

Nationality and Borders Bill 2021-22 – Committee Stage - Oct 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.

Our work includes running a national service that supports every unaccompanied child in the asylum system, working with a number of local authorities on their refugee resettlement efforts, providing an adult integration service for new refugees in London, and providing a range of mental health support services through our Therapeutic Services team. We are also currently supporting newly arrived Afghans in the UK through the Afghan Relocations and Assistance Policy (ARAP).

We use this experience and the evidence we gather from our work to inform policy and advocacy work that seeks to work with refugees to transform their experience of seeking protection in the UK.

Introduction & background

In the last year, there has been a renewed focus on the UK's asylum system. The government has made a wide range of commitments to change asylum and refugee policy, first through its [New Plan for Immigration](#), and then subsequently followed up by enacting large parts of the plan through the [Nationality and Borders Bill](#).

However, the basis on which much of the case for these reforms has been made has often lacked context and detail, particularly about the scale of asylum applications in this country, and how and why people come to the UK to seek asylum. This context is important, alongside recognising the human impact of any changes, and the overall importance of the UK maintaining its commitments to refugee protection.

This briefing focuses on the provisions about the asylum system set out in Part 2, clauses 10-36, part 3, clause 37, part 5 clause 59, and Schedules 2 and 3 of the Nationality and Borders Bill. It also comments on policy relating to age assessments, with detail still to be added in the bill to placeholder clause 58.

Part 2: Asylum

Clause 10 – Differential treatment of refugees

Clause 10 creates 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 the UK irregularly will also have to show ‘good cause’ for this, or will fall into Group 2.

Subsection 6 of Clause 10 sets out a non-exhaustive list of ways in which refugees who arrive irregularly may be treated differently: by having reduced leave to remain, more limited refugee family reunion rights, and limited access to welfare benefits.

Clause 10, subsection 5 gives powers to treat Group 2 refugees differently, including on the amount of leave they are granted, and whether they are able to be reunited with their family members under the UK’s refugee family reunion rules.

The differential treatment outlined in Clause 10 punishes refugees based on the way that they arrived in the UK. UNHCR has stated that the creation of Group 2 refugees is discriminatory and is incompatible with the 1951 Refugee Convention¹. Moreover, no evidence has ever been produced that this will deter these irregular journeys, as the Government claims.

Clause 10, subsections 5 and 6 give Government powers to limit or end access to refugee family reunion for Group 2 refugees. This could affect many thousands of refugees each year, and severely curtail one of the main routes for refugees to arrive in the UK. It would also harm the integration chances of those who have been recognised as refugees in the UK. Moreover, as Clause 59 empowers the Secretary of State to refuse family reunion visas of nationals where their country of origin is not cooperating with removals, this measure could further undermine this safe route by punishing people in precarious situations for the actions of their governments. Instead of restricting family reunion rights for refugees, the government should expand the existing family reunion rules in line with the call from the Families Together coalition.²

- > ***Members should support an amendment to remove Clause 10.***
- > ***Members should support an amendment that ensures all groups of refugees have full and equal family reunion rights, under the refugee family reunion route.***
- > ***Members should support an amendment to expand the existing family reunion rules.***

Clause 11 – Accommodation for asylum-seekers

Clause 11 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’. Our understanding is that these centres will involve ‘congregated living’ in hostel-type accommodation, which has been shown to be unsuitable to house people in the asylum system for long periods of time.

Such a move away from housing in the community will also impede integration prospects and may make access to needed support and services more difficult.

¹ <https://www.unhcr.org/6149d3484/unhcr-summary-observations-on-the-nationality-and-borders-bill-bill-141>

² <https://families-together.uk/wp-content/uploads/2021/07/FT-Response-to-Nationality-and-Borders-Bill-MM.docx-1.pdf>

- > ***Members should support an amendment to restrict specific groups of people from being housed in accommodation centres and to introduce a maximum time limit for people to be accommodated in such centres.***

Clause 14 – Asylum claims by persons with connection to safe third State: inadmissibility

Clause 14 puts on the face 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, 4,561 people were issued with notices of intent in the first 6 months of 2021, of whom seven were deemed inadmissible. None has been 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.³ Therefore, the practical consequences of this measure is that one will be returned but will wait an extra six months before entering the asylum system, which is already facing its largest backlog for over a decade.

- > ***Members should support amendments to remove subsections 4, 5 and 6.***

Clause 26 – Removal of asylum seekers to safe country

Clause 26 – 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. 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 to remove this clause and schedule.***

³ <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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Part 3: Immigration offences and enforcement

Clause 37- Illegal entry and similar offences

Clause 37 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.

The UNHCR have 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.⁴

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 up to £400 million more per year than the current system.⁵

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 recent years in the USA.

- > ***Members should support an amendment to remove clause 37.***

Part 5: Miscellaneous

Clause 58 – Age assessments

Although clause 58 is a placeholder clause, and therefore does not include detail about how Government plans to change its approach to assessing age for unaccompanied children, we know its broad intentions from the New Plan for Immigration and through stakeholder discussions.

As part of the Refugee and Migrant Children's Consortium (RMCC)⁶, Refugee Council has set out in detail the background to age assessment policy and its importance for this cohort.

Specifically and self-evidently, an unaccompanied child 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.

The Refugee Council knows from its work that large numbers of children under the current system are incorrectly assessed as adults, but that most of the reforms proposed in the new plan would not improve the process.

Parliamentarians should refer to the RMCC briefing and evidence for much greater detail, but in particular, the proposed use of 'scientific' approaches to age assessment, whether that means dental x-rays, bone age or genital

⁴ <https://www.unhcr.org/6149d3484/unhcr-summary-observations-on-the-nationality-and-borders-bill-bill-141>

⁵ <https://www.refugeecouncil.org.uk/latest/news/proposals-to-further-criminalise-and-imprison-people-seeking-asylum-to-cost-most-than-400m-per-year/>

⁶ See https://media.refugeecouncil.org.uk/wp-content/uploads/2021/07/01155215/New-Plan-for-Immigration-Age-Assessments_RMCC-briefing-FINAL.pdf

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examination, are simply not reliable and are not an improvement on the current model of assessment based on the expert decision made by a social worker following an interview with the young person.

- > ***Members should object to voting on clauses that do not have sufficient detail or where the detail has been added at such a late stage that it has not been possible to consult relevant experts to inform a proper debate.***

Clause 59 - Processing of visa applications from nationals of certain countries

Clause 59 of the bill would permit the Secretary of State to suspend, cancel or refuse family reunion visas by persons of a specific nationality on the basis that their country of origin was not in their view cooperative in receiving removals.

This measure punishes people who have sought protection, for the actions of their Government, from whom in many cases they would be fleeing. Not only is this unfair and morally unacceptable, it is not a sanction that would actually be effective in compelling a Government to comply with removals.

This is a further measure in the bill that would undermine refugee family reunion, a known safe and legal route, when the Government's stated policy intention is actually to increase these routes.

- > ***Members should support an amendment to remove clause 59.***

Other - Resettlement

Whilst the government have announced a target to resettle 5,000 people under the new Afghan Citizens Resettlement Scheme (ACRS) in the first year, followed by 20,000 in 'the coming years', there is no such target for the existing UK Resettlement Scheme (UKRS) which has a far wider, global remit to resettle the most vulnerable refugees.

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. The government need to set an annual target to resettle at least 10,000 refugees per year through their resettlement schemes.

- > ***Members should support an amendment to publish an annual target to resettle at least 10,000 refugees to the UK.***

For further information, please contact:

Seb Klier

Parliamentary Manager

Refugee Council

Seb.klier@refugeecouncil.org.uk