

Nationality and Borders Bill

AMENDMENTS TO BE MOVED IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

BARONESS MCINTOSH OF PICKERING

Page 2, line 46, at end insert –

“(7) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 17A.

Clause 2

BARONESS MCINTOSH OF PICKERING

Page 4, line 3, at end insert –

“(6) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 17C.

Page 5, line 16, at end insert –

“(3) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member’s explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 17E.

Page 6, line 40, at end insert –

“(7A) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member's explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 17F.

Clause 3

BARONESS MCINTOSH OF PICKERING

Page 8, line 18, at end insert –

“(4) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member's explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 4K.

Clause 7

LORD RUSSELL OF LIVERPOOL
BARONESS HAMWEE

Page 9, line 36, at end insert –

“(1A) In section 1 (acquisition by birth or adoption), in subsection (5) –

(a) in paragraph (a), for “minor” substitute “person”, and

(b) after paragraph (b), for “that minor shall” substitute “that person or minor (as the case may be) shall”.”

Member's explanatory statement

This amendment seeks to bring British nationality law in line with adoption law in England and Wales. In those nations, an adoption order made by a court may be made where a child has reached the age of 18 but is not yet 19. Yet such an adoption order currently only confers British citizenship automatically where the person adopted is under 18 on the day the order is made.

BARONESS MCINTOSH OF PICKERING

Page 10, line 25, at end insert –

“(5) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member's explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 4L.

Page 11, line 8, at end insert –

“(5) The Secretary of State must not charge a fee for the processing of applications under this section.”

Member's explanatory statement

This amendment ensures that the Secretary of State must not charge a fee for the processing of applications under section 17H.

Clause 9

BARONESS MCINTOSH OF PICKERING

Page 11, leave out lines 33 to 36

Member's explanatory statement*This amendment deletes the proposed new subsections 40(5A)(a) and (b) in the British Nationality Act 1981.*

Page 11, leave out lines 39 and 40

Member's explanatory statement*This amendment deletes the proposed new section 40(5A)(c)(ii) in the British Nationality Act 1981.***After Clause 10**

BARONESS LUDFORD

Insert the following new Clause—

“Acquisition of British citizenship by birth or adoption: comprehensive sickness insurance

- (1) The European Union (Withdrawal Agreement) Act 2020 is amended as follows.
- (2) After section 15, insert—
“15A Comprehensive sickness insurance
 - (1) For the purposes of any decision taken by a public authority under this Part after commencement of this section, a person is to be treated as having met a requirement to have held comprehensive sickness insurance, whenever they—
 - (a) had access to the NHS in practice, or
 - (b) held a comprehensive sickness insurance policy.
 - (2) This section applies in particular to any decisions taken under residence scheme immigration rules.”
- (3) The British Nationality Act 1981 is amended as follows.
- (4) After section 1(3A) insert—
“(3B) A person born in the United Kingdom after commencement who is not a British citizen is entitled, on application, to register as a British citizen if the person's father or mother would have been settled in the United Kingdom at the time of the person's birth, if Assumption A had applied.
(3C) Assumption A is that, in assessing whether the person's father or mother met a requirement to have held comprehensive sickness insurance, this is to be regarded as having been satisfied whenever they—
 - (a) had access to the NHS in practice, or
 - (b) held a comprehensive sickness insurance policy.**(3D) Registration under this subsection is free of charge.”**

After Clause 10 - continued

(5) After section 50A insert –

“50B Exceptions

Notwithstanding any provision of section 50A, for the purposes of an application for naturalisation or registration made under this Act, a person –

- (a) is not to be treated as having been in the United Kingdom in breach of the immigration laws during a period of time that has been counted as part of a continuous qualifying period in a grant of leave to that person under Appendix EU of the Immigration Rules, and
- (b) is not to be treated as not being of good character on account of a failure to hold comprehensive sickness insurance during some period of residence in the UK.”

