The UK's New Plan for Immigration: Normativity, Crisis, and a "Bespoke" Rationale for Humanitarian/Refugee Protection[Ψ]

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At A Glance:

Refugee Law in the United Kingdom is undergoing a moment of fundamental change. This change is clearly visible with both the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 enacted within the last two years. As such, it is argued that we are currently witnessing a fundamental shift in the underlying conception of international protection in the UK. Through an engagement with contemporary legislative enactments, political statements, and judicial decisions, this paper critically considers an emerging new logic of refugee status determination in the UK. Specifically, I chart the UK's shift from the highly individualist conception of the refugee deployed within the Refugee Convention to a series of bespoke arrangements targeting particular forms of crisis as the proper recipients of international protection. In examining this shift, the paper identifies particular minority groups, such as sexual and gender minorities, who are increasingly left outside the scope of international protection recognised by the United Kingdom.

July 19 2023 was a landmark day for asylum law in the UK. As a series of amendments fell in the House of Lords, it became increasingly clear that the government's proposed Illegal Migration Act 2023 was going to pass and become law. The response from the United Nations High Commissioner for Refugees was clear and frank stating that,

> The Illegal Migration Bill, which has now been passed by Parliament in the United Kingdom, is at variance with the country's obligations under international human rights and refugee law… the Bill extinguishes access to asylum in the UK for anyone who arrives irregularly… this new legislation significantly erodes the legal framework

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[Ψ] This article was written prior to the Supreme Court Decision in R (On the Application of AAA and others) v Secretary of State for the Home Department [2023] UKSC 42. As such, no consideration of that decision is made in this paper.

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that has protected so many, exposing refugees to grave risks in breach of international law.[1]

As this suggests, the Illegal Migration Act 2023, alongside the Nationality and Borders Act 2022 represent a substantial departure from both the historic practice of the UK and mainstream legal interpretations of the obligations to which the UK has agreed.[2] Indeed, it is telling that some refugee charities, such as Refugee Action, dubbed the Illegal Migration Act the 'Refugee Ban Bill' during its passage through parliament.[3]

This paper examines a new logic of forced protection which is emerging in the UK context, paying specific attention to how groups on the margins of normative society, such as LGBTIQA+ people[4] are unaccounted within the new rationale of protection. Specifically, I chart how the Convention conception of the refugee is being supplanted by bespoke arrangements. This is neither new nor unique to the UK.[5] However, the Illegal Migration Act represents the clearest legal investment in this new logic. Through looking at the case study of LGBTIQA+ asylum claimants, this paper reflects on the conceptually limited scheme of protection afforded by the UK's new construction of the refugee.[6] Given my own previous work on LGBTIQA+ refugees, I have chosen to focus on this group. However, I wish to be clear at the outset that these issues are not limited to LGBTIQA+ people. The problems

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[1] United Nations High Commissioner for Refugees, Press Release: UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office Warn of Profound Impact on Human Rights and International Refugee Protection System (*United Nations High Commissioner for Refugees=,* 18th July 2023) https://www.unhcr.org/news/press-releases/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn accessed 21st July 2023.

[2] See: Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

[3] See: Refugee Action, 'Refugee Action Responds to Passing of Government's Illegal Migration Bill' (*Refugee Action*, 18 July 2023) <https://www.refugee-action.org.uk/refugee-action-responds-to-passing-of-governments-illegal-migration-bill/> accessed 3 August 2023

[4] In other work, I have critique the collapse of sexuality into discrete categories of identity. However, given the general audience of the journal, I am deploying the most readily recognisable framing of sexual and gender diversity in order to make the work as accessible as possible.

[5] For example, it has long been a feature of the European approach to asylum. See Rosemary Byrne and Andrew Shacknove, The First Safe Country Notion in European Asylum Law (1996) 9 Harvard Human Rights Journal 185.

[6] Note should be taken that, as numerous scholars have shown, the refugee conceived in the terms outlined under the refugee convention is also problematic for those whose fear of persecution relates to sexual or gender diversity. See generally: Moira Dustin, Many Rivers to Cross: The Recognition of LGBTQI Asylum in the UK (2018) 30 International Journal of Refugee Law 104; Rosa Dos Ventos Lopes Heimer, Homonationalist/Orientalist Negotiations: The UK Approach to Queer Asylum Claims (2020) 24 Sexuality & Culture 174.

articulated in this case study also apply to women seeking asylum and all whose asylum claims fall outside contemporary conceptualisations of crisis.

The paper develops over three sections. Section 1 charts the mainstream conception of the refugee emerging from the Refugee Convention and largely, though certainly not perfectly, followed by the UK prior to 2022. Section 2 then examines the new logics governing asylum in the UK. By looking to the Hong Kong and Ukraine Schemes, I chart the framework crisis as a way of understanding the UK's approach to international protection. Finally, section 3 examines how LGBTIQA+ people, as well as other minoritised groups, are often excluded from this logic of crisis response.

1. The Convention Definition and the Individual

While the concept of the refugee or seeking asylum is older, with roots dating back to ancient Greece,[7] states which are signatories to the Refugee Convention have agreed to recognise as refugees anyone who,

> Owing to well-founded fear of persecution for reasons of race, religion, nationality, Membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country…[8]

As such, signatory states have agreed to recognise as refugees all who meet this definition. Once recognised as a refugee, a person is entitled to a range of fundamental rights. In this regard, refugee status is often regarded as a form of 'surrogate protection', a way for those who cannot rely on the protection of their country of nationality to access protection.[9]

The wider system of international human rights law, of which international refugee law is a part, focuses on placing obligations on states for the protection of citizens and

[7] Thanos Zartaloudis, Hieros Anthropos – An Inquiry into the Practices of Archaic Greek Supplication (2019) 13 (1) Law and Humanities 52.
[8] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), Article 1 (A) 2.
[9] See further: James Nafziger, 'Refugee Law, A Commemorative Introduction' (1992) 28 Willamette law Review 703, 706.

residents within their borders. In this sense, though proclaimed as 'universal', human rights are deeply contingent on the application of the rights by individual states.[10] Indeed, the inclusion of the right to claim asylum within the Universal Declaration of Human Rights can be viewed as an implicit recognition of this reality.[11] It is in this sense that Hathaway and Foster have described the right to asylum as the most important human right.[12]

