

## Safe Passage Visa Briefing

### Executive Summary

This paper proposes an amendment to the Illegal Migration Bill to create a visa for safe travel for refugees who have viable asylum claims, to allow them to come to the UK for the purpose of submitting those claims. This would stop people from getting into small boats and risking their lives, and eliminate people smugglers' profits, and maintaining the UK's proud compliance with its international obligations.

The amendment is New Clause 10 (NC10) and is available online here <https://bit.ly/IMBamends>

The safe passage visa would operate in a similar way to the Ukrainian visa schemes, but unlike those schemes, it is envisaged that, on arrival in the UK, applicants would enter the normal UK asylum process; indeed, this would be the sole purpose of the visa and a condition of it. Those whose asylum claims are accepted would be settled in the UK and would contribute to society. Those whose claims ultimately fail would not be allowed to remain in the UK. The application for the visa would be made online in the same way as the current Ukrainians schemes, avoiding the need for any processing in France.

### The Illegal Migration Bill

The Illegal Migration Bill is intended to “prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes”. It creates powers for mass detention and deportation of people who travel to the UK via irregular means. Asylum claims they make will be ignored, and victims of modern slavery and trafficking will not be protected.

The Government has not been able to definitively say that the Illegal Migration Bill is in line with human rights law. UNHCR has said *“The effect of the bill ...undermines the very purpose for which the Refugee Convention was established. The Convention explicitly recognises that refugees may be compelled to enter a country of asylum irregularly.”*

The Government's desire to encourage people to use legal routes does not take account of the fact that, for most refugees, there is no legal way for them to claim asylum in the UK due to the narrow scope of current schemes. If there was a legal route by which people could enter the UK and claim asylum, it's difficult to see why tens of thousands would make the dangerous journey in small boats.

The Government's preference for legal routes that the Government itself designs creates a shift in the way that asylum works. Essentially, they want to be able to control which refugees the UK will accept – for example Ukrainian nationals – whereas under the Refugee Convention, asylum is based on assessment of each individual's need, and individuals are allowed an element of agency over where they claim asylum.

Analysis by the Refugee Council shows that of all those who crossed the Channel in 2022, two thirds should be granted asylum when their claims are processed. Those people need, and are entitled to, protection – they are, contrary to popular rhetoric, ‘genuine refugees’. The Illegal Migration Bill would deny them that protection.

Not only that, it is unlikely to meet its stated objective to “stop the boats”: it is a continuation of successive deterrent policies, which have not worked in the past. There is much evidence that

deterrence does not work with asylum seekers generally, due to their lack of knowledge of asylum and immigration policies of individual countries and their high tolerance for risk and adverse treatment, given their experiences.

#### *The Proposed Safe Passage Visa:*

Safe and legal routes which are generally available to asylum seekers would, by contrast, be likely to “stop the boats”. 90% of people crossing on small boats claim asylum on arrival in the UK. It follows that at least that 90% would transition over to the new safe and legal route proposed in this paper, as it would make no sense to risk their lives if there is a safe and legal alternative.

Indeed, there is clear evidence, via the Ukrainian visa schemes, that safe passage works: no Ukrainians have crossed on small boats or drowned in the Channel, and no Ukrainians have used people smugglers to cross the Channel.

The common challenge to such safe and legal routes is that they would attract asylum seekers in ever greater numbers; however, studies show that immigration policies do not drive refugees’ destinations. In 2022, 93% of refugees in Europe did not head to the UK to claim asylum – the vast majority of refugees who come to Europe claimed asylum elsewhere and would continue to do so. Those who want to come to the UK already do, by any means available to them.

Last year the UK issued 230,000 visas to Ukrainians and 150,000 to people from Hong Kong. It would therefore not seem unreasonable to issue, for example, 80,000 visas to refugees who come from the most dangerous countries in the world, particularly if this would achieve the Government’s key stated objective of stopping small boat crossings. We believe it would. Again, at least 90% of those who cross on small boats claim asylum on arrival; claiming asylum is their objective and the visa would be aimed at those with a viable claim. For those denied a visa, they would be clearly and directly informed by the UK Government that asylum would not be available. It is one thing to risk your life for the hope of a safe future, quite another to risk it for a life of permanent precarity.

