

# SOAS ICOP Policy Briefings

## To Inform Government and Parliamentary Debates

**Illegal Migration Bill 2023** by *Daniel Grütters, Barrister One Pump Court* (26<sup>th</sup> April 2023)

The Illegal Migration Bill proposes provisions which HM Government purports will “*put a stop to illegal migration into the UK by removing the incentive to make dangerous small boat crossings.*”

Following amendments in Committee Stage, the Bill has 60 sections divided into 9 parts. The explicit purpose of the Bill set out in section 1(1) is to require the removal from the UK of certain persons who enter or arrive here in breach of immigration control. The Bill is premised on the assertion that certain legal rights conferred on irregular migrants motivates or even encourages them to cross the English Channel in small boats. If those rights were removed, so the logic goes, those migrants will cease to attempt to make those journeys.

**The Bill requires the Secretary of State (SS) to remove from the UK irregular migrants who arrived without leave (section 2). This duty explicitly applies regardless of whether those migrants: (a) seek international protection from the UK; (b) claim removal would breach their human rights; (c) are victims of modern slavery or human trafficking; or (d) seek to challenge their removal through judicial review.**

The Bill dispenses with ordinary due process for the aforementioned migrants. If passed, there would be only two bases on which removal could be suspended pending any substantive consideration of any protection or human rights claim:

- (a) A serious harm claim. This means a claim by a migrant that removal from the UK means they would face a real risk of serious and irreversible harm. Section (38) of the Bill empowers the SS to amend section (37) by issuing regulations which define ‘serious and irreversible harm.’**
- (b) A factual mistake claim (section 37). This means a claim by a migrant that the SS or an immigration officer made a mistake in deciding they met the removal criteria.**

Moreover, if either of those two claims are made but rejected by the SS, they only attract a right of appeal if the Secretary of State does not certify such a claim as clearly unfounded. Ordinarily, such certification can be challenged by way of judicial review and in practice it often is. However, as noted above, the Bill explicitly prevents the Secretary of State from suspending removal when such a judicial review challenge is brought. In other words, **the Secretary of State gets to decide whether a ‘serious harm’ or factual dispute’ claim is correct and whether that decision – if negative – may be appealed.** This approach purposefully removes the right of irregular migrants to an effective remedy.

If the Secretary of State does decide to grant a right to appeal, then the Bill requires an appeal to be lodged within 7 days and for the Upper Tribunal to decide on that appeal within 23 (working) days from when it was lodged (section 47). The decision by the Upper Tribunal is final and “*not liable to be questioned or set aside in any other court*” (section 48).

Perhaps even more concerning are the proposed new powers of immigration detention and the way the Bill would exclude that power from legal oversight (section 13). **The proposed new paragraph 3A to schedule 10 to the Immigration Act would mean a decision by the Secretary of State to detain or refuse bail under the Bill “is final and is not liable to be questioned or set aside in any court.”**

At 3<sup>rd</sup> Reading, Members of Parliament are urged to:

- **vote against the Illegal Immigration Bill**
- **take measures to ensure the independence of the judiciary and the right of judicial review.**

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