There is no international body empowered to give binding interpretations of the Refugee Convention. Implementation of the obligations it contains is a matter for individual states. Although, note should be taken that the application of the Convention is closely monitored by the United Nations High Commissioner for Refugees, with whom states have an obligation to cooperate.[13] In the UK, the implementation is across a patchwork of statutes,[14] secondary legislation, and policy. Many rules governing asylum can be found at part 11 of the immigration rules.[15] Changes to the immigration rules can be laid by the Secretary of State for the Home Department pursuant to S3(2) of the Immigration Act 1971, but a substantial number of other legislative provisions also impact on the ability of claimants to rely on protection from the UK. As discussed in depth in section 2, the wide ambit given to clauses 2 and 4 of the Illegal Migration Act is now first and foremost amongst these legislative provisions.[16]

Prior to the Illegal Migration Act, a claimant who arrived in the UK would be entitled to make a claim for asylum and have that claim processed in line with the provisions set out under part 11 of the Immigration Rules. Under this process, they would have a screening interview to identify the fundamental elements of their claim. They would then, often after substantial delay, be invited for a substantive interview. During this interview, they would present their claim to a decision-maker. These interviews can last several hours and, given the

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[10] Elisabeth Young-Bruehl, 'Hannah Arendt: For Love of the world (Yale University Press 2004) 152. See also: Hannah Arendt, *The Origins of Totalitarianism* (Harcourt 1976)
[11] Article 14, Universal Declaration of Human Rights (Adopted and Proclaimed 10 December 1948) UNGA 217 A
[12] James Hathaway and Michelle Foster, *The Law of Refugee Status (*Cambridge University Press 2014) 1.
[13] United Nations High Commissioner for Refugees, UNHCR Observations on the New Plan for Immigration Policy Statement of the Government of the United Kingdom (4th May 2021) available at https://www.refworld.org/docid/60a4db884.html accessed 05/11/2023 .
[14] See Generally: Illegal Migration Act 2023; Nationality and Borders Act 2022; Immigration Act 2016; Immigration Act 2014; Borders, Citizenship and Immigration Act 2009; Asylum and Immigration (Treatment of Claimants) Act 2004; Nationality, Immigration, and Asylum Act 2002; Immigration and Asylum Act 1999; Immigration Act 1971.
[15] The rules can be accessed online. See: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum. Date of access: 20/04/2023.
[16] Illegal Migration Act 2023.

highly narrative nature of asylum claims—where the narrative put forward by the claimant is often the central determinant of success or failure— they constitute a key part of the claim.[17] Following the interview, the caseworker considers whether the claimant has proved, to the appropriate standard of proof,[18] that they have a well-founded fear of persecution for a Convention reason.[19] If a claimant is denied, they have the ability to apply to the First-Tier Tribunal, Asylum and Immigration Chamber to ask that their claim be reassessed by an immigration judge.[20]

As well as claims for asylum, those seeking protection can also seek to rely on what is often referred to as 'complementary protection' or subsidiary protection. This form of protection arises from the Human Rights obligations states have signed up to in order to ground a duty not to remove claimants where that removal would lead to a real risk of violation of their human rights.[21] Like a claim for refugee status, this focuses on the particular circumstances of the claimant in question.

Under the above logic, surrogate protection is the main focus of refugee law. Given this, the focus of the framework is on individuals being recognised on the basis of the treatment they would face in their country or origin, not on the basis of how they came to the UK. Nor on the basis of where they came from.[22] This ensures that, where someone faces sustained abuse of their human rights within their country of nationality,[23] they are able to flee and seek the protection of another country.

The deep reliance of systems of international human rights law on the cooperation of states is was what led Hannah Arendt to argue that,

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[17] For example, in the context of LGBTIQA+ claims, Leilah Zadeh has drawn attention to how central the narrative of the claimant can be to the success or failure of the claim. Lellia Zadeh, 'The UK: Excessive Focus on Articulation of "Self-Realisation" and Development of Identity' (SOGICA Conference, Online, 7-9 July 2020).

[18] As per R v Sivakumaran [1988] AC 958 the requirement has been for the claimant to show a 'real risk' or 'reasonable degree of likelihood'

[19] Prior to the Nationality and Borders Act 2022 this was the Reasonable Degree of Likelihood standard across all elements of the asylum claim.

[20] See further: Asylum and Immigration Appeals Act 1993

[21] See: Jane McAdam, *Complimentary Protection in International Refugee Law* (Oxford University Press 2007). However, note that as Ferreira has argued, the scope of this protection for LGBTIQA+ asylum seekers has generally been narrowly interpreted. See:

[22] As the 1967 Protocol on Refugee status makes clear, the rights of refugees apply without geographical limitation. See: Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol)

[23] Ibid 288-361

> The conception of human rights based upon the assumed existence of a human being as such broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. The world found nothing sacred in abstract nakedness of being human.[24]

Indeed, in her essay 'we refugees' she further reflected on how those fleeing their own states were not offered effective protection; instead they were confined to camps both by those who wished the help them and those who wished to harm them.[25] In this vein, Giorgio Agamben argued that 'the refugee causes the secret presupposition of the political domain—bare life—to appear for an instant within that domain'. [26] Bare Life connotes a life shorn of all protection and reduced to the status of a mere body.[27] Agamben means this in the sense that someone who is denied refugee status is reduced to the mere fact of being alive with the forms of protection provided by society and the state largely stripped away.[28] This is similar to the abstract nakedness Arendt spoke of, later calling those in this position 'superfluous people'.[29] In the work of both is a sense that, once one is reduced to the mere fact of being alive, shorn of discursive and legal constructions such as rights or personhood, humans are exposed to a multitude of dangers. Thus refugee status under the terms of the Convention offers an avenue through which the proclaimed universality of human rights might be validated and people, in turn, can be lifted out of and away from bare life. It is this universalising potential, rooted in the capacity of claimants to seek surrogate protection on the basis of their individual fear of persecution, that the UK is stepping back from.

