

Nationality and Borders Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 24th February 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 56

LORD GREEN OF DEDDINGTON
BARONESS NEVILLE-ROLFE

64

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

64A Insert the following new Clause—

“Age assessments: restrictions

- (1) Age assessments under section 49 or 50 must only be undertaken if there is significant reason to doubt the age of the age-disputed person.
- (2) A person conducting age assessments under section 49 or 50 must be a local authority social worker.
- (3) Age assessments must be undertaken in accordance with the Association of Directors of Children’s Services Age Assessment Guidance or equivalent guidance in Scotland, Wales and Northern Ireland.
- (4) When an age assessment is conducted, a process must be used that allows for an impartial multi-agency approach, drawing on a range of expertise, including from—
 - (a) health professionals,
 - (b) psychologists,
 - (c) teachers,
 - (d) foster parents,
 - (e) youth workers,
 - (f) advocates,
 - (g) guardians, and
 - (h) social workers.
- (5) When making regulations under section 51, the Secretary of State must not specify scientific methods unless the Secretary of State receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate beyond reasonable doubt for assessing a person’s age.
- (6) Any organisation developed to oversee age assessments must be independent of the Home Office.
- (7) The standard of proof for an age assessment is reasonable degree of likelihood.”

Clause 57

LORD COAKER
BARONESS HAMWEE
THE LORD BISHOP OF BRISTOL
BARONESS MEACHER

65 Leave out Clause 57

Clause 58

LORD COAKER
BARONESS HAMWEE
THE LORD BISHOP OF BRISTOL
BARONESS MEACHER

66 Leave out Clause 58

Clause 59

LORD ALTON OF LIVERPOOL
BARONESS PRASHAR
THE LORD BISHOP OF ST ALBANS

67 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.

LORD ALTON OF LIVERPOOL
THE LORD BISHOP OF ST ALBANS

68 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 62

LORD RANDALL OF UXBRIDGE
BARONESS BUTLER-SLOSS
LORD COAKER
BARONESS HAMWEE

68A★ 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) A competent authority may determine that it is not bound to observe the minimum recovery period under section 60 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 it is prevented from doing so—
 - (a) as a result of an immediate, genuine, present and serious threat to public order, or
 - (b) because the person is claiming to be a victim of modern slavery improperly.
- (3) Any determination made 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 made under subsection (2) must not be made where it would breach—
 - (a) a person’s rights under the European Convention on Human 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, circumstance 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 years at the time of the referral.
- (8) Nothing in this section affects the application of section 60(2).”

Member’s explanatory statement

This new Clause is an alternative to clause 62. It ensures that the power currently provided for in Clause 62 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 COAKER
BARONESS HAMWEE
THE LORD BISHOP OF BRISTOL

69 Leave out Clause 62

Clause 64

LORD MCCOLL OF DULWICH
LORD ALTON OF LIVERPOOL
LORD PADDICK
LORD COAKER

70 Leave out Clause 64 and insert—

“Conclusive grounds: support and leave to remain for victims of slavery or human trafficking

After section 50A of the Modern Slavery Act 2015 insert—

“50B Confirmed victims etc: assistance, support and leave to remain

- (1) This section applies if a positive conclusive grounds decision is made in respect of a person.
- (2) This subsection applies if the person has received support under section 50A and in that case—
 - (a) 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 (2)(b);
 - (b) a person who receives a positive conclusive grounds decision must be considered in need of assistance and support under subsection (2)(a) for at least 12 months beginning on the day the recovery period ends;
 - (c) a reference in this subsection to assistance and support has the same meaning as in section 50A(6).
- (3) If the person is not a British citizen—
 - (a) the Secretary of State must give the person leave to remain in the United Kingdom if subsection (2) or (4) or (5) applies;
 - (b) leave to remain provided under this subsection must be provided from the day on which the positive conclusive grounds decision is communicated to a person for either—
 - (i) the amount of time support and assistance will be provided under either subsection (2) or one of the measures listed in subsection (4), or
 - (ii) at least 12 months if the person meets one or more of the criteria in subsection (5).
- (4) This subsection applies if the person receives support and assistance 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,
 - (b) section 9(3)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015, or

