

## “Safety of Rwanda” Act – Briefing Note – May 2024

This briefing updates our December 2023 briefing note on the Safety of Rwanda (Asylum and Immigration) Bill following its passage through Parliament and Royal Assent.<sup>1</sup> This briefing note explores the implications of the Safety of Rwanda (Asylum and Immigration) Act 2024<sup>2</sup> (‘the Rwanda Act’) for Northern Ireland and reiterates our strong opposition to it due to its potential violation of international and domestic legal commitments, undermining of human rights protections, and the detrimental effects on the asylum and immigration system in Northern Ireland.

### Background

The Human Rights Consortium is dismayed at the recent developments in the UK Government's cruel and unlawful policy of automatically removing asylum seekers to Rwanda, and the continued misrepresentation of refugees and asylum seekers as "illegal migrants". Working with member organisations and academics through our working group, we have continually challenged the UK Government's attempts to demonise refugees and asylum seekers and water down rights protections, from the ‘Rights Removal Bill’<sup>3</sup> to the Illegal Migration Act<sup>4</sup> and now the Rwanda Act.<sup>5</sup> Following our briefing in December 2023, we wrote to the Prime Minister in March 2024, calling on him to withdraw the bill,<sup>6</sup> and have condemned its successful passage through Parliament.<sup>7</sup>

The UK and EU agreed the Withdrawal Agreement in October 2019 which contained provisions in the Protocol on Ireland/Northern Ireland (now ‘Windsor Framework’) from the UK Government to ensure the non-diminution of rights contained in the 1998 Agreement (Article 2) and to ensure the continuation of the Common Travel Area (Article 3). The UK-EU Trade and Cooperation Agreement provides that cooperation on law enforcement and judicial cooperation in criminal matters can be suspended were the UK to leave the European Convention on Human Rights (Article 692). It also

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<sup>1</sup> Human Rights Consortium, ‘Rwanda Bill: An Attack on Fundamental Rights’, 2023, <https://www.humanrightsconsortium.org/rwanda-bill-an-attack-on-fundamental-rights/>

<sup>2</sup> UK Government, Safety of Rwanda (Asylum and Immigration) Act 2024, <https://www.legislation.gov.uk/ukpga/2024/8/enacted>

<sup>3</sup> Human Rights Consortium, ‘UK Legislation Condemned as Rights Removal Bill’, 2022, <https://www.humanrightsconsortium.org/uk-legislation-condemned-rights-removal-bill/>

<sup>4</sup> Human Rights Consortium and The PILS Project, Illegal Migration Bill – Joint Briefing, 2023, <https://www.humanrightsconsortium.org/illegal-migration-bill/>

<sup>5</sup> Human Rights Consortium, Rwanda Bill: An Attack on Fundamental Rights, 2023, <https://www.humanrightsconsortium.org/rwanda-bill-an-attack-on-fundamental-rights/>

<sup>6</sup> Human Rights Consortium, Civil Society calls on Prime Minister to abandon Rwanda Bill, 2024, <https://www.humanrightsconsortium.org/civil-society-call-on-prime-minister-to-drop-rwanda-bill/>

<sup>7</sup> Human Rights Consortium, Human Rights Consortium says government should abandon cruel Rwanda policy 2024, <https://www.humanrightsconsortium.org/human-rights-consortium-says-government-should-abandon-cruel-rwanda-policy/>

contains a shared commitment to ‘uphold the shared values and principles of democracy, the rule of law, and respect for human rights, which underpin their domestic and international policies’ (Article 763) and violation of this can be grounds for termination of the agreement.<sup>8</sup> Rights are, therefore, threaded through the UK-EU relationship with potential negative consequences if these are violated.

