

Nationality and Borders Bill

MARSHALLED LIST OF MOTIONS TO BE MOVED ON CONSIDERATION OF COMMONS REASONS AND AMENDMENTS

[The page and line references are to HL Bill 82, the bill as first printed for the Lords]

MOTION A

After Clause 4

LORDS AMENDMENT 1

- 1** Insert the following new Clause –
- “Provision for Chagos Islanders to acquire British nationality**
- (1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.
- (2) After section 17H (as inserted by section 7), insert –
- “17I Acquisition by registration: descendants of those born in British Indian Ocean Territory**
- (1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if they are a direct descendant of a person (“P”) who was a citizen of the United Kingdom and Colonies by virtue of P’s birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date.
- (2) An application under this section must be made before the date specified in subsection (3).
- (3) The specified date means –
- (a) in the case of a person aged 18 years or over on the date of coming into force of this section, five years after the date of coming into force of this section, or

- (b) in the case of a person under the age of 18 years on the date of coming into force of this section or born within 4 years of that date, before they reach the age of 23 years.
- (4) A person who is being registered as a British overseas territories citizen under this section is also entitled to be registered as a British citizen.
- (5) No charge or fee may be imposed for registration under this section.””

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 1 but propose amendments 1A and 1B as amendments in lieu –

1A Page 7, line 41, at end insert the following new Clause –

“Provision for Chagos Islanders to acquire British Nationality

In Part 2 of the British Nationality Act 1981 (British overseas territories citizenship), after section 17G (as inserted by section 2), insert –

“17H Acquisition by registration: descendants of those born in British Indian Ocean Territory

- (1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if –
 - (a) they are a direct descendant of a person (“P”) who was a citizen of the United Kingdom and Colonies by virtue of P’s birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date, and
 - (b) they have never been a British overseas territories citizen or a British Dependent Territories citizen.
- (2) An application under this section must be made –
 - (a) in the case of a person aged 18 years or over on the commencement date, before the end of the period of five years beginning with the commencement date;
 - (b) in the case of a person aged under 18 on the commencement date, or a person who is born before the end of the period of five years beginning with the commencement date, before they reach the age of 23 years.
- (3) In subsection (2), “the commencement date” means the date on which this section comes into force.””

1B Page 8, line 6, leave out “or 17F” and insert “, 17F or 17H”

A★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 1, and do agree with the Commons in their Amendments 1A and 1B in lieu.**

MOTION B

Clause 9

LORDS AMENDMENT 4

4 Leave out Clause 9

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 4 but propose amendments 4A to 4F as amendments in lieu –

4A Page 11, line 31, leave out “it appears to the Secretary of State that”

4B Page 11, leave out lines 35 to 41 and insert –

“(b) the Secretary of State reasonably considers it necessary, in the interests of –

- (i) national security,
- (ii) the investigation or prosecution of organised or serious crime,
- (iii) preventing or reducing a risk to the safety of any person, or
- (iv) the relationship between the United Kingdom and another country,

that notice under that subsection should not be given.”

4C Page 11, line 44, at end insert –

“(5C) Subsection (5D) applies where –

- (a) the Secretary of State has made an order under subsection (2) and, in reliance on subsection (5A), has not given the notice required by subsection (5), and
- (b) the person in respect of whom the order was made makes contact with the Secretary of State for the Home Department.

(5D) The Secretary of State must, as soon as is reasonably practicable, give the person written notice specifying –

- (a) that the Secretary of State has made the order,
- (b) the reasons for the order, and
- (c) the person’s right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997.

(5E) Schedule 4A makes provision for the Special Immigration Appeals Commission to consider a decision of the Secretary of State –

- (a) not to give notice to a person before depriving them of a citizenship status on the grounds mentioned in subsection (2) (deprivation conducive to the public good), or
- (b) not to give late notice to a person who has been deprived of a citizenship status on those grounds without having been given prior notice.”

4D Page 12, line 9, at end insert—

“(b) after subsection (2) insert—

“(2A) In the case of an order made as described in subsection (1)(b), for the purposes of any rule or other provision limiting the time within which an appeal under this section may be brought, time does not start to run unless and until the person is given notice of the fact that the order has been made (see section 40(5D) and Schedule 4A).

