Safety of Rwanda (Asylum and Immigration) Bill: Proposed amendments for House of Lords Committee stage

Jeff King and Lucy Moxham (12 February 2024)
About the Bingham Centre for the Rule of Law

The Bingham Centre is an independent, non-partisan organisation that exists to advance the Rule of Law worldwide. Established in 2010 as part of the British Institute of International and Comparative Law (BIICL), the Centre was brought into being to pursue Tom Bingham’s inspiring vision: a world in which every society is governed by the Rule of Law “in the interests of good government and peace at home and in the world at large.” The Rt Hon Lord Bingham of Cornhill KG was the pre-eminent UK judge of his generation, who crowned his judicial career by leaving us arguably the best account of what the Rule of Law means in practice and why it is so important in any civilised society -too important to remain the exclusive preserve of courts and lawyers. One of our strategic aims is to increase discussion about the meaning and importance of the Rule of Law in the political process.

• We carry out independent, rigorous and high quality research and analysis of the most significant Rule of Law issues of the day, both in the UK and internationally, including highlighting threats to the Rule of Law.

• We make strategic, impartial contributions to policy-making, law making or decision-making in order to defend and advance the Rule of Law, making practical recommendations and proposals based on our research.

• We hold events such as lectures, conferences, roundtables, seminars and webinars, to stimulate, inform and shape debate about the Rule of Law as a practical concept amongst law makers, policy makers, decision-makers and the wider public.

• We build Rule of Law capacity in a variety of ways, including by providing training, guidance, expert technical assistance, and cultivating Rule of Law leadership.

• We contribute to the building and sustaining of a Rule of Law community, both in the UK and internationally.

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About the Rule of Law Monitoring of Legislation Project

This Report is part of the Bingham Centre’s Rule of Law Monitoring of Legislation Project. Rule of Law Monitoring of Legislation Reports subject provisions in Government Bills which have significant Rule of Law implications to robust independent scrutiny. They aim to explain relevant legal concepts and terms and describe the effect of provisions with significant implications for the Rule of Law. They test the Government’s assertions about why the relevant provisions are necessary.
against the evidence base. They also examine the legal compatibility of the relevant provisions with the European Convention on Human Rights, the UK’s other international legal obligations, and internationally recognised Rule of Law standards. They seek to explain these evidential and legal issues as accessibly as possible for a non-legal audience. The goal is to provide independent, high quality expert analysis to assist both Houses of Parliament with its Rule of Law scrutiny of legislation.

The report’s authors are Professor Jeff King and Lucy Moxham. The authors would like to thank Jan van Zyl Smit, Murray Hunt, Adam Tucker and Tom de la Mare for very helpful discussions, as well as those who participated in an expert seminar about the Rwanda scheme on 20 December 2023.
Introduction

1. In this report, the Bingham Centre for the Rule of Law proposes amendments to several clauses of the Safety of Rwanda (Asylum and Immigration) Bill with the aim of addressing some of the most significant Rule of Law issues raised by the Bill.

2. While our view is that the Bill in its essence is a major infringement of the Rule of Law and the separation of powers, and should not be passed, we nevertheless accept that the House of Lords may wish to engage constructively with the Government’s aims. The suggestions in this report therefore should be seen in this context whereby we aim to assist and inform the House of Lords’ consideration of the Bill during its Committee stage beginning on 12 February 2024. The proposed amendments create the possibility that the scheme in the Bill could be operated consistently with the UK’s international obligations and with much less offence to the constitutional principle of the Rule of Law.

3. Previous Bingham Centre reports have provided detailed Rule of Law analysis and will assist the House of Lords in its broader consideration of the issues raised by the Bill.¹

Background

4. In April 2022, the UK announced a migration and economic development partnership (MEDP) with Rwanda. Under a Memorandum of Understanding between the two countries, some persons seeking asylum would be sent to Rwanda for their claims to be processed there. This was challenged in the courts and in a unanimous judgment on 15 November 2023 the UK Supreme Court upheld the Court of Appeal’s conclusion that the Rwanda policy is unlawful because there are substantial grounds for believing that persons seeking asylum would face a real risk of ill-treatment by reason of refoulement (return) to their country of origin if removed to Rwanda. The judgment was welcomed by the UN Refugee Agency which has consistently expressed “deep concern about the “externalization” of asylum obligations and the serious risks it poses for refugees”. While recognising the challenges involved, the UN Refugee Agency called for “practical, workable alternatives to the MEDP arrangement, including through cooperation with European neighbours in the spirit of

