

## Nationality and Borders Bill 2021-22 - Second Reading (5 January 2022)

### Introduction and background

The Nationality and Borders Bill covers a number of policy areas related to the work of the Home Office, but this briefing focuses specifically on the provisions related to refugee and asylum policy. In the spring of 2021, the Government made a wide range of commitments to reform the asylum system through its [New Plan for Immigration](#), and is now enacting some parts of that plan through the [Nationality and Borders Bill](#).

During the passage of the bill in the House of Commons, Government claimed that that these reforms were about saving lives and breaking the economic model of people smugglers. However, these claims have not been supported by evidence, nor do they properly take into account key context and detail about the current asylum system.

In particular, parliamentarians should be cognisant of the small scale of asylum applications in this country, and how and why people come to the UK to seek protection. This context is important for understanding what these changes will mean in practice, as well as how they affect the UK's overall commitment to refugee protection and its treatment of individual refugees.

In total, the UK receives a much lower number of asylum applications than other comparable countries in Europe. The latest published figures show that the UK 37, 562 applications in the year to September 2021,<sup>1</sup> which is the fifth highest total number in Europe, and the 17<sup>th</sup> highest in terms of per head of population.

In the calendar year 2020, the latest for which there are pan-European comparisons, while the UK received 29,456 asylum applications, close to three times that amount were made in France (81,800 claims). Furthermore, the UK's figure was much lower, even as a proportion of the population, than in a larger country like Germany, which had the most claims in the EU (102,500 claims). Even much smaller countries like Spain (86, 400 claims) and Greece (37, 900 claims) saw a higher number of asylum claims than were made in the UK.<sup>ii</sup> These numbers are also only a very small proportion of those who have been forced from their homes globally, where there are close to 80 million displaced people, including 26 million refugees.

Every asylum application is a person or family seeking international protection and deserves a fair hearing. Claiming asylum is a legitimate thing to do, no matter how someone arrives in the UK. The international norm, as set out in the 1951 Refugee Convention, is to accept asylum applications regardless of the mode of arrival, and it is how many millions are able to claim asylum around the world each year. International refugee law recognises that people will have to arrive in countries irregularly in order to make a claim for asylum. Nowhere in international law is there a rule around people needing to seek protection in the 'first safe country' in which they arrive, something that would clearly undermine responsibility sharing across nations.

At points, the Government has sought to suggest that those crossing the Channel in small boats are not doing so legitimately to make a protection claim, but because they are economic migrants. Analysis by the Refugee Council of

those making that journey in the year to June 2021 has shown that 91% of people came from just ten countries where human rights abuses and persecution are common. These include Afghanistan, Iran, Syria, Iraq, Sudan, Eritrea and Yemen.<sup>iii</sup> For many of these nationals, there is no current legal refugee resettlement route to the UK. Overall, the majority of people from these countries are eventually recognised as refugees, showing that the UK's asylum system understands them to be in need of international protection.

The Government has framed its new Nationality and Borders Bill as a package of measures that seeks to undermine the operations of people smuggling networks and prevent people from entering the UK who have no right to be here, while extending the safe and regular routes by which refugees are able to reach safety.

Unfortunately, the actual effects of the bill in its current form will be to punish refugees who have been recognised as such under international law, and actually reduce safe and regular routes to the UK as refugee family reunion rights become more limited.

There is an understandable and widespread concern for the safety of refugees crossing the English Channel on small boats, but these measures will offer no solution to this issue, nor any greater protection. Reducing the rights that refugees have if they arrive in the UK irregularly (such as by boat or in lorries) will not reduce the numbers fleeing war and persecution, nor will it make their travel routes any safer.

There is no evidence from anywhere in the world that reducing the rights of refugees in a particular country will stop them from making journeys to seek safety. What the bill does mean is that many thousands of refugees who come to the UK each year will not be offered a clear route to settlement in the UK, but will be living in a temporary situation, unable to properly recover from their experiences or build for their futures. This precarious existence will be cemented by the fact that refugees arriving irregularly will be unable to be reunited with their family members, even though we know that is a key measure to aid integration.

The bill also proposes that refugees arriving in this way will be housed in accommodation centres, rather than in regular housing in the community, as has been the model to date. This is despite the many problems that refugees have faced in places like the Napier military barracks, including a lack of access to legal support and other services.

## **Key measures**

This bill brings forward a wide range of reforms, not all of which can be covered in this briefing. Below sets out some key measures affecting the asylum system, though changes to areas such as supporting evidence, appeals, and priority removal notices will be covered by other organisations such as Amnesty International and Women for Refugee Women.

For greater detail on the proposed measures proposed relating to age assessments of unaccompanied children (part 4 of the bill), please see the separate briefing from the Refugee and Migrant Children's Consortium [here](#). For detail on changes to refugee family reunion, please see the Families Together briefing [here](#).