#### **Conclusion**

While safe passage is a more effective way of achieving the Government’s objectives than brutal deterrence, more importantly, it will be humane and will not risk breaching international law. The Illegal Migration Bill runs a not insignificant risk of making the UK complicit in human rights violations. The Bill has been condemned by charities, trade unions and faith leaders. It will see thousands of men, women and children, who are already victims of war, torture and persecution, detained on British soil and forcibly deported to a future where we cannot guarantee their safety.

In November 2021, 32 people lost their lives in the English Channel. On 14 December 2022, a second tragedy saw another eight people drown. There is an urgent need for a safe way for refugees to claim asylum in the UK, and an end to small boat crossings – we believe the safe passage visa proposed in this paper is that way.

## Safe Passage

This paper proposes an amendment to the Illegal Migration Bill to create a visa for safe travel for refugees who have valid asylum claims. This would stop people from getting into small boats and risking their lives and would eliminate people smugglers' profits.

There is evidence, via the Ukrainian schemes, that safe passage works: no Ukrainians have crossed on small boats or drowned in the Channel, and no Ukrainians have used people smugglers to cross the Channel.

As such a system is already in operation for Ukrainian refugees, it could be up and running within weeks if the Government so chose.

Unlike the Ukrainian schemes, it is envisaged that, on arrival in the UK, applicants would enter the normal UK asylum process. The application for the visa would be made online in the same way as the current Ukrainians schemes work, avoiding the need for any processing in France.

## How A Safe Passage Visa System Would Work

A safe passage visa would enable a qualifying person to travel safely to the UK so that they could claim asylum on arrival. They would then enter the normal UK asylum process, meaning that if it were ultimately determined that they were not eligible for asylum, they would not be allowed to stay in the UK.

A person would qualify if:

- They are in the EU;
- They are not an EU national or a national of Liechtenstein, Norway or Switzerland; and
- They have a viable claim for asylum in the UK.

This would disqualify anyone whose asylum claim is clearly unfounded and there would be restrictions based on the existing immigration rules, for example those convicted of certain crimes outside the UK. It would be a condition that, on entry into the UK, an asylum claim is made, and that entry is not possible for any other purpose.

There would be no fee for the application and legal aid would be available for any appeal.

The visa would be applied for online and, if successful, the applicant would be sent an electronic letter that they could use to enter the UK. Necessary documents would be uploaded with the application or, if this is not possible, the applicant could visit a visa centre located across Europe. On arrival in the UK, they would be required to visit a UK centre to provide biometric data.

The scheme differs from the humanitarian visa schemes due to the main intention of the safe passage visa scheme being safe travel to the UK only. A humanitarian visa scheme application process involves greater processing and screening.

## The Illegal Migration Bill

The stated purpose of the Illegal Migration Bill is to “prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes”<sup>1</sup>.

The Bill requires the Secretary of State to remove from the UK people who enter the UK illegally and do not ‘come directly’ from a place where they fear persecution, including people who have passed through a ‘safe country’ on their way here. This applies regardless of whether the person has submitted a legal claim challenging that removal. Family members may also be removed, as may unaccompanied children.

There is also a duty to refuse to process any asylum claim they make, or any claim that removal would be a breach of their human rights.

The Bill creates new powers to detain people who will be removed, and their family members. Existing statutory limitations on the duration of detention of families and pregnant women will not apply and, during the first 28 days of detention, people cannot apply for bail or judicial review.

Asylum seekers will normally be removed to their home country if that country is listed as safe. The list of safe countries will include Albania. Asylum seekers from other countries will be removed to certain safe third countries. Currently the only known removal agreement with a third country is with Rwanda.

The only legal challenges that can suspend a person’s removal, referred to as ‘suspensive’ claims, are significantly limited.

Modern slavery legislation will be amended so that potential or confirmed victims of trafficking or modern slavery will not be protected from removal under this Bill.

An annual limit will be set for the number of places offered under safe and legal routes. No new safe and legal routes have been proposed at this time.

