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Chair of the Joint Committee on Human Rights
House of Commons
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Dear Joanna,

THE ILLEGAL MIGRATION BILL

Thank you for your letter of 13 April.

You will also be aware the Illegal Migration Bill has now completed its Commons stages and was introduced in the House of Lords on 27 April. At Report stage on 26 April, the House agreed a number of Government amendments and we have published a supplementary ECHR memorandum in respect of these.

I have considered the questions set out in your letter and have responded accordingly.

- 1. You have been unable to make a statement under section 19 HRA that the Bill is compatible with the Convention rights. Can you please list exactly which provisions of this Bill you think are more likely than not to breach Convention rights and which Convention rights you think are more likely than not to be breached?*

As I and the Minister for Immigration made clear in the House of Commons, the Government takes our international obligations very seriously. The Government has concluded that radical solutions are required to put a stop to the small boats crossing the Channel and the approach adopted in these provisions is therefore new and ambitious but taking such an approach does not mean that the Bill is not compatible with international law. Instead, it means that I was unable on introduction of the Bill to make a statement under section 19(1)(a) of the 1998 Act as it has a no better than even chance of being compatible under the ECHR. A range of bills have also had section 19(1)(b) statements in the past, including the 2003 Communications Bill under the last Labour Government.

A detailed ECHR analysis is provided in the two memorandums we published on 7 March and 26 April. I would refer the Committee to paragraph 47 of the 7 March memorandum and paragraphs 24 and 45 of the 26 April memorandum.

2. *Clause 1(5) disapplies section 3 of the Human Rights Act to prevent the courts from reading the Bill in a way which is compatible with Convention rights. Why have you disapplied section 3 to the provisions of this Bill? Do you accept that this makes it more likely that the courts will issue declarations of incompatibility under section 4 HRA?*

Our targeted provision in clause 1(5) to disapply section 3 of the 1998 Act will ensure that the provisions in this Bill will be interpreted to meet the legislative intent of Parliament, rather than being interpreted as far as possible by the Courts to achieve compatibility with Convention rights. Parliament and the Government are better suited to address the often-sensitive policy issues involved in legislation. By disapplying section 3 in this Bill, we are making sure that the balance between our domestic institutions is right and Parliament's intent is clear to the courts. We do not accept the premise that it follows that this would make it more likely that the courts will issue declarations of incompatibility under section 4 of the 1998 Act.

3. *Clause 2 of the Bill would place a duty on you to make arrangements to remove all persons falling within the four conditions set out in the clause (i.e. persons who arrive or enter the UK irregularly and indirectly). Based on your most recent statistics:*

- a. *What proportion of persons who were granted asylum in the UK arrived in or entered the UK lawfully, without any involvement of deception, and did not pass through another safe state on the way?*
- b. *What proportion of victims of modern slavery arrived in or entered the UK lawfully and did not pass through another safe state on the way?*

The duty to remove will apply to individuals who entered the UK illegally having passed through a safe country.

The central premise of this legislation is clear – those in need of protection should claim asylum in the first safe country they reach, rather than risking their lives or paying people smugglers to make the dangerous journey across the Channel.

We do not collect data in a reportable format with regards to points (a) and (b).

4. *What safe and legal routes are available to refugees and others in need of international protection (other than resettlement schemes) to allow them to enter the UK both lawfully and directly? What safe and legal routes are available to, for example, Eritrean or Iranian refugees who have no family ties here and who wish to claim asylum in the UK?*

It is the Government's long-standing policy, that we do not accept asylum claims from abroad and that there is no provision within the Immigration Rules which allows an individual to travel to the UK for the purpose of claiming asylum. This first safe country principle is recognised internationally and a common position in most countries. Whilst we sympathise with the great number of individuals overseas in difficult situations, the UK cannot possibly accommodate all those who might wish to come to the UK, with some estimates suggesting that up to 100 million people are displaced around the world.

The UK focuses on helping people directly from regions of conflict and instability, including through established resettlement schemes. We believe our resettlement schemes are the best way to provide much needed support for those who need it. The UNHCR identifies the most vulnerable individuals from all around the world, already designated with refugee status, who are facing protection risks in the country of asylum, as in need of resettlement. UNHCR will then decide the most suitable resettlement country based on the individual's circumstances, and will refer those eligible to countries including the UK.

The Prime Minister has stated that as we get a grip on illegal migration, we will do more on safe and legal routes, and clause 58 provides a mechanism for this. We will begin the consultation on the clause 58(1) regulations within three months of the Bill receiving Royal Assent.

