Nationality and Borders Bill

House of Commons Report & Third Reading
7 & 8 December 2021

Introduction:

1. Amnesty International is opposed to the great majority of what is proposed by this Bill. There are important and welcome provisions concerning British nationality law to correct certain long and deep injustices in that area of law. We have, together with the Project for the Registration of Children as British Citizens (PRCBC), provided a separate briefing on Part 1 of the Bill and do not address that here.

2. This focus of this briefing is upon refugees and asylum. It concerns Part 2 and 3 of the Bill. This briefing provides a general assessment of the Bill as it relates to asylum. Thereafter it addresses some specific provisions and amendments under discrete subheadings below. We select these provisions as they are of especial concern but there is much in this Bill that is of grave concern and there is insufficient opportunity at this stage to address all of that.

General assessment concerning asylum:

3. We are strongly opposed to all in this Bill relating to asylum. Taken together, it amounts to a fundamental rejection of this country's international obligations under the 1951 UN Convention relating to the Status of Refugees. It will do very grave harm to refugees and people seeking asylum, not only in the UK but potentially far across the world. The impact of this elsewhere is liable to be significantly compounded by the fact that the UK was so integral to the drafting of that Convention, is already so modest in its contribution to providing asylum and remains a relatively wealthy nation with influence and history across so much of the world.

4. In evidence to the Public Bill Committee, together with Migrant Voice, we addressed directly the claims made by Ministers in favour of this Bill and the policy it is intended to support.[1] As we there explained, it will cost not save lives. It will enable and empower ruthless criminal gangs not break them. It closes safe routes and opens none. It will harm women and girls along with the men seeking asylum, to whom Ministers appear to take such exception. It will break not fix the asylum system. It will cause delay and dysfunction; and it will cost public money. In doing all of this, it will also continue to excite and inflame hostility towards people seeking

[1] That evidence is available here: https://bills.parliament.uk/publications/42865/documents/708

asylum and migrants more generally and compound this – in precisely the way the Home Secretary has done for several months – by promising things that cannot be delivered in answer to demands that should never have been entertained.

5. At the heart of this is a profound error. That error is to believe that the many ways by which it is intended to seek to exclude people from the UK and from receiving asylum here will – quite apart from the injustice of doing so – successfully deter and prevent people coming to the UK to seek asylum. The Government's own assessment indicates the grounds for believing this are threadbare.[2] Previous attempts at many of the same policies confirms that assessment.[3] Ministers should, therefore, urgently rethink both this Bill and their wider plans; and Parliament would do well to require them to do so.

6. Ultimately, Ministers should be focused on taking and sharing responsibility for providing asylum, providing safe passage into the UK's asylum system where this is possible and ensuring that, however someone may arrive in the UK, the system straightforwardly directed to supporting that person to best be able to put forward their claim so it can be fairly and confidently determined whether the person is entitled to asylum or any other form of protection here.

7. Among the many defects of the Bill and the policy that underpins it, is the continuing bar to any asylum claim being made to the UK unless made in the UK – as reaffirmed by the inclusion of the words "*in the United Kingdom*" clause 13(2) – alongside the longstanding refusal to make any visa or other provision permitting a person to travel to the UK for that purpose.

8. Amnesty, accordingly, welcomes **New Clauses 27 and 29**. **New Clause 27** seeks to make some limited provision for unaccompanied children present in the EU to be transferred to the UK. It would re-establish what has become known as 'the Dubs scheme' introduced by amendment during the passage of the Immigration Act 2016. It is an exceptionally modest proposal. **New Clause 29** would require the Home Secretary to amend her rules to make some provision for people to be able to come to the UK to seek asylum where they have relatively close family members, who are "*ordinarily and lawfully resident*" here. It is especially unjust and narrow-sighted that current policy continues even to deprive people fleeing persecution, who have close and settled family connections in the UK, of any safe route to safety here with their family. Accordingly, we are particularly supportive of **New Clause 29**.