## Legality of the Bill

Section 19 of the Human Rights Act 1998 requires the minister in charge of a Bill to make a statement before its second reading that, in the minister’s view, the Bill is compatible with the rights contained in the European Convention on Human Rights (s19(1)(a)), or that the minister is unable to make such a statement, but the Government wishes Parliament to proceed with the Bill nonetheless (s19(1)(b))<sup>2</sup>.

The Government’s European Convention on Human Rights memorandum acknowledges that the approach taken in relation to modern slavery in particular is “radical” and “new and ambitious” and that such an approach meant the Secretary of State was unable to make a section 19(1)(a) statement.

The Bill’s explanatory notes state that the Government is satisfied that the Bill’s provisions are capable of being applied compatibly with Convention rights, notwithstanding the inability to make a section 19(1)(a) statement.

UNHCR have said “*The effect of the bill (in this form) would be to deny protection to many asylum-seekers in need of safety and protection, and even deny them the opportunity to put forward their*

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<sup>1</sup> <https://researchbriefings.files.parliament.uk/documents/CBP-9747/CBP-9747.pdf>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1998/42/section/19>

case. This would be a clear breach of the Refugee Convention and would undermine a longstanding, humanitarian tradition of which the British people are rightly proud.

**Most people fleeing war and persecution are simply unable to access the required passports and visas. There are no safe and “legal” routes available to them. Denying them access to asylum on this basis undermines the very purpose for which the Refugee Convention was established. The Convention explicitly recognises that refugees may be compelled to enter a country of asylum irregularly.”**

Under international law, claiming asylum is not illegal. Anyone has the right to apply for asylum in a country that has signed the 1951 Refugee Convention and can stay in that country until their claim has been assessed.<sup>3</sup> There is no obligation in the Refugee Convention, either explicit or implicit, for refugee to claim asylum in the first safe country they reach. The Refugee Convention offers protection to refugees who enter a country illegally from penalties imposed on account of that illegal entry, where the refugee has ‘come directly’ to that territory from their home country, and the international interpretation of ‘come directly’ does not preclude travel through safe countries.

### Legal Routes

The Government’s desire to encourage people to use legal routes does not take account of the fact that, for most refugees, there is no legal way for them to claim asylum in the UK due to the narrow scope of current schemes. If there was a legal route by which people could enter the UK and claim asylum, it is difficult to see why tens of thousands would make the dangerous journey in small boats.

The Government has launched specific and time-limited schemes for certain nationalities such as Afghans, Ukrainians and Hong Kong residents. These are not the only places in the world which create refugees and, despite being in equal need of protection, the overwhelming majority of refugees cannot enter the UK through these routes.

Less than 1% of refugees are eligible for current resettlement schemes<sup>4</sup>, and in 2022, only 5,792 refugees were resettled in the UK<sup>5</sup>.

Although thousands of refugees miss out on specific schemes to bring them to the UK due to eligibility criteria, this does not mean that these refugees are not eligible for protection under the Refugee Convention.

The Government’s preference for legal routes creates a shift in the way that asylum works. Essentially, they want to be able to control which refugees the UK will accept – for example Ukrainian nationals – whereas under the Refugee Convention, asylum is based on assessment of each individual’s need, and individuals are allowed an element of agency over where they claim asylum.

### Who Is Crossing The Channel

Suella Braverman has said: “Let’s stop pretending they are all refugees in distress. The whole country knows that is not true.” Research from both the UNHCR<sup>6</sup> and Refugee Council disputes this, as do

<sup>3</sup> <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/#:~:text=The%20Universal%20Declaration%20of%20Human,where%20they%20risk%20being%20persecuted>

<sup>4</sup> <https://www.unhcr.org/uk/resettlement.html>

<sup>5</sup> <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/how-many-people-do-we-grant-protection-to#people-granted-protection-and-other-leave-through-asylum-and-resettlement-routes>

<sup>6</sup> <https://www.theguardian.com/uk-news/2022/jun/02/clear-majority-of-people-crossing-channel-are-refugees-says-unhcr>

the statistics on parliament's own website<sup>7</sup>. Analysis by the Refugee Council shows that of all those who crossed the Channel in 2022, two thirds should be granted asylum when their claims are processed<sup>8</sup>.

Half (48%) were from Afghanistan, Iran, Eritrea, Sudan or Syria. Asylum applications from those countries are granted in at least 80% of cases and for three – Afghanistan, Eritrea and Syria – it is 98%.

