

Research Briefing
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Article 31 of the Refugee Convention

1 Article 31 of the 1951 Refugee Convention

Article 31 of the [1951 Refugee Convention](#) is concerned with “Refugees unlawfully in the country of refuge”. It states:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country

Article 31(1) extends to the territory under a State’s control and applies to asylum-seekers as well as refugees.

Refugees who come to the UK in circumstances as outlined in Article 31(1) have a statutory defence against certain immigration offences related to document fraud and illegal entry ([section 31](#) of the Immigration and Asylum Act 1999).

The Refugee Convention doesn't define the terms used in Article 31. UNHCR has published some [summary conclusions](#) on the application of Article 31.

2 How is Article 31 relevant to the Government's new asylum proposals?

Article 31 is often raised by people concerned about asylum abuse, and asylum rights defenders, in the context of debates about:

- Whether asylum seekers should claim asylum in the 'first safe country' they reach.
- Whether it is illegal for asylum seekers to enter the country clandestinely or without immigration permission.
- To what extent Article 31 allows for different treatment of asylum seekers and people granted protection in the UK.

These issues are central to the Government's recent [New Plan for Immigration](#) policy statement (March 2021), and the related [Nationality and Borders Bill](#) which is currently before Parliament ('the Bill').

Various measures in the Bill are intended to incentivise people to claim asylum in the first safe country they reach, deter irregular travel to the UK and confine the scope of Article 31(1)'s 'non-penalisation' provisions.

Clause 34 of the Bill (as introduced) defines the terms "coming directly" and "present themselves without delay" used in Article 31(1). This is to clarify the circumstances in which a person is/isn't immune from penalties for illegal entry or presence. Specifically:

- A person will not be considered to have come "directly" to the UK if they stopped in another country on the way unless they can show that they could not reasonably be expected to have sought asylum there.
- A person will not be considered to have presented themselves "without delay" unless they claimed asylum as soon as reasonably practicable after arrival in the UK. Where a person's need for protection arises while they are already in the UK, they would be expected to apply for asylum before their pre-existing immigration permission expires (or, in the case of people unlawfully present in the UK, as soon as reasonably practicable after becoming aware of the need for protection). A person in the UK without immigration permission who claimed asylum as soon as

practicable could still be liable to penalties on the grounds of not having “good cause” for their unlawful status.¹

Offences of knowingly arriving in or entering the UK without immigration permission are provided for in **clause 37**. The offences in clause 37 target people who come to the UK without immigration permission. There is an indication of the potential effect of the new offences on people intending to seek asylum in the UK in the Bill’s Explanatory Notes:

In the 12 months ending September 2019, around 62% of asylum applicants to the UK had entered the country irregularly (40% clandestinely, 22% without relevant documentation) with the remainder largely thought to have arrived regularly, (e.g. on a visa) before subsequently applying for asylum.²

The maximum proposed penalties for the offences are four years’ imprisonment.

Clause 37 has been criticised for criminalising seeking asylum in the UK.³ As discussed in the [Library’s second reading briefing](#) on the Nationality and Borders Bill (p.22), it is not possible to apply for entry clearance (‘a visa’) from overseas with the purpose of claiming asylum in the UK. Nor is it possible to claim asylum in the UK from overseas.

The Government’s interpretation of the wording of Article 31(1) has informed various other provisions in the Bill. Other implications for people who do not come directly to the UK or claim asylum without delay are:

- Being affected by the inadmissibility procedures (**clauses 14-15**), meaning that a person is liable to being removed to another country without their asylum claim being considered in the UK. Inadmissibility may have other implications for how a person’s case is handled, for example in terms of their asylum support provisions (such as accommodation in a large-scale accommodation centre) (**clause 11, clause 15**). The Bill also allows for the future introduction of off-shore asylum processes (**clause 26 and schedule 3**).
- Being given less favourable conditions attached to their permission to remain if the asylum claim is considered in the UK. These could include the length of limited leave, the inclusion of a no recourse to public funds

¹ [Bill 141-FN](#), para 359-360

² [Bill 141-FN](#), para 15

³ Free Movement, [Briefing: the Nationality and Borders Bill, Part 3 \(criminalising asylum seekers\)](#), 14 July 2021

condition, less favourable family reunion rights and limited prospects of obtaining permission to stay permanently (**clause 10**).

The Bill also includes some expanded maritime enforcement powers for border control staff, including powers to divert a ship or require it to leave UK territorial waters. These would also affect people seeking to travel to the UK by irregular means to claim asylum, such as Channel migrants (**clause 41 and Schedule 5**).

3 **Are the proposals compatible with the Refugee Convention?**

The Refugee Convention provides the definition of a refugee, establishes the principle of non-refoulement (that refugees shouldn't be returned to a territory where they would be at risk of persecution) and the grounds for exclusion from protection. It also sets out host States' responsibilities to refugees in their territory and what rights refugees should be given. The Convention doesn't oblige States to facilitate asylum seekers' access to their territory or specify how States should approach determining whether a person qualifies for refugee status (although there is [UNHCR guidance](#)).

