Nationality and Borders Bill
House of Lords, Committee Stage
Day 2, 1 February 2022

Part 2: Asylum: Clauses 17-38
(supporting evidence, priority removal notices, late evidence, appeals, removal to safe third country, interpretation of Refugee Convention)

Introduction

1. This is the second of two briefings on Part 2 (Asylum) of the Nationality and Borders Bill. It addresses selected amendments to or relating to Clauses 17 to 38 in the order in which they appear on the Marshalled List as it first appeared on the parliamentary website on 25 January 2022. The first briefing addressed selected amendments to or relating to clauses 11 to 16 of Part 2 scheduled for consideration on Day 1 of Committee (but not considered on that day).

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

Supporting evidence, priority removal notices and late evidence (Clauses 17 to 25)

3. Several amendments are tabled to these various clauses. As explained further below we agree with concerns that we understand to motivate many of these amendments. Nonetheless, while these amendments would generally improve

the provisions somewhat for some refugees, they do not address the basic flaws that lie behind these clauses and the bureaucratic regime they seek to introduce. Migrant Voice and Amnesty, therefore, support the amendments and intentions tabled by Lord Dubs, Baroness Ludford and Baroness Jones of Moulsecoomb (below), which critically address one of those basic flaws.

LORD DUBS
BARONESS LUDFORD
BARONESS JONES OF MOULSECOOMB

83

Clause 18, Page 22, line 26, leave out subsection (4)

Member's explanatory statement
This amendment would give effect to the recommendation of the Joint Committee on Human Rights to remove the direction for decision makers to treat the provision of evidence on or after the date specified in an evidence notice as damaging to credibility.

88

Clause 21, Page 25, line 29, leave out subsection (4)

Member's explanatory statement
This amendment would give effect to the recommendation of the Joint Committee on Human Rights to remove the direction for decision makers to treat the provision of evidence on or after the date specified in a priority removal notice as damaging to credibility.

Lord Dubs gives notice of his intention to oppose the Question that Clause 25 stand part of the Bill.

Member's explanatory statement
This amendment would give effect to the recommendation of the Joint Committee on Human Rights to remove the direction for decision makers to treat the provision of evidence on or after the date specified in an evidence notice or priority removal notice as damaging to the weight to be given to that evidence.

4. Each of these amendments would remove from the Bill statutory directions to decision-makers – both at the Home Office and among the independent tribunals judiciary – as to the credibility they are to ascribe to a person and her, his or their evidence and as to the weight to give to that person's evidence.

5. We urge peers to reflect carefully upon the impropriety and effect of giving advance direction to decision-makers, including independent judicial decision-makers, as to the findings they ought to make upon the evidence that is before them and not before Parliament. It is the most basic requirement of the decision-maker's role that the person is capable of and will assess the evidence before them to determine the relevant findings on the facts and law. If it is seriously contended that decision-makers at the Home Office or at the tribunal are not competent to perform that function, the only reasonable conclusions are that either those decision-makers should not be in post or those bodies should not be performing that function.

6. Assuming such a drastic contention is not intended by either Parliament or Ministers, there is no good that can come by statutory directions such as those

which Lord Dubs, Baroness Ludford and Baroness Jones would rightly remove. We strongly support them in that.

7. The objection, summarised above, to the provisions that Lord Dubs, Baroness Ludford and Baroness Jones, supported by the recommendations of the Joint Committee on Human Rights, would remove is one of profound principle. However, this matter of principle is intimately linked to a practical objection that is similarly profound.

8. If a decision-maker properly performs their function in assessing the evidence, the ordinary expectation is that they will appropriately weigh all the evidence and submissions before them to reach a decision that is appropriate to that evidence and those submissions. If it is appropriate on the basis of what is before them – including any evidence or assertions relating to how late or slowly the claimant or appellant is said to have disclosed something – to give little weight to some evidence or regard an individual as of little credibility, that is what a competent decision-maker performing their function correctly will do. If, however, it is appropriate to find the evidence to be highly probative and the individual credible, the decision-maker will do this – unless the decision-maker is or considers themselves to be constrained to do otherwise. The statutory directions that Lord Dubs, Baroness Ludford and Baroness Jones seek to remove, constrain the decision-maker in this way – otherwise there is no purpose to these directions. But doing this can achieve nothing save for in the case where the decision-maker would otherwise, and should, find the evidence to carry weight or the claimant or appellant to be credible.[1]

9. This will certainly harm a refugee who is arbitrarily refused asylum because, although her, his or their evidence would properly compel recognition of their refugee status a statutory direction is relied upon to negate that.