---

[2] The Government's impact assessment concedes there to be "*a risk that increased security and deterrence could encourage* [refugees] *to attempt riskier means of entering the UK.*" Consideration of what has developed in the Channel confirms that. The assessment also concedes that any evidence to support the aim of deterring dangerous journeys is "*limited*" and sets out no such evidence in support. The assessment is available here: https://publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf

[3] While much of the Bill takes previous policies – some of which long since abandoned – to ever greater extremes, there is very little in the Bill that is fundamentally new. Indeed, it follows an extended pattern of successive Home Secretaries and Governments legislating to criminalise people seeking asylum, to create barriers to people reaching the UK for that purpose or permitting their entry to the asylum system if they do, and to harshen the asylum system they ultimately face. Ruthless and sometimes deadly smuggling and other exploitation has thrived from all of this.

9. Amnesty also supports **New Clause 35**. This amendment is concerned with refugees in the UK, with asylum here, who wish to be joined by their family members. It would make two relatively modest, but hugely significant for the people affected, changes to current policy. Firstly, **New Clause 35** would permit child refugees to be joined in the UK by their parents and siblings securing a family reunion visa. It is a longstanding injustice, wholly undermining of the best interests of the children affected, that UK policy persists in generally barring family reunion for children in circumstances where it is permitted for adults. Secondly, **New Clause 35** would more generally expand the ambit of refugee family reunion so that refugees could sponsor their parents and their children or siblings, who were minors at the time the refugee was forced to flee and who remain unmarried.

10. **New Clauses 27, 29 and 35** would each establish a safe route to the UK for people who may otherwise be made dependent on ruthless and dangerous smugglers.

Clause 11 (differential treatment of refugees):

11. Amnesty supports **Amendment 8** to remove clause 11.[4] The clause applies solely to people recognised as refugees in the UK and entitled to asylum here. It differentiates between these people on grounds that are wholly illegitimate, being the way by which the person came to the UK. The UK's international law obligations do not permit any such differentiation.

12. The means by which the clause proposes to impose that differentiation undermine the very purposes said to be pursued by Ministers. In short, it will add delay and cost to the asylum system to compel refugees to make repeated and regular applications to extend their stay in the UK. It will undermine any prospect of integration and increase the wider social costs of that. This will be compounded this by excluding refugees from recourse to public funds. Delaying or denying family reunion visas will increase a refugee's isolation and fears for their family members. It will mean those family members – overwhelmingly women and children – are deprived of any safe route to reunite; and thereby provide more people for smugglers to exploit on dangerous journeys to the UK.

13. During the last 12 months for which data has been published, the UK provided protection to 13,210 people. Only 1,171 of these people secured protection by resettlement. Everyone else – 12,039 people – had to seek asylum in the UK by getting here first despite there being no visa to come to this country for that purpose and the Home Office refusing or cancelling any visa obtained for a different purpose if it considers seeking asylum to be the true purpose. While some people may have been in the UK when they became at risk. Everyone else had to make a journey that

[4] Further briefing on the injustice of this clause is available from the joint Migrant Voice and Amnesty International UK briefing on clause 10 (as it them was) for Committee: https://www.amnesty.org.uk/files/2021-10/Clause%2010%20Committee%20Stage.pdf?VersionId=g6sr8R6hR2tN_j3YLnygftEReuvN1vnj

was not permitted by UK immigration rules. Most of them will have done so with the assistance of people smugglers.[5]

14. During the same period, 6,524 people – mostly women and children – were provided a refugee family reunion visa to join someone granted protection by the asylum system (not resettlement).[6]

15. Clause 11 effectively targets the 12,039 people granted protection by the asylum system and the 6,524 people whose refugee family reunion visa is also dependent on that system. Its purpose is to penalise these people, either by curtailing the protection offered to them or withdrawing a safe route to the UK currently available to them. **Amendment 114** seeks to lay bare the injustice of this by drawing specific attention to some of the refugees, and persecution from which they flee, in subparagraphs (7B)(a) to (d). It more generally seeks to render clause 11 nugatory by the inclusion of subparagraph (7B)(e), an objective we fully support.