Further details of existing safe and legal routes have been set out in our factsheet: [Safe and legal routes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/safe-and-legal-routes).

In addition, at the Commons Report Stage the Government supported Tim Loughton's new clause (see now clause 59) requiring a report being laid before Parliament, within six months of Royal Assent, detailing existing and any proposed additional safe and legal routes.

5. *The UNHCR has been clear that requiring refugees to claim asylum in the first safe country is inconsistent with the object and purpose of the Refugee Convention. The domestic courts have also held that refugees have an element of choice as to where they may claim asylum. What is your legal basis for disagreeing with both the UNHCR and the courts, and requiring refugees to claim asylum in the first safe country they enter in order to benefit from the protections of the Refugee Convention?*
6. *The Bill provides that a person who arrives in or enters the UK irregularly who has not "come directly" to the UK will have their asylum claim declared inadmissible and will be subject to removal arrangements. Clause 2(5) of the Bill specifies that someone who "passed through or stopped" in a country where they did not face persecution en route to the UK did not "come directly":*
 - a. *Article 31 of the Refugee Convention prohibits penalising refugees on the grounds of unlawful entry. Does denying access to the asylum system and removing refugees from the UK without any individualised assessment constitute a "penalty" in your view?*
 - b. *This definition of "coming directly" in the Bill is stricter than the interpretation set out in the Nationality and Borders Act 2022, which states that individuals will not be considered to have come directly only if they "stopped" in another country. On what basis has the Government substantially altered its understanding of the legal meaning of Article 31 in the past year?*

Our view is that those who need international protection should claim asylum in the first safe country they reach - that is the fastest route to safety. These journeys are unnecessary, as those making these crossings are coming from safe countries, such as France, where they could have claimed asylum. The first safe country principle is

widely recognised internationally and is a fundamental feature, for example, of the EU's Common European Asylum System.

This concept seeks to ensure that migration from safe countries does not undermine concerted efforts to help those most in need.

We are satisfied the provisions in the Bill comply with the Refugee Convention. It is a longstanding principle that those in need of protection should claim asylum at the earliest opportunity, in the first safe country they reach. The Divisional Court (AAA and others v SSHD [2022] EWHC 3230 (Admin)) recently upheld the lawfulness of this principle in relation to the UK's Migration and Economic Development Partnership with Rwanda, concluding that the Government can relocate asylum seekers to Rwanda for their claims to be determined there rather than by the United Kingdom. The Court found that the government has made arrangements with the government of Rwanda which are intended to ensure that the asylum claims of people relocated to Rwanda are properly determined in Rwanda, upholding the legality of those arrangements. No one will be returned or removed to a country where they may be persecuted and, as such, we are clear removals for this purpose are not a penalty.

We are implementing the measures in the Nationality and Borders Act 2022 at pace, but it is not enough. There is not one single solution to the problem of illegal migration and it is clear that we need to go further. The Illegal Migration Bill builds upon the previous reforms, marking a step change in our approach allowing for the swift removal of people who arrive illegally in the UK. In order to respond to the continuing problem of people making dangerous journeys to arrive in the UK illegally, it is only right that we consider our interpretation of 'coming directly'. It is patently clear that people arriving illegally in the UK on small boats have not come directly from a country where their life or freedom have been threatened.

It is also right that we prioritise protection for the most vulnerable people rather than those who could have claimed asylum elsewhere. We are satisfied that the duty to make removal arrangements does not amount to a penalty within the meaning of the Refugee Convention. And in any event, as the Committee will be aware, the prohibition on penalties in the Refugee Convention under Article 31 only applies to those who have come directly from a territory where their life or freedom was threatened in the sense of Article 1 of the Convention. A person may raise a factual suspensive claim where they believe there has been a mistake of fact in deciding they are subject to the duty to remove. A person can also raise a serious harm suspensive claim where they believe their removal to a safe third country will give rise to a real risk of serious and irreversible harm. It is also worth noting that Rwanda is a safe and secure country with a track record of supporting over 130,000 refugees in compliance with its international obligations, including working in partnership with the United Nations High Commissioner for Refugees (UNHCR) to place individuals in Rwanda for the purposes of providing sanctuary, through the Emergency Transit Mechanism.

