

Nationality and Borders Bill

SECOND MARSHALLED LIST OF AMENDMENTS TO BE MOVED IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 19th January 2022, as follows –

Clauses 1 to 8	Clause 42
Schedule 1	Schedule 5
Clauses 9 to 22	Clauses 43 and 44
Schedule 2	Schedule 6
Clauses 23 to 28	Clauses 45 and 46
Schedule 3	Schedule 7
Clauses 29 to 41	Clauses 47 to 84
Schedule 4	Title.

[Amendments marked ★ are new or have been altered]

Amendment
No.

After Clause 10

BARONESS LUDFORD

- 34 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.

After Clause 10 - continued

- (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 subsection (3B) is free of charge.”

- (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.

BARONESS HAMWEE

35

Insert the following new Clause—

“European Convention on Nationality

Her Majesty’s Government must within six months of this Act coming into force ratify the European Convention on Nationality 1997.”

Before Clause 11

BARONESS HAMWEE
LORD PADDICK
LORD COAKER

36 Insert the following new Clause –

“Smuggling

- (1) Not less than six months before this Act comes into force, the Secretary of State must publish a report to Parliament regarding discussions with the governments and authorities of other countries, including those bordering the English Channel and the North Sea, concerning the steps taken or proposed to prevent or deter a person from –
 - (a) charging refugees for assistance or purported assistance in travelling to or entering the United Kingdom;
 - (b) endangering the safety of refugees travelling to the United Kingdom.
- (2) The report must focus on steps other than the provisions of this Act.”

Member’s explanatory statement

This amendment requires the Secretary of State to publish a report on the actions that are being taken to tackle people smugglers.

Clause 11

BARONESS MCINTOSH OF PICKERING

37 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.

38 Page 13, line 36, leave out paragraph (b)

Member’s explanatory statement

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

BARONESS HAMWEE

39 Page 13, line 41, leave out “without delay”

BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
LORD CASHMAN

40 Page 13, line 44, at end insert –

- “(2A) For the purposes of subsection (2)(b), the following will be regarded as having presented themselves “without delay” –
- (a) people who have experienced sexual violence;
 - (b) people who have made a protection or human rights claim on the basis of gender-based violence;

Clause 11 - continued

- (c) people who have made a protection or human rights claim on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
- (d) people who are a victim of modern slavery or trafficking;
- (e) people who are a victim of torture;
- (f) people who are suffering from a mental impairment;
- (g) people who are suffering from a serious physical disability;
- (h) people who are suffering from other serious physical health conditions or illnesses;
- (i) people who were under 18 years of age at the time of their arrival in the United Kingdom.”

Member’s explanatory statement

This probing amendment seeks to ascertain whether and to what extent certain vulnerable groups would be covered by the “without delay” condition.

LORD ETHERTON

41 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).

BARONESS MCINTOSH OF PICKERING

42 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

LORD PADDICK

43 Page 14, line 8, leave out “for example”

Member’s explanatory statement

This amendment is to probe the extent of the Secretary of State’s powers to treat refugees differently.

BARONESS HAMWEE
LORD BLUNKETT

44 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.

45 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.

BARONESS LISTER OF BURTERSETT
BARONESS JONES OF MOULSECOOMB
BARONESS STROUD
LORD BLUNKETT

46 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.

BARONESS HAMWEE
LORD BLUNKETT

47 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 HAMWEE
LORD PADDICK

48 Page 14, line 18, leave out subsections (6) to (8)

Member's explanatory statement

This amendment is to probe the differential treatment of family members.

BARONESS MCINTOSH OF PICKERING

- 49 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

- 50 Page 14, line 19, leave out “for example”

Member’s explanatory statement

This amendment is to probe the extent of the Secretary of State’s powers to treat the family members of refugees differently.

BARONESS HAMWEE
LORD BLUNKETT

- 51 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.

- 52 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.

BARONESS HAMWEE

- 53 Page 14, line 24, leave out paragraph (c)

Member’s explanatory statement

This amendment, together with Baroness Hamwee’s amendment to page 14, line 11, would amend the list of example ways in which refugees, or their family members, can be treated differently depending on whether they’re in Group 1 or Group 2 to remove having differing routes to settlement. These amendments would probe the reason and potential impact of differentiation.

BARONESS LISTER OF BURTERSETT
BARONESS JONES OF MOULSECOOMB
BARONESS STROUD
LORD BLUNKETT

54 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.

BARONESS HAMWEE

55 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.

LORD PADDICK
LORD ROSSER
THE LORD BISHOP OF DURHAM
LORD BLUNKETT

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

Clause 12

BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
BARONESS HAMWEE
THE LORD BISHOP OF DURHAM

56 Page 15, line 39, at end insert —

“(4A) In section 16 of the Nationality, Immigration and Asylum Act 2002 (Establishment of centres), after subsection 2 insert —

“(2A) Accommodation provided under this section must —

(a) have a capacity of no more than 100 residents, and

Clause 12 - continued

- (b) provide any non-related residents at the centre with an individual room in which to sleep, such that residents are not required to share sleeping quarters with people to whom they are not related.””

Member’s explanatory statement

This amendment would amend the 2002 Act to ensure that accommodation centres are not too large and that residents are not required to share sleeping quarters with anyone they are not related to.

57

Page 15, line 39, at end insert –

“(4A) In section 16 of the Nationality, Immigration and Asylum Act 2002 (Establishment of centres), at end insert –

- “(4) For the purposes of this Part, references to “persons” does not include –
 - (a) children;
 - (b) women;
 - (c) individuals with a disability;
 - (d) individuals who have been referred to the National Referral Mechanism;
 - (e) individuals who have received a positive conclusive grounds decision following a referral to the National Referral Mechanism;
 - (f) survivors of torture;
 - (g) individuals who identify as LGBTQ+; and
 - (h) family members of any individuals referenced in this subsection.
- (5) For the purposes of this section, “family members” includes –
 - (a) dependent children;
 - (b) partners/spouses;
 - (c) in relation to children –
 - (i) their siblings;
 - (ii) any other individual who is the relevant child’s guardian.””

