

## Nationality and Borders Bill 2021-22

### Report Stage – 7<sup>th</sup> and 8<sup>th</sup> December 2021

#### About the Refugee Council

The Refugee Council is the leading charity devoted to supporting refugees and people seeking asylum in the UK. It was founded 70 years ago in the wake of the 1951 Refugee Convention. We provide a range of services to adults and children across England, seeking to ensure that they are supported throughout the process of claiming asylum, and are given the best integration support once they are recognised as refugees.

#### Introduction

The deaths of at least 27 people in the English Channel on 24 November was a stark and tragic reminder of the vulnerability of people who have been forced leave their homes because of war and persecution, and who are seeking safety in the UK. This briefing considers key parts of the Nationality and Borders Bill that relate to refugees and people seeking asylum, and makes recommendations that seek to achieve a fair and efficient system of refugee protection in the UK.

There is a consensus that more needs to be done to protect people from taking dangerous journeys, but unfortunately nothing in the Nationality and Borders Bill will achieve that aim. Although the Home Office claims that the bill will tackle smuggling networks, almost none of the provisions in the bill are about people smuggling. Rather, most of the sections of the bill that relate to refugee and the asylum system seek to make the system harder for those seeking protection, and amount to punishing those refugees who have passed through smuggling networks.

Furthermore, the Government's own impact assessment suggests that measures in the bill could actually lead to an increase in unsafe journeys, rather than a reduction.<sup>1</sup> This is most clear through provisions to reduce access to family reunion for some refugees in the UK; without that option, their family members who would previously have come on a safe route will have no choice other than to make dangerous journeys to be reunited with their loved ones.

There is a growing consensus, and one that the Government supports in its [New Plan for Immigration](#), that we need more safe routes for people to seek protection in the UK. Yet nothing in the bill will increase the two main safe routes – resettlement and family reunion. Indeed, current resettlement numbers are at their lowest for many years.

#### Executive summary and key amendments

1. In its New Plan for Immigration, one of the key priorities set out by Government was to strengthen safe and legal routes for refugees across the world to reach the UK, but this is not reflected in the bill. The Government is in the

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<sup>1</sup> [https://publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality\\_and\\_Borders\\_Bill\\_-\\_EIA.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf), p. 9.

process of establishing the Afghan Citizens Resettlement Scheme (ACRS), but it has no start date despite being announced in August 2021. Beyond ACRS, there remains a gap in terms of safe routes for refugees from other parts of the world. The UK Resettlement Scheme was previously established for this purpose, but has no target in terms of the numbers the UK has committed to resettle. Government should now commit to an overall resettlement target of 10,000 refugees per year, on an ongoing basis.

2. Refugee family reunion is a key safe route for family members to join refugees in the UK, yet it is too limited in which family members are able to apply. **Members should support new clause 35 which allows adult children up to age 25 to join their refugee parents in the UK.** People seeking asylum in Europe with family members in the UK were previously able to join them here while their asylum claim was heard. This is now not possible after Brexit, and **members should also support new clause 29 which would make this possible, thereby reducing dangerous journeys.**

2. A key principle of the bill is that refugees who arrive in the UK 'irregularly' should have access to fewer rights and entitlements than those who come to the UK on a recognised visa route. This differential treatment is deeply unjust, because it fails to recognise that most refugees have to cross borders 'irregularly' to escape war and persecution. It also judges the worth of a refugee's claim on how they travelled, rather than on their need for protection, which is the basis of the 1951 Refugee Convention. **Members should support amendment 8 which removes the provisions on differential treatment. Members should also support amendment 114 which seeks to ensure group 2 refugees have the same rights as group 1 refugees, including access to refugee family reunion.**

3. The current provision of accommodation for people seeking asylum is based on a community model, where people live in regular housing across the country. The bill moves away from this principle, establishing instead 'accommodation centres' to house large numbers of refugees in hostel-like accommodation, separated off from the rest of the population. Such an approach undermines integration and creates a damaging situation of isolation for refugees, many of whom are vulnerable and trauma survivors.

4. The bill also introduces 'inadmissibility' into primary legislation, meaning that a refugee that has travelled through a third safe country such as France will not have their asylum claim immediately heard, but will instead wait 6 months while the UK attempts to remove them. The UK currently holds no returns agreements on this basis with other EU countries, meaning that claimants wait six months before having their claim heard, causing people to wait longer for a decision and increasing the already-record high backlog of asylum claims.

5. The bill gives power for 'offshore processing', whereby asylum applications are not heard in the UK, but claimants are flown to another country to be processed. This approach abdicates the UK's responsibilities to protect people seeking asylum, and is a hugely costly and impractical approach. Its current use in Australia has led to widespread human rights violations, and cost billions of Australian dollars. **Members should support amendments 9, 10, and 11 that removes the offshore processing elements of the bill.**

6. The bill criminalises those seeking asylum, by making it a criminal offence with a maximum sentence of four years, for anyone entering the UK irregularly. This punishes people for seeking safety here, and comes with huge resource costs for the criminal justice system. **Members should support amendment 116 that prevents this policy. Parliamentarians should also support amendment 104, which seeks to provide a statutory defence to the charge of illegal entry, on the basis of article 31 of the Refugee Convention.**

7. The bill changes the way that the age of people seeking asylum is assessed, when it is disputed as to whether they are the age they claim. It undermines the system of assessment by specialist social workers, to one using so-called 'scientific methods' such as dental x-rays and saliva samples. These methods are not an accurate way of determining age, and will cause vulnerable children to be wrongly assessed as adults, cutting off the support they need and are

owed. **Parliamentarians should support new clause 26 and amendment 122 which seek to put important safeguards in place for the age assessment process.**

## Refugee resettlement

Resettlement is a vital lifeline for refugees around the world, providing a safe route for those living in refugee camps and other precarious situations to come be supported to rebuild their lives and integrate in the UK. There is a cross-party consensus that resettlement is important and the UK has had a leading record in resettlement since 2015.

Unfortunately, that legacy now risks being lost as recent numbers have dropped significantly. In the year to September 2021, 1, 171 people were resettled to the UK, a 46% drop on the previous year. Covid restrictions have been a factor in this, but unlike other countries, the UK did not seek to make up numbers when flights resumed.

Moreover, although the Government's New Plan for Immigration commits to expanding safe and legal routes, this has yet to happen. In August, the government announced a target to resettle 5,000 people under the new Afghan Citizens Resettlement Scheme (ACRS) in the first year of the scheme, followed by 20,000 in 'the coming years'. However, this scheme is still not operational, leaving many desperate people unclear about how they can safely come to the UK, and others taking dangerous journeys to flee the Taliban.

Moreover, while the Government has made a numerical commitment to resettlement of Afghans, there is no such target for the existing UK Resettlement Scheme (UKRS) which has a global remit to resettle the most vulnerable refugees from around the world.

The lack of an annual target for the total number of people resettled to the UK risks undermining the UKRS, leaving thousands of the most vulnerable refugees deprived of the life changing opportunity that resettlement offers. A target is needed to make clear the support that the UK will offer to refugees across the world, and to drive the policy and maintain its ambitions. Other countries have clear global resettlement targets: the USA has a target of 125,000 for the coming financial year, and Canada has a target of 81,000 for 2021.

For many years, people working with refugees have been calling on the UK government to set the relatively modest target of 10,000 refugee resettlement places each year,

## Refugee family reunion

Refugee family reunion is a longstanding principle of asylum systems across the world, including in the UK. Under the UK's immigration rules, when someone has been granted refugee status, certain family members overseas are allowed to apply to join them in the UK. Under current rules, those allowed are spouses or children under the age of 18. Family reunion is an all-round good; it provides a safe route for family members to reach the UK, it is the humane approach for individuals who are otherwise alone in the UK, and it leads to improved integration outcomes.

Yet the current rules are too restrictive, and many refugees in the UK have close family members who are not allowed to join them. We know that in some cases this has led to those people taking dangerous journeys to the UK. One particular anomaly is that people with older children cannot be reunited with them. **Parliamentarians should support new clause 35 which would allow refugees to bring their adult children up to the age of 25 to join them here.**

Separately, people seeking asylum in Europe were previously allowed to apply to have their asylum claim heard in the UK, where they had family members here. This was under the EU's Dublin Regulations, and so is no longer applicable in the UK. Yet around the world there are people who are seeking protection and have family members

here. Parliamentarians should support new clause 29 which would allow these people to join family members safely, rather than having to make dangerous journeys to be with them.

## **Clause 11 – Differential treatment of refugees**

Clause 11 sets out a fundamental change to the UK's asylum system, by creating two categories of refugees, with different rights and entitlements: Group 1 and Group 2 refugees. Refugees will be classified as Group 2 if they have not come directly from a country or territory that threatens their rights under Article 1 of the Refugee Convention, and/or they have not made an immediate claim for asylum on arrival. Those who have entered irregularly will also have to show 'good cause' for this, or will fall into Group 2.

This part also sets out a non-exhaustive list of ways in which refugees who arrive irregularly may be treated differently: by having reduced length of leave to remain, more limited refugee family reunion rights for themselves and their family members, and limited access to welfare benefits. Group 2 refugees will be given 30 months leave, at which point they will have to renew this in order to remain legally resident in the country, but also face the threat of removal. They will only be able to get indefinite leave to remain after 10 years. This approach will leave many thousands living precarious lives in the UK, and less able to integrate and contribute to their communities.

Differential treatment is a key principle of the bill, but the rationale and approach behind it are misguided. It punishes refugees based on the way that they arrived in the UK, rather than assessing them based on their need for protection. UNHCR has stated that the creation of Group 2 refugees is discriminatory and is incompatible with the 1951 Refugee Convention<sup>2</sup>. Moreover, no evidence has ever been produced that this will deter these irregular journeys, as the Government claims.

The provisions to limit refugee family reunion rights look set to seriously undermine safe and legal routes to the UK, affecting many thousands of refugees each year. It would also harm the integration chances of those who have been recognised as refugees in the UK, but will be forced to live here without close family members. Parliamentarians should support amendment 8 that removes the differential treatment provisions in the bill.

## **Clause 12 – Accommodation for asylum-seekers**

Clause 12 relates to accommodation for people in the asylum system, and gives Government powers to house different groups of asylum seekers in an undefined 'accommodation centre', but understood to be large-scale hostels. Such a move away from housing in the community will impede integration prospects and may make access to needed support and services more difficult.

Recent examples of 'congregated living' in centres such as Napier military barracks has shown this type of accommodation to be completely unsuitable for the long-term housing of people in the asylum system. It cannot accommodate those with complex needs and does not provide the safe and secure welcome that anyone claiming asylum is owed.

Moreover, no evidence has been presented to justify the need for these centres, or how they will lead to better outcomes than those achieved in the current system. The Republic of Ireland is currently transitioning away from this form of asylum accommodation into a community-based model, after it recognised the harm it does to individuals and the high cost associated with maintaining these centres.<sup>3</sup>

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<sup>2</sup> <https://www.unhcr.org/6149d3484/unhcr-summary-observations-on-the-nationality-and-borders-bill-bill-141>

<sup>3</sup> For more information, see <https://www.irishrefugeecouncil.ie/listing/category/direct-provision>

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## Clause 15 – Asylum claims by persons with connection to safe third State: inadmissibility

Clause 14 puts on the face of the bill an existing immigration rule on inadmissibility that makes any asylum claim 'inadmissible' in a number of circumstances, including if that claimant has passed through a safe third country.

Under this rule, if someone has not been removed from the UK after six months, as currently set out in guidance, their asylum claim will be heard here. At present, the UK has no bilateral removal agreements with other 'safe third countries' to remove people, meaning people will currently wait in limbo for six months in accommodation centres before entering the UK asylum system. Under the existing inadmissibility policy, 6,598 people were issued with notices of intent in the first 9 months of 2021, of whom 48 were deemed inadmissible. Only ten were transferred to another country under the inadmissibility rules. These figures clearly demonstrate that this policy is completely ineffective and unworkable.

This approach will result in an even longer backlog of asylum claims, at a time when the numbers waiting for an initial decision on their claim is at a ten-year high. Refugee Council has estimated that the cost of all those currently waiting more than six months for an initial decision to be £220 million per year.<sup>4</sup>

## Clause 28 – Removal of asylum seekers to safe country

Clause 28 – relating to schedule 3 - amends the 2002 Asylum and Immigration Act to allow for someone seeking asylum in the UK to be removed while their claim is still pending, thus making it possible for the UK to legally process asylum claims offshore in the future. The key international example of this policy is in Australia, which resulted in a well-documented human rights crisis in relation to their asylum system with immense suffering of individuals. Suicidal thoughts and poor mental health were common amongst detainees, adults and children experienced abuses including sexual assault, and there were several deaths.

Offshore processing is very unlikely to achieve a reduction in the numbers of arriving irregularly, and will be hugely expensive to implement. Sending people seeking asylum offshore (most likely to less developed countries) undermines the refugee convention by shifting the UK's obligations elsewhere, setting a dangerous precedent, which if other developed countries followed, would see the majority of people seeking asylum being sent to countries that have far less resources and infrastructure to support them.

The UK receives a very small proportion of the world's asylum claimants; 86 % of those seeking refuge are already hosted by countries in the same region as those they fled. The Government should abandon their plans for offshore processing and ensure everyone who claims asylum in the UK is able to remain in the UK whilst their case is being determined. **Members should support amendments 9, 10, and 11 that remove the offshore processing elements of the bill.**

## Clause 39- Illegal entry and similar offences

Clause 39 includes an amendment to the 1971 Immigration Act to create an offence where someone knowingly enters the UK without leave to enter, with a maximum four-year prison sentence. As the vast majority of asylum claims are made in such a way, this would result in the criminalisation of asylum.

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<sup>4</sup> <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/07/01191305/Living-in-Limbo-A-decade-of-delays-in-the-UK-Asylum-system-July-2021.pdf>

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The UNHCR has made it clear that the government's proposals to further criminalise people seeking asylum relies on a fundamental misapplication of Article 31(1) of the Refugee Convention.<sup>5</sup>

The Refugee Council has estimated that criminalising vulnerable people in this way is deeply costly and resource-intensive. The cost of prosecuting and imprisoning those seeking asylum could cost £400 million more per year than the current system.<sup>6</sup> It also has the potential consequence of causing family separation, with high numbers of migrant children removed from parents and put into care, as was seen in the USA. **Members should support amendment 116 that prevents this policy. Parliamentarians should also support amendment 104, which seeks to provide a statutory defence to the charge of illegal entry, on the basis of article 31 of the Refugee Convention.**

Government introduced about 80 amendments to the legislation, just days before Report Stage. Two of these – new clause 18 and amendment 51 – would criminalise those who overstay their visa in the UK. These would not typically be asylum applicants, but is part of a pattern of criminalisation in the immigration system, something that is inhumane, costly and totally unnecessary as immigration powers already exist.

## **Clauses 48-56 - Age assessments**

These new clauses were introduced by Government at Committee Stage, and seek to change how the age of an asylum applicant is assessed, when their age is in doubt. Currently local authority social workers have the main responsibility of assessing the age of unaccompanied children in the asylum system, by conducting assessments by interview, when they see fit.

Self-evidently, an unaccompanied child who is seeking asylum in the UK is only able to access education and social care if assessed correctly as a child. Otherwise, they enter the adult asylum system, with fewer rights and entitlements, and in very vulnerable circumstances.

Case law has determined that where there is doubt, an age-disputed applicant should be treated as a child pending resolution of the dispute, as a necessary safeguard. It is widely understood that age determination is an inexact science that visual assessments are unreliable, and that benefit of the doubt must be afforded to ensure that children are not mistakenly treated as adults.

These clauses enable new 'scientific' methods of assessing the age of an unaccompanied child, including 'examining and measuring parts of a person's body' and 'the analysis of saliva, cell or other samples taken from a person'. Determining a person's age is a notoriously difficult process, and there is no fully objective way to do so. 'Scientific methods' are unproven, and professional bodies like the British Dental Association do not believe that methods like dental x-rays, can ever accurately tell you someone's age.

Although under the new plans a young person will have to consent to any such method, the bill explicitly states that a decision-maker should consider the credibility of a young person to be compromised if they refuse to assent to a 'scientific' method. The proposals therefore seek to acquire consent via a threat, and put vulnerable and traumatised young people in a terrible position.

**Parliamentarians should support new clause 26 and amendment 122 which seek to put important safeguards in place for the age assessment process, including ensuring they are carried out only when absolutely necessary, by trained social workers, and that any scientific methods are used only after approval by the relevant medical, dental, scientific and professional bodies.**

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<sup>5</sup> <https://www.unhcr.org/6149d3484/unhcr-summary-observations-on-the-nationality-and-borders-bill-bill-141>

<sup>6</sup> <https://www.refugeecouncil.org.uk/latest/news/proposals-to-further-criminalise-and-imprison-people-seeking-asylum-to-cost-most-than-400m-per-year/>

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