Clause 15 (asylum claims by persons with connection to safe third State: inadmissibility):

16. **Government Amendment 26** relates to this clause. Amnesty opposes clause 15. It would apply to people in the UK who make an asylum claim and allow the Home Office to refuse to consider their claim on the basis that it will seek to transfer the person to another country for that country to deal with their claim. It is said that this is based on the person's connection to that country though there is no real foundation for the assertion and the Bill is remarkable for its recognition of no connection of anyone to the UK as opposed to elsewhere.

17. Clause 15 will put into primary legislation what has already been put into the immigration rules by the Home Secretary from 11pm on 31 December 2020.[7] Those rules have – as we warned before their commencement[8] – had disastrous effect. They have not enabled the UK to cast off its asylum responsibilities because other nations have proven unwilling to receive more people into their asylum systems, which in many cases already receive far more people than does the UK's system.[9] Instead, they have simply added bureaucracy, delay and cost to the UK system while causing uncertainty and distress to people who have claimed asylum in this country.

---

[5] Data is taken from the Home Office immigration statistics quarterly release, 25 November 2021 and covers the period to end September 2021.

[6] Data is taken from the Home Office immigration statistics quarterly release, 25 November 2021 and covers the period to end September 2021.

[7] Statement of Changes in Immigration Rules (HC 1043) was laid on 10 December 2020 including changes to Part 11 of the immigration rules that took effect at 11pm on 31 December 2020 with essentially the same purpose and application as much of the provisions of clause 15.

[8] Amnesty International UK wrote to the Minister on 17 December 2020 concerning these rules. Our letter and the Minister's reply are available here: https://www.amnesty.org.uk/resources/amnesty-uk-letter-immigration-minister-ministers-reply-regarding-immigration-rules

[9] A matter emphasised with sources of data in the joint submission of Migrant Voice and Amnesty International UK to the Public Bill Committee, at e.g. paragraphs 6, 33(c) and 45, which submission is available here: https://bills.parliament.uk/publications/42865/documents/708

18. In the first nine months of 2021, the Home Office identified 7,006 people for whom it considered applying those rules. It formally issued notices to 6,598 of these people that it was actively considering trying to transfer them to another country. It has served 48 people with decisions that it will not admit them into the UK asylum system for this reason. It has transferred 10 people. It says some of these people departed voluntarily. It has, however, admitted 2,126 people into the asylum system after commencing this procedure in their case. Meanwhile, the asylum backlog has risen over this time to 67,547 outstanding claims. That will now include the 2,126 people belatedly admitted into the system but will not include the several thousand more people who can be expected to be admitted in due course.[10]

19. The folly of this is emphasised by **Government Amendment 26**, which proposes to remove the power for the Home Secretary to admit a person into the asylum system where she thinks that it will not be possible to transfer the person to another country within a reasonable period.

Clauses 17 to 25 (supporting evidence, immigration control and late evidence)

20. There are several **Government Amendments** tabled to these clauses. In addition, there are **Amendments 14 and 15**, which relate solely to children seeking asylum; and **Amendments 118, 119 and 120** which would remove clauses 18, 21 and 25. Amnesty is generally opposed to these various clauses which seek to impose bureaucracy upon the asylum and appeals process and do so by means that risk pre-empting a reasoned consideration of a person's asylum claim and appeal that gives proper weight to all the circumstances and evidence before the decision-maker. This is done by statutory directions in clauses 18 and 21 concerning assessment of a person's credibility, in clause 25 concerning weight to be given to evidence and clause 22 concerning fast-tracking appeal processes. Accordingly, we support **Amendments 118, 119 and 120** (we support similar amendments tabled in respect of provisions in Part 5 (Modern Slavery).