¹ Murray Hunt, ‘Safety of Rwanda (Asylum and Immigration) Bill: A Preliminary Rule of Law Analysis for House of Commons Second Reading’ (Bingham Centre, 11 December 2023) and Murray Hunt, ‘Safety of Rwanda (Asylum and Immigration) Bill: A Rule of Law Analysis for House of Lords Second Reading’ (Bingham Centre, 26 January 2024) both available at https://binghamcentre.biicl.org/publications.
responsibility-sharing which lies at the core of the Refugee Convention” and emphasised that “[f]air and fast asylum procedures that respect international standards... are critical”.

5. In response to the Supreme Court’s judgment, the Government announced a new international treaty with Rwanda as well as emergency domestic legislation. The UK-Rwanda Treaty on the provision of an asylum partnership was signed on 5 December 2023. In its 4th Report of Session 2023-24 published on 17 January 2024, the House of Lords International Agreements Committee recommended that “the Treaty is not ratified until Parliament is satisfied that the protections it provides have been fully implemented”. In parallel, the Safety of Rwanda (Asylum and Immigration) Bill was introduced in the House of Commons on 7 December 2023, and passed Second reading on 12 December 2023 and Third reading on 17 January 2024. The Bill was introduced in the House of Lords on 18 January 2024 and received its Second reading on 29 January 2024. The Government has stated its intention to fast-track the legislation and, as a preliminary point, the Bingham Centre shares the concerns expressed by others about the compressed timetable for scrutiny of the Bill, which has significant constitutional and legal implications.

Clause 1

Bingham Centre proposed amendments to Clause 1

(1) The purpose of this Act is to prevent and deter unlawful migration in compliance with all of the United Kingdom’s obligations under international law, and in particular migration by unsafe and illegal routes, by enabling the removal of persons to the Republic of Rwanda under provision made by or under the Immigration Acts.

(2) To advance that purpose—
(a) the Rwanda Treaty has been laid before Parliament under section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) with a view to ratification by the United Kingdom, and
(b) this Act gives effect to the judgement of Parliament that the Republic of Rwanda is a safe country.

(3) The Government of the Republic of Rwanda has, in accordance with the Rwanda Treaty, agreed to fulfil the following obligations—[[(a) to (f) not reproduced here]].

(4) It is recognised that—
(a) the Parliament of the United Kingdom is sovereign, and
(b) the validity of an Act is unaffected by international law.

(5) For the purposes of this Act, a “safe country”—
(a) means a country to which persons may be removed from the United Kingdom in compliance with all of the United Kingdom’s obligations under international law that are relevant to the treatment in that country of persons who are removed there, and
(b) includes, in particular, a country—
6. The proposed amendment to Clause 1(1) inserts words that confirm that compliance with international law is among the Bill’s purposes. The words inserted here are identical to those used in Clause 1(5) of the Bill. They are consistent with the Government’s stated intentions that the scheme will respect international law. 2 However, these intentions are not recorded adequately as purposes on the face of the Bill, and therefore will likely be given less weight during the interpretation of the Act.3

7. The Rule of Law requires “compliance by the state with its obligations in international law as in national law” and that the law “must afford adequate protection of fundamental human rights”. Indeed, in its 17th report of Session 2019-21 published on 16 October 2020, on the UK Internal Market Bill, the House of Lords Select Committee on the Constitution was clear that “[a]ny suggestion that the rule of law is not threatened by the Bill because international law is of different legal standing to domestic law under the dualist


3 See R (on the application of O (a minor, by her litigation friend AO)) v Secretary of State for the Home Department [2022] UKSC 3, e.g., at para 30, available at https://www.supremecourt.uk/cases/uksc-2021-0062.html: “External aids to interpretation therefore must play a secondary role... But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity”.

(i) from which a person removed to that country will not be removed or sent to another country in contravention of any international law, and
(ii) in which any person who is seeking asylum or who has had an asylum determination will both have their claim determined and be treated in accordance with that country’s obligations under international law.

(6) For the purposes of this Act, “international law” includes — [(a) to (g) not reproduced here].
doctrine is untenable”. The Committee stated, “[w]e agree with Lord Bingham that respect for the rule of law requires respect for international law”.