Clause 64 - *continued*

- (c) regulation 3(4)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 (S.S.I 2018/90).
- (5) This subsection applies if the person meets one or more of the following criteria –
- (a) leave is necessary due to the person’s circumstances, including but not restricted to –
 - (i) the needs of that person for safety and protection from harm including protection from re-trafficking,
 - (ii) the needs of that person for medical and psychological treatment;
 - (b) the person is co-operating with a public authority in connection with an investigation or criminal proceedings;
 - (c) the person is seeking compensation.
- (6) Where the person is receiving assistance from a support worker the recommendations of the support worker must be considered in assessing that person’s circumstances under subsection (5)(a).
- (7) The Secretary of State must provide for persons granted leave to remain in accordance with this section to have recourse to public funds for the duration of the period of leave.
- (8) The Secretary of State must allow a grant of leave to remain under subsection (3) to be extended subject to the requirements of subsection (10).
- (9) In determining whether to extend a grant of leave to remain under subsection (8), and the period of time for which such extended leave should be provided, the person’s individual circumstances must be considered, and whether that person –
- (a) is receiving on-going support and assistance under the measures set out in either subsection (2) or subsection (4), or
 - (b) meets one or more of the criteria in subsection (5).
- (10) If the Secretary of State is satisfied that the person is a threat to public order –
- (a) the Secretary of State is not required to give the person leave under this section, and
 - (b) if such leave has already been given to the person, it may be revoked.
- (11) The best interests of the child must be a primary consideration when making decisions under this section in respect of a child.
- (12) In this section –
- “positive conclusive grounds decision” means a decision made by a competent authority that a person is a victim of slavery or human trafficking;
- “threat to public order” has the same meaning as in subsections (3) to (7) of section 62 of the Nationality and Borders Act 2022 (identified potential victims etc: disqualification from protection).
- (13) This section is to be treated for the purposes of section 3 of the Immigration Act 1971 as if it were provision made by that Act.””

Member's explanatory statement

This replacement clause would provide new statutory support for victims in England and Wales after a conclusive grounds decision for at least 12 months. It would also provide temporary leave to remain for all victims receiving support after a positive conclusive grounds decision and for victims meeting the requirements of Article 14 of the Trafficking Convention. It specifies decisions for children should be made on the basis of their best interests.

After Clause 64

LORD COAKER
BARONESS HAMWEE
THE LORD BISHOP OF DURHAM

70ZA Insert the following new Clause –

“Slavery and human trafficking: victims aged under 18 years

- (1) Where a competent authority is making a decision in relation to a person who is aged under 18 years, the best interests of the child must be a primary consideration.
- (2) The Secretary of State may not serve a slavery or trafficking information notice on a person in respect of an incident or incidents which occurred when the person was aged under 18 years.
- (3) Section 61 of this Act does not apply in cases where either the first reasonable grounds decision or a further reasonable grounds decision made in relation to a person relates to an incident or incidents which occurred when the person was aged under 18 years.
- (4) Section 62 of this Act does not apply in cases where a positive reasonable grounds decision has been made in respect of a person which relates to an incident or incidents which occurred when the person was aged under 18 years.
- (5) The Secretary of State must grant a person leave to remain in the United Kingdom where a positive conclusive grounds decision is made in respect of a person who –
 - (a) is under 18 years, or
 - (b) was under 18 years at the time of the incident or incidents to which the positive reasonable grounds decision relates.
- (6) Section 64 of this Act does not apply to a person who is eligible for leave to remain under subsection (5).
- (7) Guidance issued under section 49(1)(c) of the Modern Slavery Act 2015 on determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking must provide that, where the determination relates to an incident or incidents which occurred when the person was aged under 18 years, the determination must be made on the standard of “suspect but not prove”.