Member’s explanatory statement

This amendment is to restrict the use of accommodation centres for accommodating people seeking asylum so that the stated groups and their family members cannot be accommodated in them.

BARONESS HAMWEE
LORD PADDICK

58

Page 16, line 12, leave out from “centre),” to end of line 13 and insert “in subsection (2)(b), before “circumstances” insert “exceptional””

Member’s explanatory statement

This amendment would ensure that a person can only be held in an accommodation centre for nine months in exceptional circumstances.

BARONESS LISTER OF BURTERSETT
 BARONESS NEUBERGER
 BARONESS HAMWEE
 THE LORD BISHOP OF DURHAM

- 59 Page 16, leave out line 13 and insert “(1), for “six months” substitute “90 days”.”

Member’s explanatory statement

Clause 11(9) currently amends the Nationality, Immigration and Asylum Act 2002 to allow the Secretary of State to increase the maximum length of time someone can be accommodated in an accommodation centre from the existing limit of six months. This amendment would remove that power and instead reduce the maximum stay to ninety days. This is in line with the maximum time the Home Office have said people should be accommodated in Napier Barracks.

- 60 Page 16, line 15, at end insert –
 “(11) Omit section 36 of that Act (Education: general).”

Member’s explanatory statement

Section 36 of the Nationality, Immigration and Asylum Act 2002 prevents most children accommodated in accommodation centres from attending state schools. This amendment would remove that restriction.

LORD ETHERTON

- 61 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

- 62 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.

63 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

LORD PADDICK
BARONESS CHAKRABARTI
BARONESS MEACHER
BARONESS JONES OF MOULSECOOMB

64 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.

BARONESS STROUD
BARONESS LISTER OF BURTERSETT
BARONESS PRASHAR
BARONESS LUDFORD

65 Insert the following new Clause –

“Changes to the Immigration Act 1971

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(2) (general provisions for regulation and control) insert –

“(2A) Regulations under subsection (2) must provide that persons, and adult dependants of persons who are applying for asylum in the United Kingdom are granted permission by the Secretary of State to take up employment if –

- (a) a decision at first instance has not been taken on the applicant’s asylum application within six months of the date on which the application was made, or
- (b) a person makes an application or a further application which raises asylum grounds, and a decision on that new application, or a decision on whether to treat such further asylum grounds as a new application, has not been taken within six months of the date on which the further application was made.

After Clause 12 - continued

- (2B) For the purposes of subsection (2A), regulations must ensure that permission granted allowing people applying for asylum in the United Kingdom, and their adult dependants, to take up employment, is granted on terms no less favourable than the terms granted to a person with recognised refugee status.
- (2C) This permission is to be valid until the claim is determined and all appeal rights have been exhausted, and individuals granted permission to work will be issued with physical proof of the right to work.””

BARONESS LISTER OF BURTERSETT
 BARONESS HAMWEE
 BARONESS JONES OF MOULSECOOMB

66 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 13

BARONESS HAMWEE
 LORD PADDICK

67 Page 17, line 1, leave out subsection (7)

Member’s explanatory statement

Clause 13(1) requires an asylum claim to be made at a designated place. However, the UK territorial sea is excluded from being a place where a Home Office Immigration Officer is authorised to accept an asylum claim. This amendment would remove that provision.

Clause 14

LORD ETHERTON
LORD OATES

68 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.

LORD PADDICK

Lord Paddick gives notice of his intention to oppose the Question that Clause 14 stand part of the Bill.

Clause 15

LORD DUBS
BARONESS LUDFORD

69 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.

BARONESS HAMWEE

69A Page 18, leave out lines 26 to 38 and insert –

- “(a) there are in law and in practice –
 - (i) appropriate reception arrangements for asylum seekers;
 - (ii) sufficient protection against serious harm and violations of fundamental rights;
 - (iii) protection against refoulement and removal in violation of Article 3 of the European Convention on Human Rights;
 - (iv) access to fair and efficient State asylum procedures, or to a previously afforded refugee status or other protective status that is inclusive of the rights and obligations set out at Articles 2 to 34 of the 1951 Convention;
 - (v) the legal right to remain during the State asylum procedure;
 - (vi) a refugee status granted to those who are recognised as refugees that is inclusive of the rights and obligations set out at Articles 2 to 34 of the 1951 Convention for those found to be in need of international protection; and
- (b) it is safe for the particular claimant, taking into account their individual circumstances.”

Member's explanatory statement

This amendment modifies the definition of a "safe third State" to limit it to States that are safe, in law and practice, for the particular claimant.

LORD DUBS

BARONESS LUDFORD

70 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.

71 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,
 - (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.

BARONESS HAMWEE

71A Page 19, line 2, leave out “may” and insert “must”

Member's explanatory statement

This amendment would clarify that, under specific circumstances, an asylum claim that would otherwise be considered inadmissible must be considered under the immigration rules.

71B Page 19, leave out lines 3 to 7 and insert—

- “(a) in the absence of a formal, legally binding and public readmission agreement between the United Kingdom and the State to which the person has a connection,
- (b) as soon as the proposed State of readmission refuses to accept the person’s return or if the person’s readmission has not been agreed within three months of the registration of their asylum claim, whichever is sooner,
- (c) if, taking into account the claimant’s personal circumstances, including their family ties to the United Kingdom and the best interests of any children affected by the decision, it is more appropriate that the claim be considered in the United Kingdom, or
- (d) in such other cases as may be provided for in the immigration rules.”

Member's explanatory statement

This amendment broadens the circumstances in which the Secretary of State must consider an asylum application, despite a declaration of inadmissibility, to ensure that the fundamental right to seek and enjoy asylum is protected and asylum-seekers are not held in limbo.

BARONESS HAMWEE
LORD PADDICK

72 Page 19, line 5, at end insert—

- “(aa) if a family member of the claimant has been granted refugee status or humanitarian protection,”

Member's explanatory statement

This amendment allows an asylum claim to be considered if a claimant’s family member has been granted refugee status or humanitarian protection.

