



Home Office

The Lord Murray of Blidworth
Parliamentary Under Secretary of State

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TO:

The Lord Coaker
House of Lords
London
SW1A 0PW

26 May 2023

Dear Vernon,

ILLEGAL MIGRATION BILL: GOVERNMENT AMENDMENTS FOR COMMITTEE

I am writing to advise you of a second and final tranche of Government amendments I have tabled for Lords Committee.

Tribunal Procedure Rules (new clause "*Procedure for Tribunal Procedure Rules*" and amendment to clause 51)

The Bill provides strict but fair time limits for the consideration of an appeal in relation to suspensive claims and for these time limits to be set out in Tribunal Procedure Rules. Such Rules are made by the Tribunal Procedure Committee (TPC) which must follow certain procedures, including consultation; this could take a period of months. Given the current scale of illegal entry via these dangerous and unnecessary Channel crossings in small boats, we are working to implement the scheme in the Bill as soon as practicable after Royal Assent. To support this, it will be necessary for the Tribunal Procedure Rules to be in place from the date of commencement. To enable this to happen, new clause "*Procedure for Tribunal Procedure Rules*" provide for the first set of Tribunal Procedure Rules to be made by the Lord Chancellor, rather than the TPC. Before making such Rules, the Lord Chancellor will be required to consult the Senior President of Tribunals, the Lord Chief Justices of England and Wales and Northern Ireland, and the Lord President of the Court of Session. These Rules will be subject to the made affirmative procedure (rather than, as now, the negative procedure). The power to make rules would then immediately revert to the TPC.

As a corollary to this, the amendment to clause 51 provides for the first set of procedural rules for the Special Immigration Appeals Commission (which would hear appeals in relation to certain cases such as those where open proceedings would be damaging to national security) to be made via the made affirmative procedure (rather than, as now, the draft affirmative procedure).

I attach a supplementary delegated powers memorandum in respect of these amendments.

Interim remedies (amendments to clauses 4, 52 and 55)

Clause 52 prevents a domestic *court* granting an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of a person from the United Kingdom under the Bill. The amendments to this clause similarly prevent a *tribunal* granting such interim relief. A similar point arises in clause 55, which relates to a judicial review of a decision on age; again, the amendments to that clause supplements references to the court and applications to the court for judicial review with references to the tribunal and applications to the tribunal for judicial review. The amendment to clause 4(6) expands the definition in the Bill of “application for judicial review” to cover an application to the judicial review jurisdiction of the Upper Tribunal or the Special Immigration Appeals Commission.

Legal aid (amendment to clause 54)

Amongst other things, clause 54 provides that where there is a right of appeal to the Upper Tribunal relating to a suspensive claim under the Bill, legal aid for advocacy at the Upper Tribunal will be available. The technical amendment to this clause ensures that the relevant amendment made to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 cross refer to the appropriate clauses of the Bill.

Age assessment legal challenges (amendment to clause 55)

Clause 55 provides that any legal challenge to an age assessment will be via a judicial review and can only be quashed if there is an error of law (such as on rationality, procedural fairness) and not if there is an error of fact. Such challenges would not suspend removal. Clause 56 enables regulations to be made to provide for an automatic assumption that a person is an adult if they refuse to consent to a scientific age assessment without reasonable grounds to do so. This amendment ensures that these two provisions properly dovetail. The clarificatory amendment ensures that clause 55 applies to any decisions following regulations made under clause 56 to automatically assume someone to be an adult following their refusal to consent to a scientific age assessment, including a decision as to whether an individual has reasonable grounds to refuse consent to a scientific age assessment.

Transitional regulations (amendment to clause 63)

Clause 66(5) contains a standard power, by regulations, to make transitional or saving provision in connection with the commencement of any provision of the Bill. This amendment enables such regulations to make consequential, supplementary and incidental provision and different provision for different purposes.

I am copying this letter to Lord Ponsonby of Shulbrede, Lord Paddick, Baroness Hamwee, Baroness Ludford, the Earl of Kinnoull, Lord McLoughlin (Chair, Delegated Powers and Regulatory Reform Committee), Baroness Drake (Chair, Constitution Committee), Joanna Cherry MP (Chair, JCHR), Stephen Kinnock MP and Alison

Thewliss MP. I am also placing a copy of the letter and the delegated powers memorandum in the library of the House and on the Bill page on gov.uk.

Yours sincerely,

A handwritten signature in black ink, reading "Murray of Blidworth". The signature is written in a cursive style with a horizontal line underneath.

**The Lord Murray of Blidworth
Parliamentary Under Secretary of State**