# Nationality and Borders Bill
# House of Lords, Committee Stage
**Day 1, 27 January 2022**

## Part 2: Asylum: Clauses 11-16
**(differentiation, accommodation & inadmissibility)**

## Introduction

1. This is the first of two briefings on Part 2 (Asylum) of the Nationality and Borders Bill. It addresses selected amendments to or relating to Clauses 11 to 16 in the order in which they appear on the Running List as tabled up to and including 21 January 2022. The second briefing addresses selected amendments to or relating to the remaining clauses of Part 2.

2. Accordingly, this briefing is broken down into the following sections:



## Amendments to Clause 11 (Differential treatment of refugees)

3. Migrant Voice and Amnesty support the intention of Lord Paddick, Lord Rosser, the Lord Bishop of Durham and Lord Blunkett to remove Clause 11 from the Bill. We also provide short briefing to various other amendments tabled, which

provide useful opportunity to draw attention to some of the many faults and injustices with this clause. However, the overriding error of this clause is that its differentiation in treatment between people, who are acknowledged to have fled persecution and to be entitled to asylum in the UK, is harmful, unreasonable and unlawful.[1] It should not remain in this Bill.

BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
LORD CASHMAN

Clause 11, Page 13, line 44, at end insert—

"(2A) For the purposes of subsection (2)(b), the following will be regarded as having presented themselves "without delay"—

(a) people who have experienced sexual violence;
(b) people who have made a protection or human rights claim on the basis of gender-based violence;
(c) people who have made a protection or human rights claim on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
(d) people who are a victim of modern slavery or trafficking;
(e) people who are a victim of torture;
(f) people who are suffering from a mental impairment;
(g) people who are suffering from a serious physical disability;
(h) people who are suffering from other serious physical health conditions or illnesses;
(i) people who were under 18 years of age at the time of their arrival in the United Kingdom."

*Member's explanatory statement*
*This probing amendment seeks to ascertain whether and to what extent certain vulnerable groups would be covered by the "without delay" condition.*

LORD ETHERTON

Clause 11, Page 14, line 3, at end insert—

"(3A) In determining whether a refugee has shown good cause within subsection (3), particular regard must be had to any protected characteristic of the refugee, within the meaning of Chapter 1 of Part 2 of the Equality Act 2010, which is innate or immutable."

*Member's explanatory statement*
*Refugees who have one or more protected characteristics may face particular difficulties in entering the UK lawfully. Confinement to protected characteristics which are innate or immutable is taken from the speech of Lord Steyn in the appeals in Islam and Shah [1999] 2 AC 629 (and Clause 32(3)(a) of the Bill).*

4. The two amendments above each seek to protect refugees with specific histories or characteristics from the adverse effects of Clause 11. The

[1] See for example paragraphs 9-14 of the written evidence of Amnesty UK to the Joint Committee on Human Rights for its scrutiny of this Bill. That evidence is available at the following link (and references to Clause 10 in that document are to the provision which is now Clause 11 in the Bill):
https://committees.parliament.uk/writtenevidence/39352/html/

amendments rightly highlight personal characteristics that are relevant to why many refugees are not able to comply with the implicit demand underpinning Clause 11 (and Clause 36 to which it is connected) that their asylum claims to the UK should be made by coming directly to this country and presenting their claim immediately.

5. That is a demand which is made especially improper because the UK makes no visa available for anyone to come to this country for the purpose of claiming asylum here[2] – whatever the strength of their family or other connection to the UK may be[3] – and refuses to consider any claim for asylum unless it is made in the UK.[4] To claim asylum in the UK, someone must therefore first get here and, in the great majority of cases, that person is left entirely dependent on the smuggling gangs, whom the Government claims it is determined to tackle but persists in providing business by refusing any safe alternatives to the people whom that business exploits.

6. It is important that the people who are to be penalised by Clause 11 are, in every case, refugees from persecution whom it has been accepted are entitled to asylum in the UK. We agree that people – who have experienced sexual violence, are victims of slavery or torture, are suffering from significant mental or physical disability, are children, are LGBTQI+, or would fall within any other protected group under the terms of these amendments – should not be penalised in any of the ways that Clause 11 permits (see further below). However, our position – which accords with legal principle, international law and reason – is that no refugee should be penalised in these ways.

