



Rainbow Migration's submission to the Joint Committee on Human Rights' Call for Evidence: Legislative Scrutiny: Illegal Migration Bill

5 April 2023

Rainbow Migration supports lesbian, gay, bisexual, trans, queer and intersex (LGBTQI+) people through the asylum and immigration system. We provide practical and emotional support to improve self-esteem and confidence, reduce isolation, and help access health services and housing. We also give specialist legal information and advice to LGBTQI+ people who are seeking asylum. We carry out campaigning and policy work to improve the asylum and immigration system.

Question 1: What routes will be available to those who wish to seek asylum in the UK if this Bill is enacted, and would they be sufficient to fulfil the UK's international obligations under the UN Refugee Convention?

1. As detailed below in our response to question 5, there are many countries that are unsafe for LGBTQI+ people specifically. While established resettlement routes may prioritise LGBTQI+ people as a particularly vulnerable group¹, the fact is that for many of the countries where being LGBTQI+ is criminalised² there are no resettlement options, and the only route available to LGBTQI+ people in these countries is to make their way to the UK by whatever means necessary, should

¹ <https://www.gov.uk/government/news/uk-government-helps-lgbt-afghans-start-new-life-in-britain>

² <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>

this be the country they choose to seek safety in. The Bill would prevent them from accessing the rights they are entitled to as refugees under the UN Refugee Convention, as it would refuse them access to the system which would enable the recognition of their refugee status, and the associated benefits of that, including a grant of leave to remain in the UK.

Question 5: Clause 5 provides for the destinations to which individuals who are subject to the duty or power to be removed can be sent. Anyone who makes a protection or human rights claim can still be removed to a country on a list set out in the Schedule (which includes nations in Europe, Africa and Asia). If a protection or human rights claim is made by a national of an EU country, or Albania, Iceland, Liechtenstein, Norway and Switzerland, they can also be returned to their own country, unless the Secretary of State considers there are exceptional circumstances preventing it. What are the human rights implications of clause 5? Does the designation of states as safe for removal or return raise any additional human rights concerns?

2. The new Bill proposes in clause 5 to send people who have come to the UK seeking safety and refuge to what is referred to as a “safe third country”.³ Notwithstanding the lack of returns agreements that would facilitate such a process, it is clear that no consideration has been given to the human rights of LGBTQI+ people in devising the list of “safe third countries” set out at the Schedule to the Bill, which includes the following:

- Albania. In 2021 (the most recently published data - <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2022/asylum-claims-on-the-basis-of-sexual-orientation-2021--2> Table SOC_02) there were five grants of asylum made by the UK to Albanians who were recognised as being at risk of persecution due to their sexual

³ <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/en/220262en.pdf> Explanatory Memorandum, 2(b)

orientation.⁴ As clause 5 permits the return of Albanians to their own country, people claiming based on sexual orientation face being returned directly to the persecution they fled.

- Brazil. Asylum claims based on sexual orientation are being made here in the UK, but the number of any grants is not provided in the published data. We are routinely contacted by Brazilians who fear return to their country, with good reason (see e.g. [here](#) and [here](#)), and we have supported Brazilians who have been successfully recognised as refugees due to their fear of persecution based on their sexual orientation.
- Bulgaria. This is not a source country for people seeking asylum in the UK, however there are also serious issues for LGBTQI+ people in Bulgaria (see [here](#) and Bulgaria was ranked last in acceptance of same-sex relationships in the EU in [this](#) 2019 survey).
- Gambia (in respect of men). Nine asylum claims based on sexual orientation were made here in 2021, there are no published outcomes for that year due to the low numbers involved, nor does the Home Office provide a gender breakdown, however the most recent data on appeals shows five appeals were allowed in 2018 and 12 in 2017.
- Ghana (in respect of men). Nine grants of refugee status were made in 2021 and 7 appeals were allowed for asylum claims based on sexual orientation. Again, there is no gender breakdown, however we have supported men from Ghana who have been granted refugee status, including this grant from 2022: <https://www.rainbowmigration.org.uk/stories/adams-story/>). Ghana is becoming increasingly dangerous for LGBTQI+ people.⁵
- Hungary. The dangers to LGBTQI+ people in Hungary are well known, see e.g. [here](#) and [here](#).

