

# Nationality and Borders Bill

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

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*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.**

**Clause 57**

LORD COAKER

**151D**

Page 61, line 31, at end insert –

“(1A) The Secretary of State may not serve a slavery or trafficking information notice on any person who –

(a) is aged 17 or younger, or

(b) was aged 17 or younger at the time they were a potential victim of slavery or human trafficking on the basis of which they have made a protection claim or human rights claim.”

***Member’s explanatory statement***

*This would exclude children from the provisions of Clause 57.*

LORD COAKER  
 BARONESS HAMWEE  
 THE LORD BISHOP OF BRISTOL  
 BARONESS MEACHER

*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  
 BARONESS PRASHAR  
 BARONESS BUTLER-SLOSS  
 BARONESS HOLLINS

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;
- (f) where the claimant has diminished capacity;
- (g) fear of repercussions from people who exercise control over the person;

**Clause 58 - continued**

- (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  
BARONESS HOLLINS

*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  
THE LORD BISHOP OF ST ALBANS  
BARONESS PRASHAR

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  
BARONESS MEACHER

**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  
BARONESS MEACHER

**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)

**Clause 62 - continued**

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.*

LORD COAKER

164A Page 64, line 30, at end insert –

“(2A) Where a person receives a positive reasonable grounds determination from the competent authority, the competent authority must make a conclusive grounds decision regardless of whether subsection (1) or (2) applies.”

***Member’s explanatory statement***

*This is to probe the duty to make a conclusive grounds decision for a victim regardless of the provisions of Clause 62.*

LORD DUBS  
BARONESS LUDFORD

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  
BARONESS BUTLER-SLOSS

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.
- (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.

**Clause 62 - continued**

(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 LORD BISHOP OF BRISTOL

*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  
LORD ALTON OF LIVERPOOL  
LORD COAKER  
LORD PADDICK

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.”

***Member’s explanatory statement***

*This amendment would define the objective of assistance and support in line with Article 12 of the European Convention on Action Against Trafficking in Human Beings 2005.*

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  
LORD ALTON OF LIVERPOOL  
LORD COAKER  
LORD PADDICK

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;
  - (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.”

***Member's explanatory statement***

*This amendment would define the types of assistance and support that should be provided to a victim of modern slavery in England and Wales in line with Article 12 of the European Convention on Action Against Trafficking in Human Beings; and conditions associated with its provision.*

**Clause 64**

LORD MCCOLL OF DULWICH  
LORD COAKER  
LORD PADDICK

**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.”

***Member’s explanatory statement***

*This amendment would require leave to remain to be granted to victims across the UK who are receiving support and assistance after they have been confirmed as a victim of modern slavery.*

LORD DUBS  
BARONESS LUDFORD  
LORD COAKER

**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  
LORD COAKER  
LORD PADDICK

**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 –
  - (i) at least 12 months where leave is granted under subsection (2),
  - or

**Clause 64 - continued**

- (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.”

***Member’s explanatory statement***

*This amendment would set out the period of time for which leave to remain should be granted to victims of modern slavery.*

LORD COAKER

**171AA** Page 67, line 7, at end insert—

“(2A) If the person is aged 17 or younger at the point of referral into the National Referral Mechanism, the Secretary of State must give the person leave to remain in the United Kingdom if that is in the person’s best interests as a primary consideration.”

***Member’s explanatory statement***

*This amendment seeks to incorporate the entitlement to immigration leave for child victims in line with Article 14(2) of ECAT and the United Nations Convention on the Rights of the Child. It provides that a child victim of slavery or human trafficking must be granted leave to remain under this section where that is in their best interests.*

LORD MORROW

LORD MCCOLL OF DULWICH

**171B** Page 67, line 9, leave out subsections (4) and (5)

***Member’s explanatory statement***

*This amendment would remove the criteria of not granting leave to remain if assistance could be provided in another country or compensation sought in another country.*

LORD DUBS

BARONESS LUDFORD

LORD COAKER

LORD MCCOLL OF DULWICH

**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 UNCRIC, 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—

“(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.*

**Clause 67**

LORD COAKER

172B Page 71, line 13, at end insert –

“(1A) This section may not come into force until the Secretary of State has conducted a review of the impact of subsection (1) and laid a copy of the review before Parliament.

(1B) A review under subsection (1A) must include, but is not limited to –

- (a) identification of any parts of the Trafficking Directive which the Secretary of State considers to be incompatible with provisions made by or under this Act;
- (b) analysis of the costs and benefits of the disapplication of the Trafficking Directive;
- (c) the impact that the disapplication of the Trafficking Directive is likely to have on the identification, protection, support and access to wider remedies of victims of all forms of slavery in the United Kingdom.”