73 Page 19, line 7, at end insert—

- “(7A) For the purposes of section (7) a family member is—
 - (a) a parent, including an adoptive parent,
 - (b) a spouse, civil partner or unmarried partner,
 - (c) a child, including an adopted child, under the age of 18 or under the age of 25 but who was under 18 or unmarried at the time of leaving their country of residence to seek asylum,

Clause 15 - continued

- (d) a sibling, including an adoptive sibling, under the age of 18 or under the age of 25 but who was under 18 or unmarried at the time of leaving their country of residence to seek asylum, or
- (e) such other persons as may be entitled to sponsor a family reunion application within the immigration rules made under the Immigration Act 1971.”

Member’s explanatory statement

This amendment defines “family member” for the purposes of Baroness Hamwee’s amendment to page 19, line 5.

BARONESS HAMWEE

73A Page 19, leave out lines 12 to 15

Member’s explanatory statement

This would eliminate the reference to the “principles of” the Refugee Convention, which are not defined in the Bill, and reduce the risk of asylum-seekers being sent to countries that are not signatories to the Convention and do not respect the rights of refugees under international law.

73B Page 19, leave out lines 18 to 29 and insert —

- “(a) has been granted refugee status or another protective status in the safe third State that is inclusive of the rights and obligations set out at Articles 2 to 34 of the 1951 Convention, and
- (b) remains able to access that protection.”

Member’s explanatory statement

This amendment would strengthen the safeguards in place before a “connection” can be relied on for the purposes of inadmissibility, so as to ensure that the right to seek and enjoy asylum is protected, by eliminating inadmissibility being based on having received, or applied for, or had an opportunity to apply for, protection against removal, rather than the full rights to achieve humane, dignified and durable solutions to forced displacement.

BARONESS HAMWEE
LORD PADDICK

74 Page 19, leave out line 30 to line 2 on page 20

Member’s explanatory statement

This amendment removes some of the conditions whereby a person is deemed to have “a connection” to a safe state.

BARONESS HAMWEE

74A Page 19, line 33, at end insert “in a fair and efficient State asylum procedure”

Member’s explanatory statement

This amendment reiterates the requirement that a State have a fair and efficient asylum procedure in order for a claim to be found inadmissible on the basis of a connection to it.

LORD DUBS
BARONESS LUDFORD

75 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.

BARONESS HAMWEE

75A Page 19, leave out lines 40 to 42

Member's explanatory statement

This amendment changes the definition of a "connection" to a safe third State so as to prevent a person's claim being found inadmissible on the basis of a connection to a State to which they have never been.

75B Page 19, line 44, leave out from "claim" to end of line 2 on page 20 and insert "for refugee status or other protective status that is inclusive of the rights and obligations set out at Articles 2 to 34 of the 1951 Convention."

Member's explanatory statement

This amendment changes the definition of a "relevant claim" to a safe third State to ensure that inadmissibility is based on access to a protective status consistent with the Refugee Convention.

LORD ROSSER
LORD ETHERTON
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

After Clause 16

LORD GREEN OF DEDDINGTON
BARONESS NEVILLE-ROLFE

76 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.

After Clause 16 - continued

- (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 17

LORD ROSSER

77 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.

BARONESS HAMWEE

LORD PADDICK

LORD ROSSER

78 Page 21, line 16, leave out “, before the specified date,”

79 Page 21, line 20, leave out from “claim” to end of line

80 Page 21, line 27, leave out paragraph (b)

81 Page 21, line 32, leave out subsection (6)

Clause 17 - continued

LORD ETHERTON
LORD PADDICK
LORD ROSSER

82 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

BARONESS HAMWEE

82A★ Page 21, line 42, at end insert –

“(aa) what it considers to be the reasons for the behaviour,”

Member’s explanatory statement

This amendment requires the First-tier Tribunal to include reasons for a claimant’s behaviour in the statement explaining why it decided to dispose of proceedings against a particular claimant.

82B★ Page 22, line 10, leave out subsection (3)

Member’s explanatory statement

Subsection (3) defines relevant behaviour by a claimant that the deciding authority thinks is not in good faith. There are already provisions in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 that describe behaviour in determining a claimant’s credibility.

LORD DUBS
BARONESS LUDFORD
BARONESS JONES OF MOULSECOOMB
LORD ROSSER

83 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.

LORD EThERTON

84 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.

BARONESS NEVILLE-ROLFE
LORD GREEN OF DEDDINGTON

85 Page 22, line 36, at end insert –

“(6C) This section also applies to failure by the claimant to produce identifying documents when entering the United Kingdom or when intercepted in the territorial waters of the United Kingdom.”

Clause 19

LORD EThERTON

86 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.

BARONESS HAMWEE
As an amendment to Amendment 86

86A★ At end insert “and the impact on the PRN recipient of experience or alleged experience of sexual or gender-based violence, torture or modern slavery or trafficking.”

Member’s explanatory statement

This amendment to Lord Etherton’s amendment would require that account is also taken of experience or alleged experience of sexual or gender-based violence, torture or modern slavery or trafficking.

Clause 20

BARONESS HAMWEE

86B★ Page 24, line 24, leave out “later” and insert “earlier”

Member's explanatory statement

This is a probing amendment. It is aimed at understanding how different proceedings and procedures relate to one another.

LORD PADDICK
LORD ROSSER

87 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 21

LORD DUBS
BARONESS LUDFORD
BARONESS JONES OF MOULSECOOMB
LORD ROSSER

88 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.

LORD ROSSER

89 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,
- (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.

LORD ETHERTON

90 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.

BARONESS HAMWEE

As an amendment to Amendment 90

90A★

At end insert “and the impact on the PRN recipient of experience or alleged experience of sexual or gender-based violence, torture or modern slavery or trafficking.”

Member's explanatory statement

This amendment to Lord Etherton's amendment would require that account is also taken of experience or alleged experience of sexual or gender-based violence, torture or modern slavery or trafficking.

Clause 22

LORD ETHERTON

91

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.

92

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.

BARONESS HAMWEE

LORD PADDICK

LORD ROSSER

The above-named Lords give notice of their intention to oppose the Question that Clause 22 stand part of the Bill.

Clause 23

LORD PADDICK

BARONESS HAMWEE

LORD ROSSER

The above-named Lords give notice of their intention to oppose the Question that Clause 23 stand part of the Bill.

