

Nationality and Borders Bill:

The following is an extract from the joint submission of Migrant Voice and Amnesty International UK to the Public Bill Committee on this Bill. The Bill was preceded by a public consultation, which overwhelmingly rejected the proposals now put forward in this Bill. This extract summarises the consultation and the Government's overall and profoundly flawed case for the Bill.

Public consultation

1. As regards Parts 2 to 5 of the Bill, their contents largely adopt proposals set out in the Government's policy paper: *New Plan for Immigration*.¹ Those proposals were put out for public consultation. Thousands responded and overwhelmingly rejected the proposals. In its response to that,² the Government cautioned:

"Responses cannot be viewed as being representative of all stakeholders and the public population as a whole. Instead, the consultation and its findings represent the opinions of those who have chosen to respond."

2. In explaining its decision to proceed with its proposals despite their rejection, the Government stated:

"...the responses sent into the Government consultation also show that around three quarters of those who responded said they opposed many of the policies set out in the New Plan for Immigration. A similar view was taken by those with direct experience of the asylum system. Having considered the findings from the consultation, the Government recognises that building a system that is fair but firm will require tough decisions, some of which may be unpopular with certain individuals and/or groups. While the consultation has shown that there is some support for proceeding with the high-level vision that has been set, the Government has also listened to the concerns raised. However, the pressures of the current system cannot be ignored, requiring urgency and decisive action."

3. Among the problems with that summary is that much of what is presented as the high-level vision does not appear consistent with the actual proposals. This mirrors one key problem with the Home Secretary's presentation of this Bill at Second Reading. This submission is largely directed at analysis of this critical dissonance between the stated vision and objectives, on the one hand, and what is proposed and included in this Bill, on the other.³

Government's case for the Bill: overview

¹ The policy paper is here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972472/CCS207_CCS0820091708-001_Sovereign_Borders_FULL_v13_1_.pdf

² The Government response is here: <https://www.gov.uk/government/consultations/new-plan-for-immigration>

³ The objectives specifically addressed in this submission have here been identified from the Home Secretary's Second Reading speech. They may also be identified from the Government's Equality Impact Assessment on the Bill published on 16 September 2021, available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018188/Nationality_and_Borders_Bill_-_EIA.pdf

4. The Government's case for this Bill rests on the following three assertions. Firstly, that its proposals constitute a new approach. Secondly, that current circumstances urgently require that new approach. Thirdly, the approach is properly directed to decisively improving those circumstances. As is addressed further in the main body of this submission, this case is fatally flawed:
- a. Taken together, the proposals are themselves far from new. They have largely been proposed before; and many have been legislated for or implemented before.⁴ Many constitute nothing more than an extension of longstanding and current policy. Indeed, their totality is also nothing more than an extension of that policy – which is to invest heavily in making the UK's asylum system inaccessible and unwelcoming in the hope of preventing and deterring people from claiming asylum here. Much of that investment is directed to impeding people's journeys to the UK while refusing them any safe, still less authorised, routes to get here even though no asylum claim will be considered unless a person first reaches this country. The proposals do not change this approach. Rather, they significantly extend the approach and will greatly exacerbate the harms it causes.
 - b. There is a sense of especial emergency surrounding Channel crossings by boat.⁵ This has been built up over the last two years and yet the number of people claiming asylum in the UK over that period has not increased.⁶ Moreover, the proportion of people seeking asylum, whose claims are ultimately recognised as well-founded, has been increasing.⁷ Recognition of the refugee status of people of the nationalities making these boat journeys has been proportionately even higher.⁸ The journeys themselves, while undoubtedly dangerous for the people making them and disruptive for others, are far from secretive – the people making these journeys clearly evade the authorities in

⁴ Among the many proposals and measures that are not essentially new are: (i) building accommodation centres (see Nationality, Immigration and Asylum Act 2002, Part 2); (ii) accelerated appeals including in detention (e.g. see the previous Detained Fast Track Procedure Rules, ultimately ruled unsafe and unlawful); (iii) offshore processing (e.g. detailed proposals were put together by the UK Government in 2003); (iv) presumptions concerning the strength of a claim or credibility of a claimant (which have repeatedly been introduced in immigration acts, including those from 1999, 2002 and 2004); (v) proposals to refuse or deny family reunion to refugees who have entered the country by unauthorised routes (which were worked up in September 2016 and then abandoned); (vi) measures to require refugees to make renewal applications for permission to stay (which were introduced in August 2005 and have significantly expanded workload of the Home Office from August 2010 when the renewals will have begun); (vii) inadmissibility procedures were a feature of the UK's membership of the Dublin Regulations until the UK left the EU and unilateral rules were introduced to replicate this on 31 December 2020 but to no effect other than causing delays and adding to backlogs because no country is willing to receive people from the UK's asylum system into theirs; and (viii) so-called 'one-stop' procedures to require disclosure of all information and material at an early stage have been a feature of asylum procedures since the Immigration and Asylum Act 1999. These are just some examples. Others are manifest on the face of the Bill since certain of the relevant measures are no more than amendment of (attempts to harshen) existing legislation.

⁵ The previous Home Secretary described boat crossings of the Channel in December 2018 as "a major incident". Ever since, Ministers have spoken of these crossings in terms of emergency and crisis for the UK.

⁶ Asylum applications in the UK over 12 months to end June 2021 were 31,115; the figure for the previous 12 months was 32,488 and for the 12 months before that, 32,757.

⁷ Over the past decade, Home Office analysis of final outcomes for asylum applicants in each year indicates that success rates had risen to 65% for applicants in 2019. Over a decade to end June 2021, appeal success rates had risen from around 30% to around 50%.

⁸ Over more than 3 years, Iranians have been the largest population making these journeys according to the Government's Equalities Impact Assessment *op cit*. Iraqis, Sudanese, Syrians and Afghans have been the next largest groups together amounting to a slightly larger number of people than those from Iran. Only Iraqis have had a success rate below the average in the asylum system.

northern France but generally make no attempt to evade the UK authorities and its asylum system. While things may yet change – indeed, this Bill will change things and not for the better – the last two years have further demonstrated that the UK is not faced with any real crisis other than the individual crises of the relatively few people wishing to exercise their right to seek asylum in this country but whom the UK refuses to provide any safe route for doing so.

- c. Since there is no fundamental change in the Government’s approach – which is simply to invest even more heavily in making the UK asylum system inaccessible and unwelcoming – the impact will not achieve the objectives the Government has set for itself. The bulk of this submission provides analysis of the provisions of the Bill against eight, largely inter-related, objectives. Each objective was identified by the Home Secretary at Second Reading. The eighth objective addressed in this submission (concerning fulfilment of the UK’s international obligations) is an exception to the foregoing. While the Home Secretary expressed concern that, as she put it, “*the very principle of seeking refuge has clearly been undermined*”,⁹ she did not make any commitment to fulfilling the UK’s international obligations, whether under the Refugee Convention or any other international human rights law instrument. However, it is vital that Parliament should understand both how this Bill is antithetical to any such purpose and how that, in turn, will in its own way be destructive of the objectives the Home Secretary has stated she wishes to pursue.

⁹ Hansard HC, Second Reading, 19 July 2021 : Col 711