## **Inadmissibility of asylum claims and differential treatment of refugees**

Since 31<sup>st</sup> December 2020, a new Immigration Rule has been in place that means the UK Government can class someone's asylum claim as inadmissible if they have travelled through, or have a connection to, what is deemed a 'third safe country'.<sup>iv</sup> The new rules also give the Home Office the power to remove people seeking asylum to a safe country that agrees to receive them, even if they have never been there or have any connections to it.

Under current practice, 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

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‘safe third countries’, so the result has been to add months to the waiting period for those seeking to make an asylum claim, increasing the record-high backlog on asylum claims.<sup>v</sup>

The bill puts this rule in primary legislation, but a new Government amendment at Report Stage in the House of Commons also removed the obligation to hear a claim after a ‘reasonable time’ (which had been the six months in practice). This means that as the bill is currently written, there will potentially be no route into the asylum system for those who are deemed inadmissible, essentially blocking them from seeking protection and leaving this group of vulnerable people in limbo.

Alongside this measure, the bill also introduces the principle of differential treatment, which will affect the rights and entitlements of refugees, dependant on how they arrive in the UK. People who have not travelled ‘directly’ from a country or territory where their life or freedom is threatened, and/or have not made an asylum claim without delay, but who are recognised as refugees under international law, will be classified as a ‘Group 2 refugee’. This will affect a large number of current people who currently claim asylum, for example those who enter the UK without a valid visa, as is an accepted norm for people seeking protection across the world.

At present refugees coming through the asylum system are given five years’ leave and then the right to apply for Indefinite Leave to Remain, but this will not apply to Group 2 refugees.

Group 2 refugees will not have an automatic right to settle, instead receiving up to 30 months of leave, and individuals will be regularly reassessed for removal from the UK at the end of each period of leave. We understand that they will only be able to apply to settle permanently after ten years. They will also have limited family reunion rights and more limited access to financial support.

This central proposal, set out in clause 11 of the bill, completely undermines the principle of asylum protection in the UK and runs counter to one of the basic tenets of the 1951 Refugee Convention – that someone’s mode of arrival should have no influence on whether they have a right to make an asylum claim, or whether they are later recognised as a refugee.

The Refugee Convention protects refugees from being punished for entering a country without prior permission e.g. through clandestine means or using false documents. It also confirms that states with refugees in their territory should provide ‘the same treatment with respect to public relief and assistance as is accorded to their nationals.’

By stating that clause 11 will reduce irregular arrivals, the Government also completely misunderstands how and why refugees flee their homes. When fleeing persecution, people will use any means to get to safety, including irregular journeys. The vast majority of the world’s refugees have found safety in this way.

Moreover, with regards to ‘inadmissibility’, it should be made clear that there is no obligation in international law on people to make an asylum claim in the ‘first safe country’ in which they arrive. Refugees are often trying to seek protection in the UK for a range of reasons, including because family members live here, or because they speak English, or they feel a connection to the country as people from former British colonies.

An approach of ‘first safe country’ also sends a dangerous message to countries with far larger refugee populations, legitimising the avoidance of international responsibilities and potentially endangering the lives of thousands. It suggests that support for refugees should only fall on a small number of poorer countries, which already host 90% of those forcibly displaced.<sup>vi</sup>

The UK currently has not negotiated any removal agreements with countries like France that would allow them to remove people who arrive irregularly. In that context, the ‘inadmissibility’ proposals would place certain people in ongoing limbo, unable to claim asylum but remaining in the UK.

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## **Offshore processing of asylum claims**

Schedule 3 of the bill amends previous legislation to allow the UK to process asylum claims made in the UK in 'offshore' locations, a policy based on the model used in Australia where those arriving by boat were then housed in detention centres in Papua New Guinea while their claims were heard.

If enacted, this approach would signal a deeply worrying departure from the UK's previous approach of giving people who seek protection a fair hearing on British soil. The Australian model 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 did not lead to a reduction in those arriving by boat in Australia, which was only achieved through boat pushbacks that have alarming implications for the safety of those at sea, and are certainly extremely dangerous for small boats in the English Channel. It has also cost billions of dollars to implement. For more information, parliamentarians should examine work by the Kaldor Centre on this issue.<sup>vii</sup>

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.

## **Criminalisation of people who enter the UK irregularly**

The bill (clause 39) includes criminal offences for knowingly arriving or entering the UK without leave or a valid entry clearance – with a potential four-year prison sentence. Currently people arriving in the UK to claim asylum are not routinely charged with 'entering illegally' (the current offence) but would now be more punitively criminalised.

This proposal is deeply inhumane, and criminalises people who are seeking the protection of the UK. Rightfully there was international outrage when the USA, in recent years, started more forcefully criminalising those seeking asylum, imprisoning adults and separating them from their children, who were then moved into foster care. Any approach that has those implications would deeply damage the UK's standing in the world.