⁴ Note: the Home Office does not publish statistics on grants of asylum based on gender identity, and the statistics on claims based on sexual orientation are “experimental” only and published annually rather than quarterly

⁵ <https://www.hrw.org/news/2021/09/20/ghana-lgbt-activists-face-hardships-after-detention> and <https://www.theguardian.com/global-development/2022/aug/03/explainer-what-makes-ghana-draft-anti-gay-lgbtq-bill-so-extreme>

- India. In 2021 ten people from India claimed asylum based on sexual orientation, but there are no published outcomes due to the low numbers.
- Jamaica. Grants of asylum to people claiming on the basis of their sexual orientation have been made as recently as 2018 when 11 people were recognised as refugees by the UK.
- Kenya (in respect of men). In 2021, at initial asylum application stage, 33 people were recognised as refugees based on their sexual orientation, a gender breakdown is not published
- Malawi (in respect of men). Asylum claims based on sexual orientation have been made as recently as 2020 when five people sought refuge in the UK, however outcomes are not published due to the low numbers.
- Mauritius. The last published data on asylum claims based on sexual orientation from Mauritius show that seven people claimed in 2017. Same sex activity between men is criminalised in Mauritius⁶, although unlikely to be prosecuted this does contribute to a culture of discrimination against LGBTQI+ people.
- Nigeria (in respect of men). In 2021 there were 50 grants of asylum made to people based on their sexual orientation, and nine appeals were allowed. No gender breakdown is provided but we have supported Nigerian men who have been granted refugee status.
- Poland. As is the case with Hungary, Poland's anti-LGBTQI+ stance is well known.⁷
- Romania. This is another European country where LGBTQI+ people face serious issues and discrimination.⁸
- Rwanda. Asylum claims based on sexual orientation are being made by Rwandans in the UK, but in low numbers such that the data is not published.

⁶ <https://www.humandignitytrust.org/country-profile/mauritius/>

⁷ <https://edition.cnn.com/interactive/2020/10/world/lgbt-free-poland-intl-scli-cnnphotos/> and <https://www.hrw.org/news/2022/12/15/poland-rule-law-erosion-harms-women-lgbt-people>

⁸ <https://www.hrw.org/news/2022/06/13/romania-latest-eu-hotspot-backlash-against-lgbt-rights> and <https://www.reuters.com/world/europe/romania-must-reject-hungary-style-anti-lgbt-bill-rights-groups-say-2022-04-29/>

In 2017 there were five appeals determined in asylum claims based on sexual orientation.

- Serbia is also unsafe for LGBTQI+ people.⁹
- Sierra Leone (in respect of men). In 2021 there were five people who were recognised as refugees in the UK based on their sexual orientation.
- South Africa. Asylum claims based on sexual orientation have been made, but in such low numbers that the data is not published.

3. An example of what could happen under clause 5 and the Schedule is that a gay man from Iran who comes to the UK seeking asylum could be sent to Ghana, if a returns agreement was made with that country.
4. As is the case with the Refugee Convention, LGBTQI+ people will fall under the category of “membership of a social group” at clause 6(3)(f). Clause 6(2) gives the SSHD the power to say that countries listed in the Schedule are safe for certain groups only. This has been done for women, for example Kenya, Nigeria and Ghana are listed as safe for men only. However these countries are not safe for gay or bisexual men, as is demonstrated by the fact that the UK grants refugee status to men from there, based on their fear of persecution because of their sexual orientation.
5. The fact that it is possible in the Bill to exclude LGBTQI+ people from being sent to these countries in the way that women have been, but this has not been done, seems to signal an intention that LGBTQI+ people will be sent to danger. This view is supported by the position that has been taken on sending LGBTQI+ people to Rwanda,¹⁰ a country that is very unsafe for them.¹¹