### Top nationalities crossing in small boats 2022<sup>9</sup>

	Number of people	Asylum grant rate
Albania	12,301	49%
Afghanistan	8,633	98%
Iran	5,642	80%
Iraq	4,377	56%
Syria	2,916	99%
Eritrea	1,942	98%
Sudan	1,704	84%

### Deterrence and Numbers

A distinction should be made between deterring people from making dangerous journeys and stopping people from claiming asylum in the UK.

#### Dangerous journeys

In recent years, the UK and French Governments' policies in relation to refugees in Calais have been almost-entirely based on physical security and deterrence and yet, the small proportion of refugees who want to reach the UK continue to come, regardless of the level of hostility and the deterrents put in place. In the months since the Rwanda plan was announced, small boat crossings hit an all-time high<sup>10</sup>. By the time they reach Calais, refugees' lives have been in danger for so long that fear of undertaking a further life-threatening journey, or government deterrence measures, simply don't stop arrivals.

In Australia, offshore processing and detention measures did not impact on arrivals by boat until they were coupled with push backs<sup>11</sup> – which the UK Government abandoned following a legal challenge<sup>12</sup>.

If people were applying for visas to travel to the UK, the Government would have visibility, and therefore control, over the people who are arriving; whereas people who are threatened with detention and deportation are more likely to go underground.

90% of people crossing on small boats claim asylum on arrival in the UK<sup>13</sup>. It follows that at least 90% of those crossing on small boats would transition over to the new safe and legal route, as it would

<sup>7</sup> <https://committees.parliament.uk/work/496/channel-crossings-migration-and-asylumseeking-routes-through-the-eu/publications/oral-evidence/>

<sup>8</sup> <https://www.refugeecouncil.org.uk/latest/news/government-plans-will-lead-to-tens-of-thousands-of-refugees-locked-up-like-criminals/>

<sup>9</sup> <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022>

<sup>10</sup> <https://www.gov.uk/government/statistics/migrants-detected-crossing-the-english-channel-in-small-boats-monthly-data>

<sup>11</sup> <https://www.bbc.co.uk/news/world-australia-64898507>

<sup>12</sup> <https://www.theguardian.com/uk-news/2022/apr/25/uk-refugee-pushback-policy-withdrawn-judicial-review-priti-patel>

<sup>13</sup> <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2022/irregular-migration-to-the-uk-year-ending-december-2022>

make no sense to risk their lives if there is a safe and legal alternative. By removing 90% of the people smugglers' business, their operation would be transformed from a multi-million-pound enterprise to a small and insignificant activity. Far more importantly, lives would be saved.

### Claiming asylum in the UK

In 2022, only 7% of refugees in Europe came to the UK to claim asylum<sup>14</sup>. This means that 93% claimed asylum in other EU countries; for example, 26% went to Germany, 16% went to France and 11% went to Spain. It is a common misconception that 'all' refugees in Europe want to come to the UK; in fact, most do stay in other safe countries.

The most common reasons for travelling onwards to the UK are family and community or historical ties, and language, and people with those ties are *already coming* to the UK. People do not choose to stay in their dangerous home countries, or go to a different country, because of UK Government policy. Research has shown that refugees "have very little knowledge of the United Kingdom or the UK asylum system before they came to the country"<sup>15</sup>. If people don't know about policies when they make their journey, how can those policies deter them from making it?

The fact is that most refugees who come to Europe do not try to come to the UK - they claim asylum elsewhere, and will continue to do so.

Last year the UK issued 230,000 visa to Ukrainians and 150,000 to people from Hong Kong. If we can issue 380,000 such visas, it would not seem unreasonable to issue, say, 80,000 visas to refugees who come from the most dangerous countries in the world, particularly if this would achieve the Government's key stated objective of stopping small boat crossings.

### Those who are denied a visa

There would be people who are denied a visa and there would be a risk of these people considering a dangerous journey as before.

However, it should be remembered that at least 90% of those who cross on small boats claim asylum on arrival – the incentive to make the crossing is the hope of a safe life. If the visa is denied they are being clearly and directly informed that this possibility is removed. It is one thing to risk your life for the hope of a safe future, quite another to risk it for a life of permanent precarity.