7. *Clause 59(6) provides that the duty in clause 2 will not commence unless and until regulations dealing with interim measures under clause 51 (which is currently described by the Government as a placeholder clause) are in force:*

- a. *Why is the duty in clause 2 contingent upon regulations dealing with interim measures of the European Court of Human Rights?*
- b. *Why have you included a placeholder clause on interim measures? When will this be replaced by a substantive provision and what will this provision seek to achieve?*

Clause 59(6) was linked to the marker clause 51 relating to interim measures of the ECtHR. The Government tabled an amendment at Report Stage to remove clause 51 and clause 59(6) with a new clause on interim measures (see now clause 53).

What is now clause 53 provides for discretion for a Minister of the Crown to suspend the duty to remove where the European Court of Human Rights has issued an interim measure. This discretion must be exercised personally by a Minister of the Crown. This means the Minister may suspend removal in response to a Rule 39 interim measure but is not required to as a matter of UK law. The clause provides a broad discretion for the Minister to have regard to any factors when considering whether to disapply the duty. The clause provides a non-exhaustive list of considerations that the Minister may have regard to when considering the exercise of that discretion.

8. *The Bill provides that refugees, victims of modern slavery, and their family members will be removed either to their country of origin (if they come from an EEA country, Switzerland, or Albania), or to a 'safe' third state (listed in the Schedule to the Bill) such as Rwanda. The criteria for designating these states as 'safe' is not set out in the Bill or the Explanatory Notes. What safety assessments have been undertaken in respect of the countries listed in the Schedule, and what criteria have been applied in order to designate these states as 'safe' for third country nationals?*

Treating asylum claims from EU nationals in this way is not new. This has been a longstanding process in the UK asylum system, that is also employed by EU states. EU states are not the only countries that are safe countries.

It is right that we focus our efforts on those most in need of our help, and not on those that have travelled from safe countries. New section 80AA of the Nationality, Immigration and Asylum Act 2002, as set out in now clause 57(3) of the Bill, sets out the countries considered as safe countries of origin. New section 80AA(3) and (4) set out the criteria by which a country may be added to this list.

The countries listed in Schedule 1 to the Bill are countries to which a person may be removed if they make a protection and human rights claim which prevents removal to their country of origin and that country of origin is not listed in section 80AA. Where the country of origin is listed in section 80AA, but the person raises a protection and human rights claim and the Secretary of State considers that there are exceptional circumstances which prevent removal to that country of origin, the person may only be removed to a country listed in Schedule 1. Section 80A of the 2002 Act currently applies to nationals of EU member States. The Bill extends its application to other countries as listed in section 80AA. Clause 5 of the Bill sets out which countries a person the duty applies to may be removed to. Clause 6 sets out the criteria by which a country or part of a country may be added to the Schedule.

The list of countries in Schedule 1 is not new, it is an amalgamation of the lists of safe countries currently set out in section 94(4) of the Nationality, Immigration and Asylum Act 2002 and paragraph 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc) Act 2004 which has been added to from time to time by several governments, with the addition of the Republic of Rwanda and the exclusion of Ukraine.

9. *According to your statistics, the asylum grant rate for Albanian women and children in 2022 was 87%. On what basis has Albania been designated as safe given the significant number of Albanian women and children who have been granted asylum in the UK? Given the absence of any individualised assessment of Albanian asylum or human rights claims, does this not run a very real risk of breaching the prohibition of refoulement?*

The Bill expands the list of countries for the purposes of section 80A of the 2002 Act that are considered safe countries of origin in law, making it is unquestionably clear when someone doesn't need our protection because they are obviously not at risk of persecution in their home country.

Albania is generally considered a safe country and people should not be risking their lives travelling from there to reach the UK to claim asylum.

If an individual meets the conditions of the duty, and it is assessed that there are exceptional circumstances why they cannot return to a country generally considered safe, their claim for asylum will be processed in a safe third country such as Rwanda, and appropriate support provided. This is fully compatible with the Refugee Convention, including Article 31.

No one will be returned or removed to a country where they may be persecuted. This is in keeping with our obligations under Article 33 of the Refugee Convention.

10. *As refugees and victims of modern slavery, and their family members, will have their asylum claims declared inadmissible if they arrive or enter the UK irregularly and 'indirectly', the merits of their cases will not be considered. How does this system of automatic inadmissibility and removals guarantee non-refoulement, as guaranteed under both the Refugee Convention (Article 33) and under various articles of the ECHR?*

If individuals come to the UK illegally from a safe country, they may be detained and removed back to their home country or a safe third country, such as Rwanda. A person can raise a serious harm suspensive claim where they believe their removal to a safe third country will give rise to a real risk of serious and irreversible harm. For those who travel directly from a country of conflict or a country where they are at risk of persecution, then their asylum claim will be considered. The new laws only apply if you have passed through or come from a safe country.