In April 2022, the UK and Rwanda agreed a Migration and Economic Development Partnership to allow the UK Government to relocate some people who would otherwise claim asylum in the UK to Rwanda. In June 2022, the European Court of Human Rights issued an injunction (an ‘interim measure’) that halted the first attempted relocation of asylum seekers there. The UK Government introduced the Safety of Rwanda (Asylum and Immigration) Bill following a Supreme Court ruling in November 2023 against the interpretation of Rwanda as a 'safe country' for refugees under the Illegal Migration Act. The Government has pushed ahead by signing a new treaty with the Rwandan Government in December 2023 and progressed the Rwanda Bill as "emergency legislation" to attempt to override the Court's ruling as well as the UK's domestic and international human rights commitments.

### **What is the Rwanda Act?**

The Rwanda Act is designed in its entirety to circumvent any form of legitimate scrutiny and challenge to the policy of automatic removal of asylum seekers, requires that the courts ignore sections of the Human Rights Act and gives Government Ministers power to ignore interim measures from the European Court of Human Rights.

In the Government's own words, the Act affirms their view that the "validity of any Act of Parliament is unaffected by international law" - a brazen admission of the disregard shown to clearly defined and widely accepted international human rights standards.

Despite this view, the Act does not, in fact, remove any obligations from the UK Government to uphold international human rights standards it has acceded to in its treatment of all individuals within its jurisdiction, including refugees and asylum seekers. Instead, it removes the ability of domestic courts to block it on those grounds, including by disapplying Sections 2, 3 and 6 to 9 of the Human Rights Act relating to Interpretation of Convention Rights, Interpretation of Legislation and Acts of Public Authorities. It will nevertheless set the UK on a collision course with the European Court of Human Rights and various other international and domestic obligations. It is noteworthy that the Home Secretary was unable to declare that this legislation was compatible with the ECHR per Section 19(1) of the Human Rights Act.

The key elements of the Act are as follows:

- Clause 2 asserts that Rwanda should be treated as a ‘safe country’ by decision-makers such as the Secretary of State, immigration officers and courts or tribunals, prohibiting legal challenges based on the argument that Rwanda is unsafe.
- Clause 3 disapplies parts of the Human Rights Act where courts or tribunals are determining whether Rwanda is a safe country.

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<sup>8</sup> Steve Peers, ‘Analysis 3 of the Brexit deal: Human Rights and EU/UK Trade and Cooperation Agreement’, 2021, <https://eulawanalysis.blogspot.com/2021/01/analysis-3-of-brex-it-deal-human-rights.html>

- Clause 4 permits challenges to removal to Rwanda based on the person’s ‘particular individual circumstances’ but stipulates that courts of tribunals would not be allowed to entertain the argument that Rwanda is unsafe for that particular person because of the risk of being sent to another country to face possible persecution (‘refoulement’).
- Clause 5 asserts that ministers can decide whether or not to comply with any interim measures by the European Court of Human Rights and that courts or tribunals should not consider them when considering an application or appeal.

This Act will have significant implications for asylum seekers arriving in the UK who will face the prospect of being removed to a dangerous and unsafe country, regardless of what the government claims. It may also have negative unintended consequences such as driving refugees and asylum seekers who are already here underground, putting already vulnerable and persecuted people at even greater risk of harm and exploitation.

### **Incompatibility with commitments in Northern Ireland**

The Act is as an attack on the mechanisms that allow for human rights protections in Northern Ireland, setting a concerning precedent that could undermine rights, safeguards, and equality of opportunity as outlined in the Belfast/Good Friday Agreement (‘1998 Agreement’). This includes diminishing the role of the Human Rights Act in Northern Ireland, which is a cornerstone of the peace and rights framework established post-conflict.

This Act does not absolve the UK Government of its responsibilities in Northern Ireland stemming from the 1998 Agreement and the Windsor Framework, both of which established baselines for rights in the region.

The Angsom ruling<sup>9</sup> affirmed the widely held view that the Windsor Framework Article 2(1) commitment to "no diminution of rights in Northern Ireland" as a result of Brexit extends to refugees and asylum seekers and is not strictly limited to the political and social context in which the 'Rights, Safeguards and Equality of Opportunity' section of the 1998 Agreement was written. It also confirmed that the EU Charter of Fundamental Rights, as well as important aspects of the EU Reception Directive, both fall within the ambit of Article 2(1) of the Windsor Framework, which this new Act is likely to fall foul of.