After Clause 67

THE LORD BISHOP OF BRISTOL
 BARONESS LISTER OF BURTERSETT
 BARONESS HAMWEE

70A Insert the following new Clause –

“Migrant domestic workers

- (1) The Secretary of State must amend the rules under section 3(2) of the Immigration Act 1971 to make provision for the matters mentioned in subsection (2).
- (2) All holders of domestic worker or diplomatic domestic worker visas, including those working for staff of diplomatic missions, must be entitled to –
 - (a) change their employer (but not work sector) without restriction, but they must register such a change with the Home Office;
 - (b) 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) 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) 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.”

Before Clause 69

BARONESS WILLIAMS OF TRAFFORD

70B★ Insert the following new Clause –

“Visa penalty provision: general

- (1) The immigration rules may make such visa penalty provision as the Secretary of State considers appropriate in relation to a country specified under section (*Visa penalties for countries posing risk to international peace and security etc*) or 69.
- (2) “Visa penalty provision” is provision that does one or more of the following in relation to applications for entry clearance made by persons as nationals or citizens of a specified country –
 - (a) requires that entry clearance must not be granted pursuant to such an application before the end of a specified period;
 - (b) suspends the power to grant entry clearance pursuant to such an application;
 - (c) requires such an application to be treated as invalid for the purposes of the immigration rules;
 - (d) requires the applicant to pay £190 in connection with the making of such an application, in addition to any fee or other amount payable pursuant to any other enactment.
- (3) The Secretary of State may by regulations substitute a different amount for the amount for the time being mentioned in subsection (2)(d).

Before Clause 69 - continued

- (4) Before making visa penalty provision in relation to a specified country, the Secretary of State must give the government of that country reasonable notice of the proposal to do so.
- (5) The immigration rules must secure that visa penalty provision does not apply in relation to an application made before the day on which the provision comes into force.
- (6) Visa penalty provision may –
 - (a) make different provision for different purposes;
 - (b) provide for exceptions or exemptions, whether by conferring a discretion or otherwise;
 - (c) include incidental, supplementary, transitional, transitory or saving provision.
- (7) Regulations under subsection (3) –
 - (a) are subject to affirmative resolution procedure if they increase the amount for the time being specified in subsection (2)(d);
 - (b) are subject to negative resolution procedure if they decrease that amount.
- (8) Sums received by virtue of subsection (2)(d) must be paid into the Consolidated Fund.
- (9) In this section –
 - “country” includes any territory outside the United Kingdom;
 - “entry clearance” has the same meaning as in the Immigration Act 1971 (see section 33(1) of that Act);
 - “immigration rules” means rules under section 3(2) of the Immigration Act 1971;
 - “specified” means specified in the immigration rules.”

Member’s explanatory statement

This new clause and new clause headed “Visa penalties for countries posing risk to international peace and security etc” provide that immigration rules may make provision penalising applicants for entry clearance from countries posing a risk to international peace and security or whose actions are likely to lead to armed conflict or a breach of humanitarian law.

70C★

Insert the following new Clause –

“Visa penalties for countries posing risk to international peace and security etc

- (1) A country may be specified under this section if, in the opinion of the Secretary of State, the government of the country has taken action that –
 - (a) gives, or is likely to give, rise to a threat to international peace and security,
 - (b) results, or is likely to result, in armed conflict, or
 - (c) gives, or is likely to give, rise to a breach of international humanitarian law.

Before Clause 69 - continued

- (2) In deciding whether to specify a country for the purposes of this section, the Secretary of State must take the following into account –
- (a) the extent of the action taken;
 - (b) the likelihood of further action falling within subsection (1) being taken;
 - (c) the reasons for the action being taken;
 - (d) such other matters as the Secretary of State considers appropriate.
- (3) In this section –
- “action” includes a failure to act;
 - “country” and “specified” have the same meanings as in section (*Visa penalty provision: general*).

Member’s explanatory statement

See the explanatory statement for the new clause headed “Visa penalty provision: general”.

