



Nationality and Borders Bill 2021-22
House of Commons Second Reading
July 2021

Introduction and Overview

The focus of this Bill is twofold:

- Part 1 addresses various matters of British nationality law, largely for the purpose of correcting several anomalies and injustices.
- The remainder of the Bill concerns immigration law with a particular – though not exclusive – focus on the UK's asylum system. Here the purpose is in large part to shut down the asylum system. If the Bill is passed in its present form that will be to renege on this country's international law commitments and significantly reduce the already modest contribution made by the UK to providing a place of safety to people forced to flee conflict and persecution.

Amnesty International and Migrant Voice, therefore, strongly support most of what is contained in Part 1; and are strongly opposed to the great majority of what is to be found in the rest of the Bill. Those provisions of Part 1, which seek to dismantle historical inequalities that have deprived some people of the British nationality that ought to be theirs, will improve justice and help to secure the human rights of many British people. In contrast, the bulk of this Bill will undermine human rights of people affected by our immigration laws.

However, its harmful impacts will go much further in at least three ways.

- By repudiating its international obligations the UK will provide license and encouragement for others to do the same.
- What is proposed will add complexity, delay, inequality, dysfunction and cost to the asylum system and to the wider immigration system.
- Far from truly tackling the scourge of human exploitation, including by organised crime, the Bill will further empower and enable abusers by rendering the women, men and children on whom they prey ever more vulnerable to that predation.

Ministers and many commentators like to portray the UK as an open society and one in which there is great respect for law, equality and leadership on the world stage. However, vilifying and penalising people for exercising their rights in international law does not respect law. Maintaining an immigration system that is open to the relatively rich and privileged but is closed to, or punishing of, people who are without these advantages does not respect equality. This does

nothing to advance opportunity, equality or respect for law either at home or abroad and is antithetical to any true vision of global responsibility.

Much of what is wrong in this Bill is not fundamentally new. Many of its worst aspects have been proposed or implemented under previous administrations.ⁱ The power of the Home Office is ever being enhanced just as the oversight and constraint to which it is subject is constantly curtailed. By contrast, it is those people, who are already least free to secure such basic rights as to live free of persecution and exploitation or to nurture and enjoy family life, who by far remain more greatly susceptible to those powers and their purpose of alienation and exclusion.

The remainder of this briefing provides a short analysis of some of the key aspects of each of Parts 1 to 5 of this Bill under separate subheading. It is necessarily not a comprehensive analysis of the concerns, omissions and inadequacies of the Bill.

Part 1 – Nationality

On 1 January 1983, the British Nationality Act 1981 took effect. British nationality law was radically revised. citizenship of the UK and Colonies was ended. In its place, British citizenship was created as the nationality by which people with particular connection to the UK are recognised. Other British nationalities were created to provide for British people who would be losing their citizenship of the UK and Colonies without acquiring the new British citizenship (or rights to it).ⁱⁱ

Most of Part 3 of the Bill seeks to address various historical injustices and anomalies that have arisen from or been revealed since the coming into force of that Act. To this extent, the purpose of Part 3 is welcome though the Bill's passage will be an important opportunity to ensure that the remedies provided are adequate to cure the injustices to which they are directed. Nonetheless, the inclusion of Clause 9 to deprive many stateless children born and growing up in the UK of their existing statutory right to British citizenship for reasons impugning their parents and which are beyond their control is in stark contrast to the remainder of this Part. It will harm children and mirrors later provisions that undermine or renege on the UK's international law commitments (in this particular instance, under the 1961 Convention on the Reduction of Statelessness and 1989 Convention on the Rights of the Child).

Part 2 – Asylum

In 1951, the UK signed up to the Refugee Convention, an instrument of international human rights law for which it had been a leading proponent. The Convention's purpose, and the need for it, remain undiminished. It is to enjoin the international community of nations in a shared responsibility for making the right to seek and enjoy asylum from persecution real and accessible to everyone forcibly displaced from their home country by conflict and persecution.ⁱⁱⁱ

Part 2 of the Bill constitutes a fundamental repudiation of that purpose and the obligations established under the Convention. There are two overriding aspects to this.

The first is an attempt to unilaterally redraw what are jointly agreed and universally applicable human rights standards. Clauses 27 to 35, in particular, seek to define and confine the meaning of the Convention affecting both whom the Convention applies to and how such a person is to be treated. This is wrong in principle. If enacted, it is an open invitation to other nations to set their own interpretations of not only this Convention but of international agreements more generally. The dangers of this – not only in relation to asylum or the wider ambit of human rights law – should be obvious.