Likewise, the recent Dillon case<sup>10</sup> and the case taken against the Illegal Migration Act by the Northern Ireland Human Rights Commission (see below) both demonstrate the ability of the courts to use the mechanisms of the Windsor Framework to strike down parts of legislation which are incompatible with the non-diminution commitment.

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<sup>9</sup> Angsom’s Application, In the matter of an application by Aman Angsom for judicial review and in the matter of a decision by the Secretary of State for the Home Department and The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland Intervening, 2023, <https://www.judiciaryni.uk/judicial-decisions/2023-nikb-102>

<sup>10</sup> Dillon, McEvoy, McManus, Hughes, Jordan, Gilvary, and Fitzsimmons Application, In the matter of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and the Secretary of State for Northern Ireland, 2024, <https://www.judiciaryni.uk/sites/judiciary/files/decisions/Dillon%2C%20McAvoy%2C%20McManus%2C%20Hughes%2C%20Jordan%2C%20Gilvary%2C%20and%20Fitzsimmons%20Application.pdf>

In the Dillon case, the Belfast High Court found that a range of provisions of the Legacy Act were incompatible with Articles 2 and 3 of the European Convention of Human Rights. This included the controversial immunity from prosecution provisions in Section 19.

A Declaration of Incompatibility, which is granted under Section 4 of the Human Rights Act, is the court's way of saying that it believes that these sections of the Act are not compatible with the rights contained in the Human Rights Act/ECHR. Declarations of Incompatibility are in themselves important legal protections to ensure that laws which are at odds with Convention rights are challenged, but they do not automatically change the law. The responsibility instead falls to Parliament to decide whether to change the incompatible law or not.

However, those same provisions of the Legacy Act were also challenged in the same case as a violation of Article 2(1) of the Windsor Framework. Article 2(1) of the Windsor Framework placed a duty on the UK to ensure that no diminution of rights, safeguards or equality of opportunity as set out in the 1998 Agreement results from the UK's withdrawal from the EU, including in the area of protection against discrimination. To establish a breach of Article 2(1) a series of tests need to be met which established that the claim of diminution concerned:

- A right included in the relevant part of the B-GFA is engaged.
- The right was given effect in Northern Ireland on or before 31 December 2020.
- That the Northern Ireland law was underpinned by EU law.
- That this underpinning has been removed, in whole or in part, following withdrawal from the EU.
- This has resulted in the diminution and enjoyment of this right.
- This diminution would not have occurred had the UK remained in the EU.

The court considered in the Dillon case that each of the elements was established, and it held that in enacting the immunity provisions in the 2023 Act the Government had acted incompatibly with the EU Victims' Directive and the Charter of Fundamental Rights. It said this could not have occurred had the UK remained in the EU and therefore concluded that the immunity provisions of the 2023 Act should be disapplied. In this regard the failure to ensure that the provisions of this legislation were Article 2 compliant meant that the violating provisions no longer had any legal effect.

A similar scenario has since resulted from the High Court's consideration of the Illegal Migration Act (IMA)<sup>11</sup> which has also had a range of declarations of incompatibility and disapplications made against significant portions of that legislation.

The court found that the IMA seeks to deny entry into the asylum system for individuals who enter the UK 'irregularly' and would have subjected them to mandatory detention and removal. It would have removed the majority of pathways to obtaining refugee status and introduced a system at

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<sup>11</sup> NIHRC and JR 295, Summary of Judgement, [https://www.judiciaryni.uk/files/judiciaryni/2024-05/Summary of judgment - In re NIHRC and JR 295 %28Illegal Migration Act 2023%29.pdf](https://www.judiciaryni.uk/files/judiciaryni/2024-05/Summary%20of%20judgment%20-%20In%20re%20NIHRC%20and%20JR%20295%20-%20Illegal%20Migration%20Act%202023.pdf)

odds with the spirit of the Refugee Convention and other EU and International laws protecting the rights of asylum seekers.<sup>12</sup>

In its judgment, the Belfast High Court found that, in addition to the provisions of the Act being incompatible with several of the rights within the ECHR, the IMA was in direct violation of the Article 2(1) provisions of the Windsor Framework as it limited or denied access to existing protections under the Qualification Directive, Trafficking Directive, Refugee Convention, Procedures Directive, Dublin III Regulation, and the Charter of Fundamental Rights. The Court has therefore ordered the disapplication of the violating provisions of the Illegal Migration Act 2023 in Northern Ireland.