Clause 69

BARONESS WILLIAMS OF TRAFFORD

70D★ Page 71, line 38, leave out subsection (1)

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

70E★ Page 71, line 40, leave out “for the purposes of” and insert “under”

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

70F★ Page 72, line 23, leave out subsections (5) to (11)

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

70G★ Page 73, line 11, leave out “includes any territory outside the United Kingdom” and insert “and “specified” have the same meanings as in section (*Visa penalty provision: general*)”

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

70H★ Page 73, leave out lines 12 and 13

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70J★ Page 73, leave out lines 16 to 18

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

After Clause 69

BARONESS WILLIAMS OF TRAFFORD

70K★ Insert the following new Clause—

“Visa penalties under section (*Visa penalty provision: general*): review and revocation

- (1) This section applies where any visa penalty provision made pursuant to section (*Visa penalties for countries posing risk to international peace and security etc*) is in force in relation to a country.
- (2) The Secretary of State must, before the end of each relevant period—
 - (a) review the extent to which the country's government is continuing to act in a way that, in the opinion of Secretary of State, has or is likely to have any of the consequences mentioned in section (*Visa penalties for countries posing risk to international peace and security etc*)(1), and
 - (b) in light of that review, determine whether it is appropriate to amend the visa penalty provision.
- (3) If, at any time, the Secretary of State forms the opinion that, despite the fact that the country's government has taken or is taking action as mentioned in section (*Visa penalties for countries posing risk to international peace and security etc*)(1), the visa penalty provision is not necessary or expedient in connection with—
 - (a) the promotion of international peace and security,
 - (b) the resolution or prevention of armed conflict, or
 - (c) the promotion of compliance with international humanitarian law,
 the Secretary of State must as soon as practicable revoke the visa penalty provision.
- (4) Each of the following is a relevant period—
 - (a) the period of 2 months beginning with the day on which the visa penalty provision came into force;
 - (b) each subsequent period of 2 months.
- (5) In this section, “visa penalty provision” has the same meaning as in section (*Visa penalty provision: general*).”

Member's explanatory statement

This clause provides for the review of the effectiveness of visa penalty provision made in relation to countries presenting a risk to international peace and security etc, and requires its revocation if the Secretary of State concludes that it is no longer necessary or expedient.

Clause 70

BARONESS WILLIAMS OF TRAFFORD

- 70L★** Page 73, line 20, leave out from “provision” to end of line 21 and insert “made pursuant to section 69 is in force in relation to a country.”

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

- 70M★** Page 73, line 35, leave out paragraph (a) and insert –
“(a) “visa penalty provision” has the same meaning as in section (*Visa penalty provision: general*);”

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

- 70N★** Page 73, line 38, leave out “subsection (2)(a) of that section” and insert “section 69(2)(a)”

Member’s explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister’s name.

Clause 71

BARONESS RITCHIE OF DOWNPATRICK

BARONESS SUTTIE

LORD COAKER

- 71** 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

- 72** Leave out Clause 76

Clause 77

BARONESS WILLIAMS OF TRAFFORD

- 73** Page 80, line 35, after “Rules” insert “governing proceedings before the Tribunal (see subsection (4))”

Member's explanatory statement

This is a drafting amendment that clarifies that, like the requirement in Clause 77(2), the requirement for Tribunal Procedure Rules to prescribe conduct of the kind mentioned in clause 77(1) applies only in relation to the Immigration and Asylum Chamber of the First-Tier Tribunal and the Upper Tribunal.

BARONESS MCINTOSH OF PICKERING

74 Leave out Clause 77

After Clause 78

LORD WALLACE OF SALTAIRE

75 Insert the following new Clause—

“Tier 1 (investor) visas: review report

Any replacement, successor or alternative visa scheme to the Tier 1 (investor) visa scheme must not come into operation until the Secretary of State has published and made publicly available the review of Tier 1 (investor) visas granted between June 2008 and April 2015.”

Member's explanatory statement

This new Clause would require the Government to publish its review into Tier 1 (investor) visas granted between June 2008 and April 2015 before any replacement scheme can be brought into operation.

