

Nationality and Borders Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

After Clause 4

BARONESS LISTER OF BURTERSETT
BARONESS LUDFORD

Insert the following new Clause—

“Provision for Chagos Islanders to acquire British nationality

- (1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.
- (2) After section 17H (as inserted by section 7), insert—

“17J Acquisition by registration: descendants of those born in British Indian Ocean Territory

- (1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if they are a direct descendant of a person (“P”) who was a citizen of the United Kingdom and Colonies by virtue of P’s birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date.
- (2) An application under this section must be made before the date specified in subsection (3).
- (3) The specified date means—
 - (a) in the case of a person aged 18 years or over on the date of coming into force of this section, five years after the date of coming into force of this section, or
 - (b) in the case of a person under the age of 18 years on the date of coming into force of this section, before they reach the age of 23 years.
- (4) A person who is being registered as a British overseas territories citizen under this section is also entitled to be registered as a British citizen.
- (5) No charge or fee may be imposed for registration under this section.””

Member's explanatory statement

This amendment would allow anyone who is descended from a person born before 1983 on the British Indian Ocean Territory to register as a British overseas territories citizen. They may also register as a British citizen at the same time. Both applications would be free of charge. The application must be submitted within 5 years, or in the case of a minor born before the date of coming into force, before they reach 23 years old.

Clause 11

LORD ETHERTON

Page 14, line 3, at end insert—

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

Member's explanatory statement

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

Clause 12

LORD ETHERTON

Page 16, line 15, at end insert—

“(11) Any accommodation provided to a refugee pursuant to this section must be provided in the United Kingdom, must be consistent with the European Convention on Human Rights and must be such as is appropriate for the safety and welfare of that refugee having particular regard to any protected characteristic asserted by the refugee, within the meaning of Chapter 1 of Part 2 of the Equality Act 2010, which is innate or immutable.”

Member's explanatory statement

This amendment spells out the standard of accommodation to be provided to a refugee.

BARONESS HAMWEE

Page 16, line 15, at end insert—

“(11) In section 30 of that Act (conditions of residence), for subsection (3) substitute—

“(3) A condition imposed by virtue of this section may not—

- (a) require a person to be present within the centre during specified hours;
- (b) require a person to be present within a particular section of the centre during specified hours.””

Member's explanatory statement

Section 30 of the Nationality, Immigration and Asylum Act 2002 provides a power to make regulations about conditions that can be imposed on a resident of an asylum accommodation centre. This amendment replaces subsection (3) and would mean that conditions could not include a curfew or require a person to be within a particular part of the centre during specified hours.

Page 16, line 15, at end insert –

“(11) In section 38 of that Act (local authority), after subsection (2) insert –

“(2A) The Secretary of State may not make arrangements under section 16 for the provision of premises within the boundary of a local authority unless consent has been given by that local authority.””

Member's explanatory statement

This would amend section 38 of the Nationality, Immigration and Asylum Act 2002 to prevent the Home Secretary from opening an accommodation centre within a particular local authority within the prior consent of that local authority.

After Clause 12

BARONESS LISTER OF BURTERSETT

Insert the following new Clause –

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

- (1) The Asylum Support Regulations 2000 (S.I. 2000/704) are amended as follows.
- (2) In regulation 2(2) (interpretation) for “28” substitute “56”.
- (3) Subject to subsection (4), this section does not prevent the Secretary of State from exercising the powers conferred by the Immigration and Asylum Act 1999 to prescribe by regulations a different period for the purposes of section 94(3) (day on which a claim for asylum is determined) of that Act.
- (4) The Secretary of State may not prescribe a period less than 56 days where regulation 2(2A) of the Asylum Support Regulations 2000 (S.I. 2000/704) applies.”

Member's explanatory statement

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

Clause 14

LORD ETHERTON

Page 17, line 41, at end insert –

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

Member's explanatory statement

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

Clause 17

LORD ETHERTON

Page 21, line 32, at end insert –

“(7) The specified date must be such as will reasonably give adequate time for the collection, preparation and provision of evidence in support of the claim, and must take into account any protected characteristic asserted by the recipient of the evidence notice, 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 gives guidance as to the time to be allowed for evidence gathering by the recipient of an evidence notice. The need to take into account the difficulties encountered by some refugees, such as members of the LGBTQ community, was highlighted by the decision of the Grand Chamber of the ECJ in A, B, C on 2 December 2014 [2015] 1 WLR 2141.

Clause 18

LORD ETHERTON

Page 22, line 30, at end insert –

“(6AA) In determining whether there are good reasons why the evidence was provided late, account must be taken of any protected characteristic asserted by the claimant, 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 requires that account be taken of the difficulties encountered by some claimants with protected characteristics.

Clause 19

LORD ETHERTON

Page 23, line 38, at end insert –

“(3A) The PRN cut-off date must be such as will reasonably give adequate time for the collection, preparation and provision of the matters in subsection (3)(a) and must take into account any protected characteristic asserted by the PRN recipient, 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 requires that account be taken of the difficulties which may be encountered by recipients of a PRN who assert a protected characteristic.