Member’s explanatory statement

This new Clause provides that a person seeking to naturalise as a British citizen, seeking to exercise family reunion rights as a naturalised British citizen, or seeking to have their UK-born children recognised as British at birth, need not have had comprehensive sickness insurance prior to naturalising or prior to the birth of their child.

Clause 11

BARONESS MCINTOSH OF PICKERING

Page 13, line 33, leave out “a refugee is a Group 1” and insert “a person is a”

Member’s explanatory statement

This amendment ensures equality of treatment by removing the distinction between Group 1 and Group 2 refugees.

Page 13, leave out line 36

Member’s explanatory statement

This amendment is consequential on another amendment to Clause 11 in the name of Baroness McIntosh of Pickering.

Page 14, line 7, leave out “treat Group 1 and Group 2 refugees differently, for example” and insert “exercise reasonable discretion”

Member’s explanatory statement

This amendment is consequential on the removal of the distinction between Group 1 and Group 2 refugees by another amendment in the name of Baroness McIntosh of Pickering and ensures that the Secretary of State or an immigration officer may exercise discretion in a reasonable manner.

BARONESS HAMWEE

Page 14, line 9, leave out paragraph (a)

Member's explanatory statement

This amendment, along with Baroness Hamwee's amendment to page 14, line 22, 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 to remove providing different lengths of leave. These amendments would probe the reason for and potential impact of differentiation.

Page 14, line 11, leave out paragraph (b)

Member's explanatory statement

This amendment, along with Baroness Hamwee's amendment to page 14, line 24, 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 to remove having differing routes to settlement. These amendments would probe the reason for and potential impact of differentiation.

Page 14, line 16, leave out paragraph (d)

Member's explanatory statement

This amendment, along with Baroness Hamwee's amendment to page 14, line 21, 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 to remove having differing family reunion entitlements. These amendments would probe the detail of how this would be enacted.

BARONESS MCINTOSH OF PICKERING

Page 14, line 18, leave out "also treat the family members of Group 1 and Group 2 refugees differently" and insert "exercise reasonable discretion in relation to a family member of a refugee"

Member's explanatory statement

This amendment is consequential on the removal of the distinction between Group 1 and Group 2 refugees by another amendment in the name of Baroness McIntosh of Pickering and ensures that the Secretary of State or an immigration officer may exercise discretion in a reasonable manner.

BARONESS HAMWEE

Page 14, line 21, leave out paragraph (a)

Member's explanatory statement

This amendment, along with Baroness Hamwee's amendment to page 14, line 16, 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 to remove having differing family reunion entitlements. These amendments would probe the detail of how this would be enacted.

Page 14, line 22, leave out paragraph (b)

Member's explanatory statement

This amendment, along with Baroness Hamwee's amendment to page 14, line 9, 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 to remove providing different lengths of leave. These amendments would probe the reason for and potential impact of differentiation.

Page 14, line 32, at end insert –

“(8A) Notwithstanding section 3(2) of the Immigration Act 1971, any statement of immigration rules made under the power in subsection (8) must be approved by a resolution of each House of Parliament before coming into force.”

Member's explanatory statement

This amendment is intended to highlight the lack of parliamentary scrutiny that would be available for immigration rules implementing the differentiated treatment of refugees. The amendment would require any such rules to be approved by both Houses of Parliament before they could come into force.

Clause 20

LORD PADDICK

Page 24, line 39, leave out subsection (4)

Member's explanatory statement

This amendment is to probe why an individual will still be subject to the consequences of Priority Removal Notices when they are no longer liable to removal.

Clause 23

LORD PADDICK

Lord Paddick gives notice of his intention to oppose the Question that Clause 23 stand part of the Bill.

Clause 27

LORD PADDICK

Lord Paddick gives notice of his intention to oppose the Question that Clause 27 stand part of the Bill.

Clause 29

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 29 stand part of the Bill.