LORD ALTON OF LIVERPOOL

LORD PATTEN OF BARNES

THE LORD BISHOP OF ST ALBANS

LORD FALCONER OF THOROTON

76 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 on or after 1 July 1997,
 - (c) the person is aged 18 or over on the date of application, and
 - (d) the person is—
 - (i) if applying to enter the United Kingdom, ordinarily resident in Hong Kong, or
 - (ii) if applying for permission to remain, ordinarily resident in the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey, the Isle of Man or Hong Kong.”

After Clause 78 - continued

LORD COAKER
 BARONESS SMITH OF NEWNHAM
 LORD CRAIG OF RADLEY

77 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 and their dependents applying for indefinite leave to remain at no more than the actual administrative cost of processing that application, and”.

LORD CRAIG OF RADLEY
 BARONESS SMITH OF NEWNHAM
 LORD ALTON OF LIVERPOOL
 LORD COAKER

78 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 forthwith citizenship or indefinite leave to remain in the United Kingdom.”

LORD OATES
 LORD MCNICOL OF WEST KILBRIDE
 BARONESS ALTMANN
 THE EARL OF CLANCARTY

79 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.

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

80 Insert the following new Clause—

“Duty to publish immigration data

- (1) The Secretary of State must ensure that information is regularly published on immigration, including data on asylum and other immigration.
- (2) The Secretary of State must, within six months of the passing of this Act, review the International Passenger Survey conducted by the Office for National Statistics and in particular review whether the data that it collects are—
 - (a) accurate, and
 - (b) relevant for assessing the scale and nature of immigration to the United Kingdom.
- (3) The Office for National Statistics must update the International Passenger Survey in the light of the review.”

BARONESS NEVILLE-ROLFE
LORD GREEN OF DEDDINGTON

81 Insert the following new Clause—

“Duty to publish immigration data: English Channel

The Secretary of State must ensure that information is regularly published on immigration, including weekly figures of the number of those entering the United Kingdom across the English Channel published within seven days of end of the week to which they relate.”

82 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 be negotiated if they are approved by both Houses of Parliament. This is to ensure that visas are a matter for nationality law, not trade agreements.

BARONESS MCINTOSH OF PICKERING
 BARONESS LISTER OF BURTERSETT
 THE LORD BISHOP OF DURHAM
 LORD ALTON OF LIVERPOOL

83 Insert the following new Clause—

“Fees

- (1) Section 68 of the Immigration Act 2014 is amended as follows.
- (2) After subsection (9), insert—
 - “(9A) Notwithstanding subsection (9), in setting the amount of any fee in relation to registration of British citizenship the Secretary of State—
 - (a) must not set that amount at a level beyond the Secretary of State’s estimation of the administrative costs of the function to which the fee relates,
 - (b) must have regard to the need to promote British citizenship as the nationality of all persons connected to the United Kingdom and British overseas territories citizenship as the nationality of all persons connected to the British overseas territories, and
 - (c) may have regard only to—
 - (i) the costs of exercising the function,
 - (ii) fees charged by or on behalf of governments of other countries in respect of comparable functions, or
 - (iii) any international agreement.”
- (3) After subsection (10), insert—
 - “(10A) Fees regulations must provide that no fee is to be charged for—
 - (a) the registration of any child who is looked after by a local authority, or
 - (b) the registration by statutory entitlement of any person to correct any historical legislative unfairness.””