Clause 24

LORD DUBS
BARONESS LUDFORD

- 93 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.

- 94 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.

BARONESS HAMWEE

- 94A★ Page 29, line 4, leave out “7” and insert “20”

Member’s explanatory statement

This is to probe why 7 hours was determined to be sufficient for legal advice, particularly if an individual case is complex.

Clause 25

BARONESS COUSSINS
BARONESS LISTER OF BURTERSETT
BARONESS HAMWEE

- 95 Page 30, line 25, at end insert –

“(2A) The deciding authority must accept that there are good reasons why the evidence was provided late where –

- (a) the claimant’s claim is based on sexual orientation, gender identity, gender expression or sex characteristics;
- (b) the claimant was under 18 years of age at the time of their arrival in the United Kingdom;
- (c) the claimant’s claim is based on gender-based violence;
- (d) the claimant has experienced sexual violence;
- (e) the claimant is a victim of modern slavery or trafficking;
- (f) the claimant is suffering from a mental health condition or mental impairment;
- (g) the claimant has been a victim of torture;
- (h) the claimant is suffering from a serious physical disability;
- (i) the claimant is suffering from other serious physical health conditions or illnesses.”

Clause 25 - continued

LORD ETHERTON

96 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.

LORD DUBS
BARONESS LUDFORD
BARONESS JONES OF MOULSECOOMB
LORD ROSSER

The above-named Lords give notice of their 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
BARONESS LUDFORD

97 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.

LORD ETHERTON

98 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.

LORD DUBS
BARONESS LUDFORD

- 99 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.

LORD ROSSER
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 26 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 28

LORD KIRKHOPE OF HARROGATE
THE LORD BISHOP OF DURHAM
LORD ARBUTHNOT OF EDROM
BARONESS STROUD

- 100 Page 33, line 20, leave out paragraph (a)

Member's explanatory statement

This amendment is linked to the amendment to leave out paragraphs 1 and 2 of Schedule 3.

LORD ROSSER
LORD BLUNKETT
LORD ETHERTON
LORD DUBS

The above-named Lords give notice of their intention to oppose the Question that Clause 28 stand part of the Bill.

Schedule 3

LORD KIRKHOPE OF HARROGATE
THE LORD BISHOP OF DURHAM
LORD SHINKWIN
LORD ARBUTHNOT OF EDROM

101 Page 88, line 11, leave out paragraphs 1 and 2

Member's explanatory statement

This amendment leaves out paragraphs 1 and 2 of Schedule 3 to the Bill, which would amend section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending).

BARONESS HAMWEE

101A★ Page 89, line 6, at end insert —

“(2D) The Secretary of State must arrange for the transfer to and entry into the United Kingdom of any person removed to, or required to leave to go to, a State falling within subsection (2B) who subsequently is recognised as a refugee.”

Member's explanatory statement

This probing amendment seeks to ascertain whether an individual who has claimed asylum in the UK and is then removed to a safe third country to have their claim determined would subsequently be able to return to the UK in the circumstance that their asylum claim was successful.

LORD KIRKHOPE OF HARROGATE
THE LORD BISHOP OF DURHAM
LORD SHINKWIN
LORD ARBUTHNOT OF EDROM

102 Page 89, line 17, leave out paragraph 4

Member's explanatory statement

This amendment is consequential to the amendment to leave out paragraphs 1 and 2 of Schedule 3.

LORD ROSSER
LORD ETHERTON
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Schedule 3 be the 3rd Schedule to the Bill.

Clause 29

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 29 stand part of the Bill.

Clause 31

LORD DUBS
BARONESS LUDFORD

103 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".

104 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".

BARONESS CHAKRABARTI
BARONESS MCINTOSH OF PICKERING
BARONESS HAMWEE

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

Clause 32

BARONESS LISTER OF BURTERSETT
BARONESS COUSSINS
THE LORD BISHOP OF GLOUCESTER
LORD PADDICK

105 Page 35, line 47, leave out "only if it meets" and insert "if it meets one or"

Member's explanatory statement

This amendment would bring the definition of "particular social group" in line with international standards and UK case law by removing the requirement of two conditions.

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 32 stand part of the Bill.

Clause 33

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 33 stand part of the Bill.

Clause 34

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 34 stand part of the Bill.

Clause 35

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 35 stand part of the Bill.

Clause 36

LORD DUBS
BARONESS LUDFORD

- 106 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

- 107 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.

- 108 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 (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.

LORD DUBS
BARONESS LUDFORD

109 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.

110 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.

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 36 stand part of the Bill.

Clause 37

LORD DUBS
BARONESS LUDFORD

111 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.

BARONESS CHAKRABARTI
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 37 stand part of the Bill.

After Clause 37

LORD PADDICK
LORD HYLTON
BARONESS JONES OF MOULSECOOMB
LORD DUBS

112 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
 - (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)—

After Clause 37 - continued

- (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
LORD HYLTON
BARONESS JONES OF MOULSECOOMB
BARONESS LUDFORD

113 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.

LORD COAKER
LORD HYLTON
LORD DUBS

114 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—

After Clause 37 - continued

- (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.

LORD DUBS
BARONESS CHAKRABARTI
BARONESS JONES OF MOULSECOOMB
BARONESS LUDFORD

115 Insert the following new Clause –

“Unaccompanied refugee children: relocation and support

- (1) The Secretary of State must, within six months of the day on which this Act is passed, make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from countries in Europe.
- (2) The number of children to be resettled under subsection (1) must be determined by the Government in consultation with local authorities.
- (3) The relocation of children under subsection (1) is in addition to the resettlement of children under any other resettlement scheme.”

Member’s explanatory statement

This new Clause introduces a safe route for unaccompanied children from countries in Europe to come to the UK.

LORD KIRKHOPE OF HARROGATE
LORD SHINKWIN
BARONESS STROUD

116 Insert the following new Clause –

“Refugee resettlement

- (1) The Secretary of State must arrange for the resettlement in the United Kingdom of at least 10,000 refugees each year.
- (2) This section comes into force one month after the day on which this Act is passed.”