BARONESS LISTER OF BURTERSETT
BARONESS JONES OF MOULSECOOMB
BARONESS STROUD

Clause 11, Page 14, line 13, leave out paragraph (c)

*Member's explanatory statement*
*This probing amendment, along with another amendment to Clause 11, would amend the list of examples of ways in which refugees, or their family members, can be treated differently depending on whether they are in Group 1 or Group 2 by removing reference to the attachment of no recourse to public funds requirements so as to probe when this requirement would be attached.*

Clause 11, Page 14, line 26, leave out paragraph (d)

*Member's explanatory statement*
*This probing amendment, along with another amendment to Clause 11, would amend the list of examples of ways in which refugees, or their family members, can be treated differently depending*

[2] As further explained in the written evidence, *op cit*
[3] At Report stage in the other place, every amendment to introduce some visa system for some people with family or other connection to reach the UK for the purpose of seeking asylum was rejected by the Government.
[4] The Bill will write this longstanding policy position on the statute book by Clause 13, which requires that an asylum claim is made in "*a designated place*" as defines such a place as "*in the UK*".

*on whether they are in Group 1 or Group 2 by removing reference to the attachment of no recourse to public funds requirements so as to probe when this requirement would be attached.*

7. The two amendments above each provide opportunity to consider the impact of making a grant of asylum, to which a refugee is entitled, subject to a condition of no recourse to public funds.

8. Migrant Voice and Amnesty anticipate – we would hope – that Ministers will say that there is no intention to force any refugee into homelessness and destitution. But if that is so, what then is the purpose of a penalty that would exclude a refugee, who has been recognised to be entitled to receive asylum in the UK, from making an application to receive support from public funds? Public funds are generally subject to assessment of a person's need for them if the person is otherwise eligible. This penalty is not about securing the funds from people who do not need them. It is straightforwardly about depriving a person of eligibility for something they need.

9. Even assuming that some system would be introduced by which a person could apply to the Home Office to have the exclusion from public funds lifted, some people are going to be made destitute and homeless because they are either unable to make the application for the exclusion to be lifted or the Home Office mistakenly refuses that application. Even if everyone who needs to is able to make the application to the Home Office and the department efficiently and appropriately lifts the exclusion, all that will have happened is that time and resources will have been unnecessarily spent (not to mention anxiety on the part of the refugee).

10. It is alarming that the determination of Ministers to develop cruel and punishing policies is so fixed that this is done even at the obvious expense of making work for the very department Ministers claim is under pressure.[5] If this department is under pressure, this provision provides clear example of how that pressure results from the very policies its Ministers pursue.

LORD PADDICK
LORD ROSSER
THE LORD BISHOP OF DURHAM
LORD BLUNKETT

The above-named Lords give notice of their intention to oppose the Question that Clause 11 stand part of the Bill. Member's explanatory statement This amendment would remove Clause 11, which provides for the differential treatment of refugees depending on their method of arrival in the UK

[5] At Second Reading, Lord Wolfson of Tredegar asserted that the asylum system "*is under strain in terms of numbers, time and cost*" (*Hansard* HL, 5 January 2022 : Col 573). This is despite the fact that the countries he asserts (*Hansard* HL, 5 January 2022 : Col 572) and the Home Secretary asserts (*Hansard* HC, 19 July 2021 : Col 710) should take responsibility for many of the relatively few people seeking asylum in this country each already receive far larger numbers of people into their systems than does the UK (in absolute terms or as a proportion of population).

11. Migrant Voice and Amnesty support the intention to remove Clause 11 from the Bill.

12. It is necessary to repeat that the people affected by Clause 11 are, in every case, people who are not merely entitled to asylum but whom it has been accepted are entitled to asylum in this country. Clause 11 sets out to penalise many of these people by such things as:

    a. providing the refugee only a much-reduced period of permission to stay;[6]

    b. requiring the refugee to make several and frequent applications for further permission to stay, and remain in uncertainty for many years, before permitting that person to apply to settle;[7]

    c. excluding the refugee from public funds;[8] and

    d. delaying or denying altogether any visa by which the refugee's family members may reunite with them in the UK.[9]

13. The uncertainty, isolation, destitution, homelessness and separation from family that these penalties would risk or impose upon someone whom it is accepted has fled from persecution and is entitled to stay are plainly such as will be likely to do that person serious harm. It will also harm the prospect that she, he or they will be able to successfully integrate and rebuild a life shattered by such things as conflict and torture in the refugee's home country; exploitation and enslavement on their journey to the UK; uncertainty and delay (not to mention more direct mistreatment) in the UK asylum system; and prolonged family separation and fears for family members.

