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2 December 2021

Nationality and Borders Bill: Progress of the Bill

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The Nationality and Borders Bill was published on 6 July 2021. Most of its provisions apply across the UK. It will have its remaining stages in the Commons on 7 and 8 December.

The Bill was granted a second reading on 20 July by 366 votes to 265. Labour and the SNP voted against it.

The Bill was considered in Public Bill Committee over 16 sittings between September - November. The first four sittings took evidence from expert witnesses.

Changes made in Committee

The six "placeholder" clauses in the original version of the Bill were replaced by substantive clauses, tabled as government amendments/new clauses/schedules at Committee stage. They cover:

- Authorisation to work in UK (now clause 42 and Schedule 5).
- Prisoners liable to removal (now clause 46 and Schedule 7).
- New processes for conducting age assessments (now clauses 48 – 56).
- New powers to impose visa penalties (now clauses 69 and 70).
- Introduction of an electronic travel authorisation requirement (now clause 71). This is supported by an extension of the carriers' liability scheme (now clause 72).
- Expanding the remit of the Special Immigration Appeals Commission (now clause 73).

Several other entirely new clauses tabled by the Government were added:

- Notice of decision to deprive a person of citizenship (now clause 10).
- Expedited appeals: joining of related appeals (now clause 23).
- Removals: notice requirements (now clause 45).
- Counter-terrorism questioning of detained entrants (now clause 74).

The Committee approved all other government amendments. Broadly, these clarified drafting and made minor and technical changes. No non-government amendments or new clauses were added to the Bill.

Further government amendments for Report stage

On 1 December the Government gave notice of 80 proposed amendments to the Bill. Many make minor drafting or technical changes or are consequential to other proposed amendments, but a significant number would make more substantive changes/additions to the Bill.

1 Background

1.1 Overview of the Bill

The Nationality and Borders Bill was published on 6 July 2021.[1] Most of its provisions apply across the UK.

The Bill would implement many of the measures outlined in the Government's New Plan for Immigration policy statement (March 2021). The Plan was open to public consultation for six weeks.

The three main objectives of the Bill, and the underlying policy statement, are:

- To increase the fairness of the system to better protect and support those in need of asylum.
- To deter illegal entry into the United Kingdom, thereby breaking the business model of people smuggling networks and protecting the lives of those they endanger.
- To remove those with no right to be in the UK more easily.

The Bill also makes some changes to nationality law and to processes for identifying and protecting victims of trafficking or modern slavery.

1.2 Summary of debate at second reading stage

Second reading took place over 19 and 20 July 2021.[2] Introducing the Bill, the Home Secretary, Priti Patel, said:

> For the first time in decades, we will determine who comes in and out of our country. Our plans will increase the fairness of our system.[3]

Labour and the SNP both opposed the Bill at second reading. Their frontbench teams variously described the Bill as "as wrong as it is ineffective" and "an abysmal and, indeed, shameful Bill."[4]

1 Bill 141 of 2021-22
2 HC Deb 19 July c705-778; HC Deb 20 July c827-927
3 HC Deb 19 July 2021 c705
4 HC Deb 19 July 2021 c726; c733

Labour proposed an amendment to the motion, declining to give the Bill a second reading

> …because the Bill breaches the 1951 Refugee Convention, does not address the Government's failure since 2010 to competently process asylum applications which has resulted in a backlog of cases and increased costs to the taxpayer, fails to deal with the serious and organised crime groups who are profiteering from human trafficking and modern slavery, does not address the failure to replace the Dublin III regulations to return refugees to safe countries, fails to re-establish safe routes and help unaccompanied child refugees, and fails to deliver a workable agreement with France to address the issue of boat crossings.

It was negatived by 265 votes to 359.[5]

The Bill was granted a second reading by 366 votes to 265.[6]

1.3 Relevant documents published since second reading

The Government published its response to the public consultation on the New Plan for Immigration on 22 July 2021.[7] The Government's Overarching equality impact assessment for the Bill was published on 16 September 2021.

The Joint Committee on Human Rights is publishing a series of legislative scrutiny reports on the Bill to accompany its passage through Parliament.

The UN Refugee Agency (UNHCR) issued a Detailed legal opinion on the Bill in October 2021. This includes commentary on individual clauses. In UNHCR's view, the Bill is "fundamentally at odds with the Government's avowed commitment to upholding the United Kingdom's international obligations under the Refugee Convention and with the country's long-standing role as a global champion for the refugee cause."[8]

The Independent Anti-Slavery Commissioner wrote to the Home Secretary in September 2021 with comments on the Bill, particularly the clauses in Part 5.[9] She expressed a general concern that the Bill "will make the identification of victims of modern slavery harder and will create additional vulnerabilities".

The following recent inspection/oversight reports are relevant to the Bill:

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5 HC Deb 20 July 2021, division 57

6 HC Deb 20 July 2021, division 58

7 HM Government, Consultation on the New Plan for Immigration: Government Response, CP 493, July 2021

8 UNHCR, Observations on the Nationality and Borders Bill, Bill 141 2021-22, October 2021, para 1

9 Independent Anti-Slavery Commissioner, Dame Sara responds to the Nationality and Borders Bill, 7 September 2021

- Independent Chief Inspector of Borders and Immigration, Report of an inspection of asylum casework and Home Office response, 18 November 2021
- Independent Family Returns Panel, Annual Report 2019-2020 and Home Office response, 19 November 2021

2 Committee stage

The Bill was considered in Public Bill Committee over 16 sittings between September - November. The first four sittings took evidence from expert witnesses. Home Office Ministers and officials did not provide evidence.

References to clause numbers in this briefing reflect the version of the Bill as amended in Committee (Bill 187 of 2021-22).

2.1 Summary of changes made in Committee

The Bill as introduced included six "placeholder" clauses. These have now been replaced by substantive clauses, tabled as government amendments/new clauses/schedules at Committee stage. They cover:

- Authorisation to work in UK waters (now clause 42 and Schedule 5)
- Prisoners liable to removal (now clause 46 and Schedule 7)
- New processes for conducting age assessments (now clauses 48 – 56)
- New powers to impose visa penalties (now clauses 69 and 70)
- Introduction of an electronic travel authorisation requirement (now clause 71).[10] This is supported by an extension of the carriers' liability scheme (now clause 72, considered in Public Bill Committee as new clause 22).[11]
- Expanding the remit of the Special Immigration Appeals Commission (now clause 73)[12]

Other new clauses tabled by the Government were added to the Bill in Committee:[13]

- Notice of decision to deprive a person of citizenship (now clause 9)
- Expedited appeals: joining of related appeals (now clause 23)
- Removals: notice requirements (now clause 45)
- Counter-terrorism questioning of detained entrants (now clause 74)

10 Considered in Committee as NC21: PBC Deb 28 October 2021 c420-9; PBC Deb 2 November 2021 c569; PBC Deb 4 November 2021 cc609-11

11 Considered in Committee as NC22: PBC Deb 28 October 2021 c421; PBC Deb 4 November c612

12 Considered in Committee as NC11: PBC Deb 2 November 2021 c569-70; PBC Deb 4 November 2021 c605-6

13 In addition, the drafting of a couple of other clauses in the Bill as introduced was changed by replacing them with new clauses (**clause 26** – accelerated detained appeals; **clause 45** – removals notice requirements)

The Committee also approved all government amendments. Broadly, these were to clarify the drafting of clauses and make minor and technical changes.

No non-government amendments or new clauses were added to the Bill.

Many non-government proposals for new clauses were considered during the Committee's 15th and 16th sittings.[14] Some were pressed to divisions. They covered a wide range of issues, including:

- Safe and legal routes of entry for asylum seekers, family reunion rules and refugee resettlement schemes.
- Dispersal policy and asylum accommodation arrangements.
- Introducing time limits for immigration detention.
- Extending the 'move-on' period for people granted asylum.
- Asylum seekers' rights to work in the UK.
- The provision of independent child trafficking guardians.
- Minimum income requirement for partner visas.
- The 10-year route to settlement for children and young people raised in the UK.

2.2 Part 1: Nationality

The Joint Committee on Human Rights published a report assessing the human rights implications of Part 1 of the Bill (excluding clause 9) on 9 November.[15] It broadly welcomes the provisions to address areas of historical unfairness but raises significant concerns about the provisions affecting stateless children (clause 10).

Government new clause: Notice of decision to deprive a person of citizenship (clause 9)[16]

This clause would amend the deprivation of citizenship powers in the British Nationality Act 1981. Currently, s40(5) of the 1981 Act requires the Secretary of State to give a person written notice of their deprivation order, the reasons for the order, and the person's right of appeal.