(3A) After Schedule 4 to the 1981 Act insert the Schedule 4A set out in Schedule 1A.”

4E Page 85, line 1, leave out paragraph (a)

4F Page 87, line 4, insert the following new Schedule—

“SCHEDULE 1A

DEPRIVATION OF CITIZENSHIP WITHOUT NOTICE: JUDICIAL OVERSIGHT

This is the Schedule to be inserted after Schedule 4 to the British Nationality Act 1981—

“SCHEDULE 4A

Section 40(5E)

DEPRIVATION OF CITIZENSHIP WITHOUT NOTICE: JUDICIAL OVERSIGHT

Deprivation without notice: application to Special Immigration Appeals Commission

- 1 (1) If the Secretary of State proposes to make a conducive grounds deprivation order without notice, the Secretary of State may apply to the Special Immigration Appeals Commission under this paragraph.
- (2) If the Secretary of State makes a conducive grounds deprivation order without notice, the Secretary of State must apply to the Special Immigration Appeals Commission under this paragraph within the period of seven days beginning with the day on which the order is made (unless an application has already been made under sub-paragraph (1)).
- (3) The function of the Commission on an application under this paragraph is to determine whether, in respect of each condition in section 40(5A) on which the Secretary of State relies, the Secretary of State’s view is obviously flawed.
- (4) In determining that question, the Commission must apply the principles that would be applicable on an application for judicial review.
- (5) If the Commission determines that the Secretary of State’s view is obviously flawed in respect of each condition in section 40(5A) on which the Secretary of State relies—
 - (a) if the order in question has not been made, section 40(5) applies in relation to the order (notwithstanding section 40(5A));

- (b) if the order has been made, the Secretary of State must, within the period of 14 days beginning with the day on which the Commission made the determination—
 - (i) give late notice in respect of the order,
 - (ii) revoke the order, or
 - (iii) make an application under sub-paragraph (6).
- (6) The Secretary of State may (at any time) make an application to the Special Immigration Appeals Commission for fresh consideration of a decision the Secretary of State has made under section 40(5A) where—
 - (a) in the opinion of the Secretary of State, circumstances have changed materially since the determination mentioned in sub-paragraph (5), or
 - (b) the Secretary of State wishes to provide further evidence to the Commission.

Sub-paragraphs (3) to (5) apply to an application under this sub-paragraph.

Deprivation of citizenship without notice: review

- 2 (1) Sub-paragraphs (2) to (5) apply if—
 - (a) the Secretary of State makes a conducive grounds deprivation order without notice, and
 - (b) the Special Immigration Appeals Commission has not made the determination mentioned in paragraph 1(5) (Secretary of State's decision obviously flawed).
- (2) The Secretary of State must, at least once in every review period, review the circumstances of the person in respect of whom the order was made (so far as known) and decide whether to give late notice in respect of the order.
- (3) On such a review, the Secretary of State must decide to give late notice to the person unless it appears to the Secretary of State that any of the conditions in section 40(5A) is met (reading any reference in those provisions to notice under section 40(5) as a reference to late notice).
- (4) If the Secretary of State decides at any point to give late notice in respect of the order—
 - (a) the Secretary of State must give the notice as soon as reasonably practicable, and
 - (b) once the notice is given, sub-paragraph (2) ceases to apply in relation to the person.
- (5) If on the expiry of the final review period the Secretary of State has not given, or has not decided to give, late notice in respect of the order, the Secretary of State must make an application to the Special Immigration Appeals Commission within the period of seven days beginning with the day after the final day of that review period.

- (6) Sub-paragraphs (3) to (6) of paragraph 1 (except sub-paragraph (5)(a)) apply for the purposes of an application under sub-paragraph (5) as they apply for the purposes of an application under that paragraph.
- (7) For the purposes of this paragraph, each of the following is a “review period” –
- (a) the period of four months beginning with the day after the day on which the Special Immigration Appeals Commission first determined an application in relation to the order under paragraph 1, and
 - (b) each of the next five successive periods of four months.