84 Insert the following new Clause—

“Fees

After section 68 of the Immigration Act 2014 insert—

“68A Fees: supplementary

- (1) In setting the amount of any fee to which section 68 relates, the Secretary of State must—
 - (a) distinguish between nationality and immigration functions,
 - (b) distinguish between functions relating to statutory rights and other functions, and
 - (c) have regard to the principles in subsection (2).
- (2) The principles in this subsection are that—
 - (a) the costs of exercising immigration functions are not a relevant consideration in setting any fee relating to a nationality function;
 - (b) no fee should be set that would render any statutory right nugatory;
 - (c) no fee for the exercise of any function relating to a statutory right should be set above the Secretary of State’s estimation of the administrative costs of that function;

After Clause 78 - continued

- (d) it is necessary to promote British citizenship as the nationality of all persons connected to the United Kingdom and British overseas territories citizenship as the nationality of all persons connected to the British overseas territories;
 - (e) no fee is to be charged for the registration of any child who is looked after by a local authority;
 - (f) no fee is to be charged for the registration by statutory entitlement of any person to correct any historical legislative unfairness.
- (3) In this section—
 “registration” means registration as a British citizen or as a British overseas territories citizen;
 “statutory right” means a right that is conferred upon a person by Act of Parliament including a right to be registered as a British citizen or as a British overseas territories citizen.”

BARONESS HOLLINS

BARONESS HAMWEE

84A Insert the following new Clause—

“Codes of practice

- (1) The Secretary of State must prepare and issue one or more codes of practice for the guidance of immigration officers, medical inspectors and other persons.
- (2) Guidance under this section must have regard to the following matters in particular—
 - (a) the importance of assessing, preventing or delaying the development of health and care needs of refugees and asylum seekers and the importance of assessing and addressing such needs that already exist;
 - (b) the need to protect people from abuse and neglect.
- (3) The Secretary of State may from time to time revise a code.
- (4) Before the end of each review period the Secretary of State must—
 - (a) review each code for the guidance of persons exercising functions under this section, and
 - (b) lay a report of the review before Parliament.

But this does not affect the Secretary of State’s function under subsection (3).”

Member’s explanatory statement

This new Clause requires the Secretary of State to lay codes of practice before Parliament providing for guidance regarding the health and care needs of any asylum seeker or refugee.

BARONESS D'SOUZA
BARONESS COUSSINS
BARONESS SMITH OF NEWNHAM
LORD WEST OF SPITHEAD

84B Insert the following new Clause—

“Afghan Relocations and Assistance Policy

- (1) Within 30 days of this Act being passed, the Secretary of State must amend part 7 of the Immigration Rules on the Afghan Relocations and Assistance Policy (“ARAP”) in accordance with subsections (2) to (11).
- (2) The Secretary of State must amend paragraph 276BB3 to specify that a person falls within that paragraph if—
 - (a) at any time on or after 1 October 2001, the person—
 - (i) was directly employed in Afghanistan by a UK government department, or
 - (ii) provided goods or services in Afghanistan under contract to a UK government department (whether as, or on behalf of, a party to the contract); and
 - (b) because of that employment or provision of goods or services, the person’s life or safety is at real risk.
- (3) The Secretary of State must revoke paragraph 276BB4.
- (4) The Secretary of State must amend paragraph 276BB5 to specify that a person falls within that paragraph if the person meets conditions 1 and 2 and one or both of conditions 3 and 4, as set out in subsections (5) to (8).
- (5) Condition 1 is that at any time on or after 1 October 2001, the person worked in Afghanistan alongside, in partnership with or closely supporting and assisting a UK government department or for a British-based organisation or institution founded by, funded by or otherwise connected to the UK government.
- (6) Condition 2 is that the person, in the course of that work, made a substantive and positive contribution towards the achievement of—
 - (a) the UK government’s military objectives with respect to Afghanistan,
 - (b) the UK government’s national security objectives with respect to Afghanistan (and for these purposes, the UK government’s national security objectives include counter-terrorism, stabilisation, counter-narcotics and anti-corruption objectives), or
 - (c) the UK government’s human security objectives with respect to Afghanistan (and for these purposes, the UK government’s human security objectives include interventions to reduce violence, ensure basic security and promote human rights and the rule of law).
- (7) Condition 3 is that because of that work the person is or was at high risk of death or serious injury.
- (8) Condition 4 is that the person holds information the disclosure of which would give rise to or aggravate a specific threat to the UK government or its interests.
- (9) The Secretary of State must amend paragraph 276BB2 to reflect subsections (2) to (8) of this section.