The logic of bare life, the idea that certain forms of life register as worthy of state protection, fits with the wider idea of bio-politics as defined by Foucault. Foucault argued that, in the pre-modern period, power focused on the 'power to take life or let live'.[30] Whereas, under modernity, power became structured around discipline and government more

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[24] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, 1976) 299.
[25] Hannah Arendt, *The Jewish Writings* (Jerome Kohn and Ron H Feldman (eds) (Schocken Books 2008) 264 - 274
[26] See generally: Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life (Stanford University Press 1998). 132
[27] Ibid 1-12.
[28] This further links to the work of Michel Foucault in the sense that one is, in a bio-political sense, denied the forms of fostering essential to life. See: See Michel Foucault, The History of Sexuality: The Will to Knowledge (Robert Hurley Trans: Penguin 1998) 136-138.
[29] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, 1976)
[30] See Michel Foucault, The History of Sexuality: The Will to Knowledge (Robert Hurley Trans: Penguin 1998) 136-138.

than any Hobbesian sense of sovereign power.[31] Foucault argues that the exercise of power in the modern period focuses on whether to 'foster life or disallow it to death.'[32] He called this new form of power bio-power.[33] In one sense, the logic of refugee status determination as it exists under the Refugee Convention, speaks exactly to this framework. This is because the question of whether or not one is recognised as a refugee becomes about whether they are able to access the rights guaranteed under the convention. A person who is not recognised as a refugee is left far more exposed to the vicissitudes of nature and markets, unable to (formally) work or access public services. Here it is noted that migrant communities frequently engage in forms of resilience, resistance and community building. Migrants, including those not recognised or even criminalised by the state, are a part of British society. But, in notable ways their existence is made more difficult by living lives outside of the legal framework, be that as a result of the actions of the state, or via v the undermining of the capacity to be resilient to the multifarious forms of vulnerability that all human beings are exposed to.[34]

This is in the sense that they either disappear outside of the ambit of state view and engage in informal economies, or are held for extended periods in forms of accommodation without access to anything but the barest means of survival. Indeed, as covered by Fletcher in another part of this volume, such spaces can be sites of particular hostility for sexual and gender minorities.[35] This, then, is the sense in which Agamben speaks of the refugee as the secret pre-supposition of politics, their very personhood is a question posed in the form of a refugee status determination.[36] However, with the passing of the Illegal Migration Act 2023, the UK seeks to bar a significant majority of potential refugees from even attempting to utilise this framework of recognition.

The linkages between the question of refugee status and the concept of bare life have intensified in the UK context. This is due to the collection of policies know initially as the 'hostile environment' and later renamed the "compliant environment". [37] These policies very

[31] Ibid, 136
[32] Ibid, 138
[33] Ibid, 144.
[34] See: Martha Albertson Fineman, Vulnerability and Inevitable Inequality (2017) 4 Oslo Law Review 133
[35] Claire Fletcher, Heteronormative Accommodations: Strategies of in/visibility for LGBTQI+ People in Asylum Accommodation (2024) Journal of Immigration, Nationality and Asylum Law
[36] See generally: Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life (Stanford University Press 1998). 132
[37] See: Melanie Griffiths and Colin Yeo, The UK's Hostile Environment: Deputising Immigration Control (2021) 43 Critical Social Policy 521

directly focus on making it significantly more difficult for those without legal immigration status to access services and amenities which are essential to human flourishing. For example, right to work and right to rent checks make it both more difficult and more dangerous for those who do not have legal status in the UK to enter employment or find a place to live.[38] In this sense, the life of the unregistered or 'illegal' migrant in the UK is a true example of bare life, shorn of formal access to amenities and reduced to the mere fact of biological existence. Of course, note here should be taken that people often form associations beyond and outside of the state framework. This includes engagement in informal economies, various forms of community relationships and engagement in political processes. But the point here is that without a means to regularise status, there remain large obstacles to their ability to flourish within a contemporary (highly state-driven) context.

Judith Butler has put forward a framework of grievable life to explain how discourses distribute different levels of precarity and value to human lives.[39] To think through this a metaphor is helpful. You can think of grievable life as being about different grids of understanding. When a life fits within a certain values framework, it is understood through a grid which sees it register as valuable worthy of protection and mourning. In this sense, Butler argues that we might,

> Consider the way "the human" works as a differential norm: let us think of the human as a value and a morphology that may be allocated and retracted, aggrandized, personified, degraded and disavowed, elevated and affirmed. The norm continues to produce the nearly impossible paradox of a human who is not human, or of the human who effaces the human as it is otherwise known. Wherever there is a human, there is the inhuman.[40]

For example, the loss of a child or the death of a soldier in combat are perhaps the most pre-eminently grievable. They are attributed a status of unchallengeable humanity. This is because their lives are constructed through frameworks that align closely with particular

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[38] Ibid
[39] Judith Butler, *Frames of War: When is Life Grievable?* (Verso Books 2009) 1-15. See also: Judith Butler, *Precarious life: the power of mourning and violence* (Verso Books 2006); Judith Butler *Undoing Gender* (Routledge 2004) 18-39
[40] Judith Butler, *Frames of War: When is life Grievable* (verso Books 2009) 76.

values.[41] This means both that their deaths motivate grief, and that when their lives are lost calls for redress or action are heard.

Of course, at the opposite end of the spectrum to the soldier and the child are the lives of those who do not register as grievable or deserving of mourning. Those whose deaths go unnamed and unremarked. One example of such a group is the stateless and those seeking asylum. Since 2014, the Missing Migrants project has reported over 28,000 migrants as missing or dead in the areas around the Mediterranean Sea.[42] However, outside of the hostile coverage declaring the numbers arriving in the UK, this has received astoundingly little reporting. There have been moments where this grid of understanding has been pierced. For example, on 2nd September 2015 and across many subsequent days, British media outlets and politicians broke with their framing of huge numbers of refugees arriving on the shores of Europe as a form of 'invasion'[43] or 'swarm.'[44] Instead, they solemnly reported on the death of 2 year old Alan Kurdi, whose body had been washed up on the beach. Kurdi's death was not unique. Hundreds fleeing the conflict in Syria had drowned across a number of months. Yet, something in the appearance of a young child drew attention to the humanity of those dying and brought into sharp relief the need for action and redress.

In this sense, refugee status confers not only rights, but also a form of epistemic legitimacy. The recognition as a refugee is capable of producing the claimant as a form of grievable life. It is, I argue, for this reason that politicians consistently wish to claim that they respect the rights of refugees, even when their actions suggest otherwise. Indeed, the power of refugee status is often shown in the attempts of politicians to frame refugees as illegitimate, such as by dubbing them 'economic migrants'.[45] This is done precisely to limit the grievability of their lives, to ensure that responses such as sympathy and empathy are foreclosed and to shift the grid through which these groups are viewed.