Interpretation

- 3 (1) In this Schedule, references to making a conducive grounds deprivation order without notice are to making an order under section 40(2) without giving notice under subsection (5) of that section (in reliance on subsection (5A) of that section).
- (2) In this Schedule, “late notice”, in respect of an order under section 40(5), means written notice to the person in respect of whom the order was made specifying –
- (a) that the Secretary of State has made the order,
 - (b) the reasons for the order, and
 - (c) the person’s right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997.”

B★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 4, and do agree with the Commons in their Amendments 4A to 4F in lieu.**

B1 **Baroness D’Souza to move, as an amendment to Motion B, at end insert “and do propose Amendment 4G to the words so restored to the Bill –**

4G Page 12, line 13, leave out subsections (5) to (7)”

MOTION C

Before Clause 11

LORDS AMENDMENT 5

5 Insert the following new Clause –

“Compliance with the Refugee Convention

Nothing in this Part authorises policies or decisions which do not comply with the United Kingdom’s obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees.”

COMMONS REASON

The Commons disagree to Lords Amendment 5 for the following Reason –

5A *Because the Commons consider that the provisions of Part 2 are compliant with the Refugee Convention, and that it is therefore not necessary to provide expressly that this is so.*

C★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 5, to which the Commons have disagreed for their Reason 5A.**

C1 **Baroness Chakrabarti to move, as an amendment to Motion C, at end insert “and do propose Amendment 5B in lieu –**

5B Insert the following new Clause –

“Interpretation of Part 2

For the avoidance of doubt, the provisions of this Part are compliant with the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, and must be read and given effect as such.””

MOTION D

Clause 11

LORDS AMENDMENT 6

6 Leave out Clause 11

COMMONS REASON

The Commons disagree to Lords Amendment 6 for the following Reason –

6A *Because the Commons consider that it should be possible to accord different treatment to refugees depending on whether they have complied with the criteria set out in clause 11.*

D★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 6, to which the Commons have disagreed for their Reason 6A.**

D1 **Lord Kerr of Kinlochard to move, as an amendment to Motion D, at end insert “and do propose Amendment 6B to the words so restored to the Bill –**

6B Page 14, line 7, leave out subsections (5) to (8) and insert –

“(5) The Secretary of State must make provision within the Immigration Rules to –

- (a) guarantee Group 1 and Group 2 refugees all of their rights under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees and international law, without distinction;
- (b) ensure that the classification of a refugee as a Group 1 or a Group 2 refugee does not affect the ability to maintain the unity of that person’s family.””

MOTION E

After Clause 12

LORDS AMENDMENT 7

7 Insert the following new Clause –

“Changes to the Immigration Act 1971

- (1) The Immigration Act 1971 is amended as follows.
- (2) After section 3(2) (general provisions for regulation and control) insert –
 - “(2A) Regulations under subsection (2) must provide that persons, and adult dependants of persons who are applying for asylum in the United Kingdom are granted permission by the Secretary of State to take up employment if –
 - (a) a decision at first instance has not been taken on the applicant’s asylum application within six months of the date on which the application was made, or
 - (b) a person makes an application or a further application which raises asylum grounds, and a decision on that new application, or a decision on whether to treat such further asylum grounds as a new application, has not been taken within six months of the date on which the further application was made.
 - (2B) For the purposes of subsection (2A), regulations must ensure that permission granted allowing people applying for asylum in the UK, and their adult dependants to take up employment, are on terms no less favourable than the terms granted to a person with recognised refugee status.
 - (2C) This permission is to be valid until the claim is determined and all appeal rights have been exhausted and individuals granted permission to work will be issued with physical proof of the right to work.””

COMMONS REASON

The Commons disagree to Lords Amendment 7 for the following Reason –

7A *Because the Commons consider that asylum-seekers (save in limited circumstances) and their adult dependants should not be permitted to work while a decision on their claim for asylum is pending.*

E★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 7, to which the Commons have disagreed for their Reason 7A.**

E1★ **Baroness Stroud to move, as an amendment to Motion E, at end insert “and do propose Amendments 7B and 7C in lieu –**