8. However, as currently drafted, Clause 1(1) does not address the right under international law to seek asylum, and it does not include the purpose of compliance with international law more broadly. The Bingham Centre’s previous reports have explained the tension between the Bill’s provisions and international law. For example, we have stated that, [l]egislating notwithstanding the UK’s international obligations on this scale is unprecedented and represents a new departure in the UK’s recent disregard for international law”. Indeed, the international Rule of Law is currently under threat, and the Government’s proposals risk the UK losing its reputation before the European Court of Human Rights, and internationally as a strong upholder of the Rule of Law and human rights. It also will set a damaging precedent for other nations to follow and to cite.

9. We also propose deletion of Clauses 1(2) and 1(3) because they are legally inoperative and create legal uncertainty contrary to the Rule of Law.4 In particular, Clause 1(2)(b) asks Parliament to confirm the safety of Rwanda despite the recommendation of the House of Lords International Agreements Committee, noted above, that “the Treaty is not ratified until Parliament is satisfied that the protections it provides have been fully implemented”. On 22 January 2024, the House of Lords agreed a motion by 214 to 171 which stated that “His Majesty’s Government should not ratify the UK-Rwanda Agreement on an Asylum Partnership until the protections it provides have been fully implemented, since Parliament is being asked to make a judgement, based on the Agreement, about whether Rwanda is safe”. Clause 1(2)(b) would embroil Parliament in perpetuating a fiction that is untenable in the light of the House of Lords’ acceptance of the Committee’s findings in this regard.

Clause 2

Bingham Centre proposed amendments to Clause 2

(1) Every immigration decision-maker must conclusively treat the Republic of Rwanda as a safe country.

(2) A immigration decision-maker means—


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(a) the Secretary of State or an immigration officer when making a decision relating to the removal of a person to the Republic of Rwanda under any provision of, or made under, the Immigration Acts;
(b) a court or tribunal when considering a decision of the Secretary of State or an immigration officer mentioned in paragraph (a).

(3) When considering a decision of the Secretary of State or an immigration officer mentioned in subsection (2), a court or tribunal shall pay due regard to the Rwanda Treaty and its implementation when determining whether or not Rwanda is a safe country.

(3) As a result of subsection (1), a court or tribunal must not consider a review of, or an appeal against, a decision of the Secretary of State or an immigration officer relating to the removal of a person to the Republic of Rwanda to the extent that the review or appeal is brought on the grounds that the Republic of Rwanda is not a safe country.

(4) In particular, a court or tribunal must not consider—
(a) any claim or complaint that the Republic of Rwanda will or may remove or send a person to another State in contravention of any of its international obligations, including in particular its obligations under the Refugee Convention,
(b) any claim or complaint that a person will not receive fair and proper consideration of an asylum, or other similar, claim in the Republic of Rwanda, or
(c) any claim or complaint that the Republic of Rwanda will not act in accordance with the Rwanda Treaty.

(5) Subsections (3) and (4) apply notwithstanding—
(a) any provision made by or under the Immigration Acts,
(b) the Human Rights Act 1998, to the extent disapplied by section 3 (disapplication of the Human Rights Act 1998),
(c) any other provision or rule of domestic law (including any common law), and
(d) any interpretation of international law by the court or tribunal.

10. As currently drafted, Clauses 2(1) and 2(2) would require decision-makers, as defined, to conclusively treat Rwanda as a safe country. Clause 2(3) would prevent courts and tribunals from considering legal challenges against a decision relating to the removal of a person to Rwanda brought on the grounds that Rwanda is not a safe country. In particular, Clause 2(4) would prevent courts and tribunals from considering the risk of refoulement and claims that Rwanda will not adhere to the Rwanda treaty.

11. The purpose of the proposed amendments to Clause 2 is to permit the conclusive presumption as to Rwanda’s safety to apply vis-a-vis the Secretary of State and immigration officers, but to remove its application to courts and tribunals. In addition, the proposed amendments would remove provisions from the Bill which would prevent courts and tribunals from considering a wide-ranging list of relevant legal questions and sources.