Clause 31

BARONESS CHAKRABARTI
BARONESS MCINTOSH OF PICKERING

The above-named Lords give notice of their intention to oppose the Question that Clause 31 stand part of the Bill.

Clause 32

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 32 stand part of the Bill.

Clause 33

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 33 stand part of the Bill.

Clause 34

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 34 stand part of the Bill.

Clause 35

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 35 stand part of the Bill.

Clause 36

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 36 stand part of the Bill.

Clause 37

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 37 stand part of the Bill.

After Clause 37

BARONESS HAMWEE

Insert the following new Clause –

“Humanitarian visa

- (1) On an application by a person (“P”) to the appropriate decision-maker for entry clearance, the appropriate decision-maker must grant P entry clearance if satisfied that P is a relevant person.
- (2) For the purposes of subsection (1), P is a relevant person if –
 - (a) P intends to make a protection claim in the United Kingdom;
 - (b) P’s protection claim, if made in the United Kingdom, would have a realistic prospect of success; and
 - (c) there are serious and compelling reasons why P’s protection claim should be considered in the United Kingdom.
- (3) For the purposes of subsection (2)(c), in deciding whether there are such reasons why P’s protection claim should be considered in the United Kingdom, the appropriate decision-maker must take into account –
 - (a) the extent of the risk that P will suffer persecution or serious harm if entry clearance is not granted;
 - (b) the strength of P’s family and other ties to the United Kingdom;
 - (c) P’s mental and physical health and any particular vulnerabilities that P has; and
 - (d) any other matter that the decision-maker thinks relevant.
- (4) For the purposes of an application under subsection (1), the appropriate decision-maker must waive any of the requirements in subsection (5) if satisfied that P cannot reasonably be expected to comply with them.
- (5) The requirements are –
 - (a) any requirement prescribed (whether by immigration rules or otherwise) under section 50 of the Immigration, Asylum and Nationality Act 2006; and
 - (b) any requirement prescribed by regulations made under section 5, 6, 7 or 8 of the UK Borders Act 2007 (biometric registration).
- (6) No fee may be charged for the making of an application under subsection (1).
- (7) An entry clearance granted pursuant to subsection (1) has effect as leave to enter for such period, being not less than six months, and on such conditions as the Secretary of State may prescribe by order.
- (8) Upon a person entering the United Kingdom (within the meaning of section 11 of the Immigration Act 1971) pursuant to leave to enter given under subsection (7), that person is deemed to have made a protection claim in the United Kingdom.
- (9) In the Legal Aid, Sentencing and Punishment of Offenders Act 2012, after paragraph 30(1)(b) of Part 1 of Schedule 1 insert –

“; or

 - (c) are conferred by or under sections (*Humanitarian visa*) and (*Right of appeal against humanitarian visa refusal*) of the Nationality and Borders Act 2022.”

After Clause 37 - continued

- (10) In this section and in section (*Right of appeal against humanitarian visa refusal*) –
- “appropriate decision-maker” means a person authorised by the Secretary of State by rules made under section 3 of the Immigration Act 1971 to grant an entry clearance under paragraph (1);
 - “entry clearance” has the same meaning as in section 33(1) of the Immigration Act 1971;
 - “protection claim”, in relation to a person, means a claim that to remove them from or require them to leave the United Kingdom would be inconsistent with the United Kingdom’s obligations –
 - (a) under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention (“the Refugee Convention”);
 - (b) in relation to persons entitled to a grant of humanitarian protection; or
 - (c) under Article 2 or 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950 (“the European Convention on Human Rights”);
 - “persecution” is to be construed in accordance with its meaning in the Refugee Convention; and
 - “serious harm” means treatment that, if it occurred within the jurisdiction of the United Kingdom, would be contrary to the United Kingdom's obligations under Article 2 or 3 of the European Convention on Human Rights (irrespective of where it will actually occur).”