7B After Clause 12, insert the following new Clause –

“Changes to the Immigration Act 1971

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

- (2) After section 3(2) (general provisions for regulation and control) insert –
- “(2A) Regulations under subsection (2) must provide that persons, and adult dependants of persons who are applying for asylum in the United Kingdom are granted permission by the Secretary of State to take up employment if –
- (a) a decision at first instance has not been taken on the applicant’s asylum application within six months of the date on which the application was made, or
 - (b) a person makes an application or a further application which raises asylum grounds, and a decision on that new application, or a decision on whether to treat such further asylum grounds as a new application, has not been taken within six months of the date on which the further application was made.
- (2B) For the purposes of subsection (2A), regulations must ensure that permission granted allowing people applying for asylum in the UK, and their adult dependants to take up employment, are on terms no less favourable than the terms granted to a person with recognised refugee status.
- (2C) This permission is to be valid until the claim is determined and all appeal rights have been exhausted and individuals granted permission to work will be issued with physical proof of the right to work.”
- (3) The Secretary of State may, by regulations made by statutory instrument, repeal subsection (2) of this section, if the conditions set out in subsections (4) and (5) have been met.
- (4) The first condition is that within four years of the coming into force of this section, but no sooner than three years after the coming into force of this section, the Secretary of State has commissioned a review of whether the provisions inserted into the Immigration Act 1971 by subsection (2) have acted in such a way as to encourage persons applying for asylum, and adult dependants of such persons, to travel to the United Kingdom.
- (5) The second condition is that the Secretary of State has, within four years of the coming into force of this section, published the outcome of the review under subsection (4).
- (6) Regulations under subsection (3) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.”

7C

Clause 83, page 84, line 27, at end insert –

“(aa) section (*Changes to the Immigration Act 1971*);”

MOTION F

After Clause 15

LORDS AMENDMENT 8

8 Insert the following new Clause –

“Safe third State: commencement

- (1) The Secretary of State may exercise the power in section 83(1) so as to bring section 15 into force only if the condition in subsection (2) is met.
- (2) The condition in this subsection is that the United Kingdom has agreed formal returns agreements with one or more third States.
- (3) A “formal returns agreement” means an agreement which provides for the safe return of a person making an asylum claim (a “claimant”) to a State which is party to the agreement, where the claimant has a connection to that State.”

COMMONS REASON

The Commons disagree to Lords Amendment 8 for the following Reason –

8A *Because the Commons do not consider it appropriate that the commencement of clause 15 should be dependent on the conclusion of international agreements with other States.*

F★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 8, to which the Commons have disagreed for their Reason 8A.**

F1★ **Lord Rosser to move, as an amendment to Motion F, at end insert “and do propose Amendments 8B and 8C in lieu –**

8B After Clause 15, insert the following new Clause –

“Safe third State: commencement

- (1) The Secretary of State may exercise the power in section 83(1) so as to bring section 15 into force only if the condition in subsection (2) has been met.
- (2) The condition in this subsection is that the United Kingdom has agreed formal returns agreements with one or more third States.
- (3) A “formal returns agreement” means an agreement which provides for the safe return of a person making an asylum claim (a “claimant”) to a State which is party to the agreement, where the claimant has a connection to that State.
- (4) This section, and the condition it imposes, cease to have effect at the end of the period of five years beginning with the day on which this section comes into force.”

8C Clause 83, page 84, line 27, at end insert –
 “(aa) section (*Safe third State: commencement*);””

MOTION G

Clause 28 and Schedule 3

LORDS AMENDMENTS 9, 52 AND 53

9 Page 33, line 20, leave out paragraph (a)

COMMONS REASON

The Commons disagree to Lords Amendment 9 for the following Reason –

9A *Because the Commons consider that it is appropriate to allow the removal of an asylum seeker to a safe third country while their claim for asylum is pending.*

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

COMMONS REASON

The Commons disagree to Lords Amendment 52 for the following Reason –

52A *Because it is consequential on Lords Amendment 9 to which the Commons disagree.*

53 Page 89, line 17, leave out paragraph 4

COMMONS REASON

The Commons disagree to Lords Amendment 53 for the following Reason –

53A *Because it is consequential on Lords Amendment 9 to which the Commons disagree.*

G★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendments 9, 52 and 53 to which the Commons have disagreed for their Reasons 9A, 52A and 53A.**

G1★ **The Lord Bishop of Durham to move, as an amendment to Motion G, at end insert “and do propose Amendments 53B, 53C and 53D in lieu –**