10. It will also harm the asylum system. That system will lose credibility – and not only with the refugee who suffers this misfortune but more generally. The injustice done will be seen – not only by people seeking asylum but also those who seek to assist them. People who believe, rightly, that justice has not been done to them will, rightly, take every opportunity to challenge that (e.g. by fresh asylum claim, appeal or claim for judicial review) or avoid the consequences of it – for how could a refugee (that is someone at risk of torture, disappearance, execution, or some other grave abuse) be expected to do otherwise, and meekly resign themselves to being returned to be persecuted? Other people will believe, understandably, that they cannot rely upon the process to secure justice for themselves. They too, understandably, will take every opportunity to challenge that.

[1] The policy at the heart of these measures is one borrowed from the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 8, though it is extended beyond impact on credibility assessment to wider impact on weight given to any evidence. Section 8 has continued to undermine the reliability of decision-making, including in the tribunal appeals system, long after its first introduction as is confirmed by the judgment of the Court of Appeal in *KA (Afghanistan) v Secretary of State for the Home Department* [2019] EWCA Civ 914, where the court once more held that the tribunal had wrongly understood the direction in section 8 as requiring the credibility of the appellant to be down-graded.

11. This is all quite apart from the bureaucracy, and cost of that bureaucracy, which Clauses 17 to 25 seek to introduce.

12. We also note – as was highlighted by Lord Ponsonby at Second Reading[2] – that the risks arising from a statutory direction being wrongly taken to constrain the decision-maker are seriously exacerbated by the intention by Clause 2 of the Judicial Review and Courts Bill to exclude the High Court from its constitutional role overseeing the tribunal.[3]

13. Accordingly, we agree with the various concerns that we understand to lie behind the other amendments tabled by Lord Rosser [**77**, **89**], Lord Etherton [**82**, **84**, **86**, **90-92**, **96**], Lord Paddick [**87**], Lord Dubs [**93-94**], Baroness Ludford, Baroness Coussins [**95**] and Baroness Lister. Those concerns generally relate to such matters as the characteristics of many people seeking asylum, which make it more likely they may struggle to disclose or obtain information or evidence within the time that may be demanded of them; and the various circumstances in which it may not be reasonable to expect a person to disclose or obtain that information or evidence. Nonetheless, we do not think these amendments adequately address the vice in what is being proposed because they are not, with respect, truly directed to the nature of that vice (which we have explained above) but rather at trying to enable some people to escape from it. It would be far better to simply remove this vice altogether.

14. Migrant Voice and Amnesty nonetheless support the below amendments tabled by Lord Etherton to Clause 22; and the intention of Lord Paddick to oppose the inclusion of Clause 23.

LORD ETHERTON

91

Clause 22, Page 26, line 40, after "satisfied" insert "on reasonable grounds"

Member's explanatory statement
The Secretary of State can only give a certification if satisfied on reasonable grounds that there were no good reasons.

92

Clause 22, Page 26, line 43, at end insert—

> "(2A) In considering whether there are good reasons within subsection (2), the Secretary of State must take into account any protected characteristic asserted by P, within the meaning of Chapter 1 of Part 2 of the Equality Act 2010, which is innate or immutable."

Member's explanatory statement
This amendment provides that, in deciding whether there were good reasons for P making the claim on or after the PRN cut-off date, the Secretary of State must take into account difficulties arising from an innate or immutable protected characteristic asserted by P.

[2] *Hansard* HL, Second Reading, 5 January 2022 : Col 623ff

[3] Amnesty's supplementary written evidence (following our oral evidence) to the Public Bill Committee that considered the Judicial Review and Courts Bill in the other place addresses this matter more fully: https://publications.parliament.uk/pa/cm5802/cmpublic/JudicialReviewCourts/memo/JRCB07.htm

LORD PADDICK Lord Paddick gives notice of his intention to oppose the Question that Clause 23 stand part of the Bill.