Clause 9(2) specifies circumstances in which the Secretary of State would be able to deprive a person of their British citizenship without giving them notice. Briefly, these are if the Secretary of State does not have the information needed to give notice; it would "not be reasonably practicable" to give notice, "for any other reason"; or if giving notice would not be in the interests of

14 PBC Deb 4 November 2021 c625-646; c647-716

15 Joint Committee on Human Rights, Legislative scrutiny: Nationality and Borders Bill (Part 1) – Nationality, HC 764, 9 November 2021

16 Considered in Committee as NC19: PBC Deb 2 November 2021 c583-4; PBC Deb 4 November 2021 c607-8

national security, relations with another country, or otherwise in the public interest.

Explaining the rationale for the clause, Craig Whittaker (Government Whip, standing in for the Minister) argued that "it cannot be right that the proper functioning of the immigration and nationality system grinds to a halt" due to an inability to contact an affected person or because knowledge of their whereabouts derives from sensitive intelligence sources.[17]

The clause would have a retrospective effect on deprivation orders made before some of its provisions come into effect. Clause 9(5) (which would come into force the day the Bill received Royal Assent) provides that the validity of deprivation orders made before the provisions in clause 9(2-4) come into effect would not be affected by a failure to comply with the duty in s40(5) of the 1981 Act. As per **clause 82** (as amended in Committee), clause 9(2-4) would come into force two months after Royal Assent.

Stateless minors (clause 10)

The Government has said that **clause 10** is intended to prevent abuse of processes for registering as British citizens stateless children born in the UK.

Some external stakeholders have criticised clause 10 for being "unethical and put[ting] children's rights in jeopardy." [18] Echoing those concerns, the Opposition and SNP frontbench teams expressed strong objections to the Government's proposals in Committee.[19]

The Joint Committee on Human Rights has called for clause 10 to be removed from the Bill, or at least substantially amended. It doubts whether the clause complies with the UK's obligations under the 1961 UN Stateless Convention and UN Convention on the Rights of the Child.[20]

Issues raised during debate in Committee were:

- That the Home Office is unable to indicate the extent of suspected abuse of the existing registration process.
- That the Bill's proposed approach is not in line with international law (specifically, the 1961 UN Convention on the Reduction of Statelessness) and UNHCR guidelines on statelessness.
- That the changes will do more harm than good: existing obstacles to acquiring British citizenship will be exacerbated, and the Government has not assessed the likely impact on statelessness or set out how it has assessed the best interests of the child.

17 PBC Deb 2 November 2021 c583-4

18 NBB33, 20 October 2021

19 PBC Deb 19 October 2021, c207-10; c210-212

20 Joint Committee on Human Rights, Legislative scrutiny: Nationality and Borders Bill (Part 1) – Nationality, HC 764, 9 November 2021, para 57-8

Tom Pursglove (Minister for Justice and Tackling Illegal Migration) acknowledged that whilst the Home Office "know[s] this is happening", it cannot confirm the number of cases where it believes the process is being misused.[21] He committed to writing to the Committee setting out as much information as he could about the Government's justification for its proposed new approach.[22] A related "will write" letter had not been published at the time of writing this briefing, although the Home Office did provide some data from internal Home Office reports to the Joint Committee on Human Rights.[23]

Clause 10 was ordered to stand part of the Bill upon division, by 8 votes to 7.[24]

2.3 Part 2: Asylum

Differential treatment of refugees (clause 11)

Briefly, **clause 11** allows for people granted protection in the UK to be given different rights and entitlements, depending on the nature of their arrival to the UK.

Labour and SNP Committee members condemned the clause. Criticisms included:

- That it is drafted too broadly, and that the nature of differential treatment should be specified in the Bill rather than in future immigration rules and policy guidance, which are subjected to limited parliamentary oversight.
- That differential treatment will undermine refugees' mental health and integration prospects, have cost implications for the Devolved Administrations and Local Authorities, and impose an additional workload burden on the Home Office.
- That the clause will not achieve its stated objective of deterring irregular journeys to the UK.
- That the Government is failing to provide 'safe and legal' alternative routes to the UK.
- That the clause is contrary to the 1951 Refugee Convention and other pieces of international law, and the Government has not provided evidence to support its contention that the clause is in line with the UK's international obligations.

21 PBC Deb 19 October 2021, c207

22 PBC Deb 19 October 2021, c214

23 Joint Committee on Human Rights, Written evidence from the Home Office (NBB0074), 25 October 2021

24 PBC Deb 19 October 2021, division 7

Tom Pursglove confirmed that clause 11 would not have retrospective effect; rather it would only apply to people who claim asylum after commencement.[25]

A "will write" letter, dated 26 October, provides some further detail on how the Government anticipates applying differentiation powers in practice.[26] It confirms that "Group 2" refugees may be granted a shorter period of leave to remain (but no less than 30 months) with a 10-year route to settlement, and will only be eligible for family reunion if refusal would breach their Article 8 rights. It also confirms that there is "no intention" to impose a no recourse to public funds condition on anyone who was previously in receipt of s95 asylum support.

In terms of the clause's compatibility with international obligations, the Minister said:

> I do not agree with the assessment expressed by various Opposition Members: I argue that the differentiation policy is in line with our international obligations, including the refugee convention and the European convention on human rights. Of course, it is for Parliament to determine precisely what is meant by our international obligations, subject only to the principles of treaty interpretation in the Vienna convention. That is precisely what we are doing in the Bill.[27]

During a later stage in Committee, Stuart McDonald (SNP Shadow Home Affairs Spokesperson) proposed some amendments to **clause 36** (concerning interpretation of Article 31 of the Refugee Convention),[28] which would have had the effect of exempting asylum seekers and claims with certain characteristics from differential treatment.[29] In response, the Minister said:

> I would like to reassure hon. Members that the powers … do not compel the Secretary of State to act in a certain way, and leave discretion to impose or not impose conditions as appropriate, depending on the individual circumstances. We will of course set out our policy in immigration rules and guidance in due course. The policy will be exercised with full respect to our international obligations and will most certainly be sensitive to certain types, some of which are referenced in the amendment, such as having been trafficked.[30]

He rejected the idea of specifying blanket exemptions for certain types of case on the face of the Bill, however, reasoning that "In reality, blanket carve-outs

25 PBC Deb 21 October 2021 c241

26 Letter from Tom Pursglove to Sir Roger Gale MP and Siobhain McDonagh MP, 26 October 2021

27 PBC Deb 21 October 2021 c268

28 Clause 34 as considered in Committee

29 Amendments 157 and 158

30 PBC Deb 26 October 2021 c404

would simply encourage people coming by small boat to claim they belonged to an exempted cohort."[31]

Clause 11 was ordered to stand part of the Bill by 9 votes to 7.[32]

Accommodation centres (clause 12)

Tom Pursglove confirmed that the Government intends to break from the community-based asylum accommodation model pursued by successive governments over the past twenty years or so under the dispersal policy.[33]

The Minister said that the current model, which is based on procuring flats, houses, hotels and hostels through the private rental market, has been under "considerable strain".[34]

In the Government's view, establishing a network of full-board accommodation centres would increase capacity and flexibility, and support faster processing of cases.[35] The Minister confirmed that people would be allocated to accommodation centres under the asylum support powers in section 95 and section 98 of the Immigration and Asylum Act 1999.[36]

The Labour and SNP frontbench teams argued in favour of retaining community-based accommodation. They contended that this better supports people's future integration, and that delays in asylum decision-making are unrelated to the type of accommodation used.[37]

The Minister confirmed that asylum seekers with children will not be placed in accommodation centres at any stage of the asylum process.[38] He also noted that unaccompanied asylum-seeking children are supported by local authorities under different arrangements.

He was unwilling to identify any other cohorts or characteristics that would, as a matter of policy, preclude a person from being accommodated in an accommodation centre. The Minister said that decisions on whether a person was suitable for an accommodation centre would depend on several factors, including "their personal circumstances and vulnerabilities, and the facilities available at the particular site or in the particular area."[39]

A probing amendment tabled by the SNP had suggested that accommodation centres should not be used for cases involving children, women, people with a disability, potential trafficking/modern slavery cases, survivors of torture, or

31 PBC Deb 26 October 2021 c405
32 PBC Deb 21 October 2021, division 10
33 PBC Deb 21 October 2021 c293; c298
34 PBC Deb 21 October 2021 c298
35 PBC Deb 21 October 2021 c293, c298
36 PBC Deb 21 October 2021 c296
37 PBC Deb 21 October 2021 c275, c284; c295
38 PBC Deb 21 October 2021 c297
39 PBC Deb 21 October 2021 c295

LGBTQ+ individuals.[40] But in the Minister's view, "It is not sensible to rule out large cohorts of cases from ever being placed in an accommodated centre in any circumstance, especially if their asylum case is more likely to be resolved quickly in a centre, which of course is in their best interests."[41]

Further amendments tabled by SNP and Labour members sought to impose various other restrictions on the use of accommodation centres, including maximum limits on their capacity and limits on the length of a person's stay, a prohibition on requiring unrelated residents to share rooms; and various guarantees of residents' rights and freedom of movement. These were rejected by the Minister, who cited the need to retain flexibility. He was keen to distinguish the accommodation centre model from immigration detention facilities, and the "contingency accommodation" in use at Napier (and, previously, Penally) former military barracks.