No one will be returned or removed to a country where they may be persecuted. The Government tabled amendments at Report Stage which removed what was then clause 8 of the Bill in relation to family members.

11. Under the existing rules, asylum claims declared inadmissible can nevertheless be admitted for processing if the person cannot be removed to a safe third country within six months. However, under the Bill, refugees, victims of modern slavery, accompanied children, and family members who cannot be removed for any reason will be left subject to removal arrangements in perpetuity. How does this legal limbo comply with the duty to naturalise and assimilate refugees as far as possible, as set out in Article 34 of the Refugee Convention?

The point of this legislation is that people will be removed promptly when they come to the UK illegally, preventing people from being left in limbo. The legislation is intended to deter people who are already in a safe country from making dangerous and unnecessary journeys to arrive in the UK illegally, and to deter smuggling gangs from perpetrating organised immigration crime.

Our published inadmissibility policy sets out that an asylum case may be considered for third country inadmissibility action (and thereby not proceed in the substantive asylum process) only where there is a realistic prospect of a safe third country agreeing to admit the claimant within a reasonable timescale, generally accepted to be around six months from the point the claim was registered; removal must also proceed within a reasonable timescale after that. Where agreement with a safe third country, and removal of the individual to that country cannot be achieved in those timescales, the claim will be considered under the UK asylum system.

12. Clause 11 of the Bill provides broad powers to detain individuals (of any age) in any place you deem appropriate, and Clause 12 disapplies time limits for the detention of children and pregnant women. How does this ensure that detention will comply with human rights standards, in particular, the rights of the child?

a. Do you intend to detain all of those who you have a duty to make arrangements to remove? How is this possible given the capacity of the detention estate?

Individuals will only be detained in specified, appropriate, places of detention. Children and pregnant women will be detained in appropriate accommodation and provision will be made for education (in the case of children) and any relevant support needs. The Bill provides, in line with the current common law position, that an individual may only be detained for a period that is reasonable, with reference to the specific statutory purpose for which they are detained. Moreover, we have now amended the Bill to provide that an unaccompanied child may only be detained in circumstances prescribed in regulations, for example for the purposes of removal where family reunion is possible or age verification.

The Home Office is not currently in the position of corporate parent to any unaccompanied child and there is nothing in the Bill which changes this position. It will continue to be for the local authority where an unaccompanied child is located to consider its duties under the Children Act 1989.

Anyone subject to the duty to make arrangements to remove may be detained. We are increasing our detention capacity and already have plans in place to build two new Immigration Removal Centres. This includes developing a new immigration removal

centre in Oxfordshire on the former site of Campsfield House, and a new immigration removal centre at Gosport, Hampshire, on the former site of Haslar.

13. Clause 12 of the Bill makes clear that a person subject to removal under clause 2 may be detained for such period as is reasonably necessary and that it is for the Secretary of State to assess whether that period is reasonable. This alters the common law position that it is for the courts to decide whether removal will take place within a reasonable period and therefore whether detention is justified. How does this alteration comply with Article 5 ECHR? How do you expect the courts to approach a challenge to the Secretary of State's assessment of what is a reasonable period?

Clause 11 of the Bill as introduced in the Lords provides, in line with the existing common law position, that a person may only be detained for such period as is reasonably necessary and sets out that it is for the Secretary of State to assess that period. The Government tabled amendments at the Commons Report stage to make it clear that an unaccompanied child may only be detained in circumstances to be specified in regulations and that the Secretary of State has the power to set a time limit on detention for the purposes of removal (see new paragraph 16(2E) of Schedule 2 to the Immigration Act 1971 as inserted by clause 10(2)). The Immigration Minister also committed, in response to an amendment tabled by Tim Loughton MP "to set out the new timescale under which genuine children may be detained for the purposes of removal without the authority of the court".

Article 5(1)(f) does not prevent courts giving discretion to state authorities to decide whether there is a sufficient prospect of removal to justify detention. Giving discretion to the Secretary of State (as to whether there is a sufficient prospect of removal within a reasonable timescale to justify detention) is Article 5 EHCR compliant. During the first 28 days of detention, there will be no restriction on the ability to apply for a writ of habeas corpus (or the equivalent procedure in Scotland). Once the first 28 days of detention have elapsed there is no restriction on the ability of the courts to assess the lawfulness of detention.

As set out in the ECHR memorandum, the Government's position is that this clause is compatible with Article 5 ECHR.