Insert the following new Clause –

“Right of appeal against humanitarian visa refusal

- (1) If an application by a person (“P”) for entry clearance under section (*Humanitarian visa*) is refused by the appropriate decision-maker, P may appeal to the First-tier Tribunal against the refusal.
- (2) The following provisions of, or made under, the Nationality, Immigration and Asylum Act 2002 have effect in relation to an appeal under these Regulations to the First-tier Tribunal as if it were an appeal against a decision of the Secretary of State under section 82(1) of that Act (right of appeal to the Tribunal) –
 - (a) section 84 (grounds of appeal), as though the sole permitted ground of appeal were that the appropriate decision-maker was wrong to conclude that P was not a relevant person;
 - (b) section 85(1) to (4) (matters to be considered);
 - (c) section 86 (determination of appeal);
 - (d) section 105 and any regulations made under that section; and
 - (e) section 106 and any rules made pursuant to that section.
- (3) In an appeal under this section, the First-tier Tribunal –
 - (a) must allow the appeal if it is satisfied that P is a relevant person; and
 - (b) must otherwise dismiss the appeal.

After Clause 37 - continued

- (4) In an appeal under this section, in deciding whether there are serious and compelling reasons why P's protection claim should be considered in the United Kingdom, the First-tier Tribunal must apply section (*Humanitarian visa*)(3) as though for the words "appropriate decision-maker" there were substituted the words "First-tier Tribunal".

Clause 39

BARONESS MCINTOSH OF PICKERING

Page 40, line 7, leave out "arrives in" and insert "enters"

Page 40, line 14, leave out "arrives in" and insert "enters"

After Clause 47

THE LORD BISHOP OF LONDON

Insert the following new Clause—

"Victims of domestic abuse: data-sharing for immigration purposes"

- (1) The Secretary of State must make arrangements to ensure that personal data of a victim of a domestic abuse in the United Kingdom that is processed for the purpose of that person requesting or receiving support or assistance related to domestic abuse is not used for any immigration control purpose.
- (2) The Secretary of State must make arrangements to ensure that the personal data of a witness to domestic abuse in the United Kingdom that is processed for the purpose of that person giving information or evidence to assist the investigation or prosecution of that abuse, or to assist the victim of that abuse in any legal proceedings, is not used for any immigration control purpose.
- (3) Paragraph 4 of Schedule 2 to the Data Protection Act 2018 does not apply to personal data to which subsection (1) or (2) applies.
- (4) For the purposes of this section, the Secretary of State must issue guidance to—
 - (a) persons from whom support or assistance may be requested or received by a victim of domestic abuse in the United Kingdom;
 - (b) persons exercising any function of the Secretary of State in relation to immigration, asylum or nationality; and
 - (c) persons exercising any function conferred by or by virtue of the Immigration Acts on an immigration officer.
- (5) For the purposes of this section—

"immigration control purpose" means any purpose of the functions to which subsection (4)(b) or (c) refers;

"support or assistance" includes the provision of accommodation, banking services, education, employment, financial or social assistance, healthcare and policing services and any function of a court or prosecuting authority;

"victim" includes any dependent of a person, at whom the domestic abuse is directed, where that dependent is affected by that abuse."

Member's explanatory statement

This new Clause would require the Secretary of State to make arrangements to ensure that the personal data of migrant survivors of domestic abuse that is given or used for the purpose of their seeking or receiving support and assistance is not used for immigration control purposes.

Clause 51

BARONESS LISTER OF BURTERSETT

Page 57, line 19, at end insert –

“(3A) A method may not be specified in regulations under subsection (1) unless it is considered accurate, appropriate and ethical by the relevant medical, dental and scientific professional bodies.”

Member's explanatory statement

This amendment will ensure scientific methods of age assessments are only introduced if they are considered accurate, appropriate and ethical by the relevant professional bodies.

Page 57, line 42, leave out subsection (9)

Member's explanatory statement

This amendment would remove the provision in Clause 51(9) which allows the use of scientific methods which were not specified in regulations under subsection (1), which means no scientific advice has been sought as to whether that method is accurate or appropriate for assessing a person's age.