21. There is no good purpose to any of this, which will only increase the risk that people with good asylum claims are prevented from establishing their claims. If decision-makers – including independent judicial decision-makers – cannot be trusted to evaluate each case on its particular facts and evidence, they should not be charged with making these decisions. If, however, their competence is accepted, there is no proper basis for seeking to pre-emptively interfere with their decision-making function. People wrongly refused asylum – because they are treated as without credibility or the evidence they presented is discounted despite its probative value – will have good reason to do all that they can to avoid being returned to persecution. These clauses, therefore, will add bureaucracy and cost, undermine decision-making including in the tribunal appeals system and put people's lives at risk.

Clause 26 (accelerated detained appeals)

[10] Data is taken from the Home Office immigration statistics quarterly release, 25 November 2021 and covers the period to end September 2021.

22. **Government Amendments 46 and 47** relate to this clause. **Amendment 121** would remove the clause altogether. We support that amendment. Rushing an asylum appeal inevitably increases the prospect of injustice that leaves a refugee at risk of being returned to a place where she, he or they may be executed, disappeared, tortured or persecuted in some other way. Doing so in detention compounds that risk.

23. This is not only unsafe. Previous use of accelerated detained procedures have led to people languishing in detention long after the accelerated process is completed.[11] In other words, there was no purpose to the acceleration other than to increase the prospect of doing injustice that may ultimately lead to someone having to make a further claim or litigate or to that person facing the gravest of harms.

Clause 28 (removal of asylum seeker to safe third country)

24. **Amendments 9, 10 and 11** seek to preserve the effect of section 77 of the Nationality, Immigration and Asylum Act 2002 to prevent the Home Office removing a person while it is still to determine that person's asylum claim. Amnesty supports these amendments.

25. It has been suggested that Ministers would wish to negotiate arrangements with another country or other countries for the purpose of what is sometimes referred to as 'offshoring'. That refers to transferring people seeking asylum to another place for their claims to be determined outside of the UK. Amnesty is firmly opposed to this proposal. Nearly two decades ago, we responded to the same or very similar proposals put forward by the UK Government with detailed analysis of the harms and risks of this in our report *Unlawful and Unworkable – extra-territorial processing of asylum claims*.[12] In view of the frequently cited example of Australia, it is significant that the Public Bill Committee also received substantial evidence as to the very high cost – in human and financial terms – of that country's similar policy, which also showed that it had neither stopped the arrival of people seeking asylum in that country nor stopped people travelling and arriving by boat.[13]

Clauses 29 to 37 (interpretation of Refugee Convention):

26. **Government Amendments 48 to 50** relate to some of these clauses. We are opposed to these clauses, which seek to undermine settled law as to the meaning of the Refugee Convention. The Government is here essentially seeking to unilaterally redefine and thereby confine its international obligations. Doing so would mean that

[11] Among the many profound harms and injustices of the former detained fast-track process highlighted by Bail for Immigration Detainees (BID), in their report *Out of sight, out of mind* (2009), were examples of people detained for many months after an accelerated detained process that lasted barely weeks: https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/174/Out_of_Sight__Out_of_Mind.pdf

[12] https://www.amnesty.org/en/documents/ior61/004/2003/en/

[13] See e.g. that of the Andrew and Renata Kaldor Centre for International Refugee Law, University of New South Wales: https://bills.parliament.uk/publications/43063/documents/791

some refugees, entitled to asylum in the UK, would no longer be able to establish their entitlement. It would put them at risk of being returned to places where they face execution, disappearance, torture and other forms of persecution. This cannot do anything to secure greater confidence in the UK's asylum system; and is likely to lead to more people languishing in limbo, with considerable harm to the mental health and general wellbeing, in the UK including in detention.

27. **New Clause 32** would require courts to interpret the legislation compatibly with the Refugee Convention where at all possible; and to declare its incompatibly where that interpretation was not possible. We support the ambition behind this amendment of securing compliance with the UK's international obligations. It is profoundly regrettable that Parliament should be presented with provisions in this Bill – including those in clauses 29 to 37 – which are not only plainly incompatible with those obligations but whose incompatibility is made clear by rulings of the UK's higher courts with which the drafting is plainly inconsistent.[14]

Clauses 39 and 40 (immigration offences and penalties)

28. **Government Amendments 51 to 59** are to add a further offence to those included in clause 39.

