

Nationality and Borders Bill

AMENDMENTS TO BE MOVED IN COMMITTEE OF THE WHOLE HOUSE

Clause 3

LORD DUBS

Page 8, line 27, leave out subsection (4)

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to remove the good character requirement for a person applying for British Overseas Territories citizenship who has previously been discriminated against where this could perpetuate that discrimination.

Clause 10

LORD DUBS

Page 13, line 11, after “birth”, insert “without any legal or administrative barriers”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that, in compliance with Article 1 of the 1961 UN Statelessness Convention, British citizenship is only withheld from a stateless child born in the UK where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles.

Page 13, line 15, at end insert –

“(d) in all the circumstances, it would be in the best interests of the child for it to acquire the nationality in question.”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that the best interests of the child are central to decision-making in deciding whether to grant or decline an application for British citizenship by a stateless child who was born in the UK.

Clause 15

LORD DUBS

Page 18, leave out lines 26 to 38 and insert –

- “(a) there is not a real risk that the claimant will experience in that State –
 - (i) persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
 - (ii) violations of their fundamental human rights;
- (b) there is not a real risk that the claimant will be sent from that State to another State –
 - (i) otherwise than in accordance with the Refugee Convention, or
 - (ii) in contravention of their rights under the Human Rights Convention, or
 - (iii) where there is a real risk of their fundamental human rights being violated;
- (c) that State provides, in law and practice, and the claimant is entitled to avail themselves of –
 - (i) appropriate reception arrangements for asylum seekers;
 - (ii) access to fair and efficient State asylum procedures;
 - (iii) the legal right to remain during the State asylum procedure;
 - (iv) where an asylum seeker is found to be in need of international protection, a grant of refugee status or other protective status that provides as a minimum all the rights and obligations set out at Articles 2-34 of the Refugee Convention.”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that the definition of “safe third State” must ensure that the State in question provides effective protection against human rights abuses and access to an effective asylum system that fully complies with the Refugee Convention.

Page 18, leave out lines 42 to 45

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that asylum seekers should not be removed to a safe third State other than the one with which they are considered to have a connection.

Page 19, leave out lines 1 and 2 and insert –

- “(7) An asylum claim may not be declared inadmissible, and an asylum claim that has been declared inadmissible must nevertheless be considered under the immigration rules –
 - (a) if no formal, legally binding and public return arrangements are in place between the United Kingdom and the State to which the claimant has a connection,

Clause 15 - continued

- (b) if it is unlikely to be possible to remove the claimant to a safe third State within a reasonable period of the declaration of inadmissibility,”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that claims should not be assessed as inadmissible unless a return arrangement has already been put in place with the relevant safe third State.

Page 19, leave out lines 34 to 42

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that asylum claims should not be declared inadmissible on the basis of the Home Office’s view that it would have been reasonable to expect the claimant to have claimed elsewhere.

After Clause 16

LORD GREEN OF DEDDINGTON

Insert the following new Clause –

“Inadmissibility to the asylum system for those entering the United Kingdom without permission

- (1) Any asylum application, or human rights claim, by someone who –
 - (a) has been found to have entered the United Kingdom clandestinely, or
 - (b) has been intercepted while attempting to come, without prior permission, to the United Kingdom in a boat or vehicle,must be treated as inadmissible to the UK asylum system.
- (2) No time limit may be set in immigration rules after which an asylum claim suspected of being, or deemed to be, inadmissible must be admitted to the asylum system for substantive consideration.
- (3) Asylum claims suspected of being, or declared by the Secretary of State to be, inadmissible under subsection (1) cannot be considered under immigration rules until the individual is removed from the United Kingdom or departs voluntarily.
- (4) The provision of this section overrides all prior national and international law and should not be interpreted in the light of it, including the 1950 European Convention on Human Rights, the 1951 Refugee Convention and its 1967 Protocol, and the Human Rights Act 1998.”

