Refugee Council

Written evidence

Written evidence submitted by the Refugee Council (NBB08)

Nationality and Borders Bill 2021-22 – Public Bill Committee

About the Refugee Council

The Refugee Council is the leading charity devoted to supporting refugees and people seeking asylum in the UK. It was founded 70 years ago in the wake of the 1951 Refugee Convention. We provide a range of services to adults and children across England, seeking to ensure that they are supported throughout the process of claiming asylum, and are given the best integration support once they are recognised as refugees.

Our work includes running a national service that supports every unaccompanied child in the asylum system, working with a number of local authorities on their refugee resettlement efforts, providing an adult integration service for new refugees in London, and providing a range of mental health support services through our Therapeutic Services team. We are also currently supporting newly-arrived Afghans in the UK through the Afghan Relocations and Assistance Policy (ARAP).

We use this experience and the evidence we gather from our work to inform policy and advocacy work that seeks to work with refugees to transform their experience of seeking protection in the UK.

Executive summary

1. The evidence in this submission focuses on the provisions about the asylum system set out in Part 2, clauses 10-36, part 3, clause 37, and Schedules 2 and 3 of the bill. It also comments on policy relating to age assessments, with detail still to be added in the bill to placeholder clause 58.

2. Clause 10 creates two categories of refugees, with different rights and entitlements: Group 1 and Group 2 refugees. Refugees will be classified as Group 2 if they have not come directly from a country or territory that threatens their rights under Article 1 of the Refugee Convention, and/or they have not made an immediate claim for asylum on arrival. Those who have entered the UK irregularly will also have to show 'good cause' for this, or will fall into Group 2. Urgent clarity is needed on how Government will seek to interpret each of these elements.

3. Clause 10, subsection 5 gives powers to treat Group 2 refugees differently, including on the amount of leave they are granted, and whether they are able to be reunited with their family members under the UK's refugee family reunion rules.

4. The differential treatment outlined in Clause 10 punishes refugees based on the way that they arrived in the UK. UNHCR has stated that the creation of Group 2 refugees is discriminatory and is incompatible with the 1951 Refugee Convention. Moreover, no evidence has ever been produced that this will deter these irregular journeys, as the Government claims. **Members should seek to amend the bill to remove Clause 10.**

5. Clause 10, subsections 5 and 6 give Government powers to limit or end access to refugee family reunion for Group 2 refugees. This could affect many thousands of refugees each year, and severely curtail one of the only safe and legal routes for refugees to arrive in the UK. It would also harm the integration chances of those who have been recognised as refugees in the UK. Clause 59 empowers the Secretary of State to refuse family reunion visas of nationals where their country of origin is not cooperating with removals. This measure could further undermine this safe and legal routes and punishes persecuted people for the actions of their governments. **Members should support an amendment that ensures all groups of refugees have full and equal family reunion rights, under the refugee family reunion route. Members should support the removal of clause 59.**

6. Clause 11 relates to accommodation for people in the asylum system, and gives Government powers to house different groups of asylum seekers in an undefined 'accommodation centre'. Our understanding is that these centres will involve 'congregated living' in hostel-type accommodation, which has been shown to be unsuitable to house people in the asylum system for long periods of time. Such a move away from housing in the community will also impede integration prospects and may make access to needed support and services more difficult.

7. Clause 14 puts on the face the bill an existing immigration rule on inadmissibility that makes any asylum claim 'inadmissible' in a number of circumstances, including if that claimant has passed through a safe third country. Government has already stated that it will try to remove these claimants over a six-month period after a claim is found to be inadmissible, after which they will enter the asylum system.

8. We know that the inadmissibility regime as set out above is currently unworkable, because the UK Government does not have returns agreements with an EU member states – the 'safe third countries' that refugees are most likely to have passed through. Therefore the practical consequences of this measure is that one will be returned but will wait an extra six months before entering the asylum system, which is already facing its largest backlog for over a decade.

