

Nationality and Borders Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 9

BARONESS CHAKRABARTI
LORD ANDERSON OF IPSWICH
LORD ROSSER
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 9 stand part of the Bill.

Clause 10

LORD PADDICK
LORD ROSSER

The above-named Lords give notice of their intention to oppose the Question that Clause 10 stand part of the Bill.

Member's explanatory statement

This amendment would remove Clause 10, which restricts entitlement to British citizenship for children born stateless in the UK.

Clause 11

LORD PADDICK
LORD ROSSER

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

After Clause 12

LORD PADDICK

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.

Clause 15

LORD ROSSER

Lord Rosser gives notice of his intention to oppose the Question that Clause 15 stand part of the Bill.

Clause 17

LORD ROSSER

Page 21, line 15, at end insert—

“(1A) The Secretary of State may not serve an evidence notice on a person who—

- (a) has made a protection claim or a human rights claim on the basis of their sexual orientation or gender identity;
- (b) was under 18 years of age at the time of their arrival in the United Kingdom;
- (c) has made a protection or human rights claim involving sexual or gender-based violence;
- (d) is a victim of modern slavery or trafficking; or

on other categories of person on whom the Secretary of State considers it would be inappropriate to serve an evidence notice.”

Member’s explanatory statement

This amendment probes the serving of an evidence notice on vulnerable groups.

Clause 21

LORD ROSSER

Page 25, line 32, at end insert—

“(4A) For the purposes of subsection (4) “good reasons” include, but are not limited to—

- (a) evidence of post-traumatic stress,

Clause 21 - continued

- (b) potential endangerment to the PRN recipient caused by collecting evidence for anything mentioned in subsection (1)(a) before the PRN cut-off date.
- (4B) The Secretary of State must publish guidance including a non-exhaustive list of “good reasons” within the meaning of subsection (4) within 30 days of the passing of this Act.”

Member’s explanatory statement

This amendment probes examples of potential interpretations of “good reasons” for late compliance, and requires the Home Secretary to publish a non-exhaustive list of potential “good reasons” to aid asylum decisions.

Clause 28

LORD ROSSER

Lord Rosser gives notice of his intention to oppose the Question that Clause 28 stand part of the Bill.

After Clause 37

LORD PADDICK

Insert the following new Clause—

“Refugee family reunion

- (1) The Secretary of State must, within 6 months of the date of the passing of this Act, lay before Parliament a statement of changes in the rules (the “immigration rules”) under section 3(2) of the Immigration Act 1971 (general provisions for regulation and control) to make provision for refugee family reunion, in accordance with this section, to come into effect after 21 days.
- (2) Before a statement of changes is laid under subsection (1), the Secretary of State must consult with persons he or she deems appropriate.
- (3) The statement laid under subsection (1) must set out rules providing for leave to enter and remain in the United Kingdom for family members of a person granted refugee status or humanitarian protection.
- (4) In this section, “refugee status” and “humanitarian protection” have the same meaning as in the immigration rules.
- (5) In this section, “family members” include—
 - (a) a person's parent, including adoptive parent;
 - (b) a person's spouse, civil partner or unmarried partner;
 - (c) a person's child, including adopted child, who is either—
 - (i) under the age of 18, or
 - (ii) under the age of 25 but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum;
 - (d) a person's sibling, including adoptive sibling, who is either—
 - (i) under the age of 18, or

After Clause 37 - continued

- (ii) under the age of 25, but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum; and
- (e) such other persons as the Secretary of State may determine, having regard to—
 - (i) the importance of maintaining family unity,
 - (ii) the best interests of a child,
 - (iii) the physical, emotional, psychological or financial dependency between a person granted refugee status or humanitarian protection and another person,
 - (iv) any risk to the physical, emotional or psychological wellbeing of a person who was granted refugee status or humanitarian protection, including from the circumstances in which the person is living in the United Kingdom, or
 - (v) such other matters as the Secretary of State considers appropriate.
- (6) For the purpose of subsection (5)—
 - (a) “adopted” and “adoptive” refer to a relationship resulting from adoption, including de facto adoption, as set out in the immigration rules;
 - (b) “best interests” of a child must be read in accordance with Article 3 of the 1989 UN Convention on the Rights of the Child.”