Only Labour's amendment 104, which sought to guarantee various rights to people in accommodation centres, was pressed to a division. It was rejected by 7 votes to 9.[42]

On capacity and oversight, Bambos Charalambous (Labour Shadow Immigration Minister) noted that a prior information notice for the procurement of new accommodation centres, published in August 2021, stated that it is for housing for up to 8,000 people for periods of up to six months. He queried how the pace of the procurement timetable could keep in step with the Bill's passage through Parliament and noted that the details of the tender are not in the public domain. Mr Charalambous expressed "clear concerns about how accountability and standards can be maintained … when there is no public access to these contracts."[43]

Tom Pursglove said that "advisory groups" would be established for each accommodation centre and undertook to provide Committee members with more detailed information about how they would be established.[44] His subsequent "will write" letter set out details of oversight arrangements at Napier barracks, but did not provide additional information about responsibilities and duties to establish advisory groups for the new accommodation centres.[45]

Asylum claims from people with connections to a safe third country: inadmissibility (clause 15)

The SNP tabled a string of amendments it said were designed to encourage the Government to think about safeguards that could make the clause compatible with the 1951 Refugee Convention. Bambos Charalambous gave

40 Amendment 98
41 PBC Deb 21 October 2021 c295
42 PBC Deb 21 October 2021, division 11
43 PBC Deb 21 October 2021 c279-280
44 PBC Deb 21 October 2021 c292
45 Letter from Tom Pursglove to Sir Roger Gale MP and Siobhain McDonagh MP, 26 October 2021

Labour's support to these and both Labour and the SNP opposed the clause standing part of the Bill.[46]

The SNP and Labour frontbench teams' criticisms focused on legal, moral and practical problems with the clause as drafted. Both suggested that the "inadmissibility" policy, as currently provided for in the Immigration Rules, was proving to be unworkable in the absence of a post-Brexit return agreement with EU Member States and was simply exacerbating costs and delays in the asylum system.[47]

Stuart McDonald queried various aspects of the drafting of the clause, including its reference to "a person" rather than "the individual".[48] At a later stage in the debate, Tom Pursglove said "Of course we would look at cases on an individual basis and at the concerns that have been raised."[49]

Paul Blomfield (Labour) pressed the Minister on the implications for the international protection system if other countries applied a similar "first safe country" principle. In response, the Minister said: "It is not about this country refusing to participate in the global effort, but about establishing clear expectations around how we intend to do that."[50]

Stuart McDonald pressed amendment 56 (modifying the definition of a "safe third state") to a vote, saying that he was dissatisfied with the Minister's responses to the concerns expressed about the clause's wording. It was rejected by 7 votes to 9.[51] The clause was ordered to stand part of the Bill upon division, by 9 votes to 7.[52]

In a subsequent sitting, the SNP and Labour proposed amendments to **clause 38** (clause 36 as considered in Public Bill Committee), which would have defined "protection in accordance with the Refugee Convention" (as referred to in clause 15) with reference to all the rights and obligations specified in the Refugee Convention.[53] Mr McDonald explained: "The amendment poses the question to the Government of whether they are a champion of the full range of rights in the convention, or are requiring people to claim asylum in countries where little more than lip service is paid to it, and nothing more than a protection against refoulement is provided."[54] Tom Pursglove responded that clause 15 as drafted already ensures that the principles of the Convention should be met. Dissatisfied with the Minister's response, Mr McDonald pressed his amendment to a vote. It was rejected by 6 votes to 7.[55]

46 PBC Deb 26 October 2021 c311
47 PBC Deb 26 October 2021 c308; c312
48 PBC Deb 26 October 2021 c309
49 PBC Deb 26 October 2021 c320
50 PBC Deb 26 October 2021 c319
51 PBC Deb 26 October 2021, division 13
52 PBC Deb 26 October 2021, division 14
53 Amendments 55 and 135
54 PBC Deb 26 October 2021 c410
55 PBC Deb 26 October 2021, division 30

Supporting evidence, priority removal notices and late compliance (clauses 17-22; 25)

Labour and SNP frontbench teams had significant concerns that these clauses would have a particular impact on people with protected characteristics and vulnerable applicants, including LGBTQI+ asylum seekers, children, survivors of torture, gender-based violence or trafficking.

Tom Pursglove said that these provisions would contribute to the swift resolution of asylum and human rights claims.[56] He repeatedly pointed to the safeguard that if a person had "good reasons" for providing evidence late there would be no adverse consequences for their credibility. But he rejected calls to exempt people with certain characteristics from the clauses, or to provide examples of "good reasons" in the Bill (as suggested by some opposition amendments). He suggested that exempting specific groups could have "perverse outcomes" and argued that providing a definition of "good reasons" in the Bill would be impractical and is a task more suited to policy guidance. He also cited concerns about restricting decision-makers' flexibility to consider factors on a case-by-case basis.[57] He identified some circumstances which might be considered to amount to "good reasons", specifically objective factors, such as practical difficulties in obtaining evidence at an earlier stage, and subjective factors such as a person's particular vulnerabilities.[58]

Labour and the SNP also objected to the provisions in **clauses 21 and 25** (clauses 20 and 23 as considered in Committee), which direct decision-makers to take certain considerations into account when assessing late evidence and late compliance with a priority removal notice. Stuart McDonald argued that "Parliament cannot tell decision makers what weight to give to evidence that we cannot know anything about."[59]

The Minister stressed that decision-makers would still have discretion over who to serve evidence notices on, and the extent to which credibility is damaged by late evidence. He emphasised that "there is nothing automatic about this" and that "credibility is also not determinative".[60] He made a similar point during debate on **clause 25** (clause 23 as considered in Committee), reiterating that the clause "does not create a provision whereby decision makers are required to give late evidence minimal weight; they are required only to have regard to the principle, which they can choose to disregard."[61]

Labour and SNP Members remained unconvinced by the provisions, with Stuart McDonald countering that "the problem is that [the Minister] sounds

56 PBC Deb 26 October 2021 c353
57 PBC Deb 26 October 2021 c332-3
58 PBC Deb 26 October 2021 c331
59 PBC Deb 26 October 2021 c367
60 PBC Deb 26 October 2021 c333
61 PBC Deb 26 October 2021 c372

reassuring when he says, essentially, "This clause will not have any effect".[62] They pressed various amendments to divisions but none succeeded.[63]

Minor government amendments to **clause 19** (clause 18 as considered in Committee), and **clause 20** (19 in Committee) were approved without divisions.[64]

Government amendments were also made to the drafting of **clause 22** (clause 21 as considered in Committee).[65] The clause is now complemented by **clause 23**, which originated as a new clause tabled by the Government in Committee.[66] It provides that if a person who is subject to a priority removal notice and expedited appeal has another appeal outstanding, that appeal would also be subject to the same expedited appeal procedure. Labour and the SNP spoke against the clause in Committee, but it was agreed to without division.[67]

Clauses 17, 18, 19, 20, 21, 22 and 25 were all ordered to stand part of the Bill after divisions.[68]

Accelerated detained appeals (clause 26)

The clause as per the original version of the Bill (clause 24) was replaced in Committee by a new clause proposed by the Government.[69] The new wording of the clause allows for a broader range of appeals to be subject to the proposed new accelerated detained appeals process. The new clause was agreed to upon division by 9 votes to 2.