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[41] On the particular ideological salience of the child see: Lee Edelman, *No Future: Queer Theory and the Death Drive* (Duke University Press 2004).
[42] International Organization for Migration, Missing Migrants Project. Available at https://missingmigrants.iom.int/ accessed 30/08/2023_
[43] House of Commons Debate, Western Jet Foil and Manston Asylum Processing Centres Volume 721 Debated Monday 31st October 2022
[44] BBC News UK Politics Editor, David Cameron: "Swarm" of Migrants Crossing Mediterranean (BBC News, 30th July 2015) https://www.bbc.co.uk/news/av/uk-politics-33714282 accessed 04/09/2023.
[45] See for example: Patrick Worrall, 'Factcheck: Are Most Asylum Seekers Really Economic Migrants?' (Channel 4 News, 2017) <https://www.channel4.com/news/factcheck/factcheck-are-most-asylum-seekers-really-economic-migrants> accessed 17 July 2023. For analysis see: Meleanie Griffiths, Foreign, Criminal: A Doubly Damned Modern British Folk-Devil (2017) 21 *Citizenship Studies* 21 527.

2.Bespokeism, safe countries, and the new refugee definition

While some refugee law scholars have argued that a move towards a more collective conception of safe countries could be a route to ensuring greater levels of international protection,[46] it is argued that such bespoke arrangements in fact operate to greatly limit the scope of who is able to rely on international protection. This limitation is particularly attuned to normativities of violence, with only "exceptional" events registering as sufficiently serious to justify protection. The result of this is that groups such as LGBTIQA+ people, violence against whom is endemic and often viewed as normative, are left without a means of accessing protection, notwithstanding the fact that such violence can and does rises to the level of persecution.

The shift from a focus on individual claimants to a focus on safe countries and particular states of crisis can be clearly seen in the fact that at the same time that the UK has been restricting the rights of asylum seekers arriving in the UK irregularly by means of the Nationality and Borders Act 2022 and the Illegal Migration Bill 2023, it has also created a range of schemes to provide status for those fleeing emergent crises. For example, the UK has responded to the passing of new security laws in Hong Kong by providing a pathway for those who were had registered as a British National Overseas national prior to 01 July 1997—or are a child of someone who had done so—to move to and settle in the UK.[47] Similarly, the UK responded to the invasion of Ukraine by Russia by creating two bespoke visa routes that would permit those fleeing the conflict to come to the UK.[48]

These represent a transition away from the individual conception of the refugee outlined above towards a more country based conception that focuses on the question of whether or not a given country is a safe place. Often this question looks only to issues of immediate crisis, incidents that pierce or efface normality. This is as opposed to the more systemic forms of harm experienced by LGBTIQA+ people. In this sense, the crisis focus is

[46] James C Hathaway and R. Alexander Neve, Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection (1997) 10 Harvard Human Rights Journal 115.
[47] UK Visas and Immigration, British National (Overseas) Visa https://www.gov.uk/british-national-overseas-bno-visa accessed 06/09/2023.
[48] UK Visas and Immigration, Homes for Ukraine: Sponsor Guidelines https://apply-to-offer-homes-for-ukraine.service.gov.uk/ accessed 06/09/2023.

far less capable of recognising forms of harm that in many situations continue to be seen as normative such as patriarchy, heteronormativity and the violent enforcement of sexual and gender norms.[49]

The Refugee Convention has often been framed as a kind of exception to immigration law.[50] It provides a pathway for those who are fleeing a threat of very serious harm to regularise their status even when their arrival into the country of reception would otherwise be unlawful. As such, there is a shift here from a system premised on the ability of anyone to flee their country of nationality and seek protection on the basis of risks they as an individual face to a system premised around admitting limited numbers of people into the UK in response to particular events. This shift is made clear both in legislation and in terms of the narratives deployed by politicians defending and arguing in favour of the changes. For example, there have been frequent attempts by UK Government ministers to frame the changes brought in by the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 as being focused on deterring human trafficking, and further to suggest that those opposing those measures were actually the ones causing harm.[51]

One major concern brought about by recent changes arises from the large scale expansion of the concept of inadmissibility.[52] Specifically, section 16 of the Nationality and Borders Act 2022 amends Part4A of the Nationality, Immigration and Asylum Act 2002 to provide that the Home Secretary 'may declare an asylum claim made by a person… who has a connection to a third safe state inadmissible.'[53] Further, at subsection 4 it is identified that 'a state is a "Third Safe State" in relation to a claimant if '(a) the claimant's life and liberty are not threatened in that state'[54]… for a convention reason and '(b) the state is one from which a person will not be sent to another state (i) otherwise than in accordance with the Refugee Convention, or (ii) in contravention of their rights under article 3 of the Human

[49] For a discussion of homonormativity and the various manifestations it adopts see: Lisa Duggan, The New Homonormativity: The Sexual Politics of Neoliberalism in Russ Castronovo and Dana Nelson, *Materializing Democracy: Toward a Revitalized Cultural Politics* (2002 Duke University Press).
[50] Robert Wintermute, Universal Humanity vs National Citizenship: The Example of Same-Sex Partner Immigration in Europe in Riachrd C Mole (ed), *Queer Migration and Asylum in Europe* (UCL Press 2021).
[51] Richard Vaughan and Hugo Gye, 'Sunak Calls Keir a Friend of Traffickers and Nobody Cares': Why Labour Stopped Playing Nice (I News, April 15th 2023) https://inews.co.uk/news/politics/sunak-calls-keir-a-friend-of-traffickers-and-nobody-cares-why-labour-stopped-playing-nice-2276397 accessed 6/09/2023.
[52] Note should be taken that in an EU context, provision has long been made for asylum claims by those coming from other member states to be determined to be inadmissible. See: Directive 2013/32/EU of June 2014 On Common Procedures for Granting and Withdrawing International Protection.
[53] Nationality, Immigration and Asylum Act 2002, Part 4A
[54] Ibid, Section 16(4)

Rights Convention.'[55] Further to this subsection (5) identifies that a connection to a third safe state can be founded on the basis of any one of five criteria namely (1a) the claimant has been recognised as a refugee or (ib) is able to access protection in accordance with the convention in that state.[56] Or (2) they have been granted protection as a result of which they would not be sent to another state.[57] Or (3) They have made a relevant protection claim that has either (a) not yet been determined or (b) has been refused.[58] Or (4a) they were previous present in, and eligible to make a relevant claim (b) it would have been reasonable to expect them to make such a claim and (c) they failed to do so.[59] Finally, 'Condition 5 is that, in the claimant's particular circumstances, it would have been reasonable to expect them to have made a relevant claim to the safe third state instead of the UK.[60]