While safe passage is a more effective way of achieving the Government's objectives than brutal deterrence, more importantly, it will be humane and will not risk breaching international law. The Illegal Migration Bill risks making the UK complicit in human rights violations. This is a not insignificant risk and has implications for the Home Office staff who will be implementing the policy.

### Inhumane Policy

The Illegal Migration Bill provides for mass, unlimited detention and deportation, usually to a third country, of thousands of men, women and children, who would otherwise be able to make a legal claim for asylum.

The UK is the only country in Europe that does not have a time limit on detention. Detention destroys mental health.<sup>16</sup>

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<sup>14</sup> <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022>

<sup>15</sup> <https://journals.sagepub.com/doi/10.1177/1369148116656986>

<sup>16</sup> <https://www.libertyhumanrights.org.uk/fundamental/immigration-detention/>

UNHCR have provided significant evidence that refugees previously sent to Rwanda have not been safe there and that Rwanda's asylum system is not adequate to properly assess asylum claims<sup>17</sup>. In 2018, refugees in Rwanda who took part in riots over food shortages were fired on by police and at least 11 were killed<sup>18</sup>. Both Amnesty International and Human Rights Watch have raised serious concerns over the Rwanda plan.

In June 2022 Care4Calais supported 130 people who were issued with Rwanda notices ahead of the first planned flight to Rwanda. We saw the devastating effects this had on the people concerned and their families. We documented suicide attempts and self-harm. We are in no doubt over the cruel brutality of third country deportations.

### Practical Matters

A similar idea, humanitarian visas, have been used to reduce the number of migrants making the dangerous journey across the Mediterranean.<sup>19</sup> Between 2013 and 2016 France granted over 3,000 humanitarian visas to Syrian refugees.<sup>20</sup> Other countries that use humanitarian visas or similar include Belgium, Switzerland, Russia, Argentina, Brazil and the United States.

In December 2021, a group of MPs tabled an amendment to the Nationality and Borders Bill that sought to include the provision of humanitarian visas for refugees based in France wanting to enter the UK.<sup>21</sup> One of the major barriers to this proposal, and others like it in the past, is the extreme resistance on the part of France to anything that might cause a build-up of refugees in or around Calais and the resulting questions about their living conditions.

The use of an online system for Ukrainians circumvented this, together with the UK's existing network of visa centres across Europe which can be visited if people have difficulties, for example with documentation. This is why there has not been a build-up of Ukrainian refugees in Calais.

The more likely and the real practical issue would be the potential for visas to be declined and/or delayed as a political means to prevent people from getting to the UK to make an asylum application. In this case, we would quickly return to the position of many people in Calais crossing over in small boats. The visa system will only work if there is a real will from Government for it to do so. The incentive would be the fact that there would be political capital to be gained from halting small boat crossings, which the Government has declared to be a priority.

The related issue that should be addressed is the current excessive and unnecessary costs of the UK asylum system, which have been estimated at c£5m per day for keeping people in hotels<sup>22</sup>. The sensible step that should be taken is an urgent initiative to, firstly, process as many outstanding claims as possible and, secondly, speed up the processing of new claims. People with status can work, support themselves and pay taxes. There is no need for them to be living in hotels at taxpayer expense.

This would require significant investment in the Home Office. The thinking of the Government in May 2022 was the opposite, with plans published to cut over 91,000 jobs from the civil service.<sup>23</sup>

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<sup>17</sup> <https://www.independent.co.uk/news/uk/home-news/rwanda-high-court-un-refugees-b2161067.html>

<sup>18</sup> <https://www.dw.com/en/rwanda-police-shot-dead-11-refugees-in-food-riot/a-42751170>

<sup>19</sup> <https://redcross.eu/projects/humanitarian-visas-in-practice>

<sup>20</sup> <https://www.europarl.europa.eu/cmsdata/150782/eprs-study-humanitarian-visas.pdf>

<sup>21</sup> <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=3e589cfe-383e-40a1-ac82-eb3430e7b1d7>

<sup>22</sup> <https://www.gov.uk/government/news/faster-accommodation-moves-for-unaccompanied-asylum-seeking-children>

<sup>23</sup> <https://www.pcs.org.uk/news-events/news/pcs-condemns-johnsons-mass-civil-service-job-cuts-plan>



For the Home Office to effectively process asylum claims, deal with backlogs and handle the Channel crossings crisis, it needs more resources, not less. Staff who deal with asylum applications want what's best for those who use the system and it's a system they have valuable knowledge of, and experience in. This expertise should be utilised by Government, campaigners and policymakers when discussing the solutions needed to ensure safe passage for refugees.