53B Page 88, line 14, leave out “falling within subsection (2B)” and insert “prescribed by an order under subsection (2B)”

53C Page 88, line 15, leave out “A State falls within this subsection if” and insert “The Secretary of State may by order prescribe a State for the purposes of subsection (2A) if”

53D Page 88, line 31, at end insert –

“(2BA) No order under subsection (2B) may be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(2BB) The Secretary of State must not lay before Parliament a draft of an order prescribing a State under subsection (2B) unless the Secretary of State has first laid before each House of Parliament a proposal setting out –

(a) the estimated costs, for at least the first two years after the order is to come into effect, of any arrangements made with that State in respect of the removal of asylum seekers from the United Kingdom to that State; and

- (b) the estimated costs, for at least the first two years after the order is to come into effect, of any additional aid provided to that State as a result of any such arrangements.””

MOTION H

After Clause 37

LORDS AMENDMENT 10

10 Insert the following new Clause –

“Immigration Rules: entry to seek asylum and join family

- (1) The rules laid down by the Secretary of State in accordance with section 1(4) and section 3(2) of the Immigration Act 1971 for regulating the entry into and stay in the United Kingdom of persons not having the right of abode must include provision for admitting persons coming for the purpose of seeking asylum.
- (2) These rules must make provision, for the purpose of seeking asylum, for persons in Europe who have a family member in the United Kingdom who is ordinarily and lawfully resident in the United Kingdom.
- (3) For the purposes of this section, a “family member” means –
 - (a) when the person in Europe is an unaccompanied minor –
 - (i) a parent, including adoptive parent;
 - (ii) aunt or uncle;
 - (iii) grandparent; or
 - (iv) sibling, including adoptive siblings;
 - (b) spouse, civil partner, unmarried partner of the person in Europe; and
 - (c) such other persons as the Secretary of State may determine, having regard to –
 - (i) the importance of maintaining family unity;
 - (ii) any dependency between the family members;
 - (iii) the best interests of a child; and
 - (iv) any compelling circumstances.”

COMMONS REASON

The Commons disagree to Lords Amendment 10 for the following Reason –

10A *Because it would alter the financial arrangements made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.*

H★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 10, to which the Commons have disagreed for their Reason 10A.**

H1 **Lord Dubs to move, as an amendment to Motion H, at end insert “and do propose Amendment 10B in lieu –**

10B Insert the following new Clause –

“Immigration Rules: entry to seek asylum and join family

- (1) The rules laid down by the Secretary of State in accordance with section 1(4) and section 3(2) of the Immigration Act 1971 for regulating the entry into and stay in the United Kingdom of persons not having the right of abode must include provision for admitting persons coming for the purpose of seeking asylum.
- (2) These rules must make provision, for the purpose of seeking asylum, for unaccompanied children in Europe who have a family member in the United Kingdom who is ordinarily and lawfully resident in the United Kingdom.
- (3) For the purposes of this section, a “family member” means –
 - (a) a parent, including adoptive parent;
 - (b) an aunt or uncle;
 - (c) a grandparent;
 - (d) a sibling, including an adoptive sibling; or
 - (e) such other persons as the Secretary of State may determine, having regard to –
 - (i) the importance of maintaining family unity;
 - (ii) any dependency between the family members;
 - (iii) the best interests of a child; and
 - (iv) any compelling circumstances.”

MOTION J

LORDS AMENDMENT 11

11 Insert the following new Clause –

“Refugee resettlement schemes

- (1) The Secretary of State must arrange for the resettlement in the United Kingdom of at least 10,000 refugees each year.
- (2) The target under this section includes the numbers of people resettled under –
 - (a) dedicated schemes for the evacuation of people from a geographical locality, such as a specific third State,
 - (b) a general UK resettlement scheme,
 - (c) the mandate resettlement scheme or equivalent replacements, and
 - (d) other routes as appropriate.
- (3) The Secretary of State must be guided by the capacity of local authorities and community sponsorship groups in delivering the target under subsection (1).”

COMMONS REASON

The Commons disagree to Lords Amendment 11 for the following Reason –

11A *Because the Commons do not consider it appropriate for there to be a statutory requirement on the minimum number of refugees to be resettled in the UK each year.*

J★ Baroness Williams of Trafford to move, That this House do not insist on its Amendment 11, to which the Commons have disagreed for their Reason 11A.