Member’s explanatory statement

This Clause will require the UK to resettle at least 10,000 refugees to the UK each year.

LORD DUBS
BARONESS LUDFORD
THE LORD BISHOP OF DURHAM
BARONESS HAMWEE

117 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.

BARONESS HAMWEE
THE LORD BISHOP OF DURHAM

118 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.

After Clause 37 - continued

- (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.”
- (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).”

After Clause 37 - continued

BARONESS HAMWEE

119 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.
- (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”.

BARONESS KENNEDY OF THE SHAWS

119A★ Insert the following new Clause—

“Emergency visas

- (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 persons at particular risk are entitled to enter the United Kingdom and be provided with temporary abode.
- (2) For the purposes of this section, “persons at particular risk” include—
 - (a) a human rights defender who is at an imminent risk to his or her life;
 - (b) a person who is targeted because of their protected characteristic and is at an imminent risk to his or her life.”

Member’s explanatory statement

This new Clause would allow persons at particular risk to be able to be provided with safety in the UK, in line with the Government’s commitments from 2019.

LORD ALTON OF LIVERPOOL

119B★ Insert the following new Clause—

“Conditions for grant of asylum: cases of genocide

- (1) A person seeking asylum in the United Kingdom who belongs to a national, ethnical, racial or religious group which meets the criteria, in the place from which that person originates, set out in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948, must be presumed to meet the conditions for asylum in the United Kingdom.
- (2) The adjudication of whether the group to which the person seeking asylum belongs meets the description specified in subsection (1) must be determined by a judge of the High Court of England and Wales after consideration of the available facts.
- (3) Applicants for asylum in the United Kingdom from groups designated under this section may submit their applications and have them assessed at British missions overseas.”

Clause 39

LORD DUBS
BARONESS LUDFORD

120 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.

BARONESS MCINTOSH OF PICKERING

121 Page 40, line 7, leave out “arrives in” and insert “enters”

BARONESS MCINTOSH OF PICKERING
BARONESS HAMWEE

122 Page 40, line 14, leave out “arrives in” and insert “enters”

LORD DUBS
BARONESS LUDFORD

123 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.

124 Page 41, line 25, at end insert—

“(7A) 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—

Clause 39 - continued

“(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.

Clause 40

LORD ROSSER

LORD DUBS

BARONESS MCINTOSH OF PICKERING

BARONESS JONES OF MOULSECOOMB

125 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”.

BARONESS JOLLY

126 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.

127 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.

BARONESS MCINTOSH OF PICKERING

128 Page 42, line 7, at end insert –

“or if the person performing the act of facilitation reasonably believed that if Her Majesty’s Coastguard or the overseas authority had been aware that the assisted individual had been in danger or distress at sea they would have co-ordinated the act.”

Member’s explanatory statement

This amendment ensures that a person facilitating the rescue of a person in danger or distress who does not have express orders from HM Coastguard can do so with impunity.

After Clause 41

LORD COAKER

BARONESS NEVILLE-ROLFE

129 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.

Schedule 6

LORD DUBS

BARONESS LUDFORD

130 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.

131 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

Schedule 6 - continued

- (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.

LORD ROSSER
LORD DUBS
BARONESS CHAKRABARTI

- 132** 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.

BARONESS KENNEDY OF THE SHAWS
LORD WEST OF SPITHEAD

- 132A** Page 105, line 32, at end insert –
“(13) Nothing in this paragraph authorises any action or measure which is inconsistent with the United Kingdom's international legal obligations.”

LORD DUBS
BARONESS LUDFORD

- 133** 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.

LORD PADDICK
BARONESS CHAKRABARTI

- 134** 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.

LORD DUBS
BARONESS LUDFORD

135 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.

136 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
BARONESS LUDFORD

137 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
BARONESS LUDFORD

The above-named Lords give notice of their 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 PADDICK

138 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.

LORD DUBS

BARONESS LUDFORD

139 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.

THE LORD BISHOP OF LONDON

LORD ROSSER

BARONESS MEACHER

LORD PADDICK

140 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.

After Clause 47 - continued

- (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.

LORD PADDICK

141

Insert the following new Clause—

“Operational efficiency

- (1) Within six months of this Act coming into force the Secretary of State must commission a management review, to be undertaken by management experts outside the Home Office, of—
 - (a) the efficiency of the processing by UK Visas and Immigration of applications, and
 - (b) the efficiency of the removal by Immigration Control of persons whose leave to remain has expired.
- (2) For the purposes of this section—
 - (a) “efficiency” includes fairness, and
 - (b) the review must include information regarding the numbers of appeals and their success rate.”

Member's explanatory statement

This amendment requires the Secretary of State to commission an independent management review of the efficiency of UK Visas and Immigration in processing applications and the efficiency of the removal process for those whose leave to remain has expired.

Clause 48

BARONESS HAMWEE
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 48 stand part of the Bill.

Clause 49

BARONESS HAMWEE
LORD PADDICK

142 Page 55, line 41, leave out “must” and insert “may”

Member's explanatory statement

This amendment would allow local authorities to decide whether to refer, conduct and inform the Secretary of State of an age assessment in line with their statutory duties to children under the Children's Act 1989.

143 Page 56, line 4, leave out subsection (4)

Member's explanatory statement

This amendment would allow local authorities to decide what, if any, evidence to provide the Secretary of State in line with their statutory duties to children under the Children's Act 1989.

144 Page 56, line 16, leave out “the balance of probabilities” and insert “reasonable degree of likelihood”

Member's explanatory statement

This amendment will ensure the standard of proof is in line with case law and reflects the evidentiary challenges faced when assessing age and the need to give the benefit of the doubt where appropriate.

The above-named Lords give notice of their intention to oppose the Question that Clause 49 stand part of the Bill.

Clause 50

BARONESS HAMWEE
LORD PADDICK

145 Page 57, line 6, leave out “the balance of probabilities” and insert “reasonable degree of likelihood”

Member's explanatory statement

This amendment will ensure the standard of proof is in line with case law and reflects the evidentiary challenges faced when assessing age and the need to give the benefit of the doubt where appropriate.