15. We support these amendments in the absence of any firmer commitment to exclude fast and/or detained decision-making processes from the face of this Bill. We do not support fast or detained processes. In summary:

    a. We do not support fast-tracked processes. We support establishing a single process designed in such a way that best achieves justice in a timely manner. That does not mean all claims should progress at the same speed. There is clearly greater scope for the Home Office to recognise, in some cases, the strength of an asylum claim without requiring the person to continue through the process. Pre-emptively assigning asylum claims to different tracks, subject to different processes and speeds, is liable to increase inefficiency. Inevitably, some tracks are more favourable than others and so it matters whether someone is properly eligible for a different track, which increases either bureaucracy or sometimes litigation. It also produces an opposing effect – i.e. bureaucratic gatekeeping of those tracks that are considered more favourable. This will also lead to litigation. Indeed, the latter is not merely problematic for keeping someone out of the more favourable track for which they are eligible. It is also problematic because the criteria against which their ineligibility may have been wrongly determined is liable to be critical to the substance of their asylum claim too. It becomes important to be in the right track for e.g a survivor of torture or rape, both because being excluded from that track is detrimental to their being able to effectively present and pursue their claim and because exclusion is an effective denial of their history of torture or rape. This is all quite apart from the inevitable prejudicial effect of being placed in a track that is generally regarded is indicating the claim to be poor.[4]

    b. Detained processes tend to compound the previous concerns because detention is detrimental to effectively presenting and pursing an asylum claim. That is both because detention is psychologically disabling and because detention increases a person's isolation and thereby creates or compounds incapacity to effectively engage with others including legal representatives.[5]

[4] This is a longstanding concern reflected, for example, in the response of a senior caseworker at the Home Office to Stonewall, interviewed for research into the impact of the then detained fast-track system upon gay and lesbian people seeking asylum. That senior caseworker explained: "*In fast-track there's pretty much an expectation that almost every one will be refused. We don't put any old case into fast-track. We put ones which are removable and don't appear to have an asylum claim.*" Stonewall's report is here: https://www.stonewall.org.uk/system/files/No_Going_Back__2010_.pdf

[5] The Royal College of Psychiatrists has, for example, consistently identified the seriously detrimental impact of detention on the mental health of people seeking asylum, see e.g. https://www.rcpsych.ac.uk/news-and-features/latest-news/detail/2021/11/17/mental-illness-twice-as-common-among-refugees-and-migrants-in-detention-compared-to-those-not-in-detention

Appeals (Clauses 26 and 27)

16. We have summarised our concerns with accelerated procedures in the preceding paragraph. These apply equally to appeals processes as to the process of Home Office decision-making.

17. Accordingly, Migrant Voice and Amnesty are opposed to Clause 26. We note the amendments tabled by Lord Dubs [**97**, **99**], Baroness Ludford and Lord Etherton [**98**]. We anticipate that these would secure justice for some refugees who would otherwise be wrongly subjected to a detained fast-tracked appeal process in which they would be unlikely to be able to effectively present their claim.

18. Migrant Voice and Amnesty support the intention (below) of Lord Paddick to oppose Clause 27.

LORD PADDICK Lord Paddick gives notice of his intention to oppose the Question that Clause 27 stand part of the Bill.

19. The effect of Clause 27 is to remove a right of appeal where the Home Secretary decides the person's claim is clearly unfounded. Previously, the impact of such a decision – referred to in legislation as certifying a claim – was to permit the person to appeal only after leaving or being removed from the UK.

20. Whereas we support the retention of the right of appeal that would be removed by Clause 27, we do not consider it should be exercisable only from outside the UK. The effectiveness of any appeal is seriously undermined if the person is not able to remain in the UK to instruct any legal representatives and attend any hearing. Sadly, removing Clause 27 would, in the circumstances, go only a very short way towards providing a right of appeal of real effect.

Removal to safe third country (Clause 28)

21. Clause 28, which introduces Schedule 3, makes changes to increase the powers of the Home Secretary to remove a person from the UK while their asylum claim is yet to be determined by her department.