Member’s explanatory statement

This new Clause would make provision for leave to enter or remain in the UK to be granted to the family members of refugees and of people granted humanitarian protection.

LORD COAKER

Insert the following new Clause—

“Family reunion and resettlement: unaccompanied minors

- (1) The Secretary of State must, within a period of six months beginning with the day on which this Act is passed, amend the Immigration Rules in order to ensure that an unaccompanied minor seeking asylum in the EEA who has a family member present in the United Kingdom is entitled to claim asylum in the United Kingdom.
- (2) For the purposes of this section, “family member” includes—
 - (a) a parent or guardian of the applicant;
 - (b) an aunt, uncle or grandparent of the applicant;
 - (c) a sibling of the applicant;
 - (d) the spouse of the applicant; or
 - (e) an unmarried partner with whom the applicant is in a stable relationship.”

Member’s explanatory statement

This new clause would allow unaccompanied children to have access to family reunion with close relatives in the UK.

Insert the following new Clause—

“International co-operation on family reunion arrivals and safe returns

- (1) The Secretary of State must, within a period of six months beginning with the day on which this Act is passed, produce a report setting out a negotiating mandate for international agreements on protocols for identifying the state responsible for determining an asylum application.
- (2) The negotiating mandate must include that the state responsible for determining an asylum application shall be identified according to a hierarchy of criteria, including but not limited to—
 - (a) family unity, including regard for the safeguarding of unaccompanied minors,
 - (b) possession of residence documents or visas,
 - (c) means of entry or stay, and
 - (d) visa-waived entry.
- (3) A negotiating mandate under this section must have particular regard to the right to family life, and the rights of the child under the United Nations Convention on the Rights of the Child.
- (4) The Secretary of State must lay the report before each House of Parliament.”

Member’s explanatory statement

This new Clause would require the Government to produce a negotiating mandate to seek reciprocal arrangements, with other states, on safe returns and safe legal routes.

Clause 40

LORD ROSSER
LORD DUBS

Page 41, line 40, leave out subsection (3)

Member’s explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to maintain the current position that the offence of helping an asylum seeker to enter the United Kingdom can only be committed if it is carried out “for gain”.

After Clause 41

LORD COAKER

Insert the following new Clause—

“Advertising assistance for unlawful immigration to the United Kingdom

- (1) It is an offence to advertise by any means, including using social media, services designed to facilitate the commission of an offence under section 25 of the Immigration Act 1971.
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.”

Member's explanatory statement

This amendment would provide it is an offence to advertise illegal routes to the UK. This is to probe methods used to prevent and prosecute people smuggling.

After Clause 47

LORD PADDICK

Insert the following new Clause—

“Immigration rules since December 2020: report on effects

- (1) Before bringing any provisions of this Part into force by regulations, the Secretary of State must commission and lay before Parliament an independent report on the effects of its immigration rules on the UK economy and public services since December 2020.
- (2) The areas to be covered by the report must include but are not limited to—
 - (a) food supply;
 - (b) fuel supply;
 - (c) hospitality and tourism;
 - (d) the NHS;
 - (e) social care; and
 - (f) construction.”

Member's explanatory statement

This new Clause would require the Government to commission and publish an independent report on the effects of its Immigration Rules on the UK economy and public services since December 2020.

Clause 57

LORD COAKER

Lord Coaker gives notice of his intention to oppose the Question that Clause 57 stand part of the Bill.

Clause 58

LORD COAKER

Page 62, line 16, at end insert—

- “(aa) the person was 18 or over at the time of the incident or incidents in respect of which the slavery or trafficking information notice was issued,”

Member's explanatory statement

This amendment seeks to ensure those exploited as children are not penalised for late disclosures.