The above-named Lords give notice of their intention to oppose the Question that Clause 50 stand part of the Bill.

Clause 51

BARONESS LISTER OF BURTERSETT

146 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.

LORD DUBS

BARONESS LUDFORD

BARONESS LISTER OF BURTERSETT

147 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.

BARONESS LISTER OF BURTERSETT

148 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.

BARONESS HAMWEE

LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 51 stand part of the Bill.

Clause 52

BARONESS HAMWEE

LORD PADDICK

149 Page 58, line 25, leave out paragraph (f)

Member's explanatory statement

This amendment would remove the provision in section 52(1)(f) to allow the Government to make regulations about how age assessments should be conducted which would include damage to the person's credibility due to lack of co-operation with the assessment.

The above-named Lords give notice of their intention to oppose the Question that Clause 52 stand part of the Bill.

Clause 53

BARONESS HAMWEE
LORD PADDICK

150

Page 58, line 44, leave out "balance of probabilities" and insert "basis of the reasonable degree of likelihood"

Member's explanatory statement

This amendment provides for the standard of proof the First Tier Tribunal must apply when deciding an appeal relating to age assessment.

The above-named Lords give notice of their intention to oppose the Question that Clause 53 stand part of the Bill.

Clause 54

BARONESS HAMWEE
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 54 stand part of the Bill.

Clause 55

BARONESS HAMWEE
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 55 stand part of the Bill.

Clause 56

BARONESS HAMWEE
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 56 stand part of the Bill.

After Clause 56

LORD GREEN OF DEDDINGTON
BARONESS NEVILLE-ROLFE

151 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.
- (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.

BARONESS NEVILLE-ROLFE

151A★ Insert the following new Clause—

“Review of Part 4

- (1) Within the period of 2 years beginning with the day on which this Act is passed, the Secretary of State must commission a review of the efficacy of this Part which must consider whether the provisions contained in this Part and any regulations made by virtue of it are effective in providing a robust system of age assessment.
- (2) The Secretary of State must publish a report of the review’s findings and lay it before Parliament.”

Member’s explanatory statement

This amendment would require a review of the age assessment provisions of the Bill to ensure that they are effective in meeting their objectives.

151B★ Insert the following new Clause—

“Trade agreements containing provisions on visas

- (1) This section applies where—
 - (a) the Government intends to make a trade agreement, and
 - (b) the proposed agreement includes provision about visas.
- (2) Where this section applies, the Secretary of State must not seek to make the trade agreement unless a draft of the provisions on visas has been laid before and approved by each House of Parliament.”

Member's explanatory statement

This amendment is to ensure that any visa provisions in trade agreements can only come into effect if they are approved by both Houses of Parliament. This is to ensure that visas are a matter for nationality law not trade agreements.

Clause 57

LORD COAKER
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 57 stand part of the Bill.

Clause 58

LORD COAKER

152 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.

LORD DUBS
BARONESS LUDFORD

153 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.

LORD COAKER

154 Page 62, line 23, at end insert –

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

- (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;

Clause 58 - continued

- (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 DUBS
BARONESS LUDFORD

155 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.

LORD COAKER
LORD DUBS
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 58 stand part of the Bill.

Clause 59

BARONESS MCINTOSH OF PICKERING

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

Member’s explanatory statement

This amendment deletes Clause 59 subsection (4).

LORD ALTON OF LIVERPOOL

156A Page 63, line 1, at end insert –

“(1ZA) Guidance issued under subsection (1) must, in particular, provide that the determination mentioned in paragraph (c) is to be made on the standard of “suspect but cannot prove”.”

Member's explanatory statement

This amendment would ensure that amendments made to the Modern Slavery Act 2015 do not raise the threshold for a Reasonable Grounds decision when accessing the National Referral Mechanism in line with Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland.

156B Page 63, line 8, at end insert –

“(3A) If regulations under subsection (2) make provision for determining whether a person is a victim of slavery or human trafficking (as mentioned in paragraph (a) of that subsection), they must provide that the determination is to be made on the standard of “suspect but cannot prove”. ”

Member's explanatory statement

This amendment would ensure that amendments made to the Modern Slavery Act 2015 do not raise the threshold for a Reasonable Grounds decision when accessing the National Referral Mechanism in line with Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland.

Clause 60

LORD COAKER
BARONESS HAMWEE

157 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

158 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 DUBS
BARONESS LUDFORD

159 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.

LORD COAKER

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

Clause 62

BARONESS MCINTOSH OF PICKERING

160 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.

BARONESS HAMWEE

LORD PADDICK

160A★ Page 64, line 23, leave out from first “the” to end of line 25 and insert “Secretary of State is satisfied that this is in the interests of national security.”

Member’s explanatory statement

This amendment provides that a person may be only be disqualified from protection if it is in the interests of national security.

LORD COAKER

161 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 DUBS

BARONESS LUDFORD

162 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.

BARONESS MCINTOSH OF PICKERING

163 Page 64, line 25, leave out paragraph (b)

LORD DUBS

BARONESS LUDFORD

164 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.

165 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).

166 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".

167 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.

168 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.

LORD RANDALL OF UXBRIDGE
LORD COAKER
BARONESS HAMWEE

169 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.

Clause 62 - continued

- (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

The above-named Lords give notice of their 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.

Clause 63

LORD MCCOLL OF DULWICH

- 169A** Page 66, line 10, leave out from “their” to end of line 12 and insert “physical, psychological and social recovery or to prevent their re-trafficking in accordance with Article 12 of the Trafficking Convention.”

LORD MCCOLL OF DULWICH

LORD ALTON OF LIVERPOOL

LORD PADDICK

LORD COAKER

- 170** Page 66, line 27, at end insert –

- “(5A) If a person is receiving assistance and support under subsection (1) or (4), the Secretary of State must continue to secure tailored assistance and support for that person at the end of the recovery period if they are in need of that assistance and support in accordance with subsection (5B).
(5B) A person who receives a positive conclusive grounds decision must be considered in need of assistance and support under subsection (5A) for at least 12 months beginning on the day the recovery period ends.”