14. Moreover, it will create substantial and unnecessary work for the Home Office. That department will have to deal with the applications for exclusion from public funds to be lifted. It will have to deal with the several, frequent and repeated applications by refugees for renewed permission to stay. It will likely in some cases have to address the disruptive consequence of traumatised, confused and isolated refugees whose application to renew their stay are not made in time and hence become criminalised and subject to all the other consequences of becoming someone without permission to remain in the UK. It will also have to deal with – as will the legal aid and judicial systems – the inevitable increase in litigation that is bound to arise from the obvious harm and injustice from all of this.

15. If that were not enough, by denying or delaying the opportunity of a visa for a refugee's family members, partners and children, to reunite with the refugee in the UK, Clause 11 largely removes the single largest visa route to which the Government continues to point as constituting the UK's contribution to providing

[6] This is the intention behind Clause 11(5)(a) and (6)(b).
[7] This is the intention behind Clause 11(5)(b) and (6)(c).
[8] This is the intention behind Clause 11(5)(c) and (6)(d).
[9] This is the intention behind Clause 11(5(d).

asylum by what are termed safe and legal routes.[10] These family members – overwhelming women and children – will therefore be compelled if they wish to be reunited in safety with their partner or parent to provide even more business to the smuggling gangs that Ministers insist they are determined to tackle.

16. Clause 11 – roundly and rightly condemned by almost every authority on the subject of asylum[11] – is a dreadful measure that should never have been within the contemplation of Ministers, let alone included in this Bill. It must be removed.

## ***Short note on amendments tabled to Clause 11 first appearing on the Running List on 24 January 2022***

17. *Migrant Voice and Amnesty have noted the amendments tabled by Baroness McIntosh of Pickering and Baroness Hamwee to Clause 11, which first appeared after this briefing was drafted. We have the following short observations upon these amendments:*

    a. *We understand the purpose behind the amendments tabled by Baroness McIntosh to be to remove the differentiation between currently on the face of Clause 11 between refugees on the basis of the way by which they arrive in the UK and make their asylum claims. The effect of the amendments may, however, not be the effect intended because simply substituting "a person is" for "a refugee is a Group 1" in paragraph 1(a) of Clause 11 and deleting paragraph 1(b) appears to produce an even more restrictive approach. That is by defining a refugee according to a certain manner of arrival and claiming while excluding other refugees altogether. In any event, while we support the intention to remove the differentiation that Clause 11 seeks to impose, for reasons explained in the previous section of this briefing, the appropriate means to achieving this is to delete the clause.*

    b. *We understand the purpose behind the amendments tabled by Baroness Hamwee is to be draw attention to the harmful impact of making some – indeed very many – refugees in the UK subject to much-reduced periods of permission to stay; a requirement to make several, frequently-repeated applications for further short periods of stay before this any prospect they may secure some certainty by an application for settlement; and delaying or denying altogether refugee family reunion visas for the partners and children to join them. As explained in the previous section of this briefing, these provisions will both harm refugees and harm the asylum system and should not be enacted, still less implemented.*

[10] This was again emphasised at Second Reading by Lord Wolfson of Tredegar (*Hansard* HL, 5 January 2022 : Col 572) with no recognition of appreciation that Clause 11, if implemented would largely close this down.

[11] UNHCR has been clear and consistent, as indeed have Migrant Voice and Amnesty. The Joint Committee on Human Rights and former Home Secretaries are also among those who have rounded criticised this clause, see e.g. *Hansard* HL, 5 January 2022 : Col 587 *per* Lord Blunkett and Col 599 *per* Lord Reid of Cardowan.

## Amendments to Clause 12 (Accommodation for asylum-seekers etc.)

18. Migrant Voice and Amnesty note there are various amendments to Clause 12 concerning the standards of accommodation that ought to be provided to people seeking asylum. Each of these amendments tabled variously in the names of Baroness Lister, Baroness Neuberger, Baroness Hamwee, the Lord Bishop of Durham and Lord Etherton seek to secure guarantees as to these standards. We broadly support these amendments, which we do not set out here.