22. Lord Kirkhope of Harrogate, the Lord Bishop of Durham, Lord Arbuthnot of Edrom and Baroness Stroud [**100-102**] have tabled amendments to delete much of Clause 28 and the Schedule it introduces.

23. As indicated below, Lord Rosser, Lord Blunkett, Lord Etherton and Lord Dubs together with Baroness Hamwee have indicated their intentions to oppose Clause 28 and Schedule 3 in their entirety.

LORD ROSSER LORD BLUNKETT LORD ETHERTON

LORD DUBS

The above-named Lords give notice of their intention to oppose the Question that Clause 28 stand part of the Bill.

LORD ROSSER
LORD ETHERTON
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Schedule 3 be the 3rd Schedule to the Bill.

24. Migrant Voice and Amnesty support the removal of Clause 28 and Schedule 3 in their entirety. We remain opposed to any attempt by the UK to transfer its asylum responsibilities to other countries – whether by detaining or confining people seeking asylum in those other countries pending determination of their claims by the Home Office; or by transferring responsibility for the people and their claims entirely. Clause 28 would enable the Home Secretary to introduce what are referred to as 'offshore' asylum processes.

25. Offshore processing essentially means transferring and confining people in an overseas territory pending resolution of their asylum claim. Among the many appalling injustices done by the Australian offshore policy was the effective exclusion of legal, judicial, medical, humanitarian and media scrutiny – all of which at enormous human and financial cost and, despite what is said by the defenders of this policy, without ending the arrival of people seeking asylum including by boat.[6]

26. More generally, we are profoundly disturbed at the prevailing attitude emanating from the Home Office, which appears determined by any means and at almost any cost to seek nothing more than avoiding its responsibilities while demanding other countries should take theirs. This is a hopeless prescription from which no good can possibly come for reasons we have elaborated upon in relation to Clause 15 in our briefing for Day 1 of Committee stage.[7] We do not repeat that here.

Interpretation of Refugee Convention (Clauses 29 to 38)

27. Migrant Voice and Amnesty strongly support the intentions of Baroness Chakrabarti, in one instance supported by Baroness McIntosh of Pickering, to remove almost all of these clauses from the Bill.

BARONESS CHAKRABARTI

[6] The voluminous evidence provided to the Public Bill Committee rebutting the argument and testimony put forward in support of the Australian policy includes this detailed submission by the Kaldor Centre for International Refugee Law at the University of New South Wales, Sydney: https://bills.parliament.uk/publications/43063/documents/791

[7] See the briefing here: https://www.amnesty.org.uk/resources/joint-amnesty-uk-and-migrant-voice-briefing-nationality-and-borders-bill-part-2-asylum

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 29 stand part of the Bill.

BARONESS CHAKRABARTI
BARONESS MCINTOSH OF PICKERING

The above-named Lords give notice of their intention to oppose the Question that Clause 31 stand part of the Bill.

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 32 stand part of the Bill.

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 33 stand part of the Bill.

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 34 stand part of the Bill.

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 35 stand part of the Bill.

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 36 stand part of the Bill.

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 37 stand part of the Bill.

28. We note Baroness Chakrabarti's omission of Clause 30 from her list of clauses which she intends to oppose. We presume that this reflects an understanding that Clause 30 – unlike each of the other eight clauses that Baroness Chakrabarti has included – may uniquely not entail any incompatibility with the Convention and the settled interpretation of it by the UK's higher courts. We do not demur from that. We nonetheless object in principle to these so-called 'interpretation' clauses. There is either no need for them; or they will – and we anticipate that most of them will – causes considerable harm. There is no need or good purpose to Parliament legislating in this way for an unilateral UK interpretation of an international Treaty such as the Refugee Convention.

29. Clauses 29 to 38 constitute an attempt by the Home Office via legislation to unilaterally re-write the UK's international refugee law obligations and, in doing so, reverse the decisions of the UK's highest courts which have not found favour with that department. These clauses – although not only them – are the setting for the New Clause tabled by Baroness Chakrabarti, Lord Pannick, Lord Judge and Lord Dubs (see below), which Migrant Voice and Amnesty also support.

