



Call to Action

**Stand firm on human rights law:
Reject the Illegal Migration Bill**

On Tuesday 7th March 2023, the Home Secretary introduced a new Bill called the "[Illegal Migration Bill](#)". Organisations and people across the UK are calling it "the Refugee Ban Bill".

The Bill puts a duty on the Home Secretary to arrange the removal of people who come to the UK without permission if they have not arrived directly from a country where their life and liberty is at risk. If they make an asylum claim, it will be declared "inadmissible" – so it won't be heard – and there is no right to appeal.

The Bill passed its Second Reading on Monday 13th March 2023 and is set to be fast-tracked through the Parliamentary process to becoming law. [Find out how laws are made here](#). This in itself is of serious concern to the democratic process. There must be appropriate time to scrutinise the human rights risks of new legislation. This is especially important when laws, like this one, are seen as emergency legislation. We are now all too plainly seeing the devastating impact on people and families across the UK of the rushed emergency Coronavirus legislation this time 3 years ago.

At BIHR, we have serious concerns about the Refugee Ban Bill's removal of vital human rights protections for people.

This Explainer sets these concerns out in plain language. We hope people, communities, campaigners and decision-makers will empower themselves with this knowledge and use it to resist this Bill.

15 March 2023

Contact: cmiller@bihr.org.uk

**The British Institute
of Human Rights** 

The Refugee Ban Bill includes the most discriminatory parts of the paused Rights Removal Bill

The Bill brings over some of the most insidious elements of the "Bill of Rights" (better known as the Rights Removal Bill) which has received overwhelming criticism from the public and Parliament for:

- undermining the universality of human rights, i.e. that they are for all people
- stopping laws being interpreted compatibly with people's human rights to prevent breaches (Section 3)
- compromising the UK's relationship with the Council of Europe by ignoring the rare but important interim measures (Rule 39) of the European Court of Human Rights (ECtHR).
- circumventing the rule of law by awarding itself unchecked powers

When one Rights Removal Bill is rejected by the public and heavily criticised by Parliament, it is hugely concerning to see the Government revive some of its worst parts in new legislation.

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

A Section 19 statement is part of the law-making process under the Human Rights Act. A Section 19(1)(a) statement confirms that the law being proposed by Government is compatible with the human rights in the European Convention on Human Rights (ECHR) and the Human Rights Act.

- This Bill will instead have a Section 19(1)(b) statement that says while the Home Secretary can't say the law is compatible with people's legally protected human rights, she wants to proceed with it anyway. This extraordinary choice has only been made once before when introducing the Communications Act 2003 (which banned broadcast political advertising).
- The Government is also trying to get rid of Section 19 statements through its Rights Removal Bill – despite advice from its own Independent Human Rights Act Review Panel that Section 19 statements have "had a major, transformational and beneficial effect on the practice of Government and Parliament in taking account of human rights issues when preparing and passing legislation".

If the Bill is not compatible with the ECHR, it is not compatible with all the UK's international obligations.

The Refugee Ban Bill undermines the fundamental principle of universality (Section 3)

Clause 1 (5) of the Bill disapplies Section 3 of our Human Rights Act to one group of people based on how they arrived in the UK. This is not how human rights work; no Government gets to pick and choose who is deserving of rights and who is not.

- Section 3 of our Human Rights Act says all UK laws must be applied in a way that respects human rights wherever possible. This duty applies to courts but also public bodies, like the Home Office.
- It also means people are able to challenge decisions that breach human rights, such as through judicial review. The ECtHR found "insufficient powers of judicial review exercised by the courts" may violate the Article 13 right to an effective remedy.
- Section 3 doesn't allow courts to change the meaning of the law being looked at; they can only interpret laws in a rights-respecting way if they can do so while respecting Parliament's "intention".
- Human rights are universal – they apply to us all equally. By disapplying a key section of our Human Rights Act to one group of people based on how they arrived in the UK, the Bill would undermine this key principle.
- The Government has not explained why, if the Bill complies with the UK's international obligations (which include compliance with human rights), it would object to the Bill being interpreted compatibly with human rights.
- The Government is already trying to get rid of Section 3 of the Human Rights Act through its Rights Removal Bill. Read our briefing on why this section matters for people in their everyday lives.

Disapplying S3 would lead to uncertainty for public body workers and weaken accountability of the Government for human rights violations. As the Government itself admits in its Rights Removal Bill assessment, removing Section 3 could also "lead to more claimants taking cases to Strasbourg" because they cannot bring challenges in UK courts.

The Refugee Ban Bill sets conditions on how the UK will decide when to comply with the ECHR (Rule 39)

Specifically, Clause 49(1) of the Bill sets conditions on how the UK will comply with Rule 39 Orders (also called interim measures). Domestic legislation like this Bill cannot change international law, which is agreed to by a number of countries through organisations like the Council of Europe. The UK Government cannot say that it will remain within a system of human rights protection like the Convention, whilst also unilaterally changing the rules on when it will and will not comply with those international obligations.