19. We generally oppose proposals to corral people seeking asylum in accommodation centres or other means to isolate or detain them away from the wider community. Our opposition is chiefly because of the demoralising and debilitating impact that doing this has on someone, particularly though not exclusively where that person is made additionally vulnerable to the harmful effects of isolation or confinement by reason of any or all of the following:

    a. past experience of detention, torture, enslavement or abuse (in countries from which the person has fled or passed through);

    b. existing traumas that may arise from any such previous experience or from armed conflict, violence, mistreatment, deprivation or other fear (including on journeys in search of asylum);

    c. stigma or exclusion arising from such confinement or isolation;

    d. inability to, or anxiety about, maintaining effective contact with family, friends, lawyers, doctors and other people on whom the person's welfare, health or future depends (including the capacity to effectively present and pursue her, his or their asylum claim).

## New Clauses on permission to work for people seeking asylum

20. There are two New Clauses which would extend permission to work to people seeking asylum. Migrant Voice and Amnesty support that aim.

21. The majority of people who seek asylum are ultimately found to be refugees entitled to asylum here. A number of other people who seek asylum are ultimately permitted to stay, including because of serious risks to them if returned to their country of origin that do not engage the protection of the Refugee Convention.[12] It is demoralising and debilitating for people awaiting resolution of their claims to be excluded from employment. That is harmful to them and to their capacity to engage effectively in the asylum system.

[12] For each of the years 2012 to 2019, Home Office analysis of the final success rate on asylum claims is that the majority of claimants in each year are or will be successful. For claims made in 2019, its analysis is of a 65% success rate. This data is available in the immigration quarterly statistics.

22. That harm continues beyond the point at which people are permitted to stay because their often-long exclusion from employment leaves people de-skilled, with gaps in their work experience and, in some cases, generally de-motivated. It is thus much harder for people to move on with their lives as successfully as they would like and would be more generally beneficial. All of this is exacerbated by the growing delays in the asylum system – increasingly produced by Government policy, such as that to which Clause 15 (see below) relates concerning delayed admission to that system.

LORD PADDICK
BARONESS CHAKRABARTI

After Clause 12, Insert the following new Clause—

"Asylum seekers' right to work

The Secretary of State must make regulations providing that adults applying for asylum in the United Kingdom may apply to the Secretary of State for permission to take up employment if a decision at first instance has not been taken on the applicant's asylum application within 3 months of the date on which it was recorded."

*Member's explanatory statement*
*This new clause would require the Secretary of State to make regulations enabling asylum seekers to work once they have been waiting for a decision on their claim for 3 months or more.*

BARONESS STROUD
BARONESS LISTER OF BURTERSETT
BARONESS PRASHAR
BARONESS LUDFORD

After Clause 12, Insert the following new Clause—

"Changes to the Immigration Act 1971

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(2) (general provisions for regulation and control) insert—

"(2A) Regulations under subsection (2) must provide that persons, and adult dependants of persons who are applying for asylum in the United Kingdom are granted permission by the Secretary of State to take up employment if—

(a) a decision at first instance has not been taken on the applicant's asylum application within six months of the date on which the application was made, or

(b) a person makes an application or a further application which raises asylum grounds, and a decision on that new application, or a decision on whether to treat such further asylum grounds as a new application, has not been taken within six months of the date on which the further application was made.

(2B) For the purposes of subsection (2A), regulations must ensure that permission granted allowing people applying for asylum in the United Kingdom, and their adult

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| | dependants, to take up employment, is granted on terms no less favourable than the terms granted to a person with recognised refugee status.<br><br>(2C) This permission is to be valid until the claim is determined and all appeal rights have been exhausted, and individuals granted permission to work will be issued with physical proof of the right to work."" |

23. The two amendments above each seek the same end – permission to work for people seeking asylum – but with important differences.

24. The amendment in the names of Lord Paddick and Baroness Chakrabarti simply empowers someone to apply to the Home Office for permission to work after waiting for three months or more for a decision upon her, his or their asylum claim.

25. The amendment in the names of Baroness Stroud, Baroness Lister, Baroness Prashar and Baroness Ludford would require permission to work to be granted after a wait of six months for an asylum decision. Expressly requiring permission to work to be granted rather than merely empowering someone to apply for that is not the only important advantage of this amendment.