After Clause 78 - continued

- (10) The Secretary of State must insert into the Immigration Rules a route for additional family members of locally employed staff to apply in exceptional circumstances for relocation, and ensure this route is provided on terms that are no less favourable than those contained in the Home Office’s Additional guidance on the eligibility of additional family members under the Afghan locally employed staff relocation schemes, published on 4 June 2021.
- (11) The Secretary of State must specify in the Immigration Rules that any decision to exclude a person who would otherwise be eligible for the ARAP scheme must be made in accordance with the exclusion criteria set out in Article 1F of the 1951 Refugee Convention, and provide independent and transparent due process guarantees in relation to any exclusion decision, including impartial decision makers, disclosure of relevant information and evidence and rights of appeal.”

Member’s explanatory statement

This new Clause would expand eligibility for ARAP by amending the Immigration Rules. It would insert into the Rules a relocation route for additional family members, which can be no less favourable than the current Home Office guidance, and limit the basis on which persons, who would otherwise be eligible for relocation under ARAP, can be excluded from the scheme.

BARONESS HAMWEE
BARONESS HOLLINS

84C★ Insert the following new Clause—

“Assessments: trauma-informed approach

- (1) All assessments of persons subject to immigration control or relating to modern slavery or human trafficking must be made on the basis of a trauma-informed approach.
- (2) The Secretary of State must publish and keep updated guidance for caseworkers and others dealing with such persons regarding the use of such an approach in achieving best evidence in order to reach decisions.
- (3) The Secretary of State must ensure that caseworkers and others to whom the guidance under subsection (2) applies receive appropriate training to ensure assessments under subsection (1) are conducted on the basis of a trauma-informed approach.
- (4) Before publishing or updating the guidance in subsection (2), the Secretary of State must consult—
 - (a) the Royal College of Psychiatrists,
 - (b) the British Medical Association,
 - (c) the British Association of Social Workers, and
 - (d) any other persons they consider appropriate.
- (5) In subsection (1) “a trauma-informed approach” includes—
 - (a) the recognition of the impact of trauma on individuals,
 - (b) the recognition of the causes and indicators of trauma,
 - (c) the importance of avoiding re-traumatisation, and

After Clause 78 - continued

- (d) the integration of knowledge about trauma into policies, procedures and practices.”

Member’s explanatory statement

This new Clause is aimed at ensuring that immigration officials and caseworkers operate a trauma-informed approach in assessing claimants and provides for training to ensure a capacity for trauma-informed interviewing, similar to Ministry of Justice and National Police Chiefs’ Council guidance on achieving best evidence in criminal proceedings.

Clause 82

LORD COAKER

- 84D★** Page 83, line 35, at end insert –
“(3A) Part 4 (age assessment) applies to England only.”

Member’s explanatory statement

This amendment is to reflect concerns raised by the devolved legislatures that provisions in Part 4 require legislative consent.

Clause 83

BARONESS WILLIAMS OF TRAFFORD

- 84E★** Page 84, line 27, at end insert –
“(aa) sections (*Visa penalty provision: general*), (*Visa penalties for countries posing risk to international peace and security etc*) and (*Visa penalties under section (Visa penalty provision: general): review and revocation*) (visa penalties in relation to countries posing a risk to international peace and security etc);”

Member’s explanatory statement

This amendment provides that the provisions for imposing visa penalties introduced by the three new clauses in the Minister’s name relating to visa penalties will come into force on Royal Assent.

LORD ANDERSON OF IPSWICH
LORD MACDONALD OF RIVER GLAVEN
BARONESS MCINTOSH OF PICKERING

- 85** Page 85, line 1, leave out paragraph (a)

Member’s explanatory statement

This amendment results in subsections (2) to (4) of Clause 9 coming into force by regulation.

LORD ROSSER
LORD PADDICK

- 86** Page 85, line 2, at end insert –
“(aa) section (*Safe third State: commencement*) (safe third State: commencement);”

Nationality and Borders Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

4 March 2022