Removal of asylum seeker to safe country (clause 28)

This clause (and **Schedule 3**) would enable the UK to send people overseas to have their asylum claims determined by another state. The Labour and SNP frontbench teams emphasised their parties' fundamental objections to the practice of 'offshoring' asylum claims, highlighting ethical, legal, practical and financial concerns, and drawing heavily on findings about Australia's use of such practices.[70] UNHCR has taken the view that "the very limited safeguards set out in the Bill would mean that any extraterritorial processing established on these terms would be in breach of the UK's international obligations, not in line with them."[71]

62 PBC Deb 26 October 2021 c374
63 PBC Deb 26 October 2021 divisions 15; 20; 22; 24
64 Amendments 60 – 66
65 Amendments 67-69
66 NC6
67 PBC Deb 4 November 2021 c600
68 PBC Deb 26 October 2021, divisions 16; 17; 18; 19; 21; 23; 25
69 NC7: PBC Deb 26 October 2021 c380; PBC Deb 4 November 2021, division 59
70 PBC Deb 26 October 2021 c390-4; c394-6
71 UNHCR, Detailed legal opinion, October 2021, para 126

Tom Pursglove put the clause and Schedule 3 within the context of the Government's broader policy objectives, saying that they are intended to form part of a "whole system deterrent effect to prevent illegal migration" and encourage people to claim asylum in the first safe country they reach.[72] This, in the Government's view, is the fastest route to safety.[73]

Stuart McDonald proposed an amendment which would have exempted various categories of vulnerable people from offshore processing.[74]

Tom Pursglove confirmed that children would not be transferred overseas.[75] But he described the SNP amendment as "overly restrictive", arguing by way of example that it would prevent the removal of an LGBT person to France or Italy. The Minister said, "we simply cannot support any amendment that seeks to limit our ability to remove individuals to safe third countries." He also emphasised to the Committee "we would only ever send individuals to countries where we know that their removal will be compliant with the UK's legal obligations".[76]

Stuart McDonald strongly disagreed, commenting that "The Minister keeps referring to safeguards in the Bill and consideration of individual applicants' safety, but none of that is in schedule 3".[77] He similarly questioned the Minister's assertions that measures in the Bill would protect people in genuine need, commenting that people could be removed to a third country before the substance of their claim had been considered.[78]

A new clause and schedule proposed by Mr McDonald specified certain conditions which would have to be satisfied for a person to have their asylum claim considered in a third country. These included that the removal would be pursuant to a formal readmission agreement; that the third country meets the definition of a safe country; that the person has a connection with the third country; and that it is reasonable, in the person's personal circumstances, for them to go to that country. Mr McDonald said that his proposal had been informed by UNHCR's legal analysis of the Bill.[79]

Neil Coyle (Labour) repeatedly pressed the Minister for an indication of which countries the Government has considered making an agreement with, arguing that "it is only right and proper that the Committee has an idea of the costs involved, because they will vary massively depending on the country – or indeed the continent".[80] He criticised the absence of information provided by the Minister as a "dereliction of duty", commenting that "we are supposed

72 PBC Deb 26 October 2021 388
73 PBC Deb 26 October 2021 c396
74 Amendment 159
75 PBC Deb 26 October 2021 c393
76 PBC Deb 26 October 2021 c386
77 PBC Deb 26 October 2021 c387
78 PBC Deb 26 October 2021 c388
79 UNHCR, Detailed legal opinion, October 2021, para 129
80 PBC Deb 26 October 2021 c385

to be going through a very costly and controversial set of plans in line-by-line scrutiny".[81]

Tom Pursglove refused to "get into a running commentary …about discussions that may or may not be taking place with countries around the world in relation to this policy."[82] However he did confirm that the Government is not working with Denmark to open an offshore detention centre.[83]

Bambos Charalambous queried whether people granted asylum in an offshore centre would subsequently be returned to the UK. Tom Pursglove clarified that this would not be the case, saying that asylum claims would be processed under the third country's asylum system, rather than by the UK.[84]

The clause was ordered to stand part of the Bill by 8 votes to 6.[85]

Interpretation of Refugee Convention (clauses 29-37)

The SNP and Labour proposed amendments to **clause 31** (clause 29 as considered in Public Bill Committee), which would have removed the balance of probabilities standard for whether a person's fear of persecution relates to one of the characteristics specified in the Refugee Convention ('a convention reason').

Speaking to the amendments, Stuart McDonald described the Government's proposed new two-stage approach to assessing a well-founded fear of persecution as "hugely dangerous and possibly very confusing".[86]

He illustrated his concerns about the proposed balance of probabilities threshold with a hypothetical example, contending that "The decision maker could be 49% certain that the applicant is LGBT and 100% certain that an LGBT person returned to a particular country will be tortured and killed, but that 1%—that tiny little bit of doubt—means that the balance of probabilities threshold will not be met, and that case will be rejected."[87]

Tom Pursglove argued that the approach specified in the Bill would lead to "clearer and more consistent decisions." He agreed to write to Stuart McDonald to confirm how asylum claims based on imputed characteristics would be affected by the clause.[88] This was covered in his "will write" letter of 27 October.[89]

81 PBC Deb 26 October 2021 c396
82 PBC Deb 26 October 2021 c385
83 PBC Deb 26 October 2021 c396
84 PBC Deb 26 October 2021 c392; c397
85 PBC Deb 26 October 2021, division 27
86 PBC Deb 26 October 2021 c399
87 PBC Deb 26 October 2021 c399
88 PBC Deb 26 October 2021 c400
89 Letter from Tom Pursglove to Sir Roger Gale MP and Siobhain McDonagh MP, 27 October 2021

In the Minister's view, adopting a higher standard of proof for the convention reason element of the well-founded fear of persecution test is justified, because "that is the ordinary civil standard for establishing facts." He said that "reasonable degree of likelihood" would remain the appropriate standard for the other part of the assessment (whether the person would face persecution if returned), because "The subjective element – the future fear – is naturally harder for the claimant to demonstrate."[90] He sought to reassure the Committee that the Home Office is mindful of the need to ensure that people with certain protected characteristics, including LGBT+ people, are not disadvantaged by the clause.[91]

The clause was ordered to stand part of the Bill upon division by 7 votes to 6.[92]

Tom Pursglove similarly argued that **clause 32** (clause 30 as considered in Committee) would provide clarity on how "particular social group" should be interpreted. He said that the conditions specified in the clause reflect government policy but that currently "there is no established case law on the point". He referred to "conflicting tribunal-level case law and obiter comments by the House of Lords in the case of Fornah."[93]

The clause was ordered to stand part by 6 votes to 7.[94]

Justifying the move in **clause 37** (clause 35 as considered in Public Bill Committee) to redefine "particularly serious crime" as ones where a person has been sentenced to 12 months' custody or more, the Minister said that the Home Office "had looked carefully at the type of offending that may be caught by a new lower threshold" and was satisfied that it was appropriate.[95]

2.4 Part 3: Immigration control

Illegal entry and similar offences (clause 39)

Labour and the SNP expressed grave concerns about the potential scope and likely impact of the overhauled illegal entry offences as provided for in **clause 39** of the Bill (clause 37 as considered in Committee). They highlighted that most people who claim asylum in the UK would come within the scope of the proposed offences. Objections raised included that the clause would breach various aspects of the 1951 Refugee Convention, would be costly and difficult to implement, and was undermined by the absence of alternative provision for safe and lawful routes of entry to the UK.

90 PBC Deb 26 October 2021 c401
91 PBC Deb 26 October 2021 c401
92 PBC Deb 26 October 2021, division 28
93 PBC Deb 26 October 2021 c403
94 PBC Deb 26 October 2021, division 29
95 PBC Deb 26 October 2021 c408

Tom Pursglove confirmed that the offences could apply to a person who had obtained a visit visa to be able to travel to the UK to claim asylum.[96] But he also emphasised that the Government envisaged that prosecutions of the new offences would be targeted towards certain types of case, saying:

> It is worth repeating that we are not seeking to criminalise those who come to the UK genuinely to seek asylum, and who use safe and legal routes to do so. We will be targeting for prosecution those migrants in cases where there are aggravating factors—where they caused danger to themselves or others, including rescuers; where they caused severe disruption to services such as shipping routes, or the closure of the channel tunnel; or where they are criminals who have previously been deported from the UK or persons who have been repeatedly removed as failed asylum seekers.[97]

He continued:

> of course, the decision on whether prosecution is in the public interest rests with the Crown Prosecution Service in England and Wales, the Crown Office and Procurator Fiscal Service in Scotland and the Public Prosecution Service in Northern Ireland. In many cases, we will continue to seek the illegal migrant's removal, rather than their prosecution.[98]

Pressed on why aggravating factors could not be specified in primary legislation, Mr Pursglove argued that this would be "too restrictive", further commenting that "the factors for prosecution…may change depending on the circumstances."[99]

A government amendment to clause 39 introduced an additional new offence of knowingly arriving in the UK without an electronic travel authorisation (ETA) where an ETA is required and made consequential amendments.[100]

The amendments were approved upon division by 8 votes to 7.[101] The clause, as amended, was ordered to stand part of the Bill without division.[102]

Assisting unlawful immigration or asylum seeker (clause 40)[103]

Tom Pursglove confirmed to the Committee (and subsequently in his "will write" letter of 2 November) that the Government intends to bring an

96 PBC Deb 28 October 2021 c428
97 PBC Deb 28 October 2021 c420
98 PBC Deb 28 October 2021 c420
99 PBC Deb 28 October 2021 c422
100 Amendments 110 and 111-7
101 PBC Deb 28 October 2021, division 32
102 PBC Deb 28 October c429
103 Clause 38 as considered in Committee

amendment at Report stage to address the concerns raised about the potential effect of the clause as currently worded.[104] He said in Committee:

> I will set out my intention to amend this clause on Report to ensure that organisations such as the RNLI, those directed by Her Majesty's Coastguard, and individuals who fulfil their obligations in rescuing those in distress at sea may continue as they do now. We also intend to ensure that this provision does not prevent those responsible for vessels from complying with their obligations if they discover stowaways on board as they journey to the UK.[105]

Rejecting a proposed amendment by the Shadow Minister for Immigration, Tom Pursglove explained why, in the Government's view, it is necessary to remove the reference in the existing offence to acting "for gain". He said, "Gain can be obtained in many ways, but cannot always be proved to the evidential standard required for a successful prosecution: for example, money transfers made by other family members abroad or made cash in hand, promises of servitude by the asylum seeker or others, or the provision of assistance in the facilitation act, such as by avoiding paying a fee by agreeing to steer a small boat".[106]

Bambos Charalambous pressed his amendment to a vote, arguing that "Second Reading was back in July and there has been plenty of time to table an amendment." It was rejected by 7 votes to 8.[107]

An amendment proposed by Neil Coyle was also pressed to a vote, for similar reasons. It was also rejected by 7 votes to 8.[108]

The clause was ordered to stand part of the Bill upon division, by 8 votes to 7.[109]

Maritime enforcement (clause 44)

Government amendment 82 changed what is now **Schedule 6** of the Bill. It removed the limitation on authorising the use of maritime enforcement powers to circumstances where the Secretary of State considers that their exercise is permitted by the UN Convention on the Law of the Sea.

Tom Pursglove said that the UK is fully committed to upholding the Convention and it is unnecessary to restate that in the clause.[110] For similar reasons, government amendment 83 removed the limitation that authority to require a ship be taken to another State or territory can only be given if it is willing to receive the ship. The Minister said: "It is …unnecessary to state in

104 PBC Deb 28 October 2021 c433
105 PBC Deb 28 October 2021 c433
106 PBC Deb 28 October 2021 c432-2
107 PBC Deb 28 October 2021, division 33
108 PBC Deb 28 October 2021, division 34
109 PBC Deb 28 October 2021, division 35
110 PBC Deb 28 October 2021 c444-5

legislation, where it is already beyond doubt, that Border Force would seek permission from a foreign country before taking a migrant boat back to that country."

Explaining why, in the Government's view, the amendments were desirable, he said: "We want to make it explicit that operating these maritime enforcement powers in UK waters or international waters to simply divert a migrant vessel from UK territorial seas does not require the permission of a foreign state where that vessel may then enter their waters."[111]

Bambos Charalambous detailed broader concerns about the clause's compatibility with international maritime law, human rights and refugee law, including the duty of non-refoulement.[112]

Various amendments proposed by Paul Blomfield would have imposed some restrictions and safeguards on the exercise of maritime powers, including that officers assess welfare risk before stopping or boarding a ship, and that the powers can only be exercised by staff who have passed relevant training. The Minister said that these were unnecessary, since all immigration officers already receive such training, and staff exercising maritime powers would undergo further specialist training.[113] In terms of welfare risk assessments, Tom Pursglove said that a requirement to carry out risk assessments before and during any exercise of the powers would be specified in operational procedures.[114]

Amendment 145, also proposed by Paul Blomfield, would have required the Government to publish a list of states or territories it had secured returns agreements with. Mr Blomfield cast doubt on the Government's prospects for securing any such agreements, suggesting that the clause reflected a wider problem with the Bill, whereby "The Government are trying to talk tough and grab headlines but with proposals that are actually undeliverable and that will not solve the problem of people smuggling".[115]

Bambos Charalambous made a similar point about the proposed new powers to stop, board, and divert vessels, contending that "Ultimately, these proposals are extremely dangerous, and, if attempts were made to exercise the powers, lives at sea will surely be endangered. If attempts are not made to exercise them, then what is the point of passing them into law?"[116]

Addressing opposition Members' concerns about provisions in the Bill giving officials immunity from criminal and court proceedings, Tom Pursglove said that "these protections are nothing new."[117]

111 PBC Deb 28 October 2021 c445
112 PBC Deb 28 October 2021 c458
113 PBC Deb 28 October 2021 c446
114 PBC Deb 28 October 2021 c445
115 PBC Deb 28 October 2021 c451
116 PBC Deb 28 October 2021 459
117 PBC Deb 28 October 2021 c460

The clause was ordered to stand part of the Bill by 8 votes 7.[118]

Authorisation to work in UK waters (clause 42)

The Government's new clause 20 (and related amendments) replaced the previous placeholder clause on authorisation to work in the territorial sea with a new clause and schedule (**clause 42 and Schedule 5**).[119] The Minister said that the new clause "will clarify the legal framework but will not change the existing position that migrant workers need permission to work in UK waters."[120] He also confirmed that it would not affect people engaging in innocent passage or crew who are covered by section 8 of the Immigration Act 1971.

Removals and immigration bail (clauses 45-47)

Clauses 45 and 46 (previously clauses 43 and 44) reflect changes made by the Government's new clause 28 and new clause 8 and related schedule. The changes did not affect the clauses' underlying principles.

Clause 46 and **Schedule 7** make changes to the early removal scheme for foreign national offenders. Tom Pursglove said that the clause was part of a package of changes which would provide "greater opportunity to remove as many foreign national offenders from the UK as early as possible".[121]

The Labour and SNP frontbenchers both spoke against what became clauses 45-47, emphasising various concerns about access to justice for people affected. There was a division on **clause 47** standing part of the Bill.[122]

Bambos Charalambous pressed Labour's proposed amendment to clause 45 (leaving out subclauses allowing for no notice removals) to a division.[123]

Paul Blomfield had tabled an amendment which would have prevented the deportation of foreign national offenders who had arrived in the UK before their tenth birthday.[124] Tom Pursglove agreed to write to Committee members providing information about agreements made by the Government with other countries about the deportation of people who moved to the UK before the age of 12.[125] His "will write" letter of 2 November confirmed that an "operational agreement" had been made with the Jamaican High Commission in relation to the 2 December 2020 charter flight and that no similar arrangements have been made with other countries.[126]

118 PBC Deb 28 October 2021, division 36
119 PBC Deb 28 October 2021 c450; 460-2; PBC Deb 4 November 2021 c608
120 PBC Deb 28 October 2021 c450
121 PBC Deb 28 October 2021 c469
122 PBC Deb 28 October 2021, division 40
123 PBC Deb 28 October 2021, division 39
124 Amendment 143: PBC Deb 28 October 2021 c467-9
125 PBC Deb 28 October 2021 c469
126 Letter from Tom Pursglove to Sir Roger Gale MP and Siobhan McDonagh MP, 2 November 2021

2.5 Part 4: Age assessments (Government new clauses)

Clauses 48 – 56, considered in Public Bill Committee as new clauses 29 – 37, form a new Part 4 to the Bill. They replace the placeholder provisions in clause 58 of the Bill as originally introduced.

Very briefly, the new clauses:

- Introduce new processes for conducting age assessments in respect of people who require leave to enter/remain and for whom there is "insufficient evidence to be sure of their age" and establish the "balance of probabilities" as the standard of proof for such assessments.
- Specify powers and responsibilities of the Secretary of State, local authorities and "designated persons" (in practice, officials of the proposed National Age Assessment Board (NAAB)) to require and conduct age assessments (**clauses 49, 50**).
- Allow for the use of scientific methods in age assessments (**clause 51**) and for more detailed provisions about the conduct of age assessments to be specified in regulations subject to the affirmative procedure (**clause 52**).
- Provide for a right of appeal to the First-Tier Tribunal against an age assessment conducted by the NAAB or a local authority (**clauses 53, 54**) and allow for civil legal aid to be available for such appeals (**clause 56**).
- Outline the scope for conducting a further age assessment if significant new information about a person's age comes to light after an assessment or appeal has taken place (**clause 55**).

Criticisms and concerns raised by Labour and SNP Members in debates in Committee on the new clauses included:

- That the Government has failed to provide compelling evidence to demonstrate why its proposed new approach is necessary, and that there had been limited opportunity for scrutiny of the new clauses.
- That the wide threshold for coming within the proposed definition of an age-disputed person will result in a significant increase in the number of people subjected to age assessments.
- That the proposed standard of proof is inappropriately high considering the difficulties of assessing age accurately and the risks arising from children being wrongly identified as adults.
- That the proposed role and responsibilities of the Home Secretary and NAAB will undermine local authority expertise and autonomy.
- That there is an absence of detail in the Bill about how the NAAB will be established and resourced, and what mechanisms will be in place to ensure its accountability, transparency and independence from the Home Office.
- Doubts about the ethics and validity of scientific methods for age assessments, and whether it is appropriate to potentially draw adverse

credibility findings if a person refuses to consent to a specified scientific method.