14. Clause 13 of the Bill would, for the first 28 days of detention, prevent the First-tier Tribunal granting immigration bail to a detained person subject to removal in accordance with clause 2. It also seeks to oust judicial review in connection with their detention for the same period, although habeas corpus applications could still be made. Why do you consider it necessary to prevent tribunals and courts considering whether detention is necessary or even lawful? Are these changes compliant with the UK's human rights obligations, particularly Article 5 ECHR?

a. The ECHR memorandum that accompanies the Bill states that "the courts will ensure compliance with Article 5 when determining applications for a writ of habeas corpus". If this is true, how do you consider an application for habeas corpus will differ from an application for judicial review and what is the purpose of ousting judicial review?

The scheme is predicated on operating swiftly and restricting access to the First-tier Tribunal granting immigration bail for the first 28 days of detention will allow for an assessment of inclusion within the duty to remove, any challenges or barriers to be considered and removal arrangements to be put in place.

During the 28-day period, there will be no restriction on the ability to apply for a writ of habeas corpus (or the equivalent procedure in Scotland). Individuals will still be able to apply to the Secretary of State for bail under Schedule 10 to the Immigration Act 2016, although it will not be possible to challenge a decision by the Secretary of State to refuse bail by way of judicial review. In line with Article 5(5) ECHR, there will be no restriction on an individual's ability to access damages in respect of unlawful detention in relation to the 28-day period.

Given that individuals will be able to challenge their detention through the courts from the outset of their detention, via habeas corpus, the Government considers that these provisions are compatible with Article 5(4). The Government notes that the "Hardial Singh" principles were formulated pursuant to an application for habeas corpus and their application is, therefore, not restricted to claims for judicial review.

15. In what circumstances do you intend to exercise your power to remove unaccompanied children from the UK (clause 3) and how would this comply with the legal obligations to have regard to the need to safeguard and promote the welfare of children in the UK, and to treat the best interests of the child as a primary consideration? If this power is intended only to be exercised in very rare cases where family reunification outside the UK may be in the best interests of the child, why is the power not circumscribed in this way?

The Government tabled an amendment to clause 3 to clarify in subsection (3) of the clause the very limited circumstances in which an unaccompanied child may be removed ahead of them reaching adulthood, namely, for the purposes of reunion with the child's parent, where the person is to be removed to a safe country of origin, where the person has not made a protection claim, or in other circumstances specified in regulations made by the Secretary of State. An unaccompanied child from a safe country of origin could be removed whilst under 18 but any such decision would be taken on a case-by-case basis. The Bill makes clear that EU countries, EEA countries (Iceland, Norway, Liechtenstein), Switzerland and Albania are safe countries. We would not return an unaccompanied child to their home country unless it was safe to do so and we were satisfied there were adequate reception arrangements in place, and after consideration had been given to the best interests of the child.

If an unaccompanied child arrives in the UK illegally having passed through safe countries and is not a national of EU countries, EEA countries (Iceland, Norway, Liechtenstein), Switzerland or Albania, the power to make arrangements to remove them will only be exercised in very limited circumstances ahead of them reaching adulthood, such as for the purposes of reunion with their parent but any decision will be taken on a case-by-case basis.

In addition, if an unaccompanied child of any nationality does not make a protection claim in the UK, they may be returned to their home country or the country they

embarked from. This is not limited to the list of safe countries in the Bill but any decision would be taken on a case by case basis, as happens now with existing powers where unaccompanied children who do not seek protection in the UK can be returned where there are suitable reception arrangements for them. This has been government policy since at least 2000.

If we do not remove an unaccompanied child ahead of them reaching adulthood, they would then fall to be removed under the duty in clause 2(1) of the Bill and relocated to their home country or a safe third country from the point at which they turn 18.

We have been clear in Parliament on how we intend to use this power in clause 3 and have now set that out on the face of the Bill. Limiting the scope of the power on the face of the Bill without including the ability to make regulations would fail to take account of changing circumstances and changes to the trafficker's business model. We will ensure that any policy guidance on the use of the power takes account of section 55 of the Borders, Citizenship and Immigration Act 2009.

16. Clause 15 gives you the power to provide or arrange for the provision of accommodation in England for unaccompanied children. Can you confirm whether the safeguards under the Children's Act 1989 will apply and, if not, why have no equivalent safeguards been set out in the Bill?

The Bill provides the Home Office with the power to provide or arrange accommodation and support for unaccompanied children, if necessary, until a local authority receives them into their care, having been directed to do so via new transfer powers by the Home Secretary.