26. A further advantage of this second amendment is that it makes clear that the Home Office may not restrict that permission to work by, for example, limiting the type of work the person is permitted to undertake. The importance of this is emphasised by the current rules under which a person seeking asylum may apply for permission to work if waiting 12 months for a decision upon her, his or their asylum claim.[13] Those rules, however, restrict the types of employment that are permitted to those on the Shortage Occupation List that is maintained by the Home Secretary. The effect of that is to greatly undermine the value of the rule because the list is so restricted that many people seeking asylum are unlikely to be able to obtain work within that narrow list – including because they do not have the relevant experience or qualifications, they cannot obtain the retraining or qualification that would be required to do so, they have been too-long excluded from the work that that their experience and qualifications would otherwise suit or the nature of the work makes it unlikely an employer would be willing to employ someone whose continued stay in the UK remains uncertain.

## New Clause on continuing support for refugees on their being granted asylum

27. The amendment below is intended to ensure a refugee is not made homeless or destitute when granted asylum by being required to leave Home Office asylum accommodation and support before she, he or they have sufficient opportunity to secure the accommodation and income or other financial means that they will need.[14] Migrant Voice and Amnesty support the purpose behind

[13] Immigration Rules, paragraphs 360-360E

[14] More on this subject is available from the British Red Cross: https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/improving-the-lives-of-refugees/refugee-move-on-period

this amendment to give more time to people recognised as refugees by the asylum system to be able to move from asylum support and accommodation into the mainstream, which may involve finding accommodation, opening a bank account, finding a job or having to make a claim for welfare. However welcome and important the grant of asylum will be, it cannot in itself magic away all the social, economic, psychological and other inhibitors that a refugee is likely to have carried up to that point which will exacerbate the challenges inherent in seeking to make this transition.

BARONESS LISTER OF BURTERSETT
BARONESS HAMWEE

After Clause 12, Insert the following new Clause—

"Prescribed period under section 94(3) of the Immigration and Asylum Act 1999

(1) The Asylum Support Regulations 2000 (S.I. 2000/704) are amended as follows.

(2) In regulation 2(2) (interpretation) for "28" substitute "56".

(3) Subject to subsection (4), this section does not prevent the Secretary of State from exercising the powers conferred by the Immigration and Asylum Act 1999 to prescribe by regulations a different period for the purposes of section 94(3) (day on which a claim for asylum is determined) of that Act.

(4) The Secretary of State may not prescribe a period less than 56 days where regulation 2(2A) of the Asylum Support Regulations 2000 (S.I. 2000/704) applies."

*Member's explanatory statement*
*When an individual is granted refugee status, their eligibility for Home Office financial support and accommodation currently ends after a further 28 days. This amendment would extend that period to 56 days or allow the Secretary of State to set a longer period.*

## Amendments to Clause 14 (Asylum claims by EU nationals: inadmissibility)

28. The amendment below would prohibit the blanket exclusion of asylum claims by nationals of EU Member States. It is an important reminder that formal adoption of laws and commitments to abide by international and regional human rights standards is not a guarantee against abuse, including where such abuses arise from incapacity or unwillingness to meet those standards in circumstances where there is no direct intention to violate them.

29. At the heart of this, therefore, is something of far wider application in relation to, for example, much of the content of Part 2 (Asylum) of this Bill. This is because so much of the content of Part 2 rests on the fundamentally flawed assumption that other countries can be presumed to meet their human rights

obligations or the assumption that the Home Office can be presumed to meet its.[15]

30. However, violations of these obligations frequently occur because the impact of policy and practice is overlooked or not understood; or because the allocation of resources is inadequate to prevent these. In saying this, we regret that we cannot be taken to imply that this is the only way by which these assumptions can and do sometimes prove to be false. All too frequently, however, Parliament is asked to sanction new powers, remove judicial and other oversight and make laws on the basis that it should simply trust that the Government or the governments of other countries will meet their human rights and other obligations.

LORD ETHERTON
LORD OATES

Clause 14, Page 17, line 41, at end insert—

"(c) fails to protect its nationals, including in particular those who have a protected characteristic within the meaning of Chapter 1 of Part 2 of the Equality Act 2010 which is innate or immutable, from persecution by third parties who are not agents of the member State."