12. First, it is highly unlikely that the factual situation on the ground in Rwanda has changed sufficiently to displace the Supreme Court’s judgment. As Tom
Hickman KC has commented, “[t]he Supreme Court has found that Rwanda is not a safe country to send asylum seekers” and “[f]or parliament to contradict that finding would infringe the constitutional principle of the separation of powers, which requires parliament to “respect” the “proceedings and decisions of the Courts””. He continued, “Parliament is not being asked – as it often is – to “overrule” a judicial decision by changing the law. It is being asked to say that the facts are not as that court found them to be”. Indeed, as discussed above in relation to Clause 1, the House of Lords International Agreements Committee recommended that “[t]he Government should not ratify the Rwanda Treaty until Parliament is satisfied that the protections it provides have been fully implemented since Parliament is being asked to make a judgement, based on the Treaty, that Rwanda is safe”.

13. The Government has stated that “[t]he Supreme Court recognised that changes may be delivered in future which could address the conclusions they reached” and “[w]e have done this through the treaty and other changes outlined in the evidence pack”. The proposed amendments, therefore, would provide that when considering a decision of the Secretary of State or an immigration officer relating to the removal of a person to Rwanda, courts and tribunals “shall pay due regard to the Rwanda Treaty and its implementation when determining whether or not Rwanda is a safe country”. This seeks to ensure that due regard will be given in relevant legal proceedings to the arrangements foreseen in the Rwanda Treaty and their implementation. The Joint Committee on Human Rights has concluded in a report published today (12 February 2024), “[o]verall, we cannot be clear that the position reached on Rwanda’s safety by the country’s most senior court is no longer correct” but “[i]n any event, the courts remain the most appropriate branch of the state to resolve contested issues of fact, so the question of Rwanda’s safety would best be determined not by legislation but by allowing the courts to consider the new treaty and the latest developments on the ground” (para 58).

14. Second, as noted above, Clause 2(4)(a) as currently drafted would in particular prevent courts and tribunals from considering the risk of refoulement. The Joint Committee on Human Rights has stated that the Bill’s approach “prevents the courts carrying out independent and rigorous scrutiny of any claim that there are substantial grounds for fearing a real risk of refoulement/treatment contrary to Article 3 ECHR” and that “[t]his approach would therefore be incompatible with international obligations including the Refugee Convention and the ECHR” (para 20). Similarly, in its updated analysis dated 15 January 2024, the UN Refugee Agency set out its “firm view” that the scheme that would be established under the Bill, which would “preclude consideration by decision-makers of any risk of onward refoulement from Rwanda... and removes the
prospect of any challenge to removal on that basis, is deeply worrying and is not in line with the Refugee Convention” (para 23).

15. It would also mark a significant change to previous legal practice. As the Supreme Court emphasised in its judgment in the Rwanda appeals, “the court is itself required by law to form a view as to whether there are substantial grounds for believing that asylum seekers who are removed to Rwanda are at risk of refoulement, in the light of all the evidence bearing on that issue” and although “[t]he government’s assessment of whether there is such a risk is an important element of that evidence … the court is bound to consider the question in the light of the evidence as a whole and to reach its own conclusion” (para 57). Previous ‘safe-list’ country schemes have only operated a rebuttable presumption of safety, following the jurisprudence of the UK Supreme Court and the Court of Justice of the European Union.

16. Third, we also propose deletion of Clause 2(5), for reasons detailed in our previous report for House of Lords Second Reading, which clarified that the ““notwithstanding clauses” in the current Bill … assert that the provisions of the Bill override not only provisions of domestic law, but “any interpretation of international law” by a court or tribunal”. In that report, Murray Hunt observed that “Parliament should be in no doubt about the enormity, from a Rule of Law perspective, of what it is being asked to approve in the “notwithstanding clauses” in the Bill”.

**Clause 3**

**Bingham Centre proposed amendments to Clause 3**

1. The provisions of this Act apply notwithstanding the relevant provisions of the Human Rights Act 1998, which are disapplied as follows.

2. The relevant provisions are—
   (a) section 2 (interpretation of Convention rights),
   (b) section 3 (interpretation of legislation), and
   (c) sections 6 to 9 (acts of public authorities).

3. Section 2 does not apply where a court or tribunal is determining a question relating to whether the Republic of Rwanda is a safe country for a person to be removed to under any provision of, or made under, the Immigration Acts.

4. Section 3 does not apply in relation to this Act.

5. Sections 6 to 9 do not apply in relation to—
   (a) a decision taken on the basis of section 2(1) of this Act (decision-makers to treat Rwanda as safe).
(b) a decision as to whether to grant an interim remedy on the basis of section 4(4) of this Act (interim remedies: serious and irreversible harm), or
(c) a decision taken on the basis of section 4(1) of this Act (decisions based on particular individual circumstances) –
(i) under section 42(2), 44(6)(a) or 45(2) of the Illegal Migration Act 2023 (serious and irreversible harm) in relation to the removal of a person under that Act to the Republic of Rwanda, or
(ii) under section 44(6)(a) of the Illegal Migration Act 2023, as applied by section 2AA of the Special Immigration Appeals Commission Act 1997 (appeals to the Special Immigration Appeals Commission: serious and irreversible harm), in relation to the removal of a person under the Illegal Migration Act 2023 to the Republic of Rwanda.

17. It is a core principle of the Rule of Law that the law “must afford adequate protection of fundamental human rights”. It is also central to the Rule of Law that the “laws of the land should apply equally to all, save to the extent that objective differences justify differentiation”. The principle of universality of human rights is fundamental to international human rights law. However, if enacted, Clause 3 of the Bill would disapply key provisions of the Human Rights Act 1998 (HRA) (Sections 2, 3 and 6-9 HRA) and would undermine the universality of human rights by removing significant human rights protections from a particular group, namely those persons facing removal to Rwanda under this scheme.

18. Disapplying Section 2 HRA could create legal uncertainty and weaken human rights protection in the UK. Under Clause 3(3), as currently drafted, domestic courts and tribunals would not be required to have regard to jurisprudence from the European Court of Human Rights, though they are not prohibited from doing so. It could also force more individuals to go through the time-consuming and costly process of bringing a case to Strasbourg, though this route will be beyond the means of many claimants. In this regard, Dunja Mijatović, Council of Europe Commissioner for Human Rights, has emphasised that, “[e]veryone should be able to seek and receive justice at home, in line with the subsidiarity principle” and noted that “[r]ecourse to an international court should be seen for what it is – essentially a failure by a state to provide proper national remedies”.

19. Under Section 3 HRA, “[s]o 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”. Again, disapplying Section 3 HRA could weaken the protection of human rights in the UK and lead to legal uncertainty.
20. Significantly, this is the first time the disapplication of Section 6 HRA (acts of public authorities) has been attempted. It would diminish the framework for human rights protection in the UK and is again likely to result in more cases being brought to the European Court of Human Rights.

21. Clause 3 of the Bill is another example of the Government’s continued selective disapplication of the HRA. For example, Section 3 HRA is disapplied in Section 1(5) of the Illegal Migration Act 2023, while Section 11 of the Overseas Operations (Service Personnel and Veterans) Act 2021 amends the HRA and inserts limitations on overseas armed forces proceedings. Having regard to the Supreme Court’s finding that the HRA is a “constitutional instrument”, and to the HRA’s character as a bill of rights, we consider the trend towards selective disapplication particularly inappropriate.

22. The withdrawn Bill of Rights Bill sought to reform human rights law by repealing and replacing the HRA. At the time, the Joint Committee on Human Rights emphasised, among other things, that “[r]ecent case law indicates that the courts are using section 3 appropriately” and that “repeal of section 3 would lead to a substantial weakening in the protection of human rights in the UK - as well as significant legal uncertainty and confusion”. Section 3 HRA was also the subject of detailed examination by the Independent Human Rights Act Review, which ultimately advised against its repeal.

Clause 4

| Bingham Centre proposed amendments to Clause 4 |

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6 We agree with the observations of Liberty, ‘Liberty’s Briefing on the Human Rights Act and the Victims and Prisoners Bill for Second Reading in the House of Commons, May 2023’, available at https://www.libertyhumanrights.org.uk/wp-content/uploads/2023/03/Libertys-Briefing-on-the-HRA-and-the-Victims-and-Prisoners-Bill-second-reading-HoC-May-2023.pdf: “The trend that is emerging appears to be a sort of repeal by stealth - not taking on the Human Rights Act directly but disapplying its provisions in relation to individual bills and individual groups, piece-by-piece”. Also, “Disapplying s.3 HRA in this ad hoc way will above all else create a two-tiered system of human rights protection, whereby some people are protected by the requirement to have laws read compatibly with human rights and some are not”.

7 See R (on the application of HS2 Action Alliance Limited) v Secretary of State for Transport and another [2014] UKSC 3 at para 207, available at https://www.supremecourt.uk/cases/uksc-2013-0172.html: “The United Kingdom has no written constitution, but we have a number of constitutional instruments. They include Magna Carta, the Petition of Right 1628, the Bill of Rights and (in Scotland) the Claim of Rights Act 1689, the Act of Settlement 1701 and the Act of Union 1707. The European Communities Act 1972, the Human Rights Act 1998 and the Constitutional Reform Act 2005 may now be added to this list.” See also Thoburn v Sunderland City Council [2002] EWHC 195 (Admin) at para 62, available at https://www.balli.org/ew/cases/EWHC/Admin/2002/195.html.
(1) Section 2 does not prevent—
(a) the Secretary of State or an immigration officer from deciding (under any applicable provision of, or made under, the Immigration Acts) whether the Republic of Rwanda is a safe country for the person in question, based on compelling evidence relating specifically to the person’s particular individual circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general)—

(b) a court or tribunal considering a review of, or an appeal against, a relevant decision to the extent that the review or appeal is brought on the grounds that the Republic of Rwanda is not a safe country for the person in question, based on compelling evidence relating specifically to the person’s particular individual circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general).

(2) But subsection (1) does not permit a decision-maker to consider any matter, claim or complaint to the extent that it relates to the issue of whether the Republic of Rwanda will or may remove or send the person in question to another State in contravention of any of its international obligations (including in particular its obligations under the Refugee Convention).

(3) Where a court or tribunal is considering a review of or an appeal against a relevant decision of the Secretary of State or an immigration officer as mentioned in subsection (1)(b), any power of the court or tribunal to grant an interim remedy (whether on an application of the person in question or otherwise) is restricted as follows.

(4) The court or tribunal may grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person to the Republic of Rwanda only if the court or tribunal is satisfied that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm if removed to the Republic of Rwanda.

(5) Subsections (4) to (8) of section 39 of the Illegal Migration Act 2023 (examples of serious and irreversible harm) do not apply (with any necessary modifications) for the purposes of subsections (3) and (4) (2) and (3) as they apply for the purposes of that Act.

(6) Subsections (3) and (4). Subsections (2) and (3) also do not apply to any review or appeal relating to a decision to remove a person to the Republic of Rwanda under the Illegal Migration Act 2023 (see instead section 54 of that Act).

(7) In this section—
“interim remedy” means any interim remedy or relief however described (including, in particular, an interim injunction or interdict);
“relevant decision” means a decision taken by the Secretary of State or an immigration officer (under any applicable provision of, or made under, the Immigration Acts) that the Republic of Rwanda is a safe country for the person in question.
23. The proposed amendment to Clause 4(1)(a) removes the criterion of “compelling” from the grounds that must be shown in order for an immigration officer to decide against removal of a person to Rwanda. This criterion has no basis in principle or in the caselaw regarding the legal protection of genuine refugees and persons facing torture or cruel and unusual treatment. Claimants would already face onerous obstacles of both a procedural and legal nature in bringing claims under Clause 4.

24. The proposed amendment to Clause 4(1)(b) would remove the limitations imposed upon courts and tribunals in deciding what relevant law to apply to appeals or judicial reviews challenging removal decisions. Clause 4(1)(b), similar to the provisions in Clauses 2(4) and 2(5), would impose arbitrary limits on the legal considerations that are and have for some time been legally relevant to the determination of claims in refugee law and under Articles 2 and 3 of the ECHR.

25. The proposed amendment to Clause 4(2) would restore the capacity of courts and tribunals being able to consider the possibility of onward removal from Rwanda, either refoulement to their country of origin or to a third country where they may face in-country risk. As presently drafted, Clause 4(2) excludes such considerations. Yet they were the very issue assessed by the Supreme Court in the Rwanda appeals and considered by the House of Lords International Agreements Committee as well the UN Refugee Agency, as detailed in the Introduction of this Report. As the Joint Committee on Human Rights has stressed, the approach in Clause 4 “is not consistent with the ECHR, which requires all arguable claims that removal would expose an individual to treatment in breach of Article 2 or 3 – including by way of refoulement – to be subjected to independent and rigorous scrutiny” (para 26).

26. The proposed amendment to Clause 4(4) leaves the interim remedy scheme largely intact but removes the criterion that a claimant must present evidence that the risk of harm is “imminent”. It is crucial to recognise that interim relief will be in most cases the only remedy available to block removal, and hence the last and only opportunity to make the case that Rwanda is unsafe for the individual in question. In principle, the imminence of the threat is only relevant legally for interim relief where there will exist a further and realistically attainable legal opportunity to prevent the legal harm. Where the Rwanda scheme in this Bill is concerned, there will in the overwhelming majority of cases be no such opportunity. It is true that the requirement of imminence is part of the formal test for obtaining interim measures jurisprudence of the
European Court of Human Rights. However, it applies typically in a different context, one where there has been a pre-existing relationship between the person and the state posing the risk of harm. More importantly, the criterion has played no significant role in the Strasbourg Court’s jurisprudence issuing Rule 39 interim measures and to our knowledge received no significant judicial consideration. UK judges are liable to give more weight to the term, and hence it is appropriate for it to be removed from the Bill.

27. We propose the amendment to Clause 4(5) to ensure that the restrictive features of Section 39 of the Illegal Migration Act 2023 are not applied to removals to Rwanda under this Bill. The proposed amendment to Clause 4(6) is to ensure that the regime developed in this amended clause and Bill is also extended to any removals to Rwanda carried out under the Illegal Migration Act 2023. The rationale for both proposals is that the provisions of this amended Bill address the safety of Rwanda in particular, having regard to the weighty evidence before Parliament pertaining to that issue. It is right that the features of this (amended) scheme be applied to any immigration removals to Rwanda carried on in any immigration procedures.

**Clause 5**

*Bingham Centre proposed amendments to Clause 5*

1. This section applies where the European Court of Human Rights indicates an interim measure in proceedings relating to the intended removal of a person to the Republic of Rwanda under, or purportedly under, a provision of, or made under, the Immigration Acts.

2. It is for a Minister of the Crown (and only a Minister of the Crown) to decide whether the United Kingdom will comply with the interim measure.

3. Accordingly, a court or tribunal must not have regard to the interim measure when considering any application or appeal which relates to a decision to remove the person to the Republic of Rwanda under a provision of, or made under, the Immigration Acts.

4. In this section—
   (a) a reference to “the Immigration Acts” does not include the Illegal Migration Act 2023 (see instead section 55 of that Act);
   (b) a reference to a Minister of the Crown is to a Minister of the Crown acting in person.

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8 See case law discussed in European Court of Human Rights Press Unit ‘Factsheet – Interim measures’ (October 2023), available at https://www.echr.coe.int/documents/d/echr/FS_Interim_measures_ENG.
28. As currently drafted, Clause 5 provides that it is for a Minister (and only a Minister) to decide whether the UK will comply with an interim measure from the European Court of Human Rights. However, the Grand Chamber of the European Court of Human Rights has stated that, “[a] failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant’s complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34”.  

29. It should be noted that interim measures are provided for in Rule 39 of the Rules of Court of the European Court of Human Rights. The Court grants requests for interim measures “only on an exceptional basis, when applicants would otherwise face a real risk of serious and irreversible harm”. The Court granted only 11 out of 178 requests for interim measures against the UK processed by the Court in 2021, 2022 and 2023.

30. These are exceptional measures and “play a vital role in avoiding irreversible situations that would prevent national courts and/or the Court from properly examining Convention complaints”.

31. Indeed, in a speech on 26 January 2024, Síofra O’Leary, President of the European Court of Human Rights, stressed that “[s]howing contempt for judicial decisions adopted by independent and impartial courts, whether at national or international level, is never the solution in a democratic State governed by the rule of law”. As the Joint Committee on Human Rights concluded in a report published today (12 February 2024): “We recognise that there are differences of opinion over whether or not interim measures ought to be binding on the United Kingdom. However, as a matter of international law, they are binding. Failing to comply with interim measures directed at the UK would amount to a violation of the European Convention on Human Rights” (para 105).

32. This is not the first time that the Government has set its sights on interim measures.  

Most notably, Sections 55(6) and 55(7) of the Illegal Migration Act 2023 provide for restrictions on a court or tribunal taking notice of an interim measures ruling of the European Court of Human Rights. While we also take the


view that those provisions violate the Rule of Law, there are distinct reasons to remove Clause 5 from this Bill in particular. The safety of Rwanda is a unique legal and political situation, one where Parliament has been notified about specific dangers and where it is justified at the very least in taking extra precautions. For this reason, we would recommend as an amendment consequential to our proposal to remove Clause 5, that Clause 6 of the Bill (Consequential provision) be amended to provide that Section 55 of the Illegal Migration Act 2023 does not apply in relation to persons removed to the Republic of Rwanda.