Border Security, Asylum and Immigration Bill
Public Bill Committee

Repeal of Nationality and Borders Act 2022 – New Clause 27
March 2025

Lisa Smart
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Mr Will Forster

NC27

To move the following Clause—

"***Repeal of certain provisions of the Nationality and Borders Act 2022***

The following provisions of the Nationality and Borders Act 2022 are repealed—
(a) sections 12 to 65; and
(b) sections 68 and 69."

Member's explanatory statement
This new clause would repeal specified provisions of the Nationality and Borders Act 2022.

BRIEFING:

Ministers emphasise that this administration differs from its predecessor in ways that include:
(i) a desire to cooperate with international partners;[1]
(ii) a commitment to abide by international human rights obligations;[2] and
(iii) a determination to focus on what is practical and effective,[3] recognising there to be no silver bullets (or easy solutions or answers)[4] and eschewing all gimmicks.[5]

The provisions of this Bill and the policy it is intended to support do not, however, accord with this emphasis. The Bill repeals some but far from all of the previous administration's legislation on asylum and modern slavery. The Government are, therefore, choosing to retain legislation that undermines international human rights law, is impractical and will have bad effects – legislation that contains more of the same unserious attitude to policy-making that ministers have labelled as 'gimmickry'. The clearest example of this is provided by ministers' present decision to repeal none of the Nationality and Borders Act 2022 ("the 2022 Act") despite the present administration categorising that Act as "*wrong and unethical*" when in Opposition.[6]

[1] See e.g., *Hansard* HC, Second Reading, 10 February 2025 : Cols 62, 63 & 66 *per* Home Secretary
[2] See e.g., *Hansard* HC, Public Bill Committee, Third Sitting, 4 March 2025 : Cols 90, 91, 92 & 97 *per* Minister for Border Security and Asylum
[3] See e.g., *Hansard* HC, Public Bill Committee, Second Sitting, 27 February 2025 : Col 64 *per* Minister for Border Security and Asylum
[4] See e.g., *Hansard* HC, Second Reading, 10 February 2025 : Cols 129, 131 & 132 *per* Minister for Border Security and Asylum.
[5] See e.g., *Hansard* HC, Second Reading, 10 February 2025 : Cols 65-66 *per* Home Secretary
[6] *Hansard* HL, Consideration of Commons Amendments, 27 April 2022 : Col 306 *per* Lord Coaker

Ministers are yet to provide any account of how what was then regarded as wrong and unethical is now treated as good. They should be called upon to do so. The reality is that the original categorisation was correct and the retention of the 2022 Act – save for certain of its provisions on British nationality law[7] – is indefensible. It is not compatible with international human rights obligations and it continues the trend of recent years in creating work for the Home Office that is unnecessary, ineffective, and harmful. At the moment of the 2022 Act's passing, the UN High Commissioner for Refugees issued a public statement:

> "*UNHCR, the UN Refugee Agency, regrets that the British government's proposals for a new approach to asylum that undermines established international refugee protection law and practices has been approved.*"[8]

Previously, during the 2022 Act's parliamentary passage, UNHCR clearly, repeatedly, carefully and very publicly set out several incompatibilities of the Act with the 1951 UN Convention relating to the Status of Refugees ("the Refugee Convention").[9] When this administration, then in Opposition, opposed that Act as "*wrong and unethical*" it did so expressly by reliance on the detailed assessments of UNHCR as to the Act's effect on the Refugee Convention.[10] Nonetheless, it permitted the Act to pass and explained its position in so doing:

> "*…but we are at the point in the parliamentary process where sending it back a fourth time would not be the appropriate way forward. Noble Lords will have to make their own judgment, but that is the judgment we have made. The battle will carry on and the campaign for a proper refugee system will carry on. That campaign will take place not only in this Parliament but in the various communities up and down the country, as we fight to remain the global champion that we have always been, and to offer asylum to those who deserve it and need it.*"[11]

Why is this Government now abandoning what it described in Opposition as "*…the* [continuing] *battle… and the* [continuing] *campaign for a proper refugee system…*" by choosing to retain this legislation? If the Government takes the view that immigration policy and strategy should outweigh or negate its international obligations – a bad position more or less in keeping with its immediate predecessors – it will, like its predecessor, prepare the way for very costly policy failure where the costs will be measurable in human, financial and political terms.[12]