*Member's explanatory statement*
*This amendment provides that there are exceptional circumstances where, even though there is no overt persecution by the State or state agents, the conduct of others towards a person which the State has failed to prevent can amount to persecution within the Refugee Convention.*

## Amendments to Clause 15 (Asylum claims by persons with connection to safe third State: inadmissibility)

31. Migrant Voice and Amnesty support the intention of the Lord Rosser, Lord Etherton and Lord Paddick to remove Clause 15 from the Bill. We also provide short briefing to amendments tabled by Lord Dubs, which derive from the recommendations of the Joint Committee on Human Rights.[16] While we acknowledge the vital importance of the aims at which those amendments are directed, they would in themselves be insufficient to address an overriding flaw in Clause 15. That overriding flaw is a refusal to recognise that asylum responsibilities are shared and that sharing is critical to the effective functioning of the international asylum system.[17]

[15] For example, Migrant Voice's 2017 report on the impact of the Dublin Regulations includes examples of where these assumptions do not stand up: https://www.migrantvoice.org/resources/reports/roads-to-nowhere-case-studies-301020161638

[16] Twelfth Report of Session 2021-22, *Nationality and Borders Bill (Parts 1, 2 and 4)*, January 2022, HC 1007, HL Paper 143

[17] This principle is succinctly expressed and explained in the short May 2021 UNHCR statement on 'externalization': https://www.unhcr.org/uk/news/press/2021/5/60a2751813/unhcr-warns-against-exporting-asylum-calls-responsibility-sharing-refugees.html

LORD DUBS
BARONESS LUDFORD

Clause 15, Page 18, leave out lines 26 to 38 and insert—

"(a) there is not a real risk that the claimant will experience in that State—
(i) persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
(ii) violations of their fundamental human rights;

(b) there is not a real risk that the claimant will be sent from that State to another State—
(i) otherwise than in accordance with the Refugee Convention, or
(ii) in contravention of their rights under the Human Rights Convention, or
(iii) where there is a real risk of their fundamental human rights being violated;

(c) that State provides, in law and practice, and the claimant is entitled to avail themselves of—
(i) appropriate reception arrangements for asylum seekers;
(ii) access to fair and efficient State asylum procedures;
(iii) the legal right to remain during the State asylum procedure;
(iv) where an asylum seeker is found to be in need of international protection, a grant of refugee status or other protective status that provides as a minimum all the rights and obligations set out at Articles 2-34 of the Refugee Convention."

*Member's explanatory statement*
*This amendment would give effect to the recommendation of the Joint Committee on Human Rights that the definition of "safe third State" must ensure that the State in question provides effective protection against human rights abuses and access to an effective asylum system that fully complies with the Refugee Convention.*

Clause 15, Page 18, leave out lines 42 to 45

Member's explanatory statement
This amendment would give effect to the recommendation of the Joint Committee on Human Rights that asylum seekers should not be removed to a safe third State other than the one with which they are considered to have a connection.

Clause 15, Page 19, leave out lines 1 and 2 and insert—

"(7) An asylum claim may not be declared inadmissible, and an asylum claim that has been declared inadmissible must nevertheless be considered under the immigration rules—
(a) if no formal, legally binding and public return arrangements are in place between the United Kingdom and the State to which the claimant has a connection,
(b) if it is unlikely to be possible to remove the claimant to a safe third State within a reasonable period of the declaration of inadmissibility,"

*Member's explanatory statement*
*This amendment would give effect to the recommendation of the Joint Committee on Human Rights that claims should not be assessed as inadmissible unless a return arrangement has already been put in place with the relevant safe third State.*

Clause 15, Page 19, leave out lines 34 to 42

*Member's explanatory statement*
*This amendment would give effect to the recommendation of the Joint Committee on Human Rights that asylum claims should not be declared inadmissible on the basis of the Home Office's view that it would have been reasonable to expect the claimant to have claimed elsewhere.*

32. The four amendments above, tabled by Lord Dubs and Baroness Ludford, each seek to restrict the operation of the regime, which Clause 15 seeks to place on the statute book, by which a person in the UK, who has made a claim for asylum here, is to be refused entry to our asylum system while the Home Office attempts to persuade some other country to receive the person and take responsibility for her, his or their claim.[18]

33. Each of these amendments would significantly improve Clause 15. However, they would – for reasons explained further below – be insufficient to remedy its most basic flaw.