Clause 59

BARONESS MCINTOSH OF PICKERING

Page 63, line 1, leave out subsection (4)

Member's explanatory statement

This amendment deletes Clause 59 subsection (4).

Clause 62

BARONESS MCINTOSH OF PICKERING

Page 64, line 23, after “if” insert “in exceptional circumstances”

Member's explanatory statement

This amendment modifies Clause 62 by ensuring that a competent authority may apply Clause 62(2) when “exceptional circumstances” affect a person who may be a threat to public order.

Page 64, line 25, leave out subsection (b)

After Clause 67

BARONESS HAMWEE

Insert the following new Clause—

“Migrant domestic workers

- (1) The Secretary of State must amend the Immigration Rules to make provision for the matters the subject of subsection (2).
- (2) All holders of domestic worker or diplomatic domestic worker visas, including those working for staff of diplomatic missions, must be entitled—
 - (a) to change their employer (but not work sector) without restriction, but must register such change with the Home Office;
 - (b) to renew their domestic worker or diplomatic domestic worker visa for a period of not less than 12 months, provided they are in employment at the date of application and able to support themselves without recourse to public funds, and to make successive applications;
 - (c) to apply for leave to enter and remain for their spouse or partner and any child under the age of 18 for a period equivalent to the unexpired period of their visa and of any subsequent visa;
 - (d) to be granted indefinite leave to remain after five continuous years of residence in the United Kingdom if at the date of application their employer proposes to continue their employment.”

Member’s explanatory statement

This amendment would serve to reinstate the rights and protections that domestic workers originally had under the terms of the original Overseas Domestic Worker visa, in place from 1998 to 2012.

Clause 76

BARONESS MCINTOSH OF PICKERING

Baroness McIntosh of Pickering gives notice of her intention to oppose the Question that Clause 76 stand part of the Bill.

Clause 77

BARONESS MCINTOSH OF PICKERING

Baroness McIntosh of Pickering gives notice of her intention to oppose the Question that Clause 77 stand part of the Bill.

Clause 78

BARONESS MCINTOSH OF PICKERING

Page 81, line 24, at end insert—

“(1A) The Secretary of State must consult with such persons as the Secretary of State considers appropriate before making regulations under this section.”

Member’s explanatory statement

This amendment requires the Secretary of State to consult before making regulations under this section.

After Clause 78

BARONESS CHAKRABARTI

Insert the following new Clause –

“Prohibition on private places of detention

- (1) No one may be detained under a relevant detention power in a privately-run place of detention.
- (2) The Secretary of State’s powers to direct places of detention and to authorise persons under –
 - (a) paragraph 18 of Schedule 2 to the Immigration Act 1971 and under that paragraph as applied by paragraph 2(4) of Schedule 3 to that Act,
 - (b) article 4(1), (1A) and (1B) of the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813),
 - (c) article 4(1) of the Channel Tunnel (Miscellaneous Provisions) Order 1994 (S.I. 1994/1405),
 - (d) section 10(7) of the Immigration and Asylum Act 1999,
 - (e) article 11(1) and (2) of the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (S.I. 2003/2818), and
 - (f) section 36(4) of the UK Borders Act 2007,
 are accordingly constrained.
- (3) 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).
- (4) In this section, “a privately-run place of detention” means a place of detention run under contract, or otherwise for profit, or in a manner not directly managed by the Secretary of State.
- (5) In Schedule 2 to the Immigration Act 1971, in paragraph 18(1) after “in such” insert “non-privately run”.

Member’s explanatory statement

This new Clause prohibits immigration detention in privately-run institutions.

Clause 80

BARONESS MCINTOSH OF PICKERING

Page 82, line 19, leave out “appropriate” and insert “necessary”

Member’s explanatory statement

This amendment ensures that the Secretary of State should only make amendments which are necessary.

Nationality and Borders Bill

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24 January 2022