29. Sadly, Home Secretaries habitually appear to believe that their management of the UK's immigration system can be advanced by seeking to criminalise failure to comply with their rules and policies. It is a false belief; and one made even more harmful by the equally habitual practice of making rules and policies that are constantly in flux, made hugely complex and generally pay little if any attention to the lives, needs and rights of the people affected by them.

30. This criminalising tendency is costly – if it is ever to be acted upon. Since it is generally not possible to act upon it, it tends to be arbitrary – occasionally singling out one or two unfortunate people among many for prosecution and imprisonment at expense to the taxpayer. It does – which may be its morbid attraction – make the system more foreboding. However, that does not enable or encourage compliance with the system but rather makes more people afraid to come within its purview. In turn, that is a licence for abusers of many descriptions to exploit the fears of people made even more vulnerable by their general exclusion from basic social provision and activity. We deplore this approach in this Bill as in previous legislation. Accordingly, we support **Amendment 115**. The impact of this wider tendency in relation to refugees and asylum is highlighted by **Amendment 116**, which draws attention to some of the people who are to be criminalised and put at risk of prosecution and imprisonment.

31. **Government Amendment 63** to clause 40 has been necessitated by the backlash against the prospect – still real even with this amendment – that life-saving

[14] Further information is available from the joint Migrant Voice and Amnesty International UK briefing for Committee on relevant clauses: https://www.amnesty.org.uk/files/2021-10/Clause%2027ff.pdf?VersionId=yEQh0rPIObM4aC_dg4xL1p33YuHn9IgY

humanitarian action may be both criminalised and carry a maximum life term. The amendment to insert section 25BA includes a defence against prosecution at paragraph (2). That defence is tightly drawn to exclude any assistance that is not at sea; and to exclude any assistance that is before the time at sea at which it is said anyone so assisted was first in danger or distress – even though, in the circumstances with which this Bill is concerned, merely being at sea may itself be dangerous and distressing and any delay to the point where that risk is realised may prove fatal. None of this is about people smuggling, still less human trafficking. The relevant part of clause 40 – that is paragraph (2) – solely concerns people whose actions to assist a person seeking asylum are done for "*no gain*". Plainly criminal gangs do not engage in this activity for anything but significant profit. Accordingly, we support **Amendments 112 and 117**, which would delete that part of the clause.

Schedule 6 (maritime enforcement)

32. Clause 44 is to introduce Schedule 6. There are various Members' amendments tabled to this Schedule, including by Members of the Joint Committee on Human Rights. We are generally supportive of these. **Amendment 113** would insert the words:

> "*Nothing within this Act or this paragraph B1 authorises any action or measure which is inconsistent with the United Kingdom's international legal obligations.*"

Paragraph B1 refers to the paragraph in Schedule 6 that introduces the powers to stop, board, divert and detain boats (and over craft used to cross water).

33. It is a mark of the recklessness of Government policy, including as pursued by this Bill, that such an amendment needs to be tabled and welcomed. That recklessness is not merely for international law. It is for life itself. It should be recalled that less that a fortnight before these debates in the House, 27 people – a pregnant woman and children among them – lost their lives at sea attempting nothing more than the exercise of their right to seek asylum in the UK by the only means then available to them – a wholly unseaworthy inflatable, which duly capsized in freezing waters. The intention to permit pushbacks at sea risks greatly exaggerating the death toll. Just as the widely reported deaths of 27 people has not deterred people from taking to sea in search of safety, so merely pushing back boats will not do so. Just as the widely reported deaths of 39 people in the back of a lorry trailer found at Purfleet in October 2019 did not do so.

34. Unless and until Governments will together share responsibility for ensuring that everyone can safely get into an effective asylum system with their basic needs met – including in the county where they have strong connection such as family members – dangerous journeys and tragedies will continue. Pushing back people at sea is extremely dangerous. It also is futile if it is merely to put people back into the very same situation that has already driven them to make such a dangerous journey and can be expected to do so once again.