Craig Whittaker (Government Whip) responded on behalf of the Government. He described the NAAB as "a decision-making function in the Home Office" which would mostly consist of qualified social workers.[127]

As per **clause 51**, regulations may specify scientific methods for conducting age assessments. Scientific methods may only be specified in regulations if the Secretary of State has sought scientific advice and determined that the method is appropriate for assessing age. Craig Whittaker said that this is a safeguard which responded to ethical concerns which had been raised about the use of scientific methods.[128]

Labour and SNP members of the Committee were concerned, however, that under clause 51(9), it would remain possible to use a scientific method which had not been specified for age assessment purposes, "if the decision-maker considers it appropriate to do so and, where necessary, the appropriate consent is given."[129] Craig Whittaker responded by emphasising that failure to consent to those methods would not affect a person's credibility. The "will write" letter of 4 November provided some further commentary on clause 51(9).

Responding to comments about the use of scientific age assessment methods, Mr Whittaker contended that allowing for the use of scientific methods would enable the UK "to emulate best practice across Europe and to ensure that unaccompanied asylum-seeking children are provided with the care they are entitled to in a safe environment." He noted that such methods are not new and highlighted some examples of how they are used in other European countries.[130] A February 2021 European Migration Network ad hoc query is a source of more detailed information about age assessment techniques used in over 20 EU Member States.[131]

Referring to the potential impact on a person's credibility if they failed to consent to a specified scientific age assessment method without reasonable grounds, Mr Whittaker argued that the introduction of scientific age assessment methods would be "entirely undermined" if a person could simply refuse to co-operate.[132]

Clauses 48 – 52 were each approved upon division by 10 votes to 6.[133] **Clauses 53 – 56** were added to the Bill without division.[134]

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127 PBC Deb 4 November 2021 c561; c563

128 PBC Deb 4 November 2021 c558-9

129 PBC Deb 4 November 2021 c560; c549

130 PBC Deb 4 November 2021 c561

131 European Commission/EMN, Ad hoc query on 2021.10 Unaccompanied minors – age assessment methods, requested on 18 February 2021

132 PBC Deb 4 November 2021 c561

133 Considered in Committee as NC29 – 33: PBC Deb 4 November 2021, divisions 61-65

134 PBC Deb 4 November 2021 c622-6

2.6 Part 5: Modern Slavery

The Labour and SNP frontbench teams argued that it is inappropriate for a Bill focused on immigration and enforcement to include measures relating to modern slavery and trafficking. They also shared a general concern that various provisions in the Bill would undermine protections previously provided for in the Modern Slavery Act 2015.[135]

There were stand part divisions on **clauses 57 – 64 and 67**.[136] Labour pressed various amendments to divisions. Broadly, these aimed to provide certain protections/exemptions for child victims of trafficking/slavery, and to enshrine certain existing practices in primary legislation.[137]

The Minister sent two "will write" letters relevant to Part 5, dated 2 November 2021 (in relation to **clauses 57 and 58**) and 4 November 2021 (in relation to **clause 67** and the EU Trafficking Directive).

Slavery or trafficking information notices (clauses 57 and 58)

Discussions about **clauses 57 and 58** (clauses 46 and 47 as considered in Committee) and related non-government amendments covered much of the same ground as the debates on evidence and priority removal notices provided for in Part 2 of the Bill.[138] As with the provisions in Part 2, the Minister said that many of the issues identified by Labour and the SNP would be best dealt with in policy guidance. He emphasised a desire to work with stakeholders to develop that guidance.[139]

Holly Lynch (Shadow Minister for Crime Reduction and the Courts) highlighted concerns about Part 4's effect on children, as expressed by NGO stakeholders and the Independent Anti-Slavery Commissioner.[140] The Independent Anti-Slavery Commissioner wrote to the Home Secretary in September 2021 with detailed comments on the Bill and particular areas of concern in Part 5.[141]

Labour proposed some amendments to exclude people who were exploited as children from the scope of the provisions, noting that statutory guidance on the Modern Slavery Act requires child protection measures to be followed in such cases.[142]

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135 PBC Deb 28 October 2021 c474; c479; c483; c500

136 PBC Deb 28 October 2021, divisions 41-43; 45; 47; 49; 51-2; 54-5

137 PBC Deb 28 October 2021, divisions 42; 44;46;48; 50; 53

138 PBC Deb 28 October 2021 c473-500

139 PBC Deb 28 October 2021 c481

140 PBC Deb 28 October 2021 c483

141 Independent Anti-Slavery Commissioner, Dame Sara responds to the Nationality and Borders Bill, 7 September 2021

142 Amendments 190; 180; 164; 189

Neil Coyle spoke to a string of amendments tabled in the name of Dame Diana Johnson, which would have protected victims of trafficking for sexual exploitation from some of the Bill's effects.[143] These included a proposed new clause creating a new offence of trafficking a person to the UK for sexual exploitation.[144] Tom Pursglove argued that this is not necessary in light of existing provisions in the Modern Slavery Act 2015 and comparable legislation in Scotland and Northern Ireland.[145] Dame Diana has tabled a similar amendment for Report stage (NC3).

Labour and the SNP frontbenches suggested that, contrary to the Government's stated intentions, the issuing of information notices could significantly delay victims' access to support .[146] In response to probing questions about how the process for serving information notices would impact on the timing of a person entering the National Referral Mechanism and the issuing of reasonable grounds decisions, Tom Pursglove agreed to write to the Committee with some additional commentary.[147] The clauses are referred to in his "will write" letter of 2 November.[148] As an additional follow-up to issues raised in Committee, the letter also provides some information about the Government's assessment of the scale of abuse which the clauses are intended to address.[149]

Identification of potential victims (clause 59)

Labour's amendment 183 sought to retain the existing reasonable grounds threshold specified in the Modern Slavery Act 2015 (that a person "may be" a potential victim). Holly Lynch questioned why the Government consider change necessary. She highlighted Home Office data showing that around nine in 10 of all reasonable and conclusive grounds decisions are positive, arguing that the success rates indicate that the threshold is already set at an appropriate level.[150]

Tom Pursglove described the clause as making a "minor change" which would provide clarity by bringing the reasonable grounds threshold into closer alignment with the Council of Europe Convention on Action Against Trafficking (ECAT) and the approach taken by the devolved Administrations.[151]

Labour also proposed an amendment to introduce Multi-Agency Assurance Panels at the reasonable grounds stage and enable them to overturn decisions made by a competent authority.[152] Holly Lynch expressed concern that the introduction of trafficking information notices could affect the speed

143 Amendments 181, 187, 182: PBC 28 October 2021 c493-498
144 NC42
145 PBC Deb 28 October 2021 c497-8
146 PBC Deb 28 October 2021 c480
147 PBC Deb 28 October 2021 c482
148 Letter from Tom Pursglove to Sir Roger Gale MP and Siobhan McDonagh MP, 2 November 2021
149 PBC Deb 28 October 2021 c498
150 PBC Deb 28 October 2021 c501
151 PBC Deb 28 October 2021 c502
152 Amendment 185

of reasonable grounds decision-making. Extending the Panel's role, she suggested, could improve confidence in and scrutiny of reasonable grounds decisions, which she characterised as "effectively the gateway to all anti-trafficking support".[153]

Responding for the Government, Craig Whittaker said that it would consider the conclusions of the recent evaluation of the panels "in due course", and that primary legislation would not be needed if it subsequently decides to make changes to the panels' remit.[154]

Recovery periods for potential victims (clauses 60-61)

Labour and the SNP questioned, on various grounds, the rationale for legislating to shorten the recovery period for victims of trafficking to 30 days.[155] Labour's proposed amendment would have specified a minimum recovery period of 45 days.[156] In response, Craig Whittaker argued that the amendment was not necessary, noting that 45 days is already provided for in the statutory guidance issued under the Modern Slavery Act 2015. He also acknowledged that the average time for conclusive grounds decisions is currently significantly longer than 30 or 45 days (339 days in 2020) but said that the Government is working to reduce this.[157] Pressing the amendment to a vote, Holly Lynch contended that "the fact that it is 45 days in the statutory guidance shows why the Bill is an absolute nonsense and does not make the first bit of sense."[158]

Clause 61 (clause 50 as considered in Committee) allows for a person not to be granted an additional recovery period in the event of receiving a further positive reasonable grounds decision. Labour and the SNP questioned what evidence of abusive additional trafficking claims exists.[159] Holly Lynch highlighted concerns about the clause's potential impact, including on child victims (both migrant and British children).