BARONESS CHAKRABARTI
LORD PANNICK
LORD JUDGE
LORD DUBS

182

After Clause 78, Insert the following new Clause—

"**Compatibility with Refugee Convention**

Nothing in this Act is intended to undermine the obligations of the United Kingdom under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees."

Member's explanatory statement
This new Clause reflects the Government's stated intention that the Bill complies with the Refugee Convention and ensures that any ambiguity around interpretation of provisions is resolved in compliance with the Convention and its Protocol.

30. Nonetheless, the New Clause – as the Member's explanatory statement makes express – cannot save the Bill from incompatibility with the Convention where that incompatibility arises clearly on the Bill's face. It is not for us to say whether or where any incompatibility does so clearly arise though there is clearly cause for alarm that this may be so.

31. Moreover, these provisions cannot satisfactorily be considered in isolation from the Judicial Review and Courts Bill, which will shortly be completing its passage through the other place and arriving in the House. That Bill seeks to more firmly insulate the tribunal system against scrutiny by the higher courts, particularly by the judicial review ouster to be found in its Clause 2.[8]

32. The result of these two Bills, including by provisions addressed in this briefing, will be to gravely undermine the prospect that a refugee can receive proper consideration of her, his or their claim or appeal in the UK and establish their entitlement to asylum here. This will put a refugee facing either an indeterminate limbo of exclusion and fear in the UK, which no doubt various abusers may be only too willing to exploit, or the prospect of return to torture, disappearance, execution or other persecution. It will bring the UK asylum system into disrepute since it will be impossible for anyone to have confidence in the decisions it will be making or imposing. It will likely cause significant additional costs, including to that system, as people, reasonably and necessarily, do what they can to find means to bring legal challenges or otherwise avoid the injustices that the system will be committed to inflict upon those people it has wrongly rejected. It may give fresh or additional licence and encouragement to others elsewhere to avoid their asylum responsibilities too, generally undermining the international refugee system and increasing the prospect that more people fleeing conflict and persecution are compelled to move ever further – including to the UK – in hope of finding safety.

33. None of this is to the advantage, ultimately, of anyone but those who profit from exploitation – financial or political – from the miserable and desperate circumstances of people, whom the UK along with the rest of the international community is obliged to provide sanctuary.

34. We note the various amendments tabled by Lord Dubs, Baroness Ludford, Baroness Lister, Baroness Coussins, the Lord Bishop of Durham, Lord Paddick

[8] See fn 3 (above)

and Lord Etherton to correct certain of the injustices that are intended by Clauses 29 to 38. We support them. We draw attention to the following non-exhaustive concerns that arise from these clauses:

a. Lord Dubs and Baroness Ludford, on the recommendation of the Joint Committee on Human Rights, seek [by amendments **103-104**] to preserve the existing standard of proof as it has long applied to asylum decision-making in the UK. We strongly support that intention. Clause 31 not only seeks to raise that standard to exclude more refugees from the protection to which they are entitled but seeks to do so by a complex, staged process that is likely to increase the exclusion of refugees simply by error in operating it. This is bad for refugees, bad for the integrity of the UK's asylum system and moreover bad for any prospect that the Home Office will ever be better able to effectively and efficiently manage its responsibilities. A refugee refused asylum cannot be expected to return to a place where she, he or they will be persecuted. Legislating to increase the number of people placed in this appalling predicament cannot and will not solve any of the real or perceived ills of the asylum system.

b. Baroness Lister, Baroness Coussins, the Lord Bishop of Gloucester and Lord Paddick seek [by amendment **105**] to preserve the existing understanding of the words 'particular social group' in the Refugee Convention. We strongly support that intention. Among the people most at risk from Clause 32 are women and LGBTQI+ people, whose persecution is on the basis of their gender identity or sexual orientation. Clause 32 does this by making two alternative conditions, either of which these refugees must currently prove to establish their claims, both required to be met.[9] Again, this will exclude refugees and add complication to decision-making.

c. Lord Dubs and Baroness Ludford [by amendments **106**, **109-110**] and Lord Etherton [by amendments **107-108**] seek to confine Clause 36 to reduce the scope of power that clause seeks to permit to penalise and punish a refugee for arriving in the UK to make her, his or their asylum claim (which cannot be made from outside the country) by a journey that takes them through other countries. The clause sets out to fundamentally redefine and undermine Article 31 of the Refugee Convention in UK law as a basis for penalties and prosecutions, including under other provisions of this Bill.[10]

d. Lord Dubs and Baroness Ludford [by amendment **111**] seek to restrict the effect of Clause 37, by which it is intended to unlawfully exclude

[9] In this regard, Clause 32 is not only inconsistent with UNHCR's view of the meaning of the Convention but also in contradiction to the settled position as found by the UK's most senior judicial authority in *Fornah v Secretary of State for the Home Department* [2007] 1 AC 412.