34. The amendments would improve Clause 15 by:

    a. Requiring that a country – to which it is asserted the Home Office may lawfully remove a person seeking asylum without considering that person's asylum claim – affords the protections and rights to which the person is entitled.[19] This ought to be a minimum condition for any regime under which it is proposed that a person seeking asylum in the UK may be removed from this country without consideration being given to the asylum claim the person has made.

    b. Removing from Clause 15 the power to refuse to consider a person's asylum claim on the basis that the person has some sort of 'connection' to one country even though it is proposed to remove the person to a different place where no such 'connection' is even asserted.[20] As drafted, the various criteria by which Clause 15 asserts a person to have a connection are woefully broad; and may include circumstances in which the person neither has ever been to that country nor has any family or friends in it.[21] But Clause 15 goes further in, first, permitting the Home Secretary to treat the person's claim as inadmissible on the basis of even a tenuous or non-existent connection with another country; and, second, when, as can be anticipated, that country is unwilling to receive the person, set about trying to remove the person somewhere else even though no connection to that place is asserted.

[18] That regime currently exists in the immigration rules, has led to substantial increases in the asylum backlog and is operating to no useful effect despite the warnings of Amnesty in writing to Ministers immediately after the scheme's announcement and before its implementation: https://www.amnesty.org.uk/resources/amnesty-uk-letter-immigration-minister-ministers-reply-regarding-immigration-rules

[19] This is broadly the purpose of the first of these four amendments in the names of Lord Dubs and Baroness Ludford.

[20] This is the effect of the second of these four amendments in the names of Lord Dubs and Baroness Ludford.

[21] That is the case with the paragraphs of Clause 15, which the amendment would remove.

c. Requiring that Clause 15 cannot be applied to any person unless there is a formal agreement in place under which the particular person and their asylum claim would be received by the country to which it is proposed to transfer them.[22] Also requiring that it cannot be applied to any person if it is unlikely to be possible to transfer the person and her, his or their claim within any reasonable period of time.[23] These ought to be minimum requirements of any regime such as that to be placed on the statute book by Clause 15. As the very similar regime currently being operated under immigration rules[24] has shown, without these preconditions, all such a regime achieves are increased delays and backlogs in the asylum system that are both harmful to people seeking asylum and costly to the taxpayer.[25]

d. Confining the scope of Clause 15 to situations where the country to which it is said the person seeking asylum has a 'connection' is a place where the person has previously been granted asylum or made an asylum claim.[26] This would remove many circumstances in which Clause 15 would permit the Home Office to refuse to consider a person's asylum claim on the basis of a 'connection' to another place that was either unreal or tenuous. But even this is far from sufficient. If, for example – as is currently the case for many people – a person's connections are clearly to the UK and there exist no means by which the person can formally apply to come to the UK, it is unreasonable to refuse to consider the person's asylum claim here. That is not altered simply because she, he or they may have been compelled to register an asylum claim elsewhere to avoid being summarily returned from that country to a place of persecution.[27]

LORD ROSSER
LORD ETHERTON
PADDICK

The above-named give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

35. Migrant Voice and Amnesty support the intention of Lord Rosser, Lord Etherton and Lord Paddick to remove Clause 15. Even if, for example, all the amendments tabled by Lord Dubs were adopted, the overriding flaw in Clause 15 would remain.

[22] This is the effect of subparagraph (a) of the third of these four amendments in the names of Lord Dubs and Baroness Ludford.
[23] This is the effect of subparagraph (b) of the third of these four amendments in the names of Lord Dubs and Baroness Ludford.
[24] See paragraphs 345A to 345D of the immigration rules
[25] Immigration quarterly statistics show thousands of people being subject to this regime with the effect of nothing more than delaying their ultimate entry into the asylum system.
[26] This is the effect of the fourth of these four amendments in the names of Lord Dubs and Baroness Ludford.
[27] Even the Dublin Regulations, a system to which this country was formerly a party and of which we have many criticisms, recognised family connections as a basis for identifying a country as responsible for a person's asylum claim. For example, Migrant Voice reported on several examples of the harmful impact of that system in 2017: https://www.migrantvoice.org/resources/reports/roads-to-nowhere-case-studies-301020161638

36. The inadmissibility regime that Clause 15 seeks to place onto the statute book is not merely indefensible for its arbitrarily wide application to people seeking asylum, its lack of any effective protection of their human rights, and the absence of any agreements with third States under which the regime could be made to work. The overriding flaw in it is the refusal to meaningfully participate in the asylum responsibilities that this country shares with others.