Craig Whittaker clarified that the clause "is focused on removing the presumption for multiple recovery periods where the period of exploitation happened before the original recovery period was provided." He emphasised that it does not prevent individuals who have been re-trafficked from receiving a further recovery period, and nor is it intended to act as a "blanket disqualification" from multiple recovery periods. As with many other of the provisions in the Bill, he pointed to the fact that decision makers would retain discretion, underpinned by guidance, to grant more than one recovery period on a case-by-case basis.[160]

153 PBC Deb 2 November 2021 c506; 508
154 PBC Deb 2 November 2021 c507
155 PBC Deb 2 November 2021 c510-1
156 Amendment 1
157 PBC Deb 2 November 2021 c512
158 PBC Deb 2 November 2021, c512; division 46
159 PBC Deb 2 November 2021 c515
160 PBC Deb 2 November 2021 c516

Disqualification from protection (clause 62)

Holly Lynch and Stuart McDonald expressed similar concerns about **clause 62**. This allows for a person in receipt of a positive reasonable grounds decision to be disqualified from the protections given to trafficking or slavery victims if they are deemed to be a threat to public order or to have claimed to be a victim in bad faith.

Specific concerns highlighted by Labour and the SNP were the clause's broad scope, impact on children who are victims of child criminal exploitation and people who were targeted by traffickers because they already have minor convictions, and potential conflicts with statutory safeguarding duties under the Children Act 2004, protections in the Modern Slavery Act 2015, and provisions in the ECAT.[161]

Stuart McDonald argued that guidance on implementing ECAT already provides a remedy for dealing with improper claims or cases that raise public order concerns.[162]

Various external stakeholders, including the Independent Anti-Slavery Commissioner, have warned that the clause will make it harder to convict perpetrators and target organised crime groups. Holly Lynch echoed those concerns, contending that the clause would "drive more people underground and make it significantly harder for the police and the authorities to investigate". She further commented "It also sends the clear message to those perpetrators that they are free to exploit someone with a criminal record, knowing that they will be exempt from protection."[163]

Leave to remain for victims of slavery or human trafficking (clause 64)

Holly Lynch contested Craig Whittaker's assertion that the clause would provide clarity and certainty over the circumstances when victims might qualify for temporary leave to remain.

A key concern for Labour, shared by the SNP frontbench, was that the clause does not use the same wording ("personal situation") as Article 14 of ECAT, when setting out the grounds for granting immigration leave. Craig Whittaker said that the approach taken in the Bill would support clarity of decision making, by defining for domestic purposes what is meant by "personal situation".[164]

Labour's amendment 189, which was rejected upon division, would have incorporated into primary legislation child victims' entitlement to immigration permission (in accordance with Article 14 of ECAT).[165] Craig Whittaker argued

161 PBC Deb 2 November 2021 c517-523
162 PBC Deb 2 November 2021 c520-1
163 PBC Deb 2 November 2021 c520
164 PBC Deb 2 November 2021 c534
165 PBC 2 November 2021, division 53

that it was not necessary, emphasising that children's particular vulnerabilities are "built into our consideration of how the clause will be applied", and that the clause's wording already reflects international legal obligations.[166]

Amendments proposed by Labour would have specified that confirmed victims in England and Wales be granted leave for a minimum of 12 months and would have removed subsections (3) and (4) of the clause, which identify circumstances in which a grant of immigration leave is not necessary (e.g., where a person's need for assistance can be met in a country of proposed removal). Craig Whittaker said that decision makers would be able to draw on guidance and country information to assess whether the victim would be able to access the support and recovery they need in the country of return. He also said that decisions on the length of temporary immigration permission granted would reflect the individual's needs, commenting: "If they need six months they will get six months. If they need longer than that – whether for a court case or other circumstances – that is intended to be allowed for the individual."[167]

A government amendment to clause 64 corrected a minor drafting error.[168]

2.7 Part 6: Miscellaneous

Removal of good faith clause

The Government moved an amendment to remove the good faith requirement (clause 64 of the Bill as originally introduced to the Commons). Craig Whittaker explained that the Government had considered the impact of the clause and what it adds to wider provisions, and views expressed by wider stakeholders.[169]

Visa penalties for uncooperative countries (clauses 69-70)

Clauses 69 and 70 replace a previous "placeholder" clause. They now include some additional details about how the proposed new powers to use the visa system to penalise countries that do not cooperate with removals of their nationals from the UK would be exercised.[170]

166 PBC 2 November 2021 c535
167 PBC Deb 2 November 2021 c539
168 Amendment 72 to clause 53 as considered in Committee
169 PBC Deb 2 November 2021 c577
170 Considered in Committee as NC9 and 10

In response to questioning by Paul Blomfield and Anne McLaughlin (SNP), Craig Whittaker gave an assurance that refugee family reunion cases would be exempt from visa penalties.[171]

Referring to the existence of similar powers in the US and EU, Mr Whittaker said that the new powers would "ensure that we are no longer lagging behind our international partners" and described them as "a critical step in taking back control of our borders".[172] Mr Whittaker also emphasised that visa penalties are intended to be used as a "last resort", and for no longer than necessary. He highlighted the provisions in **clause 70**, which require the ongoing need for a visa penalty to be reviewed on a bimonthly basis. [173]

Clause 69 was added to the Bill upon division, by 10 votes to 2.[174]

Government new clause: Counter-terrorism questioning of detained entrants away from place of arrival (clause 74)

This clause would amend Schedule 7 of the Terrorism Act 2000.[175] It would broaden the definition of "ship" in that Schedule and enable a person who has arrived in the UK by sea within the past five days and is being detained under immigration Act powers to be questioned about involvement in terrorism.

171 PBC Deb 2 November 2021 c567

172 PBC Deb 2 November 2021 c567-8

173 PBC Deb 2 November 2021 c568

174 PBC Deb 4 November 2021, division 60

175 Considered in Committee as NC 12: PBC 2 November 2021 c585-6; PBC Deb 4 November 2021 c606-7

3 Remaining stages (Commons): a forward look

Full text of all amendments and new clauses proposed for consideration at Report stage, with accompanying explanatory statements, can be accessed from the 'publications' tab of the Bill's pages on the Parliament website.

3.1 Non-government amendments

High-profile non-government amendments, which have attracted cross-party support, include:

Preventing offshore processing of asylum claims (Amendments 9 – 11)

These amendments would amend **clause 28** and **Schedule 3** of the Bill, to retain the status quo that a person cannot be removed from the UK whilst they have a pending asylum claim. They have been tabled by David Davis (Conservative) and the principal supporters are Caroline Nokes (Conservative, former Immigration Minister), Andrew Mitchell (Conservative, former International Development Secretary and Government Chief Whip), and Alistair Carmichael (Liberal Democrats, Home Affairs spokesperson).

Giving Chagossians an entitlement to registration as British nationals (NC2)

This clause would create an entitlement to registration, free of charge, as a British Overseas Territories citizen and as a British citizen, for anyone who is a direct descendent of a person born before 1983 on the British Indian Ocean Territory.

The long-running campaign to allow descendants of people born on the Chagos Islands to register as British Overseas Territories Citizens has been championed in Parliament by the clause's sponsor, Henry Smith (Conservative). A previous Home Affairs Committee has also expressed support for the Chagossian's cause.[176] The background to the Chagossians'

[176] Home Affairs Committee, The Windrush generation, HC 990 of 2017-19, 3 July 2018, p.41

situation was set out in Public Bill Committee during debate on an identical clause, which was supported by Labour and the SNP.[177]

Tom Pursglove confirmed that he was "sympathetic" to the clause's aims, but was unconvinced that the clause as drafted was the correct approach. Highlighting concerns about its open-ended nature, he observed that it "would offer British citizenship in perpetuity to those born outside the UK". The general approach in British nationality law is that nationality and entitlements can only be passed on to one generation born and settled overseas. The Minister asked for an opportunity "to reflect further on the complex issues faced by Chagossian communities in the UK and those in Mauritius and the Seychelles … before making any significant changes to nationality law". He emphasised to the Committee that "there is a willingness to look closely at the Chagossian issue."[178]

Right of abode for former British-Hong Kong service personnel (NC 4)

This clause would grant the right of abode to all former British-Hong Kong service personnel, and their spouses and dependents (without age restrictions). The right of abode enables a person to travel to and from, and live and work, freely in the UK without requiring a visa or being subject to immigration time restrictions.

It has been estimated that the proposed new clause would benefit around 300 Hong Kong servicemen (1,000 people in total including family members).[179]

There has been a long campaign to grant the right of abode or British citizenship to locally recruited Hong Kong veterans.[180] It has been supported by Andrew Rosindell (the clause's sponsor) and several other Parliamentarians.[181]

The servicemen had been eligible to apply for British citizenship in the 1990s, under the quota-based British Nationality (Hong Kong) Citizenship Selection Scheme. But campaigners say that only a small number of soldiers in the Hong Kong Military Service Corps benefitted from the Scheme.