Member’s explanatory statement

This amendment would expand the definition of “inadmissible” to ensure that any claimant who comes to the UK clandestinely or who has been intercepted while attempting to come in a boat or vehicle without prior permission would be treated as inadmissible to the asylum system.

Clause 18

LORD DUBS

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.

Clause 21

LORD DUBS

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.

Clause 24

LORD DUBS

Page 28, line 40, after “notice” insert “or a slavery or trafficking information notice”

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to amend the Bill to provide those receiving a slavery or human trafficking information notice with an equivalent amount of civil legal services support as for those receiving a priority removal notice.

Page 28, line 41, after “notice” insert “or a slavery or trafficking information notice”

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to amend the Bill to provide those receiving a slavery or human trafficking information notice with an equivalent amount of civil legal services support as for those receiving a priority removal notice.

Clause 25

LORD DUBS

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.

Clause 26

LORD DUBS

Page 31, line 38, leave out from “State” to end of line 39 and insert “is satisfied that—

- (a) any relevant appeal brought in relation to the decision would be likely to be disposed of expeditiously; and
- (b) any relevant appeal brought in relation to the decision could be resolved within the time limits set out in subsection (3) without giving rise to unfairness or injustice.”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to limit the cases that are brought within the accelerated detained appeals process, to prevent unfairness or injustice arising.

Page 32, line 11, leave out from “Tribunal” to “order” in line 12 and insert “must, if it is concerned that fairness or justice in an individual case cannot be provided within the accelerated detained appeal process,”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that Clause 26 should be amended to ensure that cases are removed from the accelerated detained appeals process where the interests of justice and fairness require it.

Clause 31

LORD DUBS

Page 34, line 45, leave out subsections (2) and (3)

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that the standard of proof for an asylum seeker to establish a well-founded fear of persecution under the Refugee Convention should remain a composite standard of “reasonable likelihood”.

Page 35, line 20, leave out from “persecuted” to end of line 21 and insert “for reasons of race, religion, nationality, membership of a particular social group or political opinion, and”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that the standard of proof for an asylum seeker to establish a well-founded fear of persecution under the Refugee Convention should remain a composite standard of “reasonable likelihood”.

Clause 36

LORD DUBS

Page 37, line 18, leave out from “Kingdom” to “country” in line 20 and insert “for a substantial period and were given or could reasonably have expected to have been given protection under the Refugee Convention in that other”

Member’s explanatory statement

This amendment would give effect to the Joint Committee on Human Rights’ recommendation that clause 36 be amended to ensure that it does not contradict the protection Article 31 provides to asylum seekers who have passed through other countries on their way to the UK.

LORD ETHERTON

This amendment is intended to replace an amendment in the name of Lord Etherton at page 37, line 18, printed in HL Bill 82(i)

Page 37, line 18, at end insert “they have passed through the intermediate country on the refugee’s way to the United Kingdom by way of short-term stopover 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.

LORD DUBS

Page 37, line 37, leave out subsection (4)

Member’s explanatory statement

This amendment would give effect to the Joint Committee on Human Rights’ recommendation that clause 36 be amended to ensure that it does not contradict the protection Article 31 provides to asylum seekers who are passing through the UK on their way to their destination.

Page 37, line 41, leave out subsection (5)

Member’s explanatory statement

This amendment would ensure that the criminal defence in domestic law that is designed to reflect Article 31 of the Refugee Convention would remain consistent with Lord Dubs’ other two amendments to Clause 36.

Clause 37

LORD DUBS

Page 38, line 16, leave out subsections (3) to (13)

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that the threshold in respect of what constitutes a “particularly serious crime” for the purposes of Article 33(2) of the Refugee Convention should not be lowered.

Clause 39

LORD DUBS

Page 40, leave out lines 5 to 9

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to prevent "arrival" in the United Kingdom without a valid entry clearance, rather than "entry" into the United Kingdom without a valid entry clearance, becoming an offence.

