; 5
- “immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
- “international law” has the meaning given in section 1(6);
- “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol; 10
- “the Rwanda Treaty” means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, signed at Kigali on 5 December 2023; 15
- “safe country” has the meaning given in section 1(5).

- (2) In this Act, references to a person do not include a person who is a national of the Republic of Rwanda or who has obtained a passport or other document of identity in the Republic of Rwanda. 20

8 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.
- (2) Any amendment made by this Act has the same extent within the United Kingdom as the provision to which it relates. 25
- (3) His Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man.
- (4) A power under any provision listed in subsection (5) may be exercised so as to extend (with or without modifications) to any of the Channel Islands or the Isle of Man any amendment made by this Act of any part of an Act to which the provision listed in subsection (5) relates. 30
- (5) Those provisions are –
- (a) section 60(4) of the UK Borders Act 2007, and
 - (b) section 67(7) of the Illegal Migration Act 2023. 35

9 Commencement and transitional provision

- (1) This Act comes into force on the day on which the Rwanda Treaty enters into force.
- (2) This Act applies to any decision by a decision-maker relating to the removal of a person to the Republic of Rwanda that is made on or after the day on 40

which the Rwanda Treaty enters into force, irrespective of when the person arrived in the United Kingdom.

10 Short title

This Act may be cited as the Safety of Rwanda (Asylum and Immigration) Act 2023.

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