J1 The Lord Bishop of Durham to move, as an amendment to Motion J, at end insert “and do propose Amendment 11B in lieu –

11B Insert the following new Clause –

“Refugee resettlement schemes

- (1) The Secretary of State must publish a numerical target for the resettlement of refugees to the United Kingdom each year.
- (2) The target under this section must include the numbers of people resettled under –
 - (a) dedicated schemes for the evacuation of people from a geographical locality, such as a specific third State,
 - (b) a general UK resettlement scheme, and
 - (c) other routes as appropriate.
- (3) The Secretary of State must put in place appropriate resourcing and infrastructure to support local authorities to deliver the target under subsection (1).”

MOTION K

LORDS AMENDMENT 12

12 Insert the following new Clause –

“Conditions for grant of asylum: cases of genocide

- (1) A person seeking asylum in the United Kingdom who belongs to a national, ethnical, racial or religious group which meets the criteria, in the place from which that person originates, set out in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948, must be presumed to meet the conditions for asylum in the United Kingdom following an application to the Court from a non-governmental organisation (registered as a charity in the United Kingdom) representing such a person or group of persons belonging to a national, ethnical, racial or religious group.
- (2) The adjudication of whether the group to which the person seeking asylum belongs meets the description specified in subsection (1) must be determined by a judge of the High Court of England and Wales after consideration of the available facts.
- (3) Applicants for asylum in the United Kingdom from groups designated under this section may submit their applications and have them assessed at British missions overseas.
- (4) The Secretary of State may by regulations place a cap on the number of people granted asylum under subsection (1) in any given calendar year.”

COMMONS REASON

The Commons disagree to Lords Amendment 12 for the following Reason –

12A *Because it would alter the financial arrangements made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.*

K★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 12, to which the Commons have disagreed for their Reason 12A.**

K1 **Lord Alton of Liverpool to move, as an amendment to Motion K, at end insert “and do propose Amendment 12B in lieu –**

12B Insert the following new Clause –

“Cases of genocide and the United Kingdom’s asylum and immigration systems

Within a year of the date on which this Act is passed, the Secretary of State must publish a report on the Government’s approach to the treatment of victims of genocide as implemented through the United Kingdom’s asylum and immigration systems; and publish a comprehensive policy on the Government’s response to the duties contained in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, as they relate to the United Kingdom’s asylum and immigration systems.””

MOTION L

Clause 39

LORDS AMENDMENTS 13 TO 19

13 Page 40, leave out lines 5 to 9

COMMONS REASON

The Commons disagree to Lords Amendment 13 for the following Reason –

13A *Because the Commons consider that it should be a criminal offence for a person who requires entry clearance to knowingly arrive in the United Kingdom without such clearance.*

14 Page 40, line 46, leave out “, (E1)”

COMMONS REASON

The Commons disagree to Lords Amendment 14 for the following Reason –

14A *Because it is consequential on Lords Amendment 13 to which the Commons disagree.*

15 Page 41, line 4, leave out paragraph (e)

COMMONS REASON

The Commons disagree to Lords Amendment 15 for the following Reason –

15A *Because it is consequential on Lords Amendment 13 to which the Commons disagree.*

16 Page 41, line 19, leave out “, (E1)”

COMMONS REASON

The Commons disagree to Lords Amendment 16 for the following Reason –

- 16A** *Because it is consequential on Lords Amendment 13 to which the Commons disagree.*
17 Page 41, line 21, leave out “, (E1)”

COMMONS REASON

The Commons disagree to Lords Amendment 17 for the following Reason –

- 17A** *Because it is consequential on Lords Amendment 13 to which the Commons disagree.*
18 Page 41, line 29, leave out “, (E1)”

COMMONS REASON

The Commons disagree to Lords Amendment 18 for the following Reason –

- 18A** *Because it is consequential on Lords Amendment 13 to which the Commons disagree.*
19 Page 41, line 32, leave out “, (E1)”