We expect local authorities to meet their statutory obligations to unaccompanied children from the date of arrival and for the Home Office to only step in sparingly and temporarily.

The Home Office does not have, and therefore cannot discharge, duties under Part 3 of the Children Act 1989. It is for the local authority where an unaccompanied child is located to consider its duties under that Act. There is nothing in the Bill which changes this position.

Unaccompanied children staying in Home Office accommodation will be provided with the necessary support during their stay.

17. Given the lack of a definition of "Home Office accommodation" in the Bill, can you please set out what types of accommodation would fall within the scope of this term and specifically where children will be accommodated?

Clause 15 relates to non-detained accommodation and does not limit the type of Home Office non-detained accommodation that can be provided. We are unable to provide specific details at this time about the types of non-detained accommodation we will provide or where children will be accommodated using this power as we are continuing to work on the operational plans.

The unprecedented rise in small boat crossings has meant we have had no alternative but to temporarily use hotels to give children a temporary roof over their heads whilst

local authority accommodation is found. Our intention is to provide other appropriate accommodation and end the use of hotels.

The policy intention is to only accommodate such children on a temporary basis where deemed necessary and provide appropriate support during their short stay before moving to a local authority care placement. We expect local authorities to continue to meet their statutory obligations to children from the date of arrival and for the Home Office to only step in sparingly and temporarily. The best place for these young people is and will remain within a local authority care placement.

The Home Office is not currently in the position of corporate parent to any unaccompanied child and there is nothing in the Bill which changes this position. It will continue to be for the local authority where an unaccompanied child is located to consider its duties under the Children Act 1989.

We are working closely with the Department for Education and others to ensure we provide suitable accommodation.

Where detention is used, individuals will only be detained in specified, appropriate, places of detention. Children will only be detained in appropriate accommodation and provision will be made for any relevant support needs. We will be working closely with the Department for Education and local authorities to ensure there are proper support provisions in detention for children.

18. Why do you require a power (in clause 16) to remove unaccompanied children from local authority care? In what circumstances do you intend to exercise this power, and how would this comply with the rights of the child?

The Secretary of State may apply the power in clause 16 to direct a local authority in England to cease looking after an unaccompanied child and to transfer a child into Home Office provided non-detained accommodation after five working days of the direction being made.

This is a power rather than a duty and we are not therefore required to issue such a direction. We continue to work through the operational processes relating to unaccompanied children and the circumstances in which we will use this power.

19. Clause 21(1) provides that the public order disqualification (under ECAT as incorporated through s63 Nationality and Borders Act 2022) automatically applies to someone if the Secretary of State has a duty to remove them under clause 2. ECAT provides that a 'recovery and reflection period' must be provided unless "grounds of public order prevent it":

a. At present, the Nationality and Borders Act 2022 limits the disqualification to foreign criminals, those connected with slavery or terrorism and those who pose a threat to national security. On what basis are you suggesting that victims of modern slavery who come to the UK irregularly represent a threat to public order such that it prevents them being given a recovery and reflection period?

b. How is that threat to public order altered by their cooperation with an investigation into trafficking/slavery (which disapplies the disqualification under clause 21(2) and (3))?

The Public Order Disqualification is set out at Article 13 of ECAT as a measure that allows a signatory to the Convention to remove those who pose a risk to public order from the protections otherwise afforded to potential victims of modern slavery and human trafficking. This measure is required in order to facilitate the swift resettlement of those who enter the UK illegally. It is important to note that were the UK to give a positive conclusive grounds decision to all those who arrived in small boats there is no requirement under ECAT that they would be required to settle in the UK.

The UK remains firmly committed to ECAT, whilst taking proportionate measures to tackle illegal immigration, and stop the funding of people traffickers.

The threat to public order from someone subject to the duty under clause 2(1) arises from the exceptional circumstances relating to illegal entry into the UK, pressure placed on public services by the large number of illegal entrants and the loss of life caused by illegal and dangerous journeys. Given those circumstances, it is considered that it is consistent with ECAT to apply the public order disqualification to enable the timely removal of those subject to the duty under clause 2(1).

It is recognised that the application of the public order disqualification to this cohort of illegal entrants (subject to the limited exception where a person is cooperating with an investigation or prosecution of an offence relating to the circumstances of their modern slavery or human trafficking) is a significant step and only justified during such time as the exceptional circumstances relating to the illegal entry into the UK, including such resulting from persons crossing the Channel in small boats, continue to apply. Accordingly, it is considered appropriate for the continued necessity for these provisions to be kept under review. Under clause 25, the modern slavery provisions will be suspended after two years. If the Home Secretary is satisfied that the exceptional circumstances continue to apply, it is possible to make regulations, subject to the affirmative procedure, for the provisions to continue to apply, for no more than a year at a time. If the Home Secretary is satisfied that the circumstances are such that the provisions can be suspended earlier than they would otherwise suspend, she may make regulations suspending them at that earlier point. If the provisions are suspended and the circumstances in the future recur such that the provisions are again required, they can be revived by regulations subject to the draft affirmative procedure, or the made affirmative procedure in cases of urgency.

Co-operation with a state's investigating authorities furthers the objectives of ECAT because it assists with tackling the criminality related to modern slavery; failure to cooperate makes that objective of ECAT much more difficult. Where it is necessary for a person to be in the UK in order to provide that cooperation, and where the public interest in the cooperation is not outweighed by any significant risk of serious harm to the public posed by the person, the threat to public order mentioned above is temporarily outweighed by the public interest in cooperation with an investigation.

20. Under ECAT, the public order disqualification applies only to the “recovery and reflection period” (Article 13(3)). What is the legal basis for going further in the Bill and relying on the public order disqualification to deny victims their entitlement to assistance and support, and their entitlement to limited leave to remain? How does this broad disapplication of entitlements comply with the UK’s obligations under both ECAT and Article 4 ECHR?

The position in the Bill in this respect reflects the position under the Nationality and Borders Act 2022, see in particular: sections 63(2)(b), 65(3) and 65(7) and (8) of that Act. The position under the Bill and under the Nationality and Borders Act is consistent with ECAT. It is considered that the public order disqualification in Article 13(3) of ECAT can be read across to both Articles 10 and 14 such that once the public order or other exemption is properly invoked, the obligation to give a conclusive grounds decision and/or issue a residence permit falls away; and if an individual would not originally have been entitled to obtain leave because of the public order disqualification, it is considered consistent with Article 14 to provide for power to revoke leave on the same basis if e.g. public order concerns are subsequently discovered. Article 4 ECHR is not considered to give rise to any discrete obligation to grant limited leave.

21. Clause 29(3) provides that a person who is a family member of a person who has ever met the four conditions in clause 2, and meets the three conditions in clause 8, is automatically barred from being given leave to enter or remain in the UK for the rest of their life (unless you choose to exercise your powers to make an exception under (3)-(5)). In the case of a child who was brought to the UK by a parent in circumstances where their parent meets the conditions of clause 2 and the child meets the conditions of clause 8, can you explain how the consequences for the child are compatible with Article 2(2) of the UNCRC?

The Government amendments at Report Stage to clause 29, taken with the removal of what was clause 8 in relation to family members, will mean that a child, who has a parent that meets the four conditions in clause 2, will not be subject to the bans in that clause as a result of their parent’s status.

22. Clause 30, read with clauses 31-36, provides for the automatic and lifelong barring of a child from all forms of British citizenship based on whether either of their parents has ever, either before or after their birth in the UK on 7 March 2023, fulfilled the four conditions in clause 2 (unless the Home Secretary chooses to exercise her powers to make an exception under clause 35). Can you explain how this approach to a British-born child’s future citizenship is compatible with Article 2(2) of the UNCRC? What is the justification for changing a child’s rights to citizenship based on the actions of one of their parents?

The amendment we tabled to remove section 30(4) will mean that a child born in the UK to a parent who meets the four conditions in clause 2 will not be barred from citizenship where they meet the other statutory requirements (unless they meet those conditions themselves).

23. The Bill would introduce “serious harm suspensive claims”. Claims will be suspensive if they meet the threshold of establishing a real risk of serious and irreversible harm within a limited time frame. This is not the same as the threshold for a successful claim challenging removal under Article 2 or 3 ECHR. How does this ensure compliance with the ECHR?

The Government at Report Stage amended the Bill to include a new clause (see now clause 38) making further provisions about the meaning of serious and irreversible harm. This includes examples of harm that constitute serious and irreversible harm which is modelled on the ECtHR test for granting interim relief. This is distinct from a claim based on any specific Convention rights – which are not being ousted or limited in any way but will not suspend removal save for instances of serious and irreversible harm.

24. You have reserved the power to define what is meant by “serious and irreversible harm”. As stated in the Explanatory Notes, this is a term that “mirrors that applied by the European Court of Human Rights when considering whether to grant interim measures”. Do you intend to adopt a definition that is different to that applied by the ECtHR? If so, how would that be compatible with international law?