The UK's asylum system is based on the commitments it has as a signatory to the 1951 Convention relating to the Status of Refugees and 1967 Protocol, and the European Convention on Human Rights.

The UK has also endorsed the non-binding [2018 UN Global Compact on Refugees \(GCR\)](#) and the [2018 UN Global Compact for Safe, Orderly and Regular Migration \(GCM\)](#).

The Government's view

The Home Secretary [has argued](#) that the Government's plans are compatible with Article 31(1), because the Article refers to people "coming directly" from a country of persecution.

UNHCR's view

UNHCR says that several the Government's proposals are based on a "misconstruction" of Article 31(1). It has published [some detailed legal observations](#) on the New Plan for Immigration (which the Bill implements).

UNHCR advises that "coming directly" means that States can treat refugees differently "if they have already settled in a country and subsequently move onwards for reasons unrelated to their need for international protection." It emphasises that Article 31 does not support the notion that asylum must be claimed in the first safe country reached. It observes:

Given that the 1951 Convention was drafted at a time when air travel was inaccessible to most, and overland travel was by far the most common mode of transport, such a principle would have relieved the very States that drafted and signed the Convention of any significant obligations under it.⁴

It further comments (emphasis as per original source):

19. (...). Whilst international law does not provide an unrestricted right to choose where to apply for asylum, there is no requirement under international law for asylum-seekers to seek protection in the first safe country they reach. **This expectation would undermine the global humanitarian and cooperative principles on which refugee protection is founded, as emphasized by the 1951 Convention and recently reaffirmed by the General Assembly, including the UK, in the Global Compact on Refugees.** It would impose an arbitrary and disproportionate burden on countries in the immediate region(s) of flight and threaten the capacity and willingness of those countries to properly process claims or provide acceptable reception conditions and durable solutions. This would (and does) threaten to make these first countries, in turn, unsafe and encourage onward movement.

Instead, it says “the term “directly” is to be interpreted broadly, so that refugees who have passed through or stopped over in other countries en route, may still be exempt from penalties.” UK jurisprudence reflects this interpretation.⁵

UNHCR further notes that, where penalties for illegal entry/presence may be permissible, they should not go so far as to interfere with the fundamental right to seek asylum, or other guarantees provided by the Convention (emphasis as per original source):

Where asylum-seekers are not protected against the imposition of penalties under Article 31(1) (not having arrived directly, presented themselves without delay or shown good cause for their irregular entry or presence) any penalising measure must not undermine the right to seek and enjoy asylum or be at variance with other provisions of the 1951 Convention and international and regional human rights law. **Thus, such penalties must not involve or indirectly result in denying asylum seekers access to an asylum procedure.** Nor ... can it involve the denial of the full set of rights guaranteed by the 1951 Convention. UNHCR further considers that the denial of entry or the summary removal from its territory of asylum-seekers based on their irregular entry or presence, without necessary safeguards regarding the application of safe third country concepts, would also be in breach of the UK’s obligations under

⁴ UNHCR, [UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom](#), May 2021, Annex para 12

⁵ R v Uxbridge Magistrates Court (ex parte Adimi) [1999] Imm AR 560

the 1951 Convention and applicable international and regional human rights law.⁶

4 The relationship between the Refugee Convention and UK asylum law

Refugees cannot directly enforce their rights under the Convention in the UK – it hasn't been fully incorporated into domestic law. But the UK's asylum process is "closely assimilated" to the Convention and some of the Convention's provisions are reflected in the UK's immigration rules.⁷ [Section 2](#) of the Asylum and Immigration Appeals Act 1993 provides that "Nothing in the immigration rules ... shall lay down any practice which would be contrary to the Convention."

The UK has also endorsed the non-binding [2018 UN Global Compact on Refugees \(GCR\)](#) and the [2018 UN Global Compact for Safe, Orderly and Regular Migration \(GCM\)](#).

At the time of endorsing the GCM and GCM, the UK Government's position was that they were compatible with the UK's priorities for global migration reform. A written statement by Alistair Burt, then FCDO Minister, said:

In practice, that means a Refugee Compact that helps ensure refugees can claim asylum in the first safe country they reach. And a Migration Compact which makes a clear distinction between refugees and migrants, and which sets out a well-managed global migration system confirming the sovereign right of States to control their borders and the clear responsibility of States to accept the return of their nationals who no longer have the right to remain elsewhere.⁸

The UK delivered an Explanation of Position during the vote to adopt the GCM. Amongst other things, it welcomed the fact that "The GCM respects the sovereignty of States and reaffirms their sovereign right to determine their own migration and immigration policies and laws", and confirmed that "The UK does not interpret the Compact as creating domestic policy."⁹

⁶ UNHCR, [UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom](#), May 2021, Annex para 14

⁷ [R v Asfaw \[2008\] UKHL 31](#)

⁸ [UIN HCWS1163](#), 10 December 2018

⁹ Commons Library briefing [CBP 8459 The United Nations Global Compact for Migration](#) provides further background and discussion of the UK's position towards the GCM.

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