Moreover, criminalising vulnerable people in this way is deeply costly and resource-intensive; those arriving will not currently be able to be removed (because those removal agreements with the rest of Europe do not exist), and so would still be present in the UK – just at great cost moving through the courts and prison systems. Refugee Council analysis has suggested that full criminalisation of those seeking asylum could cost up to £412 million each year.<sup>viii</sup>

## **Safe and legal routes**

As part of its New Plan for Immigration, the Government has been keen to emphasise its desire to increase safe and regular routes under which refugees can arrive directly and safely in the UK. However, the bill does not introduce any new legal route of this kind, nor does it increase the numbers already coming via existing resettlement schemes.

In August, following the UK evacuation from Afghanistan, the Government did commit to resettling 'up to 20,000' Afghan refugees to the UK, via its new Afghan Citizens Resettlement Scheme, with 5,000 in the first year. However, four months later, the scheme is still not operational, nor has any clarity been provided as to who exactly will qualify for it, or when it will commence. We regularly hear stories of Afghans with family links in the UK, who are desperate to seek safety here, but have no means to do so.

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In recent years, the UK had been resettling approximately 5,000 refugees each year, the majority through its Syria-focused Vulnerable Person's Resettlement Scheme which ended in 2021. Sadly, resettlement numbers have severely dropped in the last year. The UK only resettled 1,171 refugees in the year to September 2021, a fall of 46% on the previous year.

This drop of resettlement capacity is worrying, particularly in the context where refugee resettlement dropped to a twenty-year low as a result of the pandemic, and where some countries such as USA, Canada, and Norway increased their resettlement targets for 2021/22 to make up for the shortfall in 2020. To put our current record in context, the USA will have a resettlement cap of 125,000 for 2022 and Canada has a target of 35,000 in 2022.

If the UK Government is serious about refugee resettlement, and about ensuring that the UK is once again a leader in this area, it should commit to resettling 10,000 refugees each year, on an ongoing basis. That target is realistic and achievable, and having a target would drive performance and make the scheme accountable. It would help local authorities and other key stakeholders plan, and gives a clear picture of the numbers of people who will be supported in coming years.

Measures in the bill will also reduce another major safe and legal route – that of refugee family reunion. Although Government has repeatedly promoted the importance of family reunion, and noted that it has supported 35,000 people in the last five years to arrive in the UK through this route, refugee family reunion will now be further limited for Group 2 refugees. The bill does not set out detail on how it will be limited, and urgent clarity is needed on this. In the Australian model, when restrictions were introduced, it meant these refugees could never be reunited with family members.

Refugee family reunion is a key measure to support integration, as refugees are better able to make links in the community, look to the future, and be supported when they are with their family. Without it, family members in other parts of the world are actually likely to take more dangerous journeys in order to join relatives. Refugee Council's impact assessment<sup>ix</sup> of the plans suggests that each year, many thousands will be affected by this measure.

## Accommodation centres

The bill includes new powers to create 'accommodation centres' to hold people who are at different stages in the asylum process, or who have 'inadmissible' claims, although more detail about the criteria for these centres is still needed.

The use of large-scale accommodation – such as military barracks - to hold people in the asylum system has come under increased scrutiny and criticism as its use has increased during the COVID-19 pandemic.<sup>x</sup> Stakeholders, including the Home Affairs Select Committee, have repeatedly shown that care of individuals has been poor, with a lack of access to legal advice and support services. Individuals have generally had very little information about their claims, leading to poor mental health and general distress.

Proposals to extend these forms of accommodation are ill-thought out and dangerous, and undermine the UK's duties to support and protect those making asylum claims. The current dispersal system, whereby people seeking asylum live in regular housing in the community, is much better for supporting future integration and ensuring that people seeking asylum are able to access services they need.

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<sup>i</sup> <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2021/how-many-people-do-we-grant-asylum-or-protection-to>

<sup>ii</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum\\_statistics#Main\\_countries\\_of\\_destination:\\_Germany,2C\\_Spain\\_and\\_France](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Main_countries_of_destination:_Germany,2C_Spain_and_France)

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- iii <https://www.refugeecouncil.org.uk/latest/news/new-refugee-council-analysis-shows-most-people-arriving-by-small-boats-across-the-channel-are-likely-be-fleeing-persecution/>
- iv <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1043-10-december-2020>
- v <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>
- vi <https://www.unhcr.org/uk/news/latest/2021/10/615dbdb34/political-needed-safeguard-824-million-displaced-unhcr-protection-chief.html>
- vii <https://www.ein.org.uk/news/academic-report-finds-australian-model-offshore-processing-asylum-seekers-which-uk-proposes>
- viii <https://www.refugeecouncil.org.uk/latest/news/proposals-to-further-criminalise-and-imprison-people-seeking-asylum-to-cost-most-than-400m-per-year/>
- ix <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/05/27161120/New-Plan-for-Immigration-Impact-Analysis-June-2021.pdf>
- x For example, see <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-military-barracks-home-office-b1862538.html>