COMMONS REASON

The Commons disagree to Lords Amendment 19 for the following Reason –

- 19A** *Because it is consequential on Lords Amendment 13 to which the Commons disagree.*
L★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendments 13 to 19, to which the Commons have disagreed for their Reasons 13A to 19A.**
L1★ **Lord Coaker to move, as an amendment to Motion L, leave out from “Amendments” to end and insert “13, 14 and 16 to 19, to which the Commons have disagreed for their Reasons 13A, 14A and 16A to 19A, do insist on its Amendment 15, to which the Commons have disagreed for their Reason 15A, and do propose Amendment 13B in lieu of Amendment 13 –**
13B Page 40, leave out lines 5 to 9 and insert –
 “(D1) A person who knowingly arrives in the United Kingdom in breach of a deportation order commits an offence.””

MOTION M

Clause 40

LORDS AMENDMENT 20

- 20** Page 41, line 40, leave out subsection (3)

COMMONS REASON

The Commons disagree to Lords Amendment 20 for the following Reason –

- 20A** *Because the Commons consider that the offence of facilitating the entry of an asylum seeker into the United Kingdom should be capable of prosecution whether or not the defendant was acting for gain.*
- M★** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 20, to which the Commons have disagreed for their Reason 20A.**
- M1★** **Lord Paddick to move, as an amendment to Motion M, at end insert “and do propose Amendment 20B to the words so restored to the Bill –**
- 20B** Page 41, line 40, leave out “omit “and for gain”” and insert “for “for gain” substitute “without reasonable excuse””

MOTION N

After Clause 56

LORDS AMENDMENT 22

- 22** 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.”

COMMONS REASON

The Commons disagree to Lords Amendment 22 for the following Reason –

- 22A** *Because the Commons consider that the additional requirements for age assessments, as set out in the new clause, are either inappropriate or unnecessary.*
- N★** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 22, to which the Commons have disagreed for their Reason 22A.**
- N1★** **Baroness Hamwee to move, as an amendment to Motion N, at end insert “and do propose Amendments 22B, 22C, 22D, 22E and 22F in lieu –**
- 22B** Clause 49, page 55, line 42, after second “person” insert “or persons”
- 22C** Clause 49, page 56, line 31, leave out “negative” and insert “affirmative”
- 22D** Clause 50, page 56, line 46, at end insert –
- “(2A) An assessment under subsection (1) shall be conducted in accordance with guidance published by the Secretary of State, and the guidance must provide that a designated person must take into account all relevant information available from all available sources.”
- 22E** Clause 51, page 57, line 10, at end insert –
- “(1A) An independent advisory board shall advise in respect of the regulations, and the Secretary of State must have due regard to the board’s advice.
- (1B) The board shall comprise experts in relevant disciplines, including nominees of relevant medical, dental and scientific professional bodies.
- (1C) The board shall give ethical advice and scientific advice for the purposes of subsection (3).”
- 22F** Clause 52, page 58, line 15, after “conduct” insert “or contribute to”

MOTION P

Clause 57 and Clause 58

LORDS AMENDMENTS 23 AND 24

- 23** Page 62, line 5, leave out from “date” to end of line 6

COMMONS REASON

The Commons disagree to Lords Amendment 23 for the following Reason –

- 23A** *Because it is consequential on Lords Amendment 24 to which the Commons disagree.*
- 24** Leave out Clause 58

COMMONS REASON

The Commons disagree to Lords Amendment 24 for the following Reason –

24A *Because the Commons consider that it is appropriate for the fact that a person claiming to be a victim of slavery or human trafficking has provided information late, without good reason, to be taken into account by the competent authority.*

P★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendments 23 and 24, to which the Commons have disagreed for their Reasons 23A and 24A, but do propose Amendment 24B in lieu –**

24B Page 62, line 15, after “person” insert “aged 18 or over”

MOTION Q

Clause 62

LORDS AMENDMENT 25

25 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).”