The net effect of the above is that an asylum seeker who has passed through another country where they could reasonably have made an asylum claim on their route to the UK can be determined to be inadmissible by the Secretary of State for the Home Department. Whist the Nationality and Borders Act gave the Secretary of State for the Home Department a discretionary power to declare claims inadmissible, the Illegal Migration Act places a duty upon the Secretary of State to make arrangements for the removal of all people whose entry into the United kingdom was either unlawful or deceptive,[61] where that person has not 'come directly to the United Kingdom from a country in which the person's life and liberty were threatened by reason of their race religion, nationality, membership of a particular social group or political opinion.'[62] This is despite the fact that the Refugee Convention specifically prohibits penalising people for entering a country unlawfully in order to claim asylum.[63]

The net effect of these legislative changes is that the Secretary of State has a duty to make immediate arrangements for the removal of anyone who has entered the UK unlawfully while passing through any other country which was not directly causing them to have a well-founded fear of persecution. Indeed, the legislation goes further still, with section 5 setting out that the duty to make arrangements for removal applies irrespective of whether the

[55] Ibid
[56] ibid
[57] ibid
[58] ibid
[59] ibid
[60] Ibid
[61] Illegal Migration Act 2023, Section 2.
[62] Ibid
[63] Refugee Convention, Article 31.

claimant makes a claim for refugee protection, makes a claim on the basis of their human rights, or claims to be a victim of slavery or human trafficking.[64]

The UK does not currently have any workable returns agreements in place. Indeed, the one agreement the UK had struck was with Rwanda, whom the Court of Appeal deemed not to be a safe country to which asylum seekers could be sent.[65] As such, the duty to make arrangements for removal will, in most cases, be practically impossible for the Secretary of State to achieve. However, given that many of these claims will likely be inadmissible, the consequence is that people will instead either (a) decide not to present themselves to the Home Office when they have entered the UK unlawfully or (b) find themselves in a state of limbo where they are neither removed, nor able to claim protection in the UK.

Central to these reforms has been an idea of asylum seekers needing to come directly to the UK. This is likely based on a highly particularistic reading of article 31 of the Refugee Convention. As well as being reflected in the legislation, the idea of safe countries has become a central talking point for members of the governing Conservative party. For example, in the Committee stage debate regarding the Nationality and Borders Act, Jonathan Gullis, Conservative MP for Stoke-on-Trent North, stated, 'If these people in Calais are legitimate refugees, why are they not claiming asylum in France, Italy, Spain or Greece, why do they need to come to the United Kingdom?'[66] In begging these questions, Gullis does not have regard to the circumstances that claimants are fleeing. Rather, he is focused on the question of which countries they have passed through. This despite the fact that the idea of needing to claim asylum in the first safe country is not a feature of the Refugee Convention. Indeed, the 1967 Protocol is explicit in setting out that there are to be no geographical limitations on the grant of refugee status.[67]

Similarly, Lee Anderson has invoked the idea of safe countries in discussing the arrival of Albanian asylum seekers into the UK. Specifically, he stated that, '*Albanian* criminals are leaving Albania, which is a safe country, and the same criminals then set up shop in France. They then leave France, which is a safe country, and come across the channel to the UK.'[68] Putting aside the deeply xenophobic idea that these claimants are

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[64] Illegal Migration Act 2023, section 4
[65] AAA and others v The Secretary of State for the Home Department [2023] EWCA Civ 745.
[66] Jonathan Gullis, Nationality and Borders Bill Committee stage. Hansard (HC) Tuesday 21st September 2021
[67] Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol)
[68] Lee Anderson, (HC) Deb Volume 721, Debated on Monday 31st October 2022.

criminals,[69] this narrative again focuses on the idea that these asylum seekers cannot be legitimate because they have passed through France. As with the Gullis quote, this situates the issue of whether or not the claimant has come from or via a safe country as central to their status, rather than the Convention's intention of a focus on the specific vulnerability that the claimant faced within their country of nationality.

This political deployment of the first safe country concept is not a new feature of British politics. Indeed, UK Government ministers have spent years attempting to construct an idea that the first safe country 'principle' is a well-established principle of international refuge law. For example, in 2019, then Home Secretary, Sajid Javid stated that,

> We remain absolutely committed to the 1951 convention, and that will not change. The principle that I have set out today, which is widely established and accepted, is the "*first safe country*" principle. It is in the interests of those *asylum* seekers not to continue what might be a dangerous journey, and to seek *asylum* in the *first safe country*.[70]

Javid's claim is interesting for two reasons. In the first instance, it is interesting because it seeks to claim that the UK's actions in moving away from the highly individualised conception of the refugee outlined above and towards a more state centred conception of safe and unsafe countries is consistent with mainstream interpretations of the Convention definition of the refugee. This is despite the fact that the United Nations High Commissioner for Refugees has clearly set out that there is no requirement for a claimant to make their claim in the 'first safe country' they pass through.[71] Second, Javid's claim is interesting because it seeks to represent the UK as remaining committed to the Refugee Convention even as legislative actions and political statements suggest an increasing movement away from it. This again speaks to the legitimacy that refugee status confers and the desire of the UK to retain and maintain a self-conception of itself as a humanitarian state.

Fundamentally, the point here is that the UK has deviated from the logic underlying the Refugee Convention. Specifically, the UK has moved from the highly individualised conception of the refugee as set out in section 1 to a highly situational conception of the

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[69] Obviously, note should be taken that most asylum seekers have entered the UK unlawfully and may well have committed criminal offences in doing so. However, this does not undermine the fact that the way in which Anderson is attempting to discursively deploy the image of criminality here is clearly intended to produce a racialized image of danger and threat.

[70] Sajid Javid, (HC) Deb Volume 652: Debated on Monday 7th January 2019.

[71] United Nations High Commissioner for Refugees, UNHCR Observations on the New Plan for Immigration UK (United nations High Commissioner for Refugees, May 2021) https://www.unhcr.org/uk/media/unhcr-observations-new-plan-immigration-uk (accessed 30/08/2023).

forced migrant as a person who is fleeing a country which is unsafe, usually because that country is facing a crisis of one form or another. In the final section, I use the example of LGBTIQA+ people to draw out how those whose oppression arises due to non-conformity with normative values are excluded from the new emerging logic of forced migration in the UK.

3.Sexual Diversity and the Definition of Crisis

With the shift from an individual conception of the refugee, to a broader focus on safe countries, we see a logic of exceptionalism take centre stage. It is within this logic of exceptionalism that the UK has simultaneously opened its borders to potentially hundreds of thousands of Hong Kongers[72] and Ukrainians[73] while also maintaining a restrictive immigration policy that includes broad aims to reduce the levels of immigration to the tens of thousands.[74]

Within this logic of exceptionalism, however, the focus is no longer on the needs of any given individual. Rather, the focus shifts to the general state of a given country, with central regard being played to whether or not that country is perceived as safe and stable. It is in this register that countries such as Kenya, where LGBTIQA+ people face criminalisation,[75] are declared to be safe third countries to which claimants might be sent. Note should be taken that, currently, only EU member states (as well as Norway, Switzerland and Liechtenstein) are exempted from individual assessments. But serious issues still arise because those claimants who enter the UK unlawfully face having their asylum claim being determined to inadmissible and may, therefore, not see an assessment of their claim be undertaken at all. This is significant because, as addressed above, the criminalisation of sexual or gender diversity is rarely understood as a form of political instability or crisis within a country.

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[72] UK Visas and Immigration, British National (Overseas) Visa https://www.gov.uk/british-national-overseas-bno-visa accessed 06/09/2023 .
[73] UK Visas and Immigration, Homes for Ukraine: Sponsor Guidelines https://apply-to-offer-homes-for-ukraine.service.gov.uk/ accessed 06/09/2023.
[74] Rajeev Syal, Suella Braverman Revives Tory Pledge to Cut Net Migration to "Tens of Thousands" (Guardian, 4 October 2022 https://www.theguardian.com/politics/2022/oct/04/suella-braverman-revives-tory-pledge-to-cut-net-migration-to-tens-of-thousands (accessed 30.08/2023).
[75] Nationality Immigration and Asylum Act, Section 94.

This does not mean that LGBTIQA+ people are imminently going to be sent to Kenya. However, it speaks to a wider failure to recognise the particular vulnerabilities that LGBTIQA+ asylum claimants face and how countries, including those which may be "safe" for other groups, can be dangerous locations to those who are of diverse genders and sexualities.[76] The issue of whether a country that is otherwise 'Safe' can be considered so if LGBTIQA+ people face forms of victimisation has been directly considered by the Court of Appeal. However, their proposal that such a country could not be considered a "Safe Country" did not result in amendment to the law.[77] As such, there remains a risk that countries which constitute highly oppressive environments for LGBTIQA+ people will be considered "safe countries".

If removal ever does become possible, such as if the UK were to strike further returns and transfer agreements, it would also be possible for a serious harm suspensive claim to be made in order to avoid removal to these countries.[78] This is a new form of claim that allows a claimant to rebut the Secretary of State's Duty to remove them. However, given the extremely restrictive procedural framework in which this new form of claim operates, it would in practice be prove difficult for claimants to rely on this as a form of protection.

Given the practical difficulties with actually effecting removals from the UK, the reality that is faced by most claimants is spending years in the UK without access to official status and without the means to regularise that status. This risk is particularly acute given the strict procedural rules which apply when seeking to argue that a claimant does not fall under the duty of removal.[79] In essence, the new UK asylum system will cast claimants into a form of bare life of the type explored above.

Several international organisations have raised alarm regarding this issue.[80] However, the concerns in regard to LGBTIQA+ people go deeper than this. Specifically, these concerns should be addressed in regard to what kinds of events will meet the conceptions of crisis

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[76] Illegal Migration Act 2023, section 39
[77] R (On the Application of B (Jamaica)) v Secretary of State for the Home Department [2013} EWCA Civ 666
[78] Illegal Migration Act 2023, section 39
[79] The rules here are effectively the same as those that apply to a serious harm suspensive claim as discussed above. However, this is a different type of claim. Namely, this would constitute a Factual Suspensive claim. See: Illegal Migration Act, section 41
[80] United Nations High Commissioner for Refugees, UK Asylum Policy and the Illegal Migration Act https://www.unhcr.org/uk/what-we-do/uk-asylum-and-policy-and-illegal-migration-act/uk-asylum-and-policy-and-illegal accessed 06/09/2023; Amnesty International , Illegal Migration Act 2023 https://www.amnesty.org.uk/files/2023-08/Illegal%20Migration%20Act_1.pdf?VersionId=WV07cR1rF4IPl_g9KLoF5ahtmJYkukEJ accessed 06/09/2023

deployed by the British government as the threshold for international protection. This is because, under the new logic, the protection of forced migrants is governed less on the basis of individual risk and more on the basis of a general perception of an urgent scenario within the country of origin. By way of an example, during the legislative journey of the Illegal Migration Act, Uganda passed a new law which included the death penalty for LGBTIQA+ people in certain circumstances.[81] Under the previous asylum framework, while it would be challenging, those able to flee Uganda and get to the UK would be able to make an asylum claim here. However, no specialist scheme was set up to permit those at risk from the new Ugandan law to come to the UK. As such, anyone attempting to flee this law would likely enter the UK unlawfully and thus face both the prospect of having any potential asylum claim deemed inadmissible and then falling under the Secretary of State's duty to make arrangements for their removal. Even if they entered the UK lawfully using another form of visa, they would then be determined to have used deception, which would again see their claim rendered inadmissible.[82]

The issue here is that the conception of a crisis is generally around spectacles such as a form of revolution or other forms of highly public, highly visible, crisis. Whereas, the harms faced by LGBTIQA+ people often take a more normative or mundane form, arising within the home, social institutions, and administrative processes.[83] Even when these harms are occurring in public, questions still arise over the extent to which they will be understood as a crisis of sufficient magnitude to permit departure from pervading narratives that favour very strict border control. For example, the changes enacted by Uganda did not register as requiring a state level response in the UK. As such, the new approach does not seem promising for sexual and gender minorities more broadly. In this sense, the logic of refugee status has shifted from a question of individual need to one of collective crisis. The nature of these bespoke arrangements have been sharply challenged by some commentators.[84] The

[81] Anti-Homosexuality Act, 2023 (Uganda)
[82] It should also be noted that the duty to remove is contingent on the claimant not having come to the UK directly. Presently, there are no direct flights from Uganda to the UK. Some flights have a layover in Brussels, while others have a layover in Nairobi. This creates the absurd situation where a claimant's ability to avoid the duty to remove could be contingent on which plane they ended up on.
[83] Michael J Bosia, Global Sexual Diversity Politics and the Trouble with LGBT Rights in Michel J Bosia, Sandra M McEvoy and Momin Rahman, *The Oxford Handbook of Global LGBT and Sexual Diversity Poltics* (2020 Oxford University Press); Dean Spade, *Normal Life, Critical Trans Politics, and the Limits of Law* (Duke University Press 2015).
[84] See for example: Sonia Lenegan, The Reality of Priti Patel's "Bespoke" Humanitarian Routes (Free Movement, 7th March 2022) available at https://freemovement.org.uk/the-reality-of-priti-patels-bespoke-humanitarian-routes/ (accessed 31/08/2023).

issue for LGBTIQA+ people is that our oppression has never registered as a form of social crisis, but rather as a form of individual harm and vulnerability.[85]

Legal experts both inside and outside of the UK have been fairly unambiguous in identifying that, in bringing into force the Illegal Migration Bill, the UK has acted in a manner that is contrary to the Refugee Convention.[86] Indeed, it is perhaps telling that the Illegal Migration Act opens with an acknowledgement that it may not be compatible with rights protected under the European Convention on Human Rights[87] and, further, makes provision in section 1(5) to state that 'Section 3 of the Human Rights Act 1998 (interpretation of legislation) does not apply in relation to provision made by or by virtue of this Act.'[88] The effect of this is that where there is a conflict with rights guaranteed under the European Convention, judges are not permitted to read the Illegal Migration Act sections in a manner that is compatible with those rights. Instead, they must give effect to the provisions of the act even where those provisions would lead to contravention of the ECHR. Otherwise put, this is the kind of clarity Parliament needs to give if—in the absence of repealing the Human Rights Act 1998—they wish to violate the rights protected under the European Convention on Human Rights.

Concerns were also raised regarding the retroactive effects of the legislation.[89] Specifically, in a manner that is manifestly incompatible with even the most formal accounts of the Rule of Law, the original bill provided for retroactive effects backdated to the day the bill had first been introduced to parliament.[90] While most elements of the retroactivity were dropped, the inclusion of it speaks to a second logic of crisis running through the UK government's New Plan For Immigration.[91] Specifically, there is a perception or construction of a crisis regarding the number of people coming to the UK unlawfully. This has manifested in some highly alarmist discourses deployed both by government ministers and the media.

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[85] See generally: Jane Spade and Craig Willse, Confronting the Limits of Gay Hate Crimes Activism: A Radical critique (2000) 21 Chicano-Latin Law Review 38; Libby Adler, Life at the Corner of Poverty and Sexual Abjection: Lewdness, Indecency and LGBTQ Youth in Chris Ashford and Alexander Maine (eds) *Research Handbook on Gender, Sexuality and the Law* (Edward Elgar 2020).

[86] Parliamentary Assembly of the Council of Europe, New Uk Legislation Thretens the 1951 Refugee Convention (PACE 21/06/2022) https://pace.coe.int/en/news/8753/new-uk-legislation-threatens-the-1951-refugee-convention accessed 06/09/2023; House of Commons Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill- Report Summary (UK Parliament 11 June 2023) https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/195605/widespread-human-rights-failings-must-be-addressed-in-illegal-migration-bill-human-rights-committee-finds/ accessed 06/09/2023

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[88] Illegal Migration Act 2023.

[89] Public Law Project, Bonavero Institute of Human Rights, Amnesty International, Liberty, Immigration Law Practitioners' Association (ILPA), The Illegal Migration Bill: Constitutional Implications https://www.libertyhumanrights.org.uk/wp-content/uploads/2023/03/The-Illegal-Migration-Bill-Constitutional-Implications.pdf accessed 06/09/2023.

[90] Illegal Migration Bill, Section 10 (as originally drafted)

[91] Note should be taken that ineligibility for a grant of leave to remain was linked to a March 7th date. Thus retaining retroactive effects. See Illegal Migration Act 2023, Section 30.

Perhaps most concerning, Suella Braverman, the then Home Secretary, has deployed language such as 'invasion' in characterising the people seeking protection into the UK.[92] Similarly, she has asserted, contrary to all available evidence, that there are 100 million people trying to get to the UK.[93] In August 2023, the government declared a 'small boats week' where they made the issue of small boats and illegal migration the central focus of government for a week.[94] Policies have focused on highly visible displays such as the placing of asylum seekers onto the Bibby Stockholm barge in Dorset.[95] All of these acts contribute to creating a sense of urgency and emergency that the government then uses as a justification for their actions, even where those actions are incompatible with the UK's international obligations. I note here that the government would argue that they are in fact complying with their 'true' obligations and that the European Court of Human Rights and other international bodies are merely overstating these obligations. But the situation remains that the Government is attempting to situate the legal changes as necessary in the context of what they represent as a crisis.

More broadly, this idea of crisis sees the government framing those who challenge their approach described as 'helping people smugglers'.[96] Or, worse, lawyers framed as 'anti-British' for supporting their clients. For example, in August 2023, Jacqueline Mackenzie, a well-known immigration and human rights lawyer, wrote about how she had become aware of the government sharing a dossier they had complied on her with government friendly media, who subsequently briefed strongly against her.[97] Carl Schmitt argued that the state of exception—brought about by emergencies—denotes a space within which the standard norms of liberal legalism might be suspended.[98] He further argued that politics could be described as the cleavage of friends from enemies, the construction of a new homogenous grouping premised on the exclusion of the other.[99] It could be argued that this is the level which migration discourse has reached within the UK. Representing a cleavage between opposing factions and leaving very limited space for effective critique or challenge.

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[92] House of Commons Debate, Western Jet Foil and Manston Asylum Processing Centres Volume 721 Debated Monday 31st October 2022

[93] House of Commons Debate, Illegal Migration Bill: Compatibility Volume 730: Debated Monday 20th March 2023

[94] Jack Kessler, "Small Boats Week" Suggests Tories Have Settled On a Core Vote Stratergy (London Evening Standard, 7th August 2023) https://www.standard.co.uk/comment/bibby-stockholm-barge-asylum-immigration-rishi-sunak-suella-braverman-b1099151.html accessed 06/09/2023.

[95] Rajeev Syal, First Occupants of Bibby Stockholm Barge Taken Onboard (Guardian, 7th August 2023) https://www.theguardian.com/uk-news/2023/aug/07/first-occupants-of-bibby-stockholm-barge-taken-onboard accessed 06/09/2023

[96] House Commons Debate, Prime Ministers Questions, Volume 729, Column 296 8th March 2023.

[97] See: Various, Open Letter by Legal Academics in Support of Immigration Lawyers https://geography.exeter.ac.uk/media/universityofexeter/schoolofgeography/routes/Open_letter_by_legal_academics_in_support_of_immigration_lawyers_Final.pdf accessed 06/09/2023

[98] Carl Schmitt, Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle (Michael Hoelzl and Graham Ward trans) (Polity Press, 2013).

[99] Carl Schmitt, The Concept of the Political (George Schwab trans) (University of Chicago Press, 2007).

Specifically, those who seek to challenge the government are not viewed as legitimate critics or people with different views. But rather, they are viewed and framed as enemies standing in front of the 'will of the people.'[100] In this register, even the application of law—particularly international or human rights law—becomes framed as an act of treachery. I am not here claiming that the government has fundamentally departed from the Rule of Law. However, I am claiming, firstly, that the idea of an emergency is being used to justify departure from norms of international law to which the UK is a signatory. Of course, the Refugee Convention permits no derogation, so this idea of emergency is not a legal claim. Rather, it provides political cover for the actions Secondly, I am claiming that the way in which emergencies are conceived has meant that considerations such as the impact of recent legislation on LGBTIQA+ people, as well as other vulnerable populations, was not given the attention they would otherwise have received. Indeed, it is telling that when the House of Lords put down an amendment aimed at specifically exempting LGBTIQA+ people from the Duty to Remove pursuant to section 2 of the Illegal Migration Act,[101] this was rejected out of hand by the government.

One area where LGBTIQA+ claimants may be at a minor advantage to other kinds of asylum seeker is in terms of their ability to lodge suspensive claims. Section 39 of the Illegal Migration Act provides a framework according to which the duty on the Home Secretary to make arrangements for the removal of an asylum claimant. This is called a Serious Harm Suspensive Claim.[102] In order to make a suspensive claim, the claimant must prove that they face a real risk of serious harm. However, this is a very difficult burden for the claimant to overcome and the timelines set out in the act are very restrictive. As such, given the extreme difficulties claimants often find in accessing adequate legal advice, there is a high likelihood that this will not prove an adequate safeguard, particularly given the stringent timeframes and evidential requirements.

Further to the above, there remains a real questions over how a serious harm suspensive claim for an LGBTIQA+ claimant would be processed. As outlined across the literature, sexual and gender minority claimants continue to face particular difficulties in framing their claims.[103] Asking that these claims are now made within the context of the

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[100] Rt Hon Suella Braverman, Oral Statement to Parliament: Home Secretary on the Illegal Migration Bill (7th March 2023) https://www.gov.uk/government/speeches/home-secretary-statement-on-the-illegal-immigration-bill accessed 06/09/2023

[101] Illegal Migration Act 2023, Lord Amendment 37.

[102] Illegal Migration Act 2023, Section 39

[103] See generally: Jenni Millbank, "The Ring of Truth": A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations (2009) 21 International Journal of Refugee law 1; Nicole LaViolette, Overcoming Problems with Sexual Minority Refugee Claims: Is LGBT Cultural Competency Training the Solution in Thomas Spijkerboer (ed), *Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum*

suspensive harm process will further undermine the capacity of claimants to properly and fully put forward their narrative. Indeed, the time frames mean that these are unlikely to function as adequate safeguards for any claimants.

4.Conclusion

This paper has argued that the Nationality and Borders Act and Illegal Migration Act represent a fundamental shift in the underlying logic of the UK's response to forced migration. This new approach to forced migration is premised on a double logic of crisis that will make the articulation of certain types of protection claim significantly more difficult.

The groups most effected are likely to be those whose experiences are often analytically characterised as being of a private nature, namely women and LGBTIQA+ people. For these groups, the changes to the UK system represent a complete curtailment of effective routes to status and protection in the UK. Due to my previous experience in working on issues of LGBTIQA+ asylum, I have focused on the impact on this group. However, this is intended to be demonstrative of a wider impact on all groups whose experiences do not meet broader definitions of crisis.

While it is true that gender and sexual diversity may offer some pathways to protection from the worst excesses of the UK's New Plan for Immigration, such as via the Serious Harm suspensive claim process, it is further submitted that these measures have not been designed in a manner that is cognisant of the issues that already plague the asylum claims of sexual and gender minorities. Indeed, I have argued that the reforms of the UK system have fundamentally changed the UK system to one that is only able to respond to moments of national crisis, rather than the more systematic, structural and fundamentally normative forms of harm that are often experienced by minority communities.

In closing, I wish to be direct in stating that crisis rarely results in thoughtful law-making. The Nationality and Borders Act 2022 and the Illegal Migration Act 2023 have both been rushed through parliament under the premise that they were essential to solve an

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(Taylor and Francis, 2013); Claire Bennett, Lesbians and United Kingdom Asylum Law: Evidence and Existence in Catherine Dauvergne, Efrat Arbel, and Jenni Millbank (eds), *Gender in Refugee Law: From the Margins to the Centre* (Taylor and Francis, 2014); Calogero Giametta, New Asylum ProtectionCategories and Elusive Filtering Devices: The Case of "Queer Asylum" in the UK and France (2020) 46 Journal of Ethic and Migration Studies 142; Alex Powell, The Place Where Only Gays Go: Constructions of Queer Space in the Narratives of Sexually Diverse Refugees (2023) Online First Journal of Place Management and Development 1.

imminent crisis. Their combined effects fundamentally alter the rationale of humanitarian and refugee protection in the UK and this new rational hugely undermines the ability of the UK system to adequately protect the rights of LGBTIQA+ asylum seekers looking to the UK for help. This new focus on moments of crisis leaves those whose claims rest of more endemic or structural forms of oppression less able to rely on protection in the UK. In short, it is a shift from refugee status premised on the individual seeking protection for persecution to a model of bespokism based on the government's acceptance that the situation in question constitutes one of crisis.