9. Clause 26 – relating to schedule 3 - amends the 2002 Asylum and Immigration Act to allow for someone seeking asylum in the UK to be removed while their claim is still pending, thus making it possible for the UK to legally process asylum claims offshore in the future. The key international example of this policy is in Australia, causing a well-documented human rights crisis in relation to their asylum system with immense suffering of individuals. **Members should support amendments to remove this clause and schedule.**

10. Part 3, clause 37 includes an amendment to the 1971 Immigration Act to create an offence where someone knowingly enters the UK without leave to enter, with a maximum four-year prison sentence. As the vast majority of asylum claims are made in such a way, this is the criminalisation of asylum, potentially costing hundreds of millions of pounds more than the current system, and using up resources in the courts system. It also has the potential consequence of causing family separation, with high numbers of migrant children removed from parents and put into care, as was seen in recent years in the USA. **Members should support an amendment to remove clause 37.**

11. Placeholder clause 58 relates to the process for assessing age when unaccompanied children who are seeking asylum arrive in the UK, and so determining whether they are over or under 18. Although the details will be presented at committee, the New Plan for Immigration states an intention to remove a key safeguard for these children, by allowing assessment that someone is adult, based on appearance and demeanour alone, to happen for those who appear over the age of 18, rather than over the age of 25. It also states an intention to use 'scientific' methods of age assessment, such as bone x-rays, despite the widespread clinical opinion that these methods are not accurate and will not improve the process of age assessment.

Part 2: ASYLUM

Clause 10 – Differential treatment of refugees

One of the key measures of the bill is to give powers to Government to treat refugees differently, dependent on their mode of arrival in the UK. People who have not travelled directly from a country or territory where their life or freedom is threatened, and/or have not made an asylum claim without delay, will be recognised as refugees under international law, but classified as a 'Group 2 refugee'. This will affect a large number of people who currently claim asylum, for example those who enter the UK without a valid visa, as is an accepted norm for people seeking protection across the world.

Subsection 6 of Clause 10 sets out a non-exhaustive list of ways in which refugees who arrive irregularly may be treated differently: by having reduced leave to remain, more limited refugee family reunion rights, and limited access to welfare benefits.

The explanatory notes for the bill state:

'The purpose of this is to discourage asylum seekers from travelling to the UK other than via safe and legal routes. It aims to influence the choices that migrants may make when leaving their countries of origin – encouraging individuals to seek asylum in the first safe country they reach after fleeing persecution, avoiding dangerous journeys across Europe.'[1]

However, Government has provided no evidence base to show that this stated aim will result from the policy. Indeed, our experience is that refugees seek asylum in the UK for a range of reasons, such as proficiency in English, family links, or a common heritage based on past colonial histories. The refugees we support do not cite the level of leave granted, or other elements of the asylum system, to be decisive factors, or even details they are aware of.

What we know definitely will result from these measures is a refugee population who are less secure because they have a shorter amount of leave, and less able to integrate, because they have reduced access to refugee family reunion. It will punish those who have been recognised, through the legal system, as in need of international protection – girls fleeing the Taliban in Afghanistan, or Christian converts fleeing theocracy in Iran, or Uighurs fleeing genocide in China.

Moreover, it will do so despite international refugee law stating that a refugee does not have an obligation to make an asylum claim in the first safe country they reach. If that obligation is not part of the international legal framework, it is deeply unfair and cruel to punish refugees for then realising their right to claim asylum.

The explanatory notes also cite the figure that 62% of asylum claims in the UK, up to September 2019, were from people who entered irregularly. This means the policy intention is to reduce the rights and entitlements of the majority of refugees coming to the UK, even though we take many fewer than comparable countries. Indeed, in Europe, the UK is 17th in terms of the numbers it takes, measured on per head of population.

Rather than attempt to share support for refugees globally, this proposal suggests that the UK should support fewer refugees, even though the vast majority of refugees are hosted by poorer countries. Low-income countries already host 86% of the world's refugees, compared to the UK which hosts just 0.5% of the world's refugees. The bill sends a dangerous message to those states supporting the vast majority of the world's refugees that it is reasonable to deter people in need of protection based on them entering without prior permission.

[1] https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf, Paragraph 145.

Clause 11 – Accommodation for asylum-seekers etc

Clause 11 creates new powers to provide different types of housing – namely 'accommodation centres' for those at different stages of their asylum claim, including those with 'inadmissible' asylum claims.

The rationale given is that this will 'increase efficiencies within the system and increase compliance', though again no evidence is given to support this claim.

'Accommodation centre' is also not defined (and clarity is urgently needed), though the general understanding is that this will mean more people seeking asylum will be living in large-scale, 'congregated' settings, and that it marks a move away from the current dispersal system, where people live in homes in the community across the country.

In August the Home Office published a Prior Information Notice for the procurement of new Accommodation Centres,[2] with initial submissions invited by the end of September 2021. Unfortunately the details of this tender are subject to commercial confidentiality, and therefore the details are only known to potential contractors who have signed non-disclosure agreements.