COMMONS REASON

The Commons disagree to Lords Amendment 25 for the following Reason –

25A *Because the Commons consider that the clause proposed by the Lords Amendment provides an unworkable regime for operating the public order and improper claim exemptions to Article 13 of the Trafficking Convention.*

Q★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 25, to which the Commons have disagreed for their Reason 25A.**

Q1★ **Lord Coaker to move, as an amendment to Motion Q, at end insert “and do propose Amendment 25B in lieu –**

25B 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) For the purposes of section (2)(a), a person is considered as presenting an immediate, genuine, present and serious threat to public order where the person has been convicted of a terrorist offence.
- (4) The Secretary of State must, within one year of this Act coming into force –
- (a) prepare and publish a consultation on whether a person convicted of any offence listed in Schedule 4 to the Modern Slavery Act 2015, other than a terrorist offence, should be considered as presenting an immediate, genuine, present and serious threat to public order for the purposes of section (2)(a); and
 - (b) lay a response to the consultation before each House of Parliament.
- (5) In subsection (3), “terrorist offence” means any of the following (whenever committed) –
- (a) an offence listed in –
 - (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or
 - (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland);
 - (b) an offence that was determined to have a terrorist connection under –
 - (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), or

- (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied);
 - (c) an offence that has been proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland).
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) This section does not apply where the person is under 18 years at the time of the referral.
- (11) Nothing in this section affects the application of section 60(2).”

MOTION R

Clause 64

LORDS AMENDMENT 26

26

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
 - (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.
- (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.”

COMMONS REASON

The Commons disagree to Lords Amendment 26 for the following Reason –

26A *Because it would alter the financial arrangements made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.*

R★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 26, to which the Commons have disagreed for their Reason 26A.**

R1 **Lord McColl of Dulwich to move, as an amendment to Motion R, at end insert “and do propose Amendment 26B in lieu –**

26B Before Clause 64, insert the following new Clause –

“Confirmed victims in England and Wales: assistance and support

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

“50B Confirmed victims etc: assistance and support

- (1) This section applies if a positive conclusive grounds decision is made in respect of a person.
- (2) If the person has received support under section 50A, the Secretary of State must continue to secure tailored assistance and support for that person at the end of the recovery period for at least 12 months beginning on the day the recovery period ends.

- (3) Any duty under this section ceases to apply in relation to a person in respect of whom a determination is made under section 62(1) of the Nationality and Borders Act 2022 (disqualification from protection).
- (4) References in this section to “assistance and support”, a “conclusive grounds decision” and the “recovery period” have the same meaning as in section 50A.””””

MOTION S

After Clause 64

LORDS AMENDMENT 27

27 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) 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”.

COMMONS REASON

The Commons disagree to Lords Amendment 27 for the following Reason –

27A *Because the Commons consider that the clause inserted by the Lords Amendment makes provision in relation to persons under the age of 18 that is not necessary, or not practically workable, or not appropriate.*

S★ **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 27, to which the Commons have disagreed for their Reason 27A.**

S1★ **Lord Coaker to move, as an amendment to Motion S, at end insert “and do propose Amendment 27B in lieu –**

27B 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 who is 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) 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”.”

MOTION T

Clause 71

LORDS AMENDMENT 40

40 Page 74, line 16, at end insert –

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

The Commons disagree to Lords Amendment 40 for the following Reason –

- 40A** *Because the Commons consider that the immigration rules should be able to include provision requiring persons travelling from the Republic of Ireland to Northern Ireland to have an electronic travel authorisation.*
- T★** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 40, to which the Commons have disagreed for their Reason 40A.**
- T1** **Lord Murphy of Torfaen to move, as an amendment to Motion T, at end insert “and do propose Amendment 40B in lieu –**
- 40B** Page 74, line 16, at end insert –
“(c) the individual is legally resident in the Republic of Ireland.””

MOTION U

Schedule 6

LORDS AMENDMENT 54

- 54** Page 104, line 13, at end insert –
“(1A) The powers set out in this Part of this Schedule must not be used in a manner or in circumstances that could endanger life at sea.”

COMMONS REASON

The Commons disagree to Lords Amendment 54 for the following Reason –

- 54A** *Because the amendment is unnecessary given that the maritime enforcement powers will in any event have to be exercised in compliance with the European Convention on Human Rights (by virtue of section 6 of the Human Rights Act 1998) and with the UK’s international obligations.*
- U★** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 54, to which the Commons have disagreed for their Reason 54A.**

Nationality and Borders Bill

MARSHALLED LIST OF MOTIONS TO BE MOVED
ON CONSIDERATION OF COMMONS REASONS AND AMENDMENTS

1st April 2022

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS