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EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 1, page 2, line 37 leave out subsection (5)

Effect

This amendment deletes clause 1(5)

Reason

Clause 1(5) provides that Section 3 of the Human Rights Act 1998 (HRA) (interpretation of legislation) does not apply in relation to provision made by or by virtue of this Act.

Section 3 HRA provides that:

(1) *So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.*

This ensures that the courts should so far as possible make sure that Acts of Parliament are read and given effect in a way which is compatible with the Convention rights brought into UK domestic law by the HRA. The Government's intention to disapply section 3 in the case of the bill is a direct consequence of the nature of the compatibility statement made by the Home Secretary.

The HRA section 19(1) provides that a Minister of the Crown "*in charge of a Bill…must, before Second Reading of the Bill— (a) make a statement to the effect that in the Minister's view the provisions of the Bill are compatible with the Convention rights ("a statement of compatibility"); or (b) make a statement to the effect that although the Minister is unable to make a statement of compatibility the Government nevertheless wishes the House to proceed with the Bill. (2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate"*. The Home Secretary has chosen to make the following statement: "*I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill*". Section 19 has been in force since 24 November 1998 and this is the first time that immigration and asylum law has been proposed which is subject to such a statement. It has been reported in the Daily Telegraph on 8 March, *The key points in Rishi Sunak's illegal immigration bill* that: " In a letter to MPs, the Home Secretary said this acknowledgement in the Bill - known as a section 19 (1)(b) of the Human Rights Act 1998 - did not mean it was incompatible with the convention but that there was more than a 50 per cent chance that it may not be. This means government lawyers have assessed its chances of withstanding a legal challenge as more likely to fail than

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succeed…" As Professor Aileen Kavanagh states in A. Kavanagh, *'Is the Illegal Migration Act itself illegal? The Meaning and Methods of Section 19 HRA', U.K. Const. L. Blog (10th March 2023)* (available at https://ukconstitutionallaw.org/)) "a negative Statement under section 19(1)(b) embodies a conclusion that the courts are more likely than not to find a violation with rights, but that the government nevertheless wishes to proceed with the Bill."
In the light of this approach to the compatibility issue it is important that the existing interpretation provisions remain in effect and are not disapplied in relation to the bill.

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Clause 2, page 2, line 41 leave out “must” and insert “may”

Effect

This amendment allows the Secretary of State some discretion in the exercise of the powers to remove under clause 2 of the bill.

Reason

Our view is that the obligation to make arrangements to remove migrants who meet certain conditions will effectively remove the right to claim asylum and breach the UK's obligations under The Refugee Convention UNHCR - Convention and Protocol Relating to the Status of Refugees.

Article 31 of the Convention stipulates refugees should not be penalised for their illegal entry or stay, however this bill places an obligation on the Secretary of State to penalise illegal entrants without giving consideration to whether they are genuine refugees.

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Clause 2, page 3, line 26	leave out “7 March 2023” and insert “the commencement of this section.”

Effect

This amendment removes the retrospective provision from clause 2

Reason

We note the second condition (Clause 2(3)) applies the obligation to remove to all individuals entering the UK on or after 7 March 2023 and not the date the law would come into force. We have concerns about the use of retrospective law making as it undermines the rule of law and no justification has been provided for this. We therefore suggest this clause is amended so the law applies only to those entering the UK after the Act comes into force.

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Clause 2, page 3. Line 32 leave out subsection (4).

Effect

This amendment deletes clause 2(4).

Reason

The third condition detailed in clause 2(4)) is inconsistent with the Refugee Convention (1951) which does not require a claim to be made in the first safe country. In the case of people who have been trafficked to the UK, it is not uncommon for them to be under control of the people smuggler until they arrive in the UK and it is unjust to penalise them for not making a claim in a country where they were unable to do so. We propose that clause 2(4) should be removed from the bill.

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Clause 3, page 4, line 26 leave out subsection (2).

Effect

This amendment deletes clause 3(2).

Reason

Although there is no obligation to remove unaccompanied asylum seeking children while they are under the age of 18, such an obligation would arise when they turn 18 regardless of how long they have spent in the UK. The provisions of this bill could lead to unaccompanied children spending their formative years in the UK and developing significant family and private life ties here. Clause 3(2) would mean these family and private life ties would be disregarded as soon as the child turns 18 and the Secretary of State would be obliged to remove the individual in spite of these ties. We propose that clause 3(2) should be removed from the bill.

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Clause 4, page 5, line 40 — leave out clause 4

Effect

This amendment deletes clause 4.

Reason

We have deep concerns about the provisions of Clause 4(1). This clause requires the Secretary of State to disregard judicial reviews, refugee protection claims, human rights claims and issues of slavery and trafficking. It means the Secretary of State will be under a duty to remove people regardless of legitimate legal proceedings or claims being in progress. This is inconsistent with the rule of law. This amendment seeks the removal of this problematic clause.

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Clause 5, page 6, line 43

add at end "(2) If the Secretary of State is unable to make arrangements for the removal of the person from the United Kingdom within three months from the date of the person's arrival in the United Kingdom the Secretary of State must:

(a) Revoke the declaration of inadmissibility made under section 4(2) in relation to a protection claim, or a human rights claim, and

(b) Consider a protection claim or a human rights claim made by the person."

Effect

This amendment requires the revocation of a declaration of inadmissibility in certain circumstances.

Reason

In the absence of returns agreements with safe 3rd countries, this clause's effect is to make almost all non-EU, Swiss or Albanian nationals unremovable. Clauses 5(8) and 5(9) state that where these individuals make a protection or human rights claim they will not be removed to their home country but will instead be removed to the country from where they embarked to the UK or another country where they will be admitted (a safe 3rd country).

At present the only proposed returns partnership is with Rwanda and is designed with hundreds of arrivals. Given the large number of arrivals this clause would apply to, it is likely that most arrivals would be unremovable but would also be in a position where the Secretary of State is legally prohibited from considering their human rights or protection claim.

This would create a large population, including children, without status in the UK. We would therefore recommend that a new provision in inserted to state that if the Secretary of State cannot remove someone from the UK within a period of 3 months, she would obliged to consider their human rights or protection claim.

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Clause 6, page 8, line 40	add at end “(2) Regulations under subsection 1 are subject to super affirmative procedure as provided for in the Schedule (Regulations under Section 6: Super Affirmative procedure).”

Effect

This amendment makes provision for a super affirmative procedure to apply to regulations containing any new countries.

Reason

We take the view that this clause should be amended to require Parliament to approve any new countries which the Secretary of State considers to be safe to return asylum seekers. It is important that such additions are subject to particular focussed scrutiny by Parliament.

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Clause 8, page 11, line 40	add at end “(8) This section does not apply to a family member who has been living in the United Kingdom prior to the commencement of this Act.”

Effect

This amendment narrows the categories of person to which clause 8 applies.

Reason

Clause 8 is extremely wide and could apply to those who would otherwise not fall within Clause 2, for example if a family member is present in the UK before 7 March, or the date the law comes into force if our amendment is accepted, they could still be removed under this Bill despite having a pending human rights or protection claim.