- Rule 39 sets out the power of the ECtHR to make interim measures ordering countries to take (or not take) certain steps while we wait for a legal decision. Rule 39 Orders happen when there is an “imminent risk of irreparable damage” to someone’s human rights, meaning the person is at risk while the case is being considered.
- When the UK signed up to the Convention, it agreed to follow these rules to make sure the ECtHR can function as intended.
- It was interim measures from the ECtHR that stopped Russia executing British soldiers Shaun Pinner and Aiden Aslin, who have since been safely returned to the UK.

The UK ignoring interim measures risks setting a precedent for other countries to do the same; backlash from the ECtHR; and that people will be subject to irreversible harm without a fair hearing.

The Refugee Ban Bill sets the UK up for a deliberate collision with the ECtHR

While the UK is rarely at the ECtHR, the Government's controversial Rwanda removal policy was subject to interim measures. The ECtHR said the Government could not send people to Rwanda until UK courts had decided whether the policy is legal. Contrary to the Government’s rhetoric, the ECtHR was acting to ensure the Government did not remove people while UK courts were deciding the lawfulness of the policy itself. To allow such removals in the middle of people’s cases clearly prevents justice from being done.

- In 2022, just four judgments by the ECtHR concerned the UK and two found violations.
- This Bill is once again setting the UK on an unnecessary but deliberate collision course with the ECtHR.
- Countries have a “margin of appreciation” (i.e. flexibility around how to apply Convention rights in their own countries, particularly where isn’t a consensus across countries within the Convention). However, as with the Rights Removal Bill, the UK Government seems to think this means they can fundamentally change the legal obligations set out in the Convention; this is not how international obligations work, and will only lead to judgements against the UK by the ECtHR.

The ECtHR plays a vital role in upholding the rule of law and ensuring that nobody, including the Government, is above the law. By removing routes of challenge and expanding its own authority, this Government is undermining the rule of law by awarding itself power at the expense of people.

Useful resources:



[A section-by-section guide to the Human Rights Act \(including Sections 3 & 19\)](#)
[How are laws made?](#)
[Migrant & Refugee Rights](#)
[The Rights Removal Bill hub](#)
[The Rights Removal Bill, Rwanda & Interim Measures](#)
[What is judicial review?](#)
[What's in the European Convention on Human Rights?](#)
[What is the rule of law?](#)
[What is universality?](#)
[What rights do I have \(under the Human Rights Act\)?](#)
[Why our Human Rights Act Matters...to the rule of law](#)
[Organisations' duties to migrants and refugees](#)

Specific human rights issues

There are numerous specific human rights concerns raised by clauses in the Refugee Ban Bill that were impossible to analyse in the three working days allowed between publication and the Bill's first vote in Parliament (13 March 2023).

At BIHR, we have completed an initial human rights analysis of the Bill and our concerns are listed below:

Article 3: the right to be free from torture and inhuman or degrading treatment (“serious harm”)

- Clause 5 is likely to increase legal challenges by setting an “exceptional circumstances” test for challenging some removals on human rights grounds.
- Clause 40 and 48 together ignore the positive obligation to carry out an effective investigation into Article 3 claims by preventing judicial review in some cases.

Article 4: the right to be free from slavery or forced labour

- Clause 21 ignores the protective duty by removing modern slavery protections for people even where there are reasonable grounds to believe they are a survivor of trafficking.
- Clause 22 breaches the duty to “assist victims in their physical, psychological and social recovery” by removing support from survivors of trafficking.

Article 5: the right to liberty & Article 6: the right to a fair trial in relation to civil rights

- Clause 7 gives transport operators (like airlines) powers to detain people under Home Office orders.
- Clause 11 and Clause 13 together risk unlawful, arbitrary detention by granting sweeping powers of detention where courts can't grant bail for at least 28 days.
- Clause 13 prevents judicial review of detention decisions although the Home Office confusingly says people can rely on the writ of habeas corpus (an ancient type of legal proceeding) which must either fall short or render the clause pointless.
- Clause 8 together with Clause 11 risks arbitrary detention and discrimination by association by allowing the Home Office to detain partners, children, adult dependent relatives and parents.

Article 7: No punishment without law

Clause 2 risks breaching the right to no punishment without law by applying the rules retrospectively rather than from when they would become law.

Article 13: the right to an effective remedy

- Clause 4 risks preventing effective and practical remedies by requiring the Home Secretary to arrange to remove people even if they have made an application for judicial review.
- Clause 4 removes the right of appeal by declaring the asylum claims of people who meet the Bill's criteria as “inadmissible” rather than refused.

Article 14: the right to be free from discrimination

- Clause 5 discriminates between people seeking asylum of different nationalities by setting a higher bar to prevent removal for some.
- Clause 8 discriminates by association by saying people can be removed based on how their partner, parent (if they're a child) or minor child arrived in the UK
- Clause 16 discriminates between unaccompanied asylum-seeking children and other children in Local Authority care by allowing the Home Office to take them out of the Authority's care.