Clause 21

LORD EHERTON

Page 25, line 32, at end insert –

“(4A) In determining whether there are good reasons for the late provision of the material, there must be taken into account any protected characteristic asserted by the PRN recipient, 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 requires that account be taken of the difficulties encountered by some recipients of a PRN who assert a protected characteristic.

Clause 22

LORD EHERTON

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.

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.

Clause 25

LORD EHERTON

Page 30, line 43, at end insert –

“(6A) In considering whether there are good reasons within subsection (2), the Secretary of State must take into account any protected characteristic asserted by the claimant, 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 the late provision of evidence, the Secretary of State must take into account difficulties arising from an innate or immutable protected characteristic asserted by the claimant.

Clause 26

LORD EHERTON

Page 31, line 39, at end insert –

“(2A) The Secretary of State may not give any such certification if the appellant claims to have a protected characteristic, within the meaning of Chapter 1 of Part 2 of the Equality Act 2010, which is innate or immutable, and that the characteristic is relevant to the appeal.”

Member’s explanatory statement

The effect of the amendment is that the Secretary of State cannot certify an appeal as an accelerated detained appeal if the appellant asserts that they have an innate or immutable protected characteristic as such cases involve complexities that make them unsuitable for the accelerated detained appeal procedure.

Clause 36

LORD EHERTON

Page 37, line 18, at end insert “they have passed through intermediate countries on the refugee’s way to the United Kingdom by way of short term stopovers or”

Member’s explanatory statement

This is the interpretation given to Article 31 of the Refugee Convention by the decision of the Divisional Court of the Queen’s Bench Division in Adimi [2001] QB 667. This amendment seeks to ensure that, as part of an international Treaty, Article 31 has the same meaning applicable in all Member States.

Page 37, line 34, at end insert –

“(2A) In determining the issues of reasonable expectation under subsection (1) and what was reasonably practicable under subsections (2)(a) and (2)(b)(ii), particular regard must be had to any protected characteristic asserted by the refugee, within the meaning of Chapter 1 of Part 2 of the Equality Act 2010, which is innate or immutable.”

Member’s explanatory statement

This amendment requires there to be taken into account particular practical difficulties that may be encountered by a refugee who has one or more protected characteristics which are innate or immutable.

After Clause 37

LORD DUBS

Insert the following new Clause –

“Immigration Rules: entry to seek asylum and join family

- (1) The rules laid down by the Secretary of State in accordance with section 1(4) and section 3(2) of the Immigration Act 1971 for regulating the entry into and stay in the United Kingdom of persons not having the right of abode must include provision for admitting persons coming for the purpose of seeking asylum.
- (2) These rules must make provision, for the purpose of seeking asylum, for persons in Europe who have a family member in the United Kingdom who is ordinarily and lawfully resident in the United Kingdom.
- (3) For the purposes of this section, a “family member” means a grandchild, child, parent, grandparent, sibling, uncle or aunt.”

Member’s explanatory statement

This new Clause would require the Government to make provision within the Immigration Rules for people in Europe to be admitted to the UK for the purposes of seeking asylum where they have a family member in the UK.

Clause 40

BARONESS JOLLY

Page 42, line 2, at end insert –

- “(A1) The master of a ship does not commit a facilitation offence if the act of facilitation was an act done in response to –
- (a) receiving a distress signal at sea as listed in Annex IV of the International Regulations for the Prevention of Collisions at Sea (COLREGS);
 - (b) a requisition by the vessel in distress or another vessel or search and rescue organisation;
 - (c) the consequences of a collision at sea.”

Member’s explanatory statement

The purpose of this amendment is to ensure that the master of a vessel is not charged with a facilitation offence if he or she responds to a distress signal as required by the SOLAS Convention, long standing customary international law and the Merchant Shipping (Distress Messages) Regulations 1998.

Page 42, line 3, after “person” insert “other than the master of a ship”

Member’s explanatory statement

This amendment is consequential to Baroness Jolly’s amendment to clause 40, page 42, line 2.

After Clause 78

BARONESS CHAKRABARTI

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.

LORD WALLACE OF SALTAIRE
BARONESS BENNETT OF MANOR CASTLE

Insert the following new Clause –

“Tier 1 (investor) visas: suspension

- (1) Within two months of the passing of this Act, the Secretary of State must bring into force regulations suspending the Tier 1 (investor) visa route.
- (2) Regulations under subsection (1) must temporarily close the Tier 1 (investor) visa route to new applicants until –
 - (a) the Secretary of State’s review on Tier 1 (investor) visas granted between June 2008 and April 2015 is published and made publicly available; or
 - (b) the Tier 1 (investor) visa route is closed permanently to new applicants.”

Member’s explanatory statement

This new Clause would require the Government to suspend the Tier 1 (investor) visa route until its review into those visas granted between June 2008 and April 2015 is published.

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19 January 2022
