

Nationality and Borders Bill

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

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

MOTION A

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.*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 5, to which the Commons have disagreed for their Reason 5A, 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.”

COMMONS REASON

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

5C *Because the Commons consider that Lords Amendment 5B makes unnecessary provision.*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 5B, to which the Commons have disagreed for their Reason 5C, but do propose Amendment 5D in lieu –

5D Insert the following new Clause –

“Interpretation of Part 2

- (1) So far as it is possible to do so, the provisions of this Part must be read and given effect in a way which is compatible with the Refugee Convention.
- (2) If a court or tribunal determining a question which has arisen in connection with the provisions of this Part cannot read and give effect to those provisions in a way which is compatible with the Refugee Convention, it must make a declaration to that effect.”

COMMONS REASON

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

5E *Because the Commons consider that the provisions of Part 2 are compliant with the Refugee Convention without the need for an interpretation provision; and that it is not appropriate to give the courts a power to make a declaration of incompatibility.*

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

A1 **Baroness Chakrabarti to move, as an amendment to Motion A, at end insert “and do propose Amendment 5F in lieu –**

5F Insert the following new Clause –

“Interpretation of Part 2

- (1) So far as it is possible to do so, the provisions of this Part must be read and given effect in a way which is compatible with the Refugee Convention.
- (2) If a court or tribunal determining a question which has arisen in connection with the provisions of this Part cannot read and give effect to those provisions in a way which is compatible with the Refugee Convention, it must make a declaration to that effect.
- (3) Where a court or tribunal is considering whether to make a declaration of incompatibility, the Secretary of State is entitled to notice in accordance with rules of the court or tribunal.
- (4) In any case to which subsection (3) applies the Secretary of State is entitled, on giving notice in accordance with rules of the court or tribunal, to be joined as a party to the proceedings.
- (5) Notice under subsection (4) may be given at any time during the proceedings.”

MOTION B

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.*

LORDS NON-INSISTENCE AND AMENDMENT TO THE WORDS SO RESTORED TO THE BILL

The Lords do not insist on their Amendment 6, to which the Commons have disagreed for their Reason 6A, 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.”

COMMONS REASON

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

6C *Because the Commons consider that it is possible to accord different treatment to refugees depending on whether they have complied with the criteria set out in clause 11 in a way which is compliant with the Refugee Convention.*

LORDS NON-INSISTENCE AND AMENDMENTS IN LIEU

The Lords do not insist on their Amendment 6B, to which the Commons have disagreed for their Reason 6C, and do propose Amendments 6D, 6E and 6F in lieu –

6D Page 13, line 44, at end insert –

- “(2A) A refugee is not to be regarded as failing to comply with the requirement in subsection (2)(a) if, in coming to the United Kingdom, they have stopped in another country outside the United Kingdom with the intention that the stopover in the intermediate country was to be a brief transit on the way to the United Kingdom.
- (2B) A refugee is not to be regarded as failing to comply with the requirement in subsection (2)(b) if they had good cause to delay the point at which they presented themselves to the authorities.”

- 6E** Page 14, line 6, at end insert—
- “(4A) It shall be for the Secretary of State to prove a failure to comply with the requirement in subsection (2)(a), (2)(b) or (3), as the case may be.”
- 6F** Page 14, line 32, at end insert—
- “(8A) In accordance with section 2 of the Asylum and Immigration Appeals Act 1993, no such immigration rules shall lay down any practice or differentiate in any way which would be contrary to the Refugee Convention.
- (8B) Immigration rules implementing this provision must take due account of the best interests of children and the fundamental right to family unity in all cases.”

COMMONS REASON

The Commons disagree to Lords Amendments 6D, 6E and 6F for the following Reason –

- 6G** *Because the provision in Lords Amendments 6D and 6E conflicts with clause 36; and because the provision in Lords Amendment 6F is unnecessary.*

B **Baroness Williams of Trafford to move, That this House do not insist on its Amendments 6D, 6E and 6F, to which the Commons have disagreed for their Reason 6G.**

B1 **Lord Kerr of Kinlochard to move, as an amendment to Motion B, at end insert “and do propose Amendments 6H and 6J in lieu –**

- 6H** Page 14, line 6, at end insert—
- “(4A) The burden of proving a failure to comply with the requirement in subsection (2)(a), (2)(b) or (3), as the case may be, shall be on the Secretary of State.”
- 6J** Page 14, line 32, at end insert—
- “(8A) No such immigration rules shall permit any practice which would be contrary to the United Kingdom’s international obligations, including its obligations under the Refugee Convention, the European Convention on Human Rights, and the United Nations Convention on the Rights of the Child.””

MOTION C

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.*

LORDS NON-INSISTENCE AND AMENDMENTS IN LIEU

The Lords do not insist on their Amendment 7, to which the Commons have disagreed for their Reason 7A, 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*);”

COMMONS REASONS

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

7D *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, even for a trial period of 4 years.*

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

7E *Because it is consequential on Lords Amendment 7B to which the Commons disagree.*

LORDS NON-INSISTENCE AND AMENDMENTS IN LIEU

The Lords do not insist on their Amendments 7B and 7C, to which the Commons have disagreed for their Reasons 7D and 7E, and do propose Amendments 7F and 7G in lieu –

7F 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 United Kingdom, and their adult dependants, to take up employment, is on terms no less favourable than the terms granted to a person with recognised refugee status.
 - (2C) Such permission is to be valid until the claim is determined and all appeal rights have been exhausted and individuals granted permission to work must 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 three years of the coming into force of this section, but no sooner than two 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 three 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.”

7G Clause 83, page 84, line 27, at end insert –

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

COMMONS REASON

The Commons disagree to Lords Amendments 7F and 7G for the following Reason –

7H *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, even for a trial period of 3 years.*

C **Baroness Williams of Trafford to move, That this House do not insist on its Amendments 7F and 7G, to which the Commons have disagreed for their Reason 7H.**

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