It therefore looks increasingly likely that the Rwanda Act will be similarly challenged in Northern Ireland courts given that many of its provisions also look set to breach a range of EU Directives or protections that fall within the scope of Article 2 including:

- the Charter of Fundamental Rights of the EU,
- the EU Temporary Protection Directive (2001/55/EC),
- the original EU Asylum Reception Directive (2003/9/EC),
- the EU Qualification Directive (2004/83/EC),
- the EU Asylum Procedures Directive (2005/85/EC), and
- the Dublin Convention and successor Regulation (EU) No 604/2013.

The Rwanda Act, as well as the Illegal Migration and Nationality and Borders Acts which preceded it, violate domestic and international law irrespective of any legislative gymnastics the Government conducts to avoid their obligations. It continues a troubling pattern of disregard for these human rights standards and the principle of "non-diminution of rights in Northern Ireland" as a result of Brexit which the Government agreed to and have reaffirmed on several occasions.

There is also a growing risk that this Act and its outworkings will have significant and deleterious impacts on the Common Travel Area and British/Irish relations. These have been apparent in the immediate aftermath of the bill passing into law and illustrate the real and significant risk the Act and the wider hostile environment policies of the UK Government have of introducing a hard border on the island of Ireland.

## **Conclusions and recommendations**

The Rwanda Act poses significant challenges and risks, not only to the asylum seekers it targets but also to the fabric of human rights protections in Northern Ireland. Its provisions for bypassing established legal norms and international agreements threaten to undermine the 1998 Agreement and have already impacted British/Irish relations, with negative potential consequences for the Common Travel Area.

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<sup>12</sup> Human Rights Consortium and The PILS Project, Illegal Migration Bill Joint Briefing, <https://www.humanrightsconsortium.org/wp-content/uploads/2023/03/Illegal-Migration-Bill-Joint-PILS-HRC-Briefing-March-2023.pdf>

Despite the UK Government's claims to the contrary, the Act violates both domestic and international human rights commitments. As a result, we repeat our calls on the UK Government to abandon this policy and revise its migration and asylum policy to uphold its international and domestic human rights obligations. In particular, the UK Government should recognise and protect the higher standard of rights protections enjoyed in Northern Ireland under the Windsor Framework.

Likewise, we strongly encourage the Irish Government to uphold its obligations under international law and its agreements, including its role as a co-guarantor of the 1998 Agreement. We hope that they will use their influence, including as an EU member state, to ensure that the UK Government upholds its commitments

It is crucial that policymakers at all levels, whether domestic, national, or international, place a fair, just, and humane migration and asylum process at the heart of their work now and in the future and that full consideration of the legal duties flowing from Article 2 of the Windsor Framework are built into that process at every stage.

### **Support and Advice**

The Law Centre NI through its Migration Justice Project has produced a briefing<sup>13</sup> for asylum seekers which outlines the process that the Home Office must follow to relocate someone to Rwanda and contains important practical advice for asylum seekers on the application of this legislation. It outlines that only adult asylum seekers who claimed asylum after 1 January 2022 can potentially be sent to Rwanda. Crucially, they state that 'if you receive a Notice of Intent (the Home Office procedure to alert you that is looking for a 'third country' to accept you for relocation) naming Rwanda you should notify your solicitor immediately. If you do not have a solicitor, you should seek immigration advice urgently' and advises that asylum seekers continue to report to the Home Office and abide by Home Office restrictions.

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<sup>13</sup> Law Centre Northern Ireland, Rwanda update for asylum seekers, <https://www.lawcentreni.org/news/rwanda-update-asylum-seekers-april2024/>