The second provides example of the first and is also central to the much publicised and illegitimate purpose of the Home Secretary to differentiate and disadvantage some refugees from

others by diminishing, delaying or denying them altogether certain of the rights and opportunities that are provided to others. Clause 10 is the primary provision but must be read with Clause 34. It too is wrong in principle. Neither the Convention,^{iv} international human rights standards more generally^v nor basic moral principle permit arbitrary discrimination between people, all of whom entitled to asylum by reason of their shared status as refugees.

This discrimination – long trailed by Ministers – is broadly to penalise refugees whose means of exercising their right to seek asylum in the UK do not meet with Home Office approval. That approval is limited to satisfying all of three specified conditions, which are:

- That the person has come to the UK directly from the country where she, he or they are at risk. Coming directly is defined as not stopping anywhere on the way unless the person “*could not reasonably be expected*” to have sought asylum in the place in which he, she or they stopped.
- The person has sought asylum “*as soon as reasonably practicable*” after arriving or, if already in the UK, on becoming aware of the risk to them or, if present with permission, before that permission expires.
- The person is not in the UK without permission or has not entered without permission unless with “*good cause*” (which is not defined).

Clause 10(5) and (6) sets out various penalties that may be imposed upon a refugee for failing to satisfy these conditions; and upon that refugee’s family member. Both the refugee and the family member may:

- be granted only a reduced period for which they may stay before having to reapply;^{vi}
- have additional conditions imposed on any permission to stay that is granted (including that she, he or they may not access public funds);
- face additional requirements if applying to settle whenever she, he or they may be permitted in any case to make such an application; and
- in the case of family members (unless they are also recognised as refugees), be refused permission to stay or, if not in the UK, to come to join the refugee.^{vii}

However, this system of penalisation goes far further even than what is listed in Clause 10(5) and (6), albeit the criteria for imposing other serious penalties and exclusions is less transparent and, in some cases, extend beyond failure to meet the three conditions in Clause 10. These further penalties and exclusions that people seeking asylum will face include:

- isolation from the community in accommodation centres akin to detention (Clause 11);^{viii}
- their claims treated as inadmissible, leaving them in limbo while the Home Office seeks to persuade some other country to take the responsibility for them and their claims, which responsibility the UK seeks to refuse to take (Clause 14);^{ix}
- arbitrary requirements, encouragement and licence to Home Office and judicial decision-makers to disbelieve or refuse to consider people’s evidence in support of their claims (Clauses 17, 23 and related clauses);^x
- curtailed appeal rights (Clause 21);^{xi}
- detention and fast-tracked processes, which by people’s isolation and the processes’ speed will undermine their capacity to effectively make their claims (Clause 24);^{xii} and
- expulsion from the UK to be held in other countries either pending determination by the Home Office of the person’s asylum claim or for that country to take full responsibility for the person’s asylum claim, referred to as offshore processing (Clause 26 and Schedule 3).^{xiii}

Many of these measures have been proposed or introduced by previous administrations^{xiv} so it is especially demoralising to see the Home Office revisiting policies that have previously done so much individual and systemic harm. As before, implementation of these measures will satisfy nobody’s concerns, legitimate or otherwise. It will, however, cost the taxpayer greatly to pay for the increased backlogs, delays and dysfunction introduced and to pay the border security business and other countries on whom many of these measures will depend.^{xv} Moreover, the

increased uncertainty, isolation and injustice that will be the lot of many women, men and children seeking asylum will not only exacerbate their traumas and insecurity, delaying or preventing their social integration, but will render them ever more vulnerable to those, including organised criminals, who are willing to exploit them.

It is all the more stark and dangerous that the Government is pursuing such measures at this time given two especially salient facts:

- The UK already receives relatively few people seeking asylum and provides sanctuary to very few refugees compared to its nearest neighbours, let alone several far poorer and less stable countries further afield.^{xvi} The disparity between the UK's modest commitment and the commitment of others has grown over recent years.^{xvii} If this country chooses to exaggerate that still further, it can only strongly encourage or licence others to similarly refuse and fail to take their own responsibilities. If so, not only in the UK will many more people fleeing war and persecution face abandonment and violence meaning that they will both need to move and be vulnerable to abusive and dangerous people who exploit their predicament.
- The need for a world in which countries share their responsibility to provide asylum – i.e. do the opposite of what the Government intends and may encourage elsewhere – is growing. Developments in Afghanistan in the wake of withdrawal by the UK and allies,^{xviii} the election of a President in Iran, who was previously a member of a 'death commission' responsible for the disappearance and extrajudicial execution of thousands of political dissidents in that country,^{xix} and the impact and wider implications of conflict and atrocities in Tigray, Ethiopia^{xx} are but a few examples indicating an immediate future in which more not fewer women, men and children will need to seek sanctuary.