37. Clause 15 implicitly asserts (as does the existing inadmissibility regime) that the responsibility for people and their asylum claims lies elsewhere. It implies this is by reason of 'connection'. This is despite the fact that it applies in circumstances where there is no connection or only a very tenuous connection between the person seeking asylum and that other country.

38. Moreover, there is no recognition in Clause 15 (or the existing regime) that connection may lie to the UK, not even in the case where the connections to this country are very close (whether of family, community, language, history etc). Clause 15 is entirely one-way and solely about this country avoiding rather than accepting responsibility.

39. Clause 15 is, therefore, unworkable and undermining of the international asylum system:

    a. It is unworkable because it essentially constitutes a unilateral assertion that other countries are responsible for people seeking asylum in the UK in circumstances in which it acknowledges no similar or any circumstances in which the UK may be responsible for people seeking asylum who are here or in other countries. There is no rational basis for any country to accept that assertion by the UK – at least not unless the Government is prepared to pay that country large sums of money for it to agree to add to its own asylum responsibilities by accepting some of the UK's responsibilities.

    b. It undermines the international asylum system because it strikes at the heart of a core principle on which that system depends. That principle is one of shared responsibility – the idea that the international community is together responsible for guaranteeing a place of asylum to people who must flee their own country to escape persecution. If one country – particularly a relatively wealthy country receiving very few people seeking asylum[28] – is so clearly unwilling to accept the very limited responsibilities that are asked of it, that provides licence and encouragement to other countries to refuse to accept the, in many instances, far greater responsibilities that are asked of them.[29]

[28] According to UNHCR refugee statistics, the UK is currently host to a refugee and asylum-seeker population of around 220,000 people.

[29] According to UNHCR refugee statistics, the following are the total refugee and asylum-seeker populations of the following countries: France (around 540,000), Lebanon (around 900,000), Pakistan (over 1.4 million) and Uganda (over 1.4 million). These figures do not include the Palestinian refugee population in Lebanon nor undocumented Afghans in Pakistan.

40. Clause 15 should, therefore, be removed from the Bill. It promises nothing but greater delays, backlogs and costs in the asylum system and greater anxiety and incapacity to engage with that system by people whose claims will ultimately need to be addressed here. It also risks reducing international cooperation and effort to meet asylum responsibilities. If those risks are realised, that can only mean more rather than fewer people compelled to make dangerous journeys, exploited by smugglers and others, searching for a place of safety, including in the UK.

## New Clause relating to admissibility of asylum claims

41. Migrant Voice and Amnesty have noted the New Clause tabled by Lord Green of Deddington to be added to the Bill after Clause 16. We do not set it out here. We are strongly opposed to it. We invite peers – and all who consider it – to reflect upon our briefing to the previous amendments concerning Clause 15.

42. If Lord Green's New Clause were added to this Bill it would certainly go far further than even the Government in ripping up this country's commitments to the Refugee Convention and the international asylum regime at the heart of that Convention.

43. Those who make or propose asylum policy ought to carefully reflect upon the practical impact of simply avoiding responsibilities while constantly seeking to insist that others should take these – whether because those others are closer to places of persecution and conflict or for any other reason advanced as a supposed justification for avoiding responsibility here in the UK. Advancing policies that pursue this dismal aim is obviously unfair. It is obviously unattractive to any other country for any purpose other than as excuse for similarly avoiding or refusing their responsibilities. As such it cannot provide any answer to the needs and rights of people who must flee from persecution. Accordingly, it can only lead to ever more people having to make dangerous journeys, dependent on and exploited by dangerous people, in the hope of finding the safety that is theirs by right. And when people – as they will – continue to arrive on these shores, it can only add more greatly to the delays and backlogs from which our asylum system has again been recklessly made to suffer by similarly badly-motivated policies with all the human and financial costs that go with that.