The definition of serious and irreversible harm set out in the Bill reflects the threshold applied by the European Court of Human Rights when considering whether to grant interim measures.

25. Other than the very limited suspensive claims provided for in the Bill, all other legal challenges will be “non-suspensive”. How is removing refugees, victims of human rights abuse and victims of modern slavery and human trafficking from the UK while their cases are ongoing compliant with the UK’s international legal obligations? How will you ensure that such individuals can continue to pursue their legal claims from overseas and can be returned to the UK if their claims are successful?

Those persons in scope of the duty to remove will not have their asylum claim considered by the UK and will be excluded from the protections afforded to potential victims of modern slavery save in the limited circumstances specified in the Bill. A person will not be relocated to a third country if they make a serious harm suspensive claim and the Home Office concludes they would face a real risk of serious and irreversible harm if removed there.

Notwithstanding the UK’s obligations under ECHR Article 4 to consider the risk of re-trafficking in the country of removal, under the Relevant Conventions (ECHR and ECAT), the UK is under no obligation to resettle any such individual.

Arrangements will be made to ensure that those persons relocated to a safe third country can continue to pursue their legal claims from overseas and returned to the UK if their human rights claims are successful.

26. Clause 51 gives you the power to make regulations concerning interim measures indicated by the ECHR. Such interim measures are binding on States

Parties to the ECHR under Article 34 (Mamatkulov and Askarov v Turkey). Do you agree that any regulations that called into question the binding nature of interim measures would be incompatible with the UK's obligations under the ECHR? If not, why not?

Clause 51 has been replaced by a new clause (now clause 53). The new clause will create a discretion for a Minister of the Crown to suspend the duty to remove a person where an interim measure has been indicated. That discretion must be exercised personally by a Minister of the Crown. This means the Minister may suspend removal in response to a Rule 39 interim measure but is not required to as a matter of UK law. The clause provides a broad discretion for the Minister to have regard to any factors when considering whether to disapply the duty. The clause provides a non-exhaustive list of considerations that the Minister may have regard to when considering the exercise of that discretion.

27. How do you intend the cap under clause 53 to function? How does the cap comply with the Refugee Convention?

The Government is committed to maintaining clear, well-defined global, safe and legal routes for people in need of protection. The Prime Minister has committed to introduce a cap on the number of people coming via safe and legal routes. This is necessary if we are to ensure that the number of people we welcome doesn't exceed the capacity of the UK to integrate and accommodate them effectively. This is the right way to ensure that we can continue to provide sanctuary to those in need of international protection as part of a well-managed migration system. The cap does not detract from the UK's responsibilities under the Refugee Convention.

The cap will be amendable in the event of humanitarian emergencies and based on local authority capacity. The consultation with local authorities will enable a realistic view of the UK's capacity to welcome, house and support individuals arriving through safe and legal routes.

Once we have engaged with local authorities, and any other persons or bodies relevant to the development of the cap, we will propose a figure on safe and legal routes which will be presented to Parliament in the form of a draft affirmative statutory instrument for debate and approval by both Houses. The safe and legal routes to which the cap will apply will be considered as part of this process, as the routes the UK offers at the time the regulations are made will need to be taken into account.

The clause (now clause 58) provides for a cap, not a target, hence subsection 58(5) to ensure that should the total figure be exceeded there will be a statement made to Parliament.

28. In evidence to our Committee, expert witnesses told us that the research indicates that deterrent asylum policy does not work. We note that the Government has not published an impact assessment alongside the introduction of this Bill, as required by the Government's own guide to making legislation. Can you please set out your evidence base for claiming that the Bill will "stop the boats"?

This Bill will send an unambiguous message that people who enter the UK illegally will not be able to stay. Instead, they will be liable to be detained and will be either promptly returned to their home country or a safe third country. People who enter the UK illegally will have no right to claim asylum here, and they will never be able to make a life here. If they cannot be returned to their home country, their asylum claim will be considered by a safe third country. Given this we believe the Bill will have a significant deterrent effect. The Australian experience demonstrates that once it is clear an illegal route is unviable, the number attempted the journey fall significantly. In a similar way, the intent of this legislation is to deter and prevent these dangerous and illegal crossings.

Yours sincerely,

A handwritten signature in blue ink that reads "Suella Braverman". The signature is written in a cursive, flowing style.

Rt Hon Suella Braverman KC MP