## Conclusion

In November 2021, 32 people lost their lives in the English Channel. On 14 December 2022, a second tragedy saw another eight people drown. There is an urgent need for a safe way for refugees to claim asylum in the UK, and an end to small boat crossings.

The Illegal Migration Bill has been condemned by charities, trade unions and faith leaders. It will see thousands of men, women and children, who are already victims of war, torture and persecution, detained on British soil and forcibly deported to a future where we cannot guarantee their safety. It risks making the United Kingdom complicit in human rights abuses. This is for a promise that it cannot deliver.

It is clear that deterrence does not work. Years of deterrence-based policies in Calais have had no impact on numbers of people crossing the Channel. Since the Rwanda policy was announced, record numbers have crossed the Channel in small boats.

Issuing visas for safe passage to people in Calais who have viable asylum claims would stop small boat crossings, eliminate people smugglers' profits and save lives. When there is a more effective and humane way to stop the boats, it is difficult to see why more draconian measures are necessary.

## Appendix – Proposed Amendment to the Illegal Migration Bill

- (1) Within three months of the passing of this Act, the Secretary of State must lay before Parliament statements of changes to the immigration rules to make provision for a safe passage visa scheme (referred to in the remainder of this section as the "scheme").
- (2) The purpose of the scheme referred to in subsection (1) is to enable a qualifying person to travel safely to the United Kingdom in order to make an application for asylum (within the meaning given by paragraph 327 of the immigration rules) or a claim for humanitarian protection (within the meaning given by paragraph 327EA of the immigration rules).
- (3) A person is a "qualifying person" for the purposes of subsection (2) if the person-
  - (a) is present in a member State of the European Union when the person makes an application to the scheme;
  - (b) is not a national of a member State of the European Union, Liechtenstein, Norway or Switzerland; and
  - (c) would, on securing entry to the United Kingdom, be able to make-
    - (i) a valid application for asylum in accordance with paragraph 327AB of the immigration rules; or
    - (ii) a valid claim for humanitarian protection in accordance with paragraph 327EB of the immigration rules,which would not be clearly unfounded.

- (4) For the purposes of determining whether the condition in subsection (3)(c) above is satisfied, the following are disapplied -
- a. the conditions in subsections (4) and (5) of section 80C of the Nationality, Immigration and Asylum Act 2002; and
  - b. the duty in [clause] 2(1) of this [Bill].
- (5) Changes to the immigration rules made under this section must also make provision for-
- (a) applications to the scheme, including-
    - (i) identification of the relevant gov.uk webpage through which applications must be made;
    - (ii) the provision of relevant biometric data by the person;
    - (iii) the supplying of relevant information and supporting documentation related to applications;
    - (iv) confirmation that applications will be without cost to applicants; and
    - (v) provision for legal aid in relation to applications made to the scheme;
  - (b) any additional suitability requirements for applications to the scheme, including matters referred to in Part 9 of the immigration rules;
  - (c) entry requirements for those granted entry clearance under the scheme, including the requirement that the person be provided with a letter by the Secretary of State confirming that the person can enter the United Kingdom;
  - (d) limitations on the entry clearance granted under the scheme, including provision that clearance is provided solely to enable the person to make an application for asylum or a claim for humanitarian protection and requiring that such an application or claim be made immediately on entry into the United Kingdom; and
  - (e) appeal rights for those denied entry clearance under the scheme, including legal aid to be made available for persons making such appeals.
- (6) The scheme referred to in this section is to be specified as a “safe and legal route” for the purposes of regulations referred to in [subclause] (6) of [clause] 51 of this [Bill].
- (7) In this section-
- “immigration rules” means rules under section 3(2) of the Immigration Act 1971.