⁹ <https://abcnews.go.com/International/wireStory/serbias-lgbtq-groups-rally-after-spate-attacks-gays-97616918> and <https://balkaninsight.com/2023/03/02/serbian-rights-groups-to-protest-over-wave-of-homophobic-attacks/>

¹⁰ <https://www.theguardian.com/uk-news/2022/may/10/home-office-admits-gay-lesbian-refugees-could-be-persecuted-sent-rwanda>

¹¹ <https://www.rainbowmigration.org.uk/news/proposals-to-offshore-asylum-claims-to-rwanda-will-be-harmful-to-lgbtqi-people/>

Evidential requirements

6. Clause 40 sets out the requirements to challenge removal to a third country, which is that “compelling evidence” must be provided (at clause 40 (5)) and the threshold is “real risk of serious and irreversible harm”. Most LGBTQI+ people have to rely on their own account as evidence of their identity, as documentary evidence is unlikely to exist. It is unclear whether a person’s own account would be enough to meet what is a very high threshold, but it seems unlikely. Further, we still see the Home Office routinely disbelieving people who are LGBTQI+ (our report *Still Falling Short*¹² remains relevant as we continue to see the same issues regularly). With the extremely limited timescales and restrictions on challenging poor decision making as proposed in the Bill, there is a serious risk that this will result in LGBTQI+ people being sent from the UK into danger.

7. Regarding the “real risk of serious and irreversible harm” threshold; many of the countries listed in the Schedule are discriminatory towards LGBTQI+ people, and they will suffer if sent there. The threshold of “real risk of serious and irreversible harm” seems likely to be reached for countries where the UK is already recognising LGBTQI+ people as refugees. However, because the Schedule states that these countries are safe for people, those issues will need to be litigated on an individual basis, instead of acknowledging that LGBTQI+ people should not be sent to those countries generally. Further, in other countries the high threshold of risk may not be reached, however LGBTQI+ people will be disproportionately impacted due to societal attitudes and discrimination, harassment, and an inability to access employment or healthcare.

¹² <https://www.rainbowmigration.org.uk/publications/still-falling-short/>

Question 19. Are there any other human rights considerations arising from this Bill that you want to bring to the attention of the Committee?

8. The Bill gives the SSHD the ability to detain people for longer periods of time, and it seems likely that the number of people held in immigration detention will increase dramatically. The policy paper "Illegal Migration Bill: detention and bail factsheet" states that "*The adults at risk in immigration detention policy will continue to apply and will be updated*".¹³ The adults at risk policy currently recognises various groups as being particularly vulnerable to harm in immigration detention. This rightly includes trans and intersex people, as well as e.g. victims of torture, people with a serious physical disability and pregnant people. However people who are recognised as being an adult at risk are still being detained in large numbers and for long periods of time. Issues with the policy have been raised previously.¹⁴ The policy needs to be reviewed and simplified.¹⁵ Further, all LGBTQI+ people should be recognised as unsuitable for detention.¹⁶

¹³ <https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-detention-and-bail-factsheet>

¹⁴ See HMIP report <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/09/Brook-House-web-2022.pdf> e.g. at 2.9 and 2.52 and page 27, also ICIBI reports

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881648/Annual_inspection_of_Adults_at_Risk_in_Immigration_Detention_2018-29.pdf at e.g. 8.231 and <https://www.gov.uk/government/news/inspection-report-published-second-annual-inspection-of-adults-at-risk-in-immigration-detention> "*Known flaws with the Adults at Risk policy itself remained unaddressed*"

¹⁵ https://www.helenbamber.org/sites/default/files/2022-10/ES_Abuse%20by%20the%20system_survivors%20of%20trafficking%20in%20immigration%20detention.pdf

¹⁶ <https://www.rainbowmigration.org.uk/publications/no-safe-refuge/> and <https://www.rainbowmigration.org.uk/news/lgbtqi-people-still-at-serious-risk-of-harm-in-immigration-detention/>