Part 3 – Immigration Offences and Enforcement

Part 3 of the Bill provides for offences, sentences, powers and procedures relating to entry to and removal from the UK. As with Part 2, there is little that is in essence new. The provisions are all, in their own way, extensions of Home Office power to inhibit, deter or punish people for acts of which the department disapproves. Its disapproval is generally not, however, a reflection upon the legality, necessity or inevitability or otherwise of the action that is criticised.

Thus, a key aim is to deter people from coming to the UK to seek asylum and, in this respect, build on the objectives of Part 2 (Asylum). Key examples are:

- Amending existing offences to ease the prosecution of people who enter without permission for the purpose of claiming asylum (Clause 37).
- Amending an existing offence to extend the group of people, who may be prosecuted for providing assistance to someone seeking asylum by entering without permission, to include people who do so without seeking or receiving any personal gain from providing that help (Clause 38).^{xxi}

This deterrence policy is to be escalated despite the Home Office providing no visa to anyone for the purpose of coming to the UK to seek asylum^{xxii} while its longstanding general policy remains that it will consider no asylum claim made by anyone who is not physically present in the UK.^{xxiii} This aim to largely shutdown the UK's asylum system will have an especially dreadful impact on many people who may be compelled to take significantly more dangerous journeys and resign themselves to lives of punishing uncertainty and extreme vulnerability to exploitation to avoid contact with the authorities. This is to nobody's advantage but that of those who will abuse, exploit and enslave women, men and children who are too afraid to claim asylum. Horrific experiences of, for example, domestic abuse, domestic slavery and human trafficking in this country are to be wilfully multiplied by a Government that makes great claims to abhor these crimes and exploitations but which, by this Bill, will dramatically exacerbate the very conditions for their occurrence.

Part 4 – Modern Slavery

Part 4 of the Bill adopts measures relating to the protection and support of victims of human trafficking and slavery (modern slavery) that mirror much of what is to be done in terms of protection and support for people escaping war and persecution (refugees).

This Part provides new bureaucracy (Clauses 46) by which people unable to comply may be arbitrarily penalised by refusing to give credence to their account and evidence of the abuse and exploitation they have suffered (Clause 47). Remaining provisions in this Part generally seek to exclude certain people from support, recognition or protection as survivors of modern slavery or as people who may be survivors pending final determination of whether that is so.

Part 5 – Miscellaneous

The provisions in Part 5 of the Bill are more or less loosely connected to Parts 2, 3 and 4. Key concerns with provisions in this Part include its wide enabling provisions to permit:

- significantly greater risk that children are treated as adults in the asylum or wider immigration system; and to permit Home Office interference with how and indeed whether local authorities fulfil their statutory obligations towards children in need in their area, who are subject to immigration controls (Clause 58); and
- delay, refusal or other penalty for visa applicants (e.g. people wishing to come to the UK to work, study, join family or visit) of specified nationalities in circumstances where the Home Office asserts that their country of nationality has failed to co-operate with the return of its nationals in the UK without permission (Clause 59).

Clause 65 is an enabling provision of the Henry VIII type concerning amendment of primary legislation in the area of immigration (and asylum) that is of extraordinarily wide scope.

Concluding observations

The Bill adopts the proposals that were trailed in the Government's policy document, *New Plan for Immigration*, on which it conducted a hurried, inadequate and unconvincing consultation, which closed on 6 May 2021. There remains no response to that consultation.

The Bill represents a serious escalation of Home Office power and effort to deter migration, particularly but not exclusively by people seeking asylum, and a profound assault upon the capacity of such people to secure their rights in the UK. Neither the content nor purpose of this Bill is, however, in essence new. Nonetheless, the harm that will be done if the bulk of this Bill is adopted will be profound. That harm will be both to the UK's immigration and asylum systems, which will be made even more costly and less efficient, as well as to the people subject to and dependent on these. That harm will be wider still because the impact of the welfare deprivation and social exclusion that is intended will itself be socially harmful and enable still greater exploitation and abuse that is inimical to a healthy society. Finally, the harms will extend even further since the lead the UK will offer to others will promote and encourage wider disrespect of human rights and asylum laws with the prospect that, by putting the safety of many more people at risk, many more people are compelled to move.