What is public is that this contract will be delivered in accordance with part 2 of the 2002 Nationality, Immigration, and Asylum Act,[3] and states that it is for housing up to 8,000 people, for periods of up to 6 months. Alongside accommodation, it is intended to be a support contract that delivers services such as healthcare, safeguarding, and education.

This tender is not dependent on the passage of the bill, but it does raise serious questions about how this approach will interact with provisions set out in clause 11 of the bill, given that contracts will be awarded before the bill receives royal assent. Concerns have previously been raised about how accountability and standards can be maintained in asylum accommodation when there is no public access to the contract, and those issues also apply here.

More generally, the use of large-scale accommodation – such as military barracks - to hold people in the asylum system has come under increased scrutiny and criticism as its use has increased during the COVID-19 pandemic.[4] Stakeholders, including the Home Affairs Select Committee, have repeatedly shown that care of individuals has been poor, with a lack of access to legal advice and support services. Individuals have generally had very little information about their asylum claims, leading to and exacerbating poor mental health and general distress.

Legal action taken against the Government about the suitability of the barracks for certain vulnerable groups has also shown that this system has failed to maintain appropriate safeguards, with people often being housed in the barracks when the Government's own policy said their vulnerability made this inappropriate.

Proposals to extend these forms of accommodation are ill-thought out and dangerous, and undermine the UK's duties to support and protect those making asylum claims. The current dispersal system, whereby people seeking asylum live in regular housing in the community, is much better for supporting future integration and ensuring that people seeking asylum are able to access services they need.

Clause 14 – Asylum claims by persons with connection to safe third State: inadmissibility

This clause puts into primary legislation an immigration rule change that has been in operation for the whole of 2021. Since 31st December 2020 , a new Immigration Rule has been in place that means the UK Government can class someone's asylum claim as inadmissible if they have travelled through, or have a connection to, what is

[2] https://www.contractsfinder.service.gov.uk/notice/200ecd04-fc0d-4622-8aeb-ab8f9c126780?origin=SearchResults&p=1
[3] https://www.legislation.gov.uk/ukpga/2002/41/part/2
[4] For example, see https://www.independent.co.uk/news/uk/home-news/asylum-seekers-military-barracks-home-office-b1862538.html

deemed a 'third safe country'.[5] The new rules also give the Home Office the power to remove people seeking asylum to a safe country that agrees to receive them, even if they have never been there or don't have any connections to it.

Under this rule, if someone has not been removed from the UK after six months, as currently set out in guidance, their asylum claim will be heard here. At present, the UK has no bilateral removal agreements with other 'safe third countries' in Europe to remove people, meaning people will currently wait in limbo for six months in accommodation centres before entering the UK asylum system. Under the existing inadmissibility policy, 4,561 people were issued with notices of intent in the first 6 months of 2021, of whom 7 were deemed inadmissible. None has been transferred to another country under the inadmissibility rules. These figures clearly demonstrate that this policy is completely ineffective and unworkable.

This approach will result in an even longer backlog of asylum claims, at a time when the numbers waiting for an initial decision on their claim is at a ten-year high. Refugee Council has estimated that the cost of all those currently waiting more than six months for an initial decision to be £220 million per year.[6]

It also has a grave human cost. Uncertainty caused by long waiting times has long been associated with poor mental health of those in the asylum system.

Clause 26 – Removal of asylum seekers to safe country

This clause makes it possible to remove someone to a safe third country while they still have an active claim in the UK's asylum system. The bill's explanatory notes state that:

'This supports the future object of enabling asylum claims to be processed outside the UK and in another country. The purpose of such a model is to manage the UK's asylum intake and deter irregular migration and clandestine entry to the UK.'[7]

This policy – commonly known as 'offshore processing' - has been enacted most widely in Australia. People arriving by boat to claim asylum in that country have been transported to Nauru and Manus Island (part of Papua New Guinea) since 2001 (this policy stopped in 2008 but was resumed in 2012).[8] No person has been transferred since 2014, because all people seeking asylum who have approached Australia by boat since that time have been turned back at sea, or otherwise returned to their countries of origin.

Observers of the offshore processing policy have noted that it seeks to punish, rather than protect, extremely vulnerable people who are seeking asylum. Individuals have been detained in remote places; the lack of scrutiny and connection to mainstream society has meant poor conditions have been more likely, and has allowed politicians to argue that the duty of care lies in that country, not within the responsibility of the Australian government.