[10] Clause 36 is both contrary to the clear opinion of UNHCR as to the meaning of the Refugee Convention but also conflicts with the settled understanding of the UK's higher courts, including the House of Lords, as explained in *R (Adimi) v Secretary of State for the Home Department* [1999] Imm AR 560 and *R v Asfaw* [2008] UKHL 31.

refugees in the UK from their international status and right to asylum on the basis of convictions that are far below the 'particularly serious crime' threshold that applies by virtue of Article 33(2) of the Refugee Convention. The threshold of what is to be defined as particularly serious is, by Clause 37, to be set as including any sentence of 12 months of more imprisonment. That is especially remarkable give this Bill also seeks to impose a 4 years' maximum prison sentence upon the mere act of arriving in the UK without permission, something which the majority of refugees to whom the UK provides asylum are compelled to do by the longstanding policy by which no visa is made available for them or any other person seeking asylum to come to this country for that purpose.

35. These provisions are intended and will mean that refugees in the UK are made unable to secure their right to asylum here. That is a shocking purpose. It will have dire consequences. People who cannot safely return to a place of persecution are likely to be made destitute and homeless, subjected to long periods of limbo and fear, made especially vulnerability to a host of exploiters and abusers and plainly in need, if they can, to take any opportunity to seek to challenge their continuing exclusion from asylum that is their right. It may be the Government thinks this dreadful mistreatment of people will deter other people from seeking asylum in this UK – even at the risk that it may deter people from presenting themselves to the authorities here even though they continue to come because they have no real choice if not finding safety elsewhere. And yet the risks of the latter will be greatly extended if the UK's determination to flout its own responsibilities lead to others doing likewise.

New Clauses relating to 'safe and legal' routes (family unity, resettlement and humanitarian visas)

36. There are several New Clauses tabled that seek to expand the availability of asylum-related visas for people to travel to the UK to make asylum claims here, reunite with family here or both:

    a. By New Clause **112**, Lord Paddick, Lord Hylton and Baroness Jones of Moulsecoomb seek to require an extension of the scope of refugee family reunion visas. This would enable refugees granted asylum in the UK to sponsor a wider range of family members to join them in this country. It would permit parents and child or young adult siblings to be sponsored, including by children who have established their asylum claims in the UK. It would also permit parents, who have established their right to asylum in the UK, to sponsor their young adult children to join them. Children recognised as refugees in the UK are currently excluded from existing immigration rules permitting family members to secure visas to join a refugee. Adult refugees in the UK may sponsor their partners and children (under 18 years of age) to secure a visa to join them.

    b. By New Clause **113**, Lord Coaker, Lord Hylton and Baroness Jones of Moulsecoomb seek to require changes in the immigration rules to permit

children seeking asylum, who are currently in the European Economic Area but have family in the UK, to be permitted to come to the UK for the purpose of making their claim here where they have family. This would, in significant part, reintroduce measures to which the UK was party under what are known as the Dublin Regulations before leaving the EU.

c. By New Clause **115**, Lord Dubs, Baroness Chakrabarti and Baroness Jones of Moulsecoomb seek to reintroduce a requirement formerly adopted by the Immigration Act 2016, and often referred to as the 'Dubs Amendment', to require the UK to share some, unspecified, degree of responsibility with its EU neighbours for receiving unaccompanied children into its asylum system. The number of children to be relocated under the scheme proposed by this New Clause is to be established in consultation with local authorities.