Member’s explanatory statement

This amendment would ensure provision of support and assistance to modern slavery victims in England and Wales with a positive conclusive grounds decision for at least 12 months.

LORD MCCOLL OF DULWICH

- 170A** Page 66, line 36, at end insert –

“50B Meaning of assistance and support

- (1) For the purpose of guidance issued under section 49(1)(b), regulations made under section 50, and section 50A, “assistance and support” includes but is not restricted to the provision of –
 - (a) appropriate and safe accommodation;
 - (b) material assistance, including financial assistance;
 - (c) medical advice and treatment (including psychological assessment and treatment);
 - (d) counselling;
 - (e) a support worker;
 - (f) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person;
 - (g) translation and interpretation services;
 - (h) assistance in obtaining specialist legal advice or representation (including with regard to access to compensation);
 - (i) assistance with repatriation, including a full risk assessment.
- (2) Assistance and support provided to a person under this section –
 - (a) must not be conditional on that person's acting as a witness in any criminal proceedings;
 - (b) may be provided only with the consent of that person;
 - (c) must be provided in a manner which takes due account of the needs of that person as regards safety and protection from harm;

Clause 63 - continued

- (d) must be provided to meet the needs of that person having particular regard to any special needs or vulnerabilities of that person caused by gender, pregnancy, physical or mental illness, disability or being the victim of violence or abuse;
 - (e) must be provided in accordance with an assistance and support plan which specifies that person's needs for support and how those needs will be met for the full duration of the period to which that person is entitled to support under this Act.
- (3) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision."

Clause 64

LORD MCCOLL OF DULWICH

170B Page 66, line 41, at end insert –

- “(1A) The Secretary of State must grant the person limited leave to remain in the United Kingdom where the person is being provided with support and assistance under section 50A(5B) of the Modern Slavery Act 2015 or where subsection (1B) applies.
- (1B) This subsection applies if the person receives assistance and support under one of the following –
- (a) section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)),
 - (b) section 9(3)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12), or
 - (c) regulation 3(4)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 (S.S.I 2018/90).
- (1C) If subsections (1A) or (1B) do not apply, subsection (2) applies.”

LORD DUBS
BARONESS LUDFORD**171** Page 67, line 1, leave out from “assisting” to “harm” in line 2 and insert “with their personal situation, including but not limited to assisting the person in their recovery from any physical, psychological or social”***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.

LORD MCCOLL OF DULWICH

171A Page 67, line 7, at end insert –

- “(2A) The Secretary of State must grant the person limited leave to remain in the United Kingdom for the period –
- (a) beginning on the day on which the positive conclusive grounds decision is communicated to the person, and
 - (b) for the duration of –

Clause 64 - continued

- (i) at least 12 months where leave is granted under subsection (2), or
- (ii) the amount of time support and assistance will be provided under either subsection (1B) or section 50A(5B) of the Modern Slavery Act 2015.”

LORD DUBS
BARONESS LUDFORD

172 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.

Clause 65

LORD PADDICK
BARONESS JONES OF MOULSECOOMB

172A Leave out Clause 65 and insert the following new Clause –

“Civil legal aid under section 9 of LASPO: add-on services in relation to the national referral mechanism

- (1) In Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services qualifying for legal aid), after paragraph 32A insert –

“Pre-national referral mechanism advice

- 32B(1) Civil legal services provided to an individual in relation to referral into the national referral mechanism and connected immigration advice.

General exclusions

- (2) Sub-paragraph (1) is subject to the exclusions in Part 2 of this Schedule.

Specific exclusions

- (3) The civil legal services described in sub-paragraph (1) do not include –
 - (a) advocacy, or
 - (b) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of a reasonable grounds decision or a conclusive grounds decision.”
- (2) In regulation 5(1) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480) (exceptions from requirement to make a determination in respect of an individual’s financial resources), after paragraph (l) insert –

Clause 65 - continued

“(m) civil legal services described in paragraph 32B of Part 1 of Schedule 1 to the Act (civil legal services provided to an individual in relation to referral into the national referral mechanism).”

Member’s explanatory statement

This amendment facilitates access to legal advice at as early a stage as possible in trafficking cases, by removing the requirement for it to be attached to an existing immigration or asylum matter.

Clause 66

LORD PADDICK

Lord Paddick gives notice of his intention to oppose the Question that Clause 66 stand part of the Bill.

Member’s explanatory statement

This is contingent on Lord Paddick’s amendment to replace Clause 65 (“Civil legal aid under section 9 of LASPO: add-on services in relation to the national referral mechanism”); Clause 66 would no longer be required if that amendment is agreed to.

After Clause 67

LORD COAKER

173 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.

BARONESS HAMWEE
THE LORD BISHOP OF BRISTOL
BARONESS LISTER OF BURTERSETT
BARONESS BENNETT OF MANOR CASTLE

174 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).

After Clause 67 - continued

- (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 71

BARONESS RITCHIE OF DOWNPATRICK
BARONESS SUTTIE

175

Page 74, line 16, at end insert –

- “(c) the individual is travelling to Northern Ireland on a local journey from the Republic of Ireland.”

Member’s explanatory statement

Under this amendment, persons who are neither British nor Irish would nevertheless be able to make local journeys from the Republic of Ireland to Northern Ireland without the need for an Electronic Travel Authorisation.

Clause 76

BARONESS MCINTOSH OF PICKERING
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 76 stand part of the Bill.

Clause 77

BARONESS MCINTOSH OF PICKERING
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 77 stand part of the Bill.

Clause 78

BARONESS HAMWEE

LORD PADDICK

- 175A★** Page 81, line 20, leave out from “State” to end of line 24 and insert “must, no later than 31 December 2025, publish draft primary legislation to consolidate the Acts relating to immigration.

(1A) The Secretary of State must consult such persons as are appropriate during the period of six months following publication and shall report the result of the consultation to Parliament.”

Member’s explanatory statement

This amendment removes the Henry VIII power in Clause 78 and replaces it with a duty to consolidate immigration law. It further requires consultation on this draft consolidation.

BARONESS MCINTOSH OF PICKERING

- 176** 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.

BARONESS HAMWEE

LORD PADDICK

- 176A★** Page 82, line 1, leave out subsections (3) to (6)

Member’s explanatory statement

This amendment is consequential on Baroness Hamwee's amendment to Clause 78, page 81, line 20.

After Clause 78

LORD COAKER

BARONESS BENNETT OF MANOR CASTLE

- 177** 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;

After Clause 78 - continued

- (c) any children of the applicant;
 - (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.

LORD DANNATT

LORD COAKER

BARONESS SMITH OF NEWNHAM

BARONESS BENNETT OF MANOR CASTLE

178

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.

LORD ALTON OF LIVERPOOL

LORD PATTEN OF BARNES

THE LORD BISHOP OF ST ALBANS

LORD FALCONER OF THOROTON

179

Insert the following new Clause –

“British National (Overseas) visas: eligibility

- (1) Within two months of this Act being passed, the Secretary of State must amend the immigration rules to ensure that all persons meeting all the conditions set out in subsection (2) are eligible to apply for the British National (Overseas) visa.
- (2) The conditions in this subsection are that –
 - (a) the person has at least one parent who is a British national (overseas);
 - (b) the person was born in or after 1997; and

After Clause 78 - continued

- (c) the person is currently resident in Hong Kong or the United Kingdom.”

LORD OATES

BARONESS BENNETT OF MANOR CASTLE

180 Insert the following new Clause—

“UK immigration status: certification

- (1) The Secretary of State must issue physical proof confirming immigration status to anyone who has been granted such status under the immigration laws of the United Kingdom and who requests such proof.
- (2) No fee may be charged for issuing physical proof under this section.
- (3) The certificate mentioned in subsection (1) must confirm that the relevant person has the relevant status.
- (4) The certificate mentioned in subsection (1) is valid for right to work checks, right to rent checks and all other checks that may be undertaken by agents within and without the United Kingdom to confirm the relevant person’s UK immigration status including permission to travel to and enter the United Kingdom.”

Member’s explanatory statement

This new Clause would require the Government to issue a physical certificate to all people with a UK immigration status, allowing all those with such status to provide documentary proof.

LORD GERMAN

181 Insert the following new Clause—

“Immigration health surcharge: exemption for international volunteers

- (1) Part 3 of the Immigration Act 2014 is amended as follows.
- (2) After section 38 (Immigration health charge), insert—

“38A Immigration health surcharge: exemption for international volunteers

- (1) A charge under section 38 may not be imposed on persons who have leave to enter, or to remain in, the United Kingdom through a visa to work voluntarily for a period of no more than 12 months, or for such period as may be prescribed by regulations, for a registered UK charity advancing the charity’s primary purpose.
- (2) A statutory instrument containing regulations under this section must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.””

Member’s explanatory statement

This new Clause would ensure that international volunteers, including those working in health and social care, will be exempt from paying the immigration health surcharge.

BARONESS CHAKRABARTI
LORD PANNICK
LORD JUDGE
LORD DUBS

182 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
LORD GREEN OF DEDDINGTON

183 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.

LORD MOYLAN
LORD HODGSON OF ASTLEY ABBOTTS
LORD BLUNKETT

184 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
 LORD ALTON OF LIVERPOOL
 BARONESS SMITH OF NEWNHAM
 LORD COAKER

185 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.”

BARONESS CHAKRABARTI

186 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.

BARONESS CHAKRABARTI
 BARONESS JONES OF MOULSECOOMB

187 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);

After Clause 78 - continued

- (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.

BARONESS CHAKRABARTI

188

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
 - (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.*

189 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
 - (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.

After Clause 78 - continued

- (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.

190

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).

After Clause 78 - continued

- (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.

LORD PADDICK
BARONESS HAMWEE

191 Insert the following new Clause –

“Persons in the UK without leave: duty to report

- (1) Before Parts 2 to 6 of this Act come into force the Secretary of State must publish a report regarding the number of persons in the United Kingdom without leave for each of the previous five full years.
- (2) The report must in particular provide information about –
 - (a) the number of persons who have been granted a visa and have overstayed the expiry of the visa;
 - (b) the type of visa in question;
 - (c) the number of such persons who have been removed.”

Member’s explanatory statement

This amendment requires the Secretary of State to report on the number of people in the UK without leave and how many have been removed.

192 [Withdrawn]

BARONESS NEVILLE-ROLFE
LORD GREEN OF DEDDINGTON

193 Insert the following new Clause –

“Duty to publish immigration data

The Secretary of State must ensure that information is regularly published on immigration, including –

- (a) data on asylum and other immigration, and
- (b) weekly figures of the number of those entering the United Kingdom across the English Channel.”

Clause 80

BARONESS MCINTOSH OF PICKERING

194 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.

Clause 83

LORD ROSSER
LORD BLUNKETT

195 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.

BARONESS HAMWEE

196★ Page 85, line 14, at end insert –

- “(6) Paragraph 1 of Schedule 3 and section 28 so far as it relates to that paragraph (removal of asylum seeker to safe country) must not come into force until the following requirements are met –
- (a) the Secretary of State has laid before Parliament a policy statement on the processing of protection and human rights claims outside of the United Kingdom, and
 - (b) that policy statement has been debated and approved by both Houses of Parliament.
- (7) The policy statement referred to in subsection (6)(a) must, at a minimum, provide information on –
- (a) accommodation provided to asylum seekers removed to a third country,
 - (b) arrangements for access to legal advice for asylum seekers removed to a third country,
 - (c) arrangements for the provision of health services for asylum seekers removed to a safe third country,
 - (d) arrangements for the transport to the United Kingdom of people who receive a positive decision on their protection or human rights claim, and
 - (e) independent monitoring arrangements of the treatment and conditions of asylum seekers removed to a third country.”

Member's explanatory statement

This probing amendment would require the Secretary of State to lay before Parliament a policy statement setting out the detail of how the offshoring of asylum claims would work and for that policy statement to be debated and approved by both Houses of Parliament before the power to remove people with outstanding asylum claims can come into force. It also sets out the information that the policy statement on the offshoring of UK asylum claims must, at a minimum, cover.

Nationality and Borders Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

28 January 2022