For further information, please contact **Amnesty UK** at parliament@amnesty.org.uk or **020-7033 1557**; or **Migrant Voice** at nazek@migrantvoice.org

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- ⁱ Indication is given in the footnotes to this briefing to some of these previous proposals and measures.
- ⁱⁱ As discussed in the White Paper, *British Nationality Law*, July 1980, Cmnd 7987
- ⁱⁱⁱ The Convention not only gives practical effect to Article 14 of the 1948 Universal Declaration of Human Rights, which provides for the right to asylum in another country with no specification or condition on in which that country that may be, but expressly by its Preamble enjoins the international community to share responsibility to avoid the responsibility falling disproportionately and unjustly.
- ^{iv} As is more fully explained by UNHCR in its response to the Government's consultation on its New Plan for Immigration, there is a fundamental misconstruction by the Government of the meaning and effect of Article 31 of the Convention. That UNHCR response is available here:
<https://www.unhcr.org/uk/60950ed64.pdf>
- ^v Inequality in the means adopted for meeting international human rights obligations is generally antithetical to international human rights law.
- ^{vi} Ending the immediate grant of indefinite leave to remain to person's recognised as refugees in August 2005 reintroduced the uncertainty for the refugee and workload for the Home Office necessitated by formal application to renew leave to remain. The present proposal exaggerates the uncertainty and additional workload of that for refugees who are thereby to be treated less favourably than others.
- ^{vii} Amnesty International UK is aware that the Home Office has made such proposals previously, though these have not then been pursued.
- ^{viii} See Part 2 of the Nationality, Immigration and Asylum Act 2002
- ^{ix} The Home Secretary introduced such provisions into the immigration rules, which took effect on 31 December 2020. Amnesty International UK's assessment and objections regarding the principle and practicality of these rules is addressed in our correspondence with the Minister at the time, available here:
<https://www.amnesty.org.uk/resources/amnesty-uk-letter-immigration-minister-ministers-reply-regarding-immigration-rules>
- ^x See section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
- ^{xi} There have been various provisions introduced to preclude or curtail appeals, whether appeals from within the UK or at all, under various immigration acts since the Asylum and Immigration Appeals Act 1993.
- ^{xii} A detained fast track asylum system previously operated in the UK up to its being declared unlawful by the Court of Appeal in *R (Detention Action) v The Lord Chancellor* [2015] EWCA Civ 840 for being "systemically unfair and unjust".
- ^{xiii} Such proposals, which had at the time been proposed by the UK Government, were discussed in this article by Dr Jeff Crisp, Associate Fellow at Chatham House in 2000:
<https://www.chathamhouse.org/2020/10/what-externalization-and-why-it-threat-refugees>
- ^{xiv} See the immediately preceding endnotes.
- ^{xv} Australian asylum policy is often cited. Neither Australia's geographical location nor numbers of people seeking asylum there make it a useful comparator but the billions of Aus\$ spent by the Australian government on cruelly detaining a small number of highly traumatised women, men and children on the islands of Manus and Nauru indicate that to make possible any similar policy by the UK would cost the taxpayer enormous sums. Amnesty International's *Island of Despair* report from 2016 includes cost assessments by the Australian National Audit Office:
<https://www.amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>
- ^{xvi} Annual data provided by UNHCR's global trends report shows the UK's contribution to providing sanctuary to refugees, even with its much-lauded Syrian resettlement programme, is very modest compared to countries such as France, Germany or Italy; and even more so compared to countries such as Lebanon, Uganda and Bangladesh.
- ^{xvii} The disparity between the UK and EU neighbours has grown, as comparisons with Greece and Spain and countries such as those mentioned in the previous endnote make clear.
- ^{xviii} The House of Lords' International Relations and Defence Committee's 2nd Report of Session 2019-21 on *The UK and Afghanistan*, HL Paper 208, January 2021 provides context for current developments; as does Amnesty International UK's submission to the Committee, which are available respectively here:
<https://committees.parliament.uk/publications/4185/documents/43162/default/>
<https://committees.parliament.uk/writtenevidence/13034/pdf/>
- ^{xix} <https://www.amnesty.org/en/latest/news/2021/06/iran-ebrahim-raisi-must-be-investigated-for-crimes-against-humanity/>
- ^{xx} <https://www.amnesty.org/en/latest/news/2021/05/ethiopia-tepid-international-response-to-tigray-conflict-fuels-horrific-violations-over-past-six-months/>

^{xxi} The effect of removing the words “*and for gain*” from section 25A(1)(a) has attracted a great deal of attention in relation to its potential criminalisation of life-saving acts, including by the Royal National Lifeboat Institute.

^{xxii} The immigration rules set out the purposes for which a person may come to the UK, and for which a person may apply for a visa to do so. These purposes do not include seeking asylum. For more on this matter, see Amnesty International UK’s January 2021 briefing on safe and legal routes here:

<https://www.amnesty.org.uk/resources/safe-and-legal-routes-briefing>

^{xxiii} Home Office policy is longstanding and stated here:

<https://www.gov.uk/government/publications/applications-from-abroad-policy>