Page 41, line 16, leave out subsection (4)

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to prevent the offence of facilitating a breach of immigration law being extended to include facilitating "arrival" in the United Kingdom without a valid entry clearance in addition to facilitating "entry" into the United Kingdom without a valid entry clearance.

Page 41, line 34, at end insert –

- “(10) In section 31(3) of the Immigration and Asylum Act 1999 (defences based on Article 31(1) of the Refugee Convention), after paragraph (aa) insert –
“(ab) section 24 of the Immigration Act 1971 (illegal entry and similar offences)”.”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to extend the statutory defence based on Article 31 of the Refugee Convention to offences of illegal entry under section 24 of the Immigration Act 1971.

Schedule 6

LORD DUBS

Page 101, line 21, at end insert –

- “(4) Authority for the purposes of subsection (3) may be given in relation to a foreign ship only if the Convention permits the exercise of Part A1 powers in relation to the ship.”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to follow the drafting in the equivalent paragraphs of sections 28M, 28N and 28O of the Immigration Act 1971, and ensure that enforcement action complies with international maritime law, similar to other enforcement action under Schedule 4A to the Immigration Act.

Page 103, line 48, leave out from “ship” to end of line 4 on page 104 and insert –

- “(a) includes every description of vessel (including a hovercraft) used in navigation, but
(b) does not include any vessel that is not seaworthy or where there could otherwise be a risk to the safety of life and well-being of those onboard.”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that enforcement action such as pushbacks could not be taken against unseaworthy vessels such as dinghies.

Page 108, line 23, at end insert –

“(2) Force 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 that force in maritime enforcement powers cannot be used in a manner that would endanger lives at sea.

Page 108, leave out lines 28 to 32 and insert –

“J1 The Home Office, rather than an individual officer, is liable in civil proceedings for anything done in the purported performance of functions under this Part of this Schedule.”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that the Home Office is liable, rather than immigration officers and enforcement officers being personally liable, for civil wrongs that may occur whilst undertaking pushbacks or other maritime enforcement operations.

Page 108, line 28, leave out “criminal or”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to remove the immunity from criminal proceedings for “relevant officers” for criminal offences committed whilst undertaking pushbacks or other maritime enforcement operations.

Clause 45

LORD DUBS

Page 47, line 34, at end insert –

“(6B) Nothing in this section, or in sections 10A to 10E, permits a person to be removed from the United Kingdom if that removal would violate their common law right to access justice.”

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to make clear that the regime for providing notice to persons liable to removal remains subject to the common law right to access justice, which in the asylum context is mirrored by Article 13 ECHR.

Clause 47

LORD DUBS

Lord Dubs gives notice of his intention to oppose the Question that Clause 47 stand part of the Bill.

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to prevent it being compulsory for decision makers and tribunals to take into account whether a person has failed to cooperate with any immigration process when making decisions on immigration bail.

After Clause 47

LORD DUBS

Insert the following new Clause—

“Requirement for the Secretary of State to waive the full capacity requirement

In section 44A of the British Nationality Act 1981, for “may” substitute “must”.

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to require the Secretary of State to waive the requirement for a person to have full capacity if it is in that person's best interests to do so.

Clause 51

LORD DUBS

Page 57, line 31, leave out subsections (6) and (7)

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that refusal to consent to scientific procedures to assess age should not be taken into account when assessing the credibility of an age-disputed person who may be a child.

After Clause 56

LORD GREEN OF DEDDINGTON

Insert the following new Clause—

“Age assessments for age-disputed persons: initial assessments of undetermined age

- (1) An age-disputed person must be treated as an adult where their physical appearance and demeanour strongly suggest that they are over the age of 18.
- (2) Where the age-disputed person's physical appearance and demeanour do not meet that threshold, and doubt remains as to their claim to be a child, the person must be treated as being of undetermined age until a further age assessment is carried out.

After Clause 56 - continued

- (3) Those of undetermined age must not be placed alongside minors in schools or accommodation.”

Member’s explanatory statement

This amendment would place in primary legislation a rule for tighter initial age assessments for asylum seekers and would ensure that, where doubts about the person’s age are raised by initial assessors, applicants will not be placed alongside children in schools or accommodation.

Clause 58

LORD DUBS

Page 62, line 21, leave out “must take account, as” and insert “may take account, as potentially”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to amend Clause 58 to make the requirement for late provision of information to have a negative impact on credibility less mandatory and would bring the language into line with existing caselaw on how such language should be interpreted given the need for a global assessment of credibility.

Page 62, line 28, at end insert –

- “(5) This section does not apply to –
 (a) child victims, or potential victims, of slavery or human trafficking, or
 (b) victims, or potential victims, of sexual exploitation.”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to amend Clause 58 to specify that the requirement for late provision of information to have a negative impact on credibility does not apply to child victims of slavery or human trafficking or victims of sexual exploitation.

Clause 61

LORD DUBS

Page 64, line 11, leave out first “may” and insert “must”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to clarify that a person should not be removed if a conclusive grounds decision is pending and it would be inappropriate to remove that person.

Clause 62

LORD DUBS

Page 64, line 24, after “a” insert “serious and ongoing”

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to ensure that this exemption goes no wider than that permitted under Article 13 ECAT in relation to a person who poses an ongoing threat to public order.

Page 64, line 25, at end insert –

“(1A) No determination may be made under subsection 1 in respect of a child.”

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to ensure that clause 62 does not apply so as to deprive child victims of slavery or human trafficking of protection.

Page 64, line 40, leave out paragraph (d)

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to remove the public order condition that would require the competent authority to make a determination in relation to terrorist activity; such risks could be covered by clause 62(3)(i).

Page 65, line 1, leave out paragraph (f)

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to remove clause 62(3)(f), which provides that any person who had been sentenced to more than one year in prison was a “threat to public order”.

Page 65, line 9, leave out “the person otherwise” and insert “the Secretary of State has certified that the person”

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to remove the requirement for the competent authority to develop expertise in making determinations as to who is a threat to national security and instead requires such determinations to be made and certified by the Secretary of State.

Page 65, line 40, at end insert –

“(5A) For the purposes of subsection (1)(a), a person is not a threat to public order for any reason related to conduct that that person was compelled to do as a victim of slavery or human trafficking.”

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to amend clause 62 so that it does not apply where any criminality was caused by the victim being compelled to do so by virtue of their being a victim of slavery or human trafficking.

Clause 64

LORD DUBS

Page 67, line 1, leave out “assisting the person in their recovery from any physical or psychological harm” and insert “assisting with their personal situation, including but not limited to assisting the person in their recovery from any physical, psychological or social harm”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights to ensure clause 64 adequately covers the obligations in Article 14 ECAT.

Page 67, line 33, at end insert –

“(8A) The best interests of the child must be a primary consideration when making decisions under this section in respect of a child.”

Member’s explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights such that, in order to comply with the UK’s obligations, under ECAT and the UNCRC, toward child victims of slavery and human trafficking in the UK, this would ensure that the best interests of the child are a primary consideration when making decisions on granting leave to remain for child victims of slavery or human trafficking.

After Clause 78

LORD MOYLAN

Insert the following new Clause –

“Consultation on citizenship

Within six months of the passing of this Act, the Secretary of State must issue for public consultation a review of its implications for the nature of British citizenship and national cohesion.”

Member’s explanatory statement

This amendment requires the Government to consult publicly on the impact of the Act on citizenship and national cohesion.

LORD CRAIG OF RADLEY

Insert the following new Clause –

“Veterans of Her Majesty’s Armed Forces: Hong Kong

Within three months of the passing of this Act, the Secretary of State must report on whether veterans who were recruited and served in Her Majesty’s Armed Forces in Hong Kong should be granted citizenship or indefinite leave to remain in the United Kingdom.”

Nationality and Borders Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

20 January 2022