Since 2016, successive governments have said that the Home Office is considering representations made on behalf of former Hong Kong servicemen.[182] But Tom Pursglove was not receptive to the proposed new clause when an identical version was considered in Public Bill Committee.[183] In addition to concerns about the impact on public services, he commented that

177 Considered in Public Bill Committee as NC 15: PBC Deb 4 November 2021 c638-644

178 PBC Deb 4 November 2021 c644

179 PBC Deb 4 November 2021 c645

180 For background, see HC Deb 11 March 2015 c87-94WH

181 E.g., EDM 1521 of 2019-21 session

182 E.g. PQ UIN HL11870, answered on 18 January 2021; HC Deb 2 June 2020 c691

183 Considered in Committee as NC 5

"it might be difficult to justify why this specific cohort should be granted the right of abode when others from former colonial garrisons are not."[184] He also noted that the servicemen would have been eligible to apply for British National (Overseas) status in the run-up to the Hong Kong handover.[185]

Broadening eligibility for British National (Overseas) visa (NC 5)

This clause, tabled by Damian Green, former Immigration Minister, echoes a recommendation made by the Home Affairs Committee in its recent inquiry into the UK's visa offer for residents of Hong Kong.[186]

The proposed new clause would enable people who have a parent with British National (Overseas) - 'BNO' - citizen status to apply for a BNO visa independently of their parent.[187] Currently, non-BNOs can only apply for the visa if they are the dependent family member of a person with BNO citizen status who is also applying.

The change would benefit young adults who do not have BNO status in their own right (for example, because they were born after the cut-off date for applying) and whose BNO parent(s) do not wish to move to the UK.

Mr Green has suggested that, as well as meeting a "moral obligation" to young Hong Kong citizens and rectifying an "unfair" policy, extending the eligibility criteria for the BNO visa would also help to alleviate pressure on the asylum system.[188] Bambos Charalambous made similar points when proposing a related new clause in Committee.[189]

The Government has previously said that it understands concerns about accessibility to the BNO visa route. But it has ruled out broadening the scope of the visa's eligibility criteria. It argues that people ineligible for the BNO visa can make use of other visa routes, such as the Youth Mobility Scheme or as a Skilled Worker visa holder.[190]

Campaigners argue that these routes are inadequate, and that some young Hong Kong activists are overstaying their visas or claiming asylum in the UK due to an absence of alternative options.

184 PBC Deb 4 November 2021 c649-50

185 PBC Deb 4 November 2021 c649

186 Home Affairs Committee, The UK's offer of visa and settlement routes for residents of Hong Kong, HC 191, 7 July 2021, para 57

187 For background information about the visa, see Commons Library briefing CBP 8939, 6 May 2021

188 The Independent, 'Senior Tories call on Home Office to stop 'unfairly' excluding young Hong Kong nationals from BNO scheme', 11 November 2021

189 Considered as NC52; PBC Deb 4 November 2021 c701-4

190 Home Affairs Committee, Government response to the Committee's Second Report, HC 682, 10 September 2021, paras 2-4

3.2 Government amendments

On 1 December the Government gave notice of 80 proposed amendments to the Bill. Many of these make minor drafting or technical changes or are consequential to other proposed amendments, but a significant number would make more substantive changes and additions to the Bill.

Proposed changes to Part 1 (nationality)

Amendments 17-18 are drafting and consequential amendments to **clause 9**.

Proposed changes to Part 2 (asylum)

Amendments 19 – 25 would make technical changes to **clause 12**, which is concerned with the use of asylum accommodation centres.

Amendment 26 would amend **clause 15**, which relates to inadmissibility procedures for asylum claims connected to safe third States. It would remove the power to consider an asylum claim previously declared inadmissible in circumstances where the Secretary of State determines that the person's removal to a safe third State within a reasonable period is unlikely to be possible.

Amendment 27 would amend **clause 17** so that a person who provides the Tribunal or SIAC with late evidence would also have to provide them with their reasons for the lateness. **Amendment 30** makes a similar change to **clause 19** in respect of submissions made after a Priority Removal Notice cut-off date.

Amendments 28 – 29 would amend **clause 18** (damage to a claimant's credibility). **Amendment 29** would introduce a requirement for the Tribunal or SIAC to explicitly address section 8 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004 (behaviours damaging to credibility) in their decisions.

Amendments 31 – 38 would make various changes to **clause 21** (late compliance with priority removal notices: damage to credibility) including how it applies to the Tribunal and SIAC.

Amendments 39 – 40 would raise the threshold for an appeal to be removed from the expedited appeal process for priority removal notice cases (provided for in **clause 22**) from being "in the interests of justice" to if it is "the only way for justice to be done". **Amendment 42** makes the same change to the wording of **clause 23** and **Amendments 46-47** likewise amend **clause 26** in relation to removing cases from the accelerated detained appeal route.

Amendments 91 - 93 would change **Schedule 2** (introduced by clause 22).

Amendments 44 – 45 specify that **clause 25** would not apply to the Upper Tribunal when it is acting in judicial review proceedings.

Amendments 48 – 50 would change the wording of **clause 34** (which sets out a definition of the "internal relocation" concept in the 1951 Refugee Convention), to clarify that a person would not qualify as a refugee if there is a part of their country of nationality/habitual residence where they can reasonably be expected to travel to and remain in (regardless of if they have been there previously).

Proposed changes to Part 3 (immigration control)

Amendments 51 - 59 would amend **clause 39**, to include the offence of knowingly remaining in the UK beyond the length of immigration permission (i.e., overstaying) and increase the maximum penalty for that to up to four years' imprisonment.

Amendments 60 - 63 reflect commitments made by the Government at earlier stages of the Bill to amend **clause 40**, to provide for exclusions or defences to the offences of facilitating illegal entry or the entry of asylum seekers (see p.21-2 of this briefing for background).

Amendments 94 – 95 would amend **Schedule 4** (introduced by **clause 41**). The changes would include providing discretion for the Secretary of State to reduce the amount of a penalty issued under the clandestine civil penalty regime, where the person can show they took reasonable steps to secure the vehicle (**amendment 94**), and removing a defence to the related offence of carrying a clandestine entrant (namely, that the driver was unaware of the clandestine entrant and had taken steps to secure their vehicle) (**amendment 95**).

Proposed changes to Part 5 (modern slavery)

Amendments 64 – 66 would amend **clause 60:**

- to remove the requirement that there must be at least 30 days between the making of a positive reasonable grounds decision and a conclusive grounds decision (**amendment 64**);
- to ensure that an identified potential victim would be entitled to a recovery period of at least 30 days even where a conclusive grounds decision is made within 30 days of the positive reasonable grounds decision (**amendment 66**);
- to clarify that the prohibition on removal during the recovery period does not apply where a person is disqualified from protection under clause 62 (**amendment 65**).

Amendments 67 – 69 would amend **clause 61**, which concerns entitlements and protections for people who receive a further positive reasonable grounds decision. **Amendment 69** replaces subsections (2) to (4) with alternative provisions.

Amendments 70 - 71 would amend **clause 62**. **Amendment 71** would provide that the requirement to grant leave to remain as a victim of trafficking or modern slavery under clause 64 does not apply to a person disqualified from protection on public order or bad faith grounds.

Amendments 72 – 75 would amend **clause 63**, which concerns identified potential victims' assistance and support entitlements. **Amendment 72** would change the definition of "harm" used to inform whether support is necessary. It would replace the reference to harm to a person's "social well-being" with a reference to their "physical, psychological or social harm". The Government says that this follows the wording of ECAT more closely.

Amendments 76 – 83 would amend **clause 64**, which is concerned with the granting of immigration permission to victims of slavery of trafficking. **Amendment 76** removes one of the purposes for which leave to remain must be provided (namely, to assist a victim in recovery from harm to their social well-being). **Amendment 80** confirms that a trafficking victim may be removed to a country that is not a signatory to ECAT, if the UK has made an agreement with that country.

Proposed changes to Part 7 (general)

Amendment 84 would amend **clause 81** (on territorial extent), to allow for provisions to be extended to the Channel Islands and Isle of Man.

Amendments 85 – 90 would change arrangements for commencement as covered by **clause 82**. **Amendment 87** would bring specified regulation-making powers in the Bill into force upon Royal Assent. The regulations would come into force at later dates.

Annex: Public Bill Committee details

Committee membership

Chairs: Sir Roger Gale (Con), Siobhain McDonagh (Lab)

Anderson, Stuart (Wolverhampton South West) (Con)

Baker, Duncan *(North Norfolk)* (Con