Committee member could usefully reflect back 19 years when the then Home Secretary, now Lord Reid of Cardowan, was somewhat famously reported to have described the Home Office as 'not fit for purpose' for reasons largely related to systemic backlogs.[13] In 2006, what became known as the 'legacy backlog' was a result of years during which the Home Office was encouraged to refuse asylum to large numbers of people without proper regard to the true nature of their claims and the reality that many could neither return home in safety nor be removed in practice. Among policies that led to this were detained fast-tracking of asylum cases,[14] arbitrary laws to bar or deter Home Office and judicial decision-makers from properly

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[7] Sections 1-9, Nationality and Borders Act 2002, to which Amnesty UK and the Project for the Registration of Children as British Citizens (PRCBC) refer in our joint submission to the Committee (paragraph 19.1).
[8] Statement of Filippo Grandi, UN High Commissioner for Refugees on 27 April 2022.
[9] See various analysis and briefings by UNHCR during the Act's passage in 2021-2022.
[10] *Hansard* HL, Consideration of Commons Amendments, 27 April 2022 : Col 308 *per* Lord Coaker
[11] *Hansard* HL, Consideration of Commons Amendments, 27 April 2022 : Col 308 *per* Lord Coaker
[12] Amnesty UK's briefing, *Gambling with Lives*, February 2024 concerning the harm and cost of the previous administration's asylum policy.
[13] We understand Lord Reid refutes that he used this term but it is now a feature of his entry on Wikipedia.
[14] As relevant procedure rules for operating this process were declared *ultra vires* and quashed by decisions of the High Court in 2015 and 2017, as set out in *R (TN & US) v Secretary of State for the Home Department* [2017] EWHC 59 (Admin); [2018] EWCA Civ 2838.

assessing facts on the basis of evidence before them,[15] and instructions for the Home Office to decide claims on the basis of misunderstandings of refugee law[16] and mischaracterisations of the conditions in countries from which people seeking asylum have fled.[17]

The extremes of the previous administration in passing the Nationality and Borders Act 2022, Illegal Migration Act 2023, and Safety of Rwanda (Asylum and Immigration) Act 2024, built on very similar foundations. Ministers have rightly condemned the latter two – the Acts of 2023 and 2024 – as creating a permanent limbo in which a growing number of people became stuck because their claims could never be decided.[18] But as Labour has proved previously, it is perfectly possible to do harm to people and create administrative chaos, including systemic backlogs, by deciding claims badly as distinct from not deciding those claims at all.[19] In this regard, the following provisions of the Nationality and Borders Act 2022 are especially harmful.

Section 12 permits the Secretary of State to operate an illegitimate two-tier system of refugee protection, whereby people granted asylum may be divided into two categories. In one such category would be refugees whose right to asylum is upheld in full. In the other would also be refugees – no less at risk of persecution and no less entitled to asylum – but who are provided a significantly reduced level of protection. The refugees to suffer this discrimination would face prolonged periods of short-term permission to stay, other barriers to becoming settled in the UK, exclusion from public funds, and exclusion from rules designed to enable reunion with family members. None of this discrimination is permissible under international law. Moreover, it is purely punitive and for no useful purpose. It would obstruct integration and exacerbate the impact and cost of alienating people. It would require the Home Office to process repeated claims for further permission to stay rather than permitting people to get on with their lives – unnecessarily and harmfully adding to the workload of the asylum system. It would also deny a safe route for close family members (partners and children) thereby creating incentive or necessity for more people to rely on smuggling gangs and dangerous journeys.

Sections 15 to 17 provided the first statutory basis for the inadmissibility regime that led directly to the asylum backlog inherited by this Government.[20] It was only when that regime had created this backlog that the previous administration sought, by introducing the Illegal Migration Act 2023, to double-down on the policy by making the regime mandatory.[21] If ministers are now satisfied – as they surely should be – that the regime was wrong, harmful and dysfunctional, there is no rational basis for keeping its legislative foundations.

Sections 18 to 26 introduced unnecessary bureaucracy into the asylum decision-making and appeals system with arbitrary penalties to enforce compliance with that bureaucracy. These provisions permit or require decision-makers to ignore evidence or treat a claimant as untruthful for no other reason than being caught out by bureaucratic demands. The asylum system cannot function either fairly or efficiently if decision-makers fail or are barred from

[15] See, e.g., Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 8 as discussed in e.g., *ST (Libya) v Secretary of State for the Home Department* [2007] EWCA Civ 24; *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878.