d. By New Clause **116**, Lord Kirkhope of Harrogate, Lord Shinkwin and Baroness Stroud seek to require the Home Office to resettle at least 10,000 refugees to the UK each year. Resettlement is the means by which refugees – generally those whose circumstances in the countries in which they have found asylum are especially dire or unsustainable – may be selected to be transferred from those countries to the UK (or some other country of resettlement). The New Clause would significantly increase the UK's resettlement commitment.[11] Nonetheless, even at this level, the asylum system (at this and previous years' levels) would continue to provide asylum to more people than resettlement,[12] even discounting for the number of people (mostly women and girls) granted refugee family reunion visas on the back of asylum granted via the asylum system.[13]

e. By New Clause **117**, Lord Dubs seeks to require the immigration rules to provide for people to be able to obtain a visa to seek asylum in the UK if they have a family member (as defined in the New Clause) in the UK. This New Clause would be limited to people currently in Europe. The style of drafting of the New Clause is taken from section 1 of the Immigration Act 1971 – i.e. it requires the rules to make provision for people to come to the UK for specified purposes without stipulating what conditions or other restrictions may be put on that.

f. By New Clause **118**, Baroness Hamwee seeks to introduce a scheme of humanitarian visas to permit someone who wishes to seek asylum in the UK to come to the UK to do so if that person's claim would have a

[11] As recorded in Home Office immigration quarterly statistics, 2017 was the UK's highest year of resettlement. In that year, 6,212 people were resettled to UK.

[12] Over the last 12 months period for which data is available, 11,689 people secured asylum by the asylum system. A further 350 people who had sought asylum were permitted to stay on other grounds. See Home Office quarterly immigration statistics.

[13] If people permitted to come to the UK by a refugee family reunion visa granted so they could join a refugee recognised in the UK are added, this is a further 6,552 people over the last 12 months period dependent on the asylum system. See Home Office quarterly immigration statistics.

'realistic prospect of success' and there are 'serious and compelling reasons' why the claim should be considered in the UK.

37. Migrant Voice and Amnesty broadly support each of the above New Clauses. Each would provide some refugees the opportunity to come to the UK with a visa permitting this by a 'safe and legal' route rather than relying upon a smuggler and a dangerous journey. Ministers have repeatedly asserted their intention to 'break' what they regard as the 'business model' of people smugglers.[14] That model relies on people needing to make a journey but being without any means to do so that is managed or authorised by Government.

38. The fundamental error in the Government's analysis is that by refusing to provide any means by which a person may come to the UK for the purpose of seeking asylum, it has – as have others elsewhere – effectively 'contracted out' to smugglers the role of providing those means. The more it seeks to inhibit the journeys that a person could attempt on their own or with a smuggler, the more a person needs the smuggler and the more the smuggler is able to exploit the person. This is an especially lucrative business for smugglers made all the more so because the circumstances of refugees are often so dire; and while countries such as the UK refuse to share responsibility with others – preferring to insist instead that other countries should take the responsibilities they avoid – the net result is greater need for more people to travel further seeking safety. This is all greatly exacerbated because, even when a refugee has very close connection to e.g. the UK (such as by having family here), there is no mitigation of this refusal to take or share responsibility.

39. This Bill, by its asylum provisions, generally seeks to not only further entrench this refusal to take or share responsibility. It seeks to penalise – harshly – the people whom it leaves compelled to make their journeys with the assistance of smugglers. All the proposals that were advanced in the other place to provide some people what is called a 'safe and legal' route to the UK were rejected. Thus far, Ministers have by their actions been crystal clear. They do not intend that this country should even persist in the very modest contribution it currently makes to providing a place of safety to some very few of the world's refugees.[15] That is something that we deplore. It is not breaking any smugglers' so-called business model. Rather it is wrecking the UK's asylum system to the advantage of nobody but those smugglers and other abusers.

[14] e.g. *Hansard* HC, Second Reading, 19 July 2021 : Cols 706 & 713 *per* Home Secretary

[15] UNHCR provide refugee statistical data at the following link: https://www.unhcr.org/refugee-statistics/ That data does not include the millions of Palestinian refugee hosted in Jordan, Lebanon and Syria. Nor does it include large undocumented populations such as Afghans in Iran and Pakistan. But it highlights clearly the very modest contribution made by the UK compared to near neighbours such as France or far, poorer countries further afield such as Lebanon.