



Lord Speaker

The Rt Hon. the Lord McFall of Alcluith

17 April 2023

Deposited Papers Clerk
House of Lords Library

To whom it may concern,

Commitment of documents to be deposited in the Library

I hereby give instruction for the following documents to be deposited in the Library of the House of Lords:

Letter from Dunja Mikatović, Council of Europe Commissioner for Human Rights, 24 March 2023: re Illegal Immigration Bill

A handwritten signature in blue ink, reading "John McFall". The signature is stylized with large loops and a long tail.

Ref: CommHR/DM/sf 007-2023

Rt Hon Sir Lindsay HOYLE MP

Speaker of the House of Commons of the United Kingdom Parliament

Rt Hon the Lord McFALL OF ALCLUITH

Lord Speaker of the House of Lords of the United Kingdom Parliament

Strasbourg, 24 March 2023

Dear Speaker, dear Lord Speaker, dear Members of the House of Commons and the House of Lords,

As Council of Europe Commissioner for Human Rights, my mandate is to foster effective observance of human rights in all 46 member states of the Council of Europe. An important part of my work is to engage in dialogue with member states' governments and parliaments, and to assist them in addressing possible shortcomings in their laws and practices. In this capacity, I am writing in relation to the Illegal Immigration Bill, which will be subject to the committee stage in the House of Commons on Monday.

Ensuring access to asylum procedures is a key component of the system of human rights protection in Europe and beyond. Regardless of the manner of their arrival, people who may be in need of protection must have an opportunity to put their claim forward and have it fairly assessed. By effectively preventing people arriving irregularly from having their asylum claims assessed, the Bill would strip away one of the essential building blocks of the protection system. Through this and other measures, the Bill would, in my view, add to the already significant regression of the protection of the human rights of refugees, asylum seekers and migrants of which I warned in the recent [report](#) following my visit to the United Kingdom. In the process, it would also provide an incentive to other states, in Europe and beyond, to follow the UK's lead in evading and abdicating its responsibilities to people in need of protection.

Beyond the Bill's overall impact on access to protection, it contains numerous other measures that give cause for concern. While the Bill foresees possibilities to challenge removal, the way these are set out raises serious doubts whether such challenges will be subject to an adequate consideration of the risk of exposure to serious human rights violations. Such doubts relate, for example, to the power of the government to determine how a 'real risk of serious and irreversible harm', which could lead to the suspension of removal, should be defined. There is no clear guarantee that such a definition will be in line with the UK's obligations, including under the European Convention on Human Rights (ECHR), especially the absolute prohibition of exposing people to risks of a violation of their right to life or of their freedom from torture or inhuman or degrading treatment or punishment. The risk of violating this prohibition is further increased by the Bill prohibiting UK courts from interpreting its provisions in line with the ECHR as far as possible under Section 3 of the Human Rights Act 1998.

The exclusion, with very limited exceptions, of people arriving irregularly from modern slavery protections is another disturbing aspect of the Bill, both in view of the prohibition of slavery, servitude and forced or compulsory labour under the ECHR and of the Council of Europe Convention on Action against Trafficking in Human Beings. The government justifies this exclusion on the ground that persons falling under the Bill's removal provisions can be deemed a threat to public order, arising from the exceptional circumstances relating to their irregular entry, including pressure on public services and the loss of life due to dangerous crossings. Such a justification appears to me to be so broad and general that it increases the likelihood of an arbitrary application of the modern slavery protections.

I am also concerned at the widespread powers of detention, including in view of the fact that those detained will be largely deprived of ways to judicially challenge their detention in the first 28 days (with the limited exception of habeas corpus writs). Furthermore, the fact that the determination of the reasonableness of continuing detention will be a matter solely for the government to decide entails a risk of such detention becoming virtually unlimited in time and without sufficient possibilities for independent judicial oversight. In my view, these provisions raise serious issues under the ECHR and

the European Court of Human Rights' well-established case law on the right to liberty and security. I am especially concerned about the Bill's impact on the detention of children. It would reverse the UK's progress in reducing the number of children in immigration detention, a practice that is widely recognised as being extremely harmful. As a reminder, the UN [Committee on the Rights of the Child](#) has made it very clear that the detention of children because of their or their parents' immigration status constitutes a violation of children's rights. It has called on states to 'expeditiously and completely cease and eradicate' this practice.

Given the serious concerns about the human rights impact of the Bill in the areas mentioned above, the multiple limits that are imposed on appeals or making other challenges by affected individuals are also particularly worrying, and may very well undermine the right to an effective remedy.

I further note that it is likely that many people who are subject to the Bill's provisions on removal and inadmissibility will not be removed, either because of practical difficulties or because of legal barriers to their removal. By permanently excluding them from asylum procedures or ways to regularise their status, the Bill would simply leave potentially large numbers of people in legal limbo.

The Bill also briefly addresses safe and legal routes. The provision of sufficient and accessible safe and legal routes is integral to an approach that safeguards human rights, but these must be available alongside a fair and effective territorial asylum system. In view of the importance of safe and legal routes, I am concerned that the government has committed to looking at expanding these only *after* small boat crossings have stopped. If this is the case, such routes, by definition, will not be able to act as a credible alternative to current dangerous irregular crossings. Additionally, as I have [indicated](#) before, establishing a credible alternative to dangerous crossings of the Channel must also include the development of a framework that enables persons on the territory of France, who may have a legitimate claim to protection or stay on other grounds in the UK, to make such a claim.

In short, my assessment is that the Bill would have serious consequences both for the rights of refugees, asylum seekers and migrants in the UK, and for the upholding of the UK's international obligations more generally. The UNHCR has already [stated](#) that the Bill is in clear breach of the UK's obligations under the 1951 Refugee Convention. Similarly, in my view, the Bill's provisions create clear and direct tension with well-established and fundamental human rights standards, including under the ECHR.

Ultimately, the question of ECHR compatibility must lie with the judiciary, with UK courts being at the frontline of making this assessment as ordinary judges of the Convention. However, as already mentioned, the Bill would seek to prevent UK courts from interpreting its provisions in line with the ECHR. This risks creating divergence with the case law of the European Court of Human Rights. In this respect, the Bill adopts some of the troubling elements of the Bill of Rights Bill, whose problematic impact I have discussed in detail in my afore-mentioned report. By preventing UK courts from fully applying ECHR standards and the Court's case law, the Bill would put the onus of the effective protection of the rights of those affected on the European Court of Human Rights. I am concerned that this would undermine the principle of subsidiarity on which the Convention system is built, and of which the UK has been one of the foremost champions. I wish to reiterate that interim measure issued by the European Court of Human Rights, and their binding nature, are integral to ensuring that member states fully and effectively fulfil their human rights obligations.

In view of the issues above, it is now essential that members of Parliament and peers prevent legislation that is incompatible with the UK's international obligations being passed.

I would greatly appreciate if you could put this letter at the disposal of the members of your Houses.

Sincerely,



Dunja Mijatović