[16] Various of which the Nationality and Borders Act 2022 seeks to return to by overriding settled judicial rulings upon them, such as *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 and *Fornah & K v Secretary of State for the Home Department* [2005] UKHL 46.

[17] Country of origin information and country policies have caused concern and litigation over many years.

[18] e.g., *Hansard* HC, Second Reading, 10 February 2025 : Cols 60 & 66 *per* Home Secretary (though references to "*an asylum Hotel California*" do not contribute to serious reflection on the circumstances and impact upon people affected by this policy).

[19] e.g., *Hansard* HC, 19 July 2006 : Col 324 & 25 July 2006 : Col 736 *per* Rt Hon John Reid, Home Secretary (giving a commitment to resolve a "*legacy of unresolved cases in five years or less*")

[20] The regime was first introduced in immigration rules commenced at 11pm on 31 December 2020.

[21] Illegal Migration Act 2023, section 5 and related provisions.

making decisions based on the facts and evidence in each individual case. This legislative basis for harmful and unnecessary bureaucracy should therefore be abandoned.

Section 27 is for reintroducing a detained fast-track appeals system operated by previous administrations with dreadful results, ultimately condemned by the UK's judiciary as unlawful.[22] The prospect, if this provision is retained, is another period of excessive, harmful and costly asylum detention that undermines any ambition of fairness or efficiency in the asylum system.

Sections 28 and 29 sought to revise existing legislation to enable the Rwanda plan that the Government has rightly abandoned. A proper focus on fairness and efficiency would prompt further review of the original legislation, not retention of these revisions to it.

Sections 30 to 38 illegitimately reduce the true meaning of the Refugee Convention for the purpose of avoiding the UK's full obligations to refugees. These provisions allow refugees to be penalised in circumstances prohibited by the Convention and exclude refugees by requiring their claims meet standards that are significantly more restricted than the Convention applies. This is wholly improper, sends a dreadful invitation to other countries to adopt their own bespoke and unlawfully restrictive asylum laws, and risks refusal of asylum to someone at risk of persecution but unable to meet more restrictive tests. There is already evidence than this is happening.[23] Refusing asylum in these circumstances is both unfair and inefficient, creating more work for the Home Office in seeking to hound out of the country people who quite legitimately cannot go because of the real risks they face but the system refuses to recognise.

These provisions are no less 'gimmicks' – in the sense of being impractical or unworkable attempts to portray control rather than deliver on moral and legal obligations – than those the Government is choosing to repeal. They provide particularly stark example of how, by choosing to retain thoroughly bad laws, the present administration is not being true to its stated commitments to international cooperation, to compliance with international human rights law and to do what is practical and effective. Retaining the Nationality and Borders Act 2022 in full contradicts international law commitments and concern for practicality and effectiveness. It undermines proper international cooperation by encouraging similar disdain for international law. In practice, it can be expected to create the same kinds of dysfunction at the Home Office that previous administrations have created. Although this Government may begin by reducing backlogs at the start of the asylum system, it is retaining legislation that is liable to shift backlogs to other stages of the system – and as the impact on the capacity of the Home Office grows, it can be expected to undermine fairness and efficiency at all stages.

As Amnesty has warned this administration and its predecessor, fairness and efficiency go hand in hand – just as respecting human rights is integral to respecting human life and wellbeing.[24] If ministers expect people seeking asylum to abide by the rules they make, ministers must at least abide by the rules by which they are bound when making and implementing those rules. Moreover, the more ministers encourage or licence an arbitrary and hostile approach to the international rules for providing asylum, the more overloaded and inefficient they make the systems and processes they ask to implement their rules. They thereby encourage more inconsistency and unfairness. They promote more fear, mistrust, and resistance to effective engagement with those systems. For all these reasons, much of the Nationality and Borders Act 2022 – including all of Part 2 – must be repealed.

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[22] See fn. 14 (above)

[23] See, e.g., the dramatic fall in the 2024 grant rate for Afghans, Eritreans and Iranians seeking asylum with no obvious change in the conditions in any of those countries.

[24] e.g., Amnesty UK's briefing: *A fair and efficient process for making asylum decisions*, October 2024.