***Member’s explanatory statement***

*This would require the Secretary of State to review the impact of disapplying the EU Trafficking Directive before this section can come into force.*

**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.*

LORD COAKER

174A

Insert the following new Clause –

**“Report on modern slavery and human trafficking**

- (1) The Secretary of State must, within six months of the passing of this Act, prepare a report on modern slavery and human trafficking in the United Kingdom.
- (2) A report under subsection (1) must include –
  - (a) the number of children who are victims of slavery and trafficking in the United Kingdom;
  - (b) the number of children with British citizenship who are victims of slavery and trafficking in the United Kingdom;
  - (c) the operation of criminal gangs across county boundaries in the United Kingdom involving the exploitation of child victims of slavery and trafficking.
- (3) The Secretary of State must lay a copy of the report before Parliament.”

***Member’s explanatory statement***

*This would require the Secretary of State to publish a report on modern slavery and trafficking, focussing on county lines and child victims.*

**Clause 69**

LORD PADDICK  
BARONESS HAMWEE

*The above-named Lords give notice of their intention to oppose the Question that Clause 69 stand part of the Bill.*

**Clause 71**

BARONESS RITCHIE OF DOWNPATRICK  
 BARONESS SUTTIE  
 LORD COAKER

- 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.*

LORD PADDICK  
 BARONESS HAMWEE

- 175ZA** Page 75, line 8, at end insert –  
 “(9) Rules made by virtue of this section must not be brought into force until the Secretary of State has reported to both Houses of Parliament on how the proposed rules will operate, including with respect to –  
 (a) checking on the criminal record of an individual, and  
 (b) the means to check the status of an individual who is required to rely on a digital system to record it in the event of a technical malfunction of the system.”

***Member’s explanatory statement***

*This amendment requires the Secretary of State to report to Parliament on how the ETA system will operate in respect of checking an individual’s criminal record and how it will operate in the event of a technical malfunction.*

**Clause 74**

BARONESS HAMWEE  
 LORD PADDICK

- 175ZB** Page 79, line 7, leave out subsection (3)

**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 HAMWEE  
 LORD PADDICK

- 175ZC** Page 80, line 36, leave out “is to” and insert “may”  
**175ZD** Page 81, line 2, leave out “must” and insert “may”

**Clause 77 - continued**

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”).



**After Clause 78 - continued**

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

LORD OATES  
BARONESS BENNETT OF MANOR CASTLE  
LORD MCNICOL OF WEST KILBRIDE

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**

**After Clause 78 - continued**

- (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  
LORD ROOKER

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  
BARONESS LISTER OF BURTERSETT

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  
BARONESS RITCHIE OF DOWNPATRICK

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.

**After Clause 78 - continued**

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

**Member's explanatory statement**

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

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

**After Clause 78 - continued**

- (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 –

**After Clause 78 - continued**

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

**Member’s explanatory statement**

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

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),

**After Clause 78 - continued**

- (c) article 4(1) of the Channel Tunnel (Miscellaneous Provisions) Order 1994 (S.I. 1994/1405),
  - (d) section 10(7) of the Immigration and Asylum Act 1999,
  - (e) article 11(1) and (2) of the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (S.I. 2003/2818), and
  - (f) section 36(4) of the UK Borders Act 2007,
- are accordingly constrained.
- (3) In this section, “relevant detention power” means a power to detain under –
    - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),
    - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),
    - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or
    - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).
  - (4) In this section, “a privately-run place of detention” means a place of detention run under contract, or otherwise for profit, or in a manner not directly managed by the Secretary of State.
  - (5) In Schedule 2 to the Immigration Act 1971, in paragraph 18(1) after “in such” insert “non-privately run”.

***Member’s explanatory statement***

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

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]



**After Clause 78 - continued**

BARONESS NEVILLE-ROLFE  
LORD GREEN OF DEDDINGTON  
LORD HODGSON OF ASTLEY ABBOTTS

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 82**

BARONESS RITCHIE OF DOWNPATRICK  
LORD DUBS  
BARONESS HAMWEE

194A Page 83, line 30, at end insert—

“(1A) Sections 57, 58, 60, 61, 62 and 67 extend to England and Wales, and Scotland.”

***Member’s explanatory statement***

*This amendment would exclude Northern Ireland from the operation of the specified Clauses, to test the extent to which those provisions are compatible with Article 2 of the Ireland/Northern Ireland Protocol.*

**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

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

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*8 February 2022*

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