Page 62, line 23, at end insert—

- “(2A) For the purposes of subsection (2) “good reasons” include, but are not limited to—

Clause 58 - continued

- (a) the impact of trauma, including behaviour consistent with post-traumatic stress disorder;
- (b) distrust of authorities, including fear of punishment or a lack of confidence in the confidentiality of information sharing;
- (c) fear of reprisals against the person, or people they are related to or have close personal relationships with, if they make an allegation of slavery;
- (d) experiencing pressures and fears related to bonded debt;
- (e) where the claimant was under the age of 18 years at their time of arrival in the United Kingdom or at the time of their exploitation;
- (f) where the claimant has diminished capacity;
- (g) fear of repercussions from people who exercise control over the person;
- (h) a lack of understanding of modern slavery including being unable or unwilling to identify themselves as a “victim”; or
- (i) an ongoing or previous relationship with the trafficker.”

Member’s explanatory statement

This amendment probes what will be defined as a “good reason” for late disclosure.

Lord Coaker gives notice of his intention to oppose the Question that Clause 58 stand part of the Bill.

Clause 60

LORD COAKER

Page 63, line 41, leave out “30” and insert “45”

Member’s explanatory statement

This amendment would ensure that victims of modern slavery continue to receive a recovery period of at least 45 days, bringing this provision in line with current statutory guidance.

Clause 61

LORD COAKER

Page 64, line 4, at end insert –

- “(aa) the person was aged 18 or over at the time of the circumstances which gave rise to the first RG decision;”

Member’s explanatory statement

This amendment seeks to preclude those exploited as children from being denied additional recovery periods if they are re-trafficked.

Lord Coaker gives notice of his intention to oppose the Question that Clause 61 stand part of the Bill.

Clause 62

LORD COAKER

Page 64, line 23, at end insert “was aged 18 or over at the time of the circumstances which gave rise to the positive reasonable grounds decision and”

Member’s explanatory statement

This would exclude children from the disqualification from protection measures under this clause.

LORD RANDALL OF UXBRIDGE

LORD COAKER

Leave out Clause 62 and insert the following new Clause—

“Identified potential victims etc: disqualification from protection

- (1) This section applies to the construction and application of Article 13 of the Trafficking Convention.
- (2) The competent authority may determine that it is not bound to observe the minimum recovery period under section 60(2) of this Act in respect of a person in relation to whom a positive reasonable grounds decision has been made, if the authority is satisfied that—
 - (a) it is prevented from doing so as a result of an immediate, genuine, present and serious threat to public order; or
 - (b) the person is claiming to be a victim of modern slavery improperly.
- (3) Any determination under subsection (2) must only be made—
 - (a) in exceptional circumstances;
 - (b) where necessary and proportionate to the threat posed; and
 - (c) following an assessment of all the circumstances of the case.
- (4) A determination under subsection (2) must not be made where it would breach—
 - (a) a person’s Human Rights Convention rights;
 - (b) the United Kingdom’s obligations under the Trafficking Convention; or
 - (c) the United Kingdom’s obligations under the Refugee Convention.
- (5) For the purposes of a determination under subsection 2(b), victim status is being claimed improperly if the person knowingly and dishonestly makes a false statement without good reason, and intends by making the false statement to make a gain for themselves.
- (6) A good reason for making a false statement includes, but is not limited to, circumstances where—
 - (a) the false statement is attributable to the person being or having been a victim of modern slavery; or
 - (b) any means of trafficking were used to compel the person into making a false statement.
- (7) This section does not apply where the person is under 18.
- (8) Nothing in this section affects the application of section 60(3) of this Act.”

Member's explanatory statement

This amendment maintains the spirit of clause 62 but ensures that the power is exercised in line with the UK's obligations under Article 13 of the Trafficking Convention. This amendment also protects child victims of modern slavery from disqualification from protection.