Individuals have been vulnerable to abuse, with ongoing evidence of sexual abuse. Healthcare and support has been poor; the widespread hopelessness that has been reported amongst detainees has led to a number of suicides and overall poor mental health. The policy has cost the Australian government billions of dollars, even though the high-point in numbers was a little of 1,200 in Nauru and 1,400 in Manus (in 2014), and there now remain a little over 200 people on Nauru.

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[5] https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1043-10-december-2020
[6] https://media.refugeecouncil.org.uk/wp-content/uploads/2021/07/01191305/Living-in-Limbo-A-decade-of-delays-in-the-UK-Asylum-system-July-2021.pdf
[7] https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf, Paragraph 291.
[8] See https://www.refugeecouncil.org.au/offshore-processing-facts/

The Australian experience has shown that pursuing such a policy would be disastrous, inhumane, and entirely unnecessary when we have the infrastructure in the UK to support people seeking asylum.

Part 3: Immigration offences and enforcement

Clause 37- Illegal entry and similar offences

This clause criminalises the means by which the majority of refugees seek asylum in the UK, by creating a new criminal offence of arriving in the UK without valid entry clearance, and increasing the penalty for this offence from 6 months to four years.

The explanatory notes do not set out why the penalty should increase so drastically, but are keen to capture within this offence those who do not technically 'enter' the UK, because they are rescued at sea.

Refugee Council has estimated that criminalising vulnerable people in this way is deeply costly and resource-intensive. The cost of prosecuting and imprisoning those seeking asylum could cost up to £400 million more per year than the current system.[9]

Parliamentarians should also be seriously concerned about the implications for children. There was international outrage when the USA, in recent years, started more forcefully criminalising those seeking asylum, imprisoning adults and separating them from their children, who were then moved into foster care. Clarity is needed on whether the UK intends to separate families in this way, and how separated children will then be cared for.

Moves of this sort would damage Britain's standing in the world, and cast huge doubts over its commitment to children's rights.

Part 5: MISCELLANEOUS

Clause 58 – Age assessments

Although clause 58 is a placeholder clause, and therefore does not include detail about how Government plans to change its approach to assessing age for unaccompanied children, we know its broad intentions from the New Plan for Immigration and through stakeholder discussions.

As part of the Refugee and Migrant Children's Consortium (RMCC)[10], Refugee Council has set out in detail the background to age assessment policy and its importance for this cohort.

Specifically and self-evidently, an unaccompanied child is only able to access education and social care if assessed correctly as a child. Otherwise they enter the adult asylum system, with fewer rights and entitlements, and in very vulnerable circumstances.

Case law has determined that where there is doubt, an age-disputed applicant should be treated as a child pending resolution of the dispute, as a necessary safeguard. It is widely understood that age determination is an inexact science, that visual assessments are unreliable, and that benefit of the doubt must be afforded to ensure that children are not mistakenly treated as adults.

Those who are later determined to be adult do not generally pose a danger to children; the safeguarding risks are much greater when refugee children are erroneously housed with adults in unsupervised accommodation and in

[9] https://www.refugeecouncil.org.uk/latest/news/proposals-to-further-criminalise-and-imprison-people-seeking-asylum-to-cost-most-than-400m-per-year/

[10] See https://media.refugeecouncil.org.uk/wp-content/uploads/2021/07/01155215/New-Plan-for-Immigration-Age-Assessments_RMCC-briefing-FINAL.pdf

circumstances where authorities are treating them as adults, rather than young people whose age is not yet determined.

Refugee Council knows from its work that large numbers of children under the current system are incorrectly assessed as adults, but that most of the reforms proposed in the new plan would not improve the process.

Parliamentarians should refer to the RMCC briefing and evidence for much greater detail, but in particular, the proposed use of 'scientific' approaches to age assessment, whether that means dental x-rays, bone age or genital examination, are simply not reliable and are not an improvement on the current model of assessment based on the expert decision made by a social worker following an interview with the young person.

Clause 59 - Processing of visa applications from nationals of certain countries

Clause 59 of the bill would permit the Secretary of State to suspend, cancel or refuse family reunion visas by persons of a specific nationality on the basis that their country of origin was not in their view cooperative in receiving removals.

This measure punishes people who have sought protection, for the actions of their Government, from whom in many cases they would be fleeing. Not only is this unfair and morally unacceptable, it is not a sanction that would actually be effective in compelling a Government to comply with removals.

This is a further measure in the bill that would undermine refugee family reunion, a known safe and legal route, when the Government's stated policy intention is actually to increase these routes.

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