

Nationality and Borders Bill

AMENDMENTS TO BE MOVED IN COMMITTEE OF THE WHOLE HOUSE

Clause 11

BARONESS LISTER OF BURTERSETT

Page 14, line 13, leave out paragraph (c)

Member's explanatory statement

This probing amendment, along with another amendment to Clause 11, would amend the list of examples of ways in which refugees, or their family members, can be treated differently depending on whether they are in Group 1 or Group 2 by removing reference to the attachment of no recourse to public funds requirements so as to probe when this requirement would be attached.

Page 14, line 26, leave out paragraph (d)

Member's explanatory statement

This probing amendment, along with another amendment to Clause 11, would amend the list of examples of ways in which refugees, or their family members, can be treated differently depending on whether they are in Group 1 or Group 2 by removing reference to the attachment of no recourse to public funds requirements so as to probe when this requirement would be attached.

After Clause 78

BARONESS CHAKRABARTI

Insert the following new Clause—

“Birthright commitment under the Belfast (Good Friday) Agreement 1998

- (1) The Secretary of State must, within six months of the passing of this Act, produce a report setting out how the Secretary of State will give effect to the recognition set out in the Belfast (Good Friday) Agreement 1998 of the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may choose.
- (2) The Secretary of State must lay the report before Parliament.”

Member's explanatory statement

This new Clause requires the Secretary of State to report on progress to give effect to the nationality provision of the Belfast Agreement 1998.

Insert the following new Clause—

“Time limit on immigration detention

- (1) This section applies to any person (“P”) who is liable to detention under a relevant detention power.
- (2) P may not be detained under a relevant detention power for a period of more than 28 days from the relevant time.
- (3) If P remains detained under a relevant detention power at the expiry of the period of 28 days then—
 - (a) P must be released forthwith, and
 - (b) P may not be detained under a relevant detention power thereafter, unless the Secretary of State or an immigration officer, as the case may be, is satisfied that there has been a material change of circumstances since P’s release and that the criteria in section (*Initial detention: criteria and duration*)(1) are met.
- (4) In this section, “relevant detention power” means a power to detain under—
 - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).
- (5) In this section, “relevant time” means the time at which P is first detained under a relevant detention power.
- (6) This section does not apply to a person in respect of whom the Secretary of State has certified that the decision to detain is or was taken in the interests of national security.”

Member's explanatory statement

This new Clause would prevent people who are liable to detention under a relevant power from being detained for longer than 28 days.

Insert the following new Clause—

“Initial detention: criteria and duration

- (1) A person (“P”) to whom section (*Time limit on immigration detention*) applies may not be detained under a relevant detention power other than for the purposes of examination, unless the Secretary of State or an immigration officer, as the case may be, is satisfied that—
 - (a) P can be shortly removed from the United Kingdom,
 - (b) detention is strictly necessary to effect P’s deportation or removal from the United Kingdom, and

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- (c) the detention of P is in all the circumstances proportionate.
- (2) P may not be detained under a relevant detention power for a period of more than 96 hours from the relevant time, unless –
 - (a) P has been refused bail at an initial bail hearing in accordance with subsection (5)(b) of section (Bail hearings), or
 - (b) the Secretary of State has arranged a reference to the Tribunal for consideration of whether to grant immigration bail to P in accordance with subsection (2)(c) of section (Bail hearings) and that hearing has not yet taken place.
- (3) Nothing in subsection (1) or (2) authorises the Secretary of State to detain P under a relevant detention power if such detention would, apart from this section, be unlawful.
- (4) In this section –
 - “Tribunal” means the First-tier Tribunal;
 - “relevant detention power” and “relevant time” have the meanings given in section (Time limit on immigration detention).”

Member’s explanatory statement

This new Clause sets out the circumstances in which a person to whom Clause (Time limit on immigration detention) applies may be held in initial detention, and the maximum duration of such detention.

Insert the following new Clause –

“Bail hearings

- (1) This section applies to any person (“P”) to whom section (Time limit on immigration detention) applies and who is detained under a relevant detention power.
- (2) Before the expiry of a period of 96 hours from the relevant time, the Secretary of State must –
 - (a) release P,
 - (b) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016, or
 - (c) arrange a reference to the Tribunal for consideration of whether to grant immigration bail to P.
- (3) Subject to subsection (4), when the Secretary of State arranges a reference to the Tribunal under subsection (2)(c), the Tribunal must hold an oral hearing (“an initial bail hearing”) which must commence within 24 hours of the time at which the reference is made.
- (4) If the period of 24 hours in subsection (3) ends on a Saturday, Sunday or bank holiday, the Tribunal must hold an initial bail hearing on the next working day.
- (5) At the initial bail hearing, the Tribunal must –
 - (a) grant immigration bail to P under paragraph 1 of Schedule 10 to the Immigration Act 2016, or

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- (b) refuse to grant immigration bail to P.
- (6) Subject to subsection (7), the Tribunal must grant immigration bail to P at a bail hearing unless it is satisfied that the Secretary of State has established that the criteria in subsection 1 of section (*Initial detention: criteria and duration*) are met and that, in addition—
 - (a) directions have been given for P’s removal from the United Kingdom and such removal is to take place within 14 days,
 - (b) a travel document is available for the purposes of P’s removal or deportation, and
 - (c) there are no outstanding legal barriers to removal.
- (7) Subsection (6) does not apply if the Tribunal is satisfied that the Secretary of State has established that the criteria in subsection (1) of section (*Initial detention: criteria and duration*) are met and that there are very exceptional circumstances which justify maintaining detention.
- (8) In subsection (6), “a bail hearing” includes—
 - (a) an initial bail hearing under subsection (2), and
 - (b) the hearing of an application for immigration bail under paragraph 1(3) of Schedule 10 to the Immigration Act 2016.
- (9) In this section, “Tribunal” means the First-tier Tribunal.
- (10) The Secretary of State must provide to P or to P’s legal representative, not more than 24 hours after the relevant time, copies of all documents in the Secretary of State’s possession which are relevant to the decision to detain.
- (11) At the initial bail hearing, the Tribunal must not consider any documents relied upon by the Secretary of State which were not provided to P or to P’s legal representative in accordance with subsection (10), unless—
 - (a) P consents to the documents being considered, or
 - (b) in the opinion of the Tribunal there is a good reason why the documents were not provided to P or to P’s legal representative in accordance with subsection (10).
- (12) In Schedule 10 to the Immigration Act 2016, after paragraph 12(4) insert—
 - “(5) Sub-paragraph (2) does not apply if the refusal of bail by the First-tier Tribunal took place at an initial bail hearing within the meaning of section (*Bail hearings*) of the Nationality and Borders Act 2022.””

Member’s explanatory statement

*In respect of people to whom Clause (*Initial detention: criteria and duration*) applies, this new Clause would require the Secretary of State either to release them, grant immigration bail or arrange a reference to the Tribunal within 96 hours.*

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21 January 2022