LORD PADDICK
LORD COAKER

Lord Paddick gives notice of his intention to oppose the Question that Clause 62 stand part of the Bill.

Member's explanatory statement

This amendment would remove clause 62, which excludes potential modern slavery victims from protection in certain circumstances.

After Clause 67

LORD COAKER

Insert the following new Clause—

“Victim navigators

- (1) The Secretary of State must, within six months of the date of the passing of this Act, make provision for each police force in England and Wales to have one or more independent victim navigators to liaise between the relevant police force and potential victims of slavery or human trafficking and to assist in the procurement of specialist advice for both the police force and the potential victim.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

Member's explanatory statement

This new clause seeks to introduce provisions for Independent Victim Navigators to be in operation on a national level, acting as a liaison between the police and potential victim of slavery or human trafficking in accessing the appropriate support.

After Clause 78

LORD COAKER

Insert the following new Clause—

“Afghan Citizens Resettlement Scheme

- (1) The Secretary of State must, in regulations subject to affirmative resolution procedure, provide for a resettlement scheme for Afghan citizens known as the Afghan Citizens Resettlement Scheme (“ACRS”).
- (2) There must be provisions within the ACRS to allow those who are fleeing persecution and have family members in the United Kingdom to apply for the Scheme.
- (3) For the purposes of this section, “family member” includes—
 - (a) the spouse of the applicant;
 - (b) an unmarried partner with whom the applicant is in a stable relationship;
 - (c) any children of the applicant;

After Clause 78 - continued

- (d) a parent or guardian of the applicant;
 - (e) an aunt, uncle or grandparent of the applicant; or
 - (f) a sibling of the applicant.
- (4) Regulations under this section must be made and the ACRS must come into force within 30 days from the date of the passing of this Act.”

Member’s explanatory statement

This new Clause will place the Afghan Citizens Resettlement Scheme on a statutory footing and ensure that it includes provisions for a family reunion route within it.

Insert the following new Clause –

“Indefinite leave to remain payments by Commonwealth, Hong Kong and Gurkha members of armed forces

- (1) The Immigration Act 2014 is amended as follows.
- (2) In section 68(10), after “regulations” insert “must make exceptions in respect of any person with citizenship of a Commonwealth country (other than the United Kingdom) who has served at least four years in the armed forces of the United Kingdom, or any person who has served at least four years in the Royal Navy Hong Kong Squadron, the Hong Kong Military Service Corps or the Brigade of Gurkhas, such exceptions to include capping the fee for any such person applying for indefinite leave to remain at no more than the actual administrative cost of processing that application, and”.”

Member’s explanatory statement

This new Clause will ensure that Commonwealth, Hong Kong and Gurkha veterans applying for Indefinite Leave to Remain following four years of service will only pay the unit cost of an application.

Clause 83

LORD ROSSER

Page 85, line 14, at end insert –

- “(6) The Secretary of State may not make regulations to bring section 15 into force until such a time as the United Kingdom has agreed formal returns agreements with one or more third states. ”

Member’s explanatory statement

This would prevent Clause 15, which includes inadmissibility rules in the bill, being commenced until the UK has working returns agreements which would allow the rules to function. This is to prevent unworkable rules being introduced and causing further delays in the asylum system.

Schedule 3

LORD ROSSER

Lord Rosser gives notice of his intention to oppose the Question that Schedule 3 be the 3rd Schedule to the Bill.

Schedule 6

LORD ROSSER

LORD DUBS

Page 104, line 13, at end insert—

“(1A) The powers set out in this Part of this Schedule must not be used in a manner or in circumstances that could endanger life at sea.”

Member’s explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure the maritime enforcement powers cannot be used in a manner that would endanger lives at sea.

LORD PADDICK

Page 108, leave out lines 27 to 32

Member’s explanatory statement

This amendment would remove the provision granting immigration and enforcement officers immunity from civil or criminal liability for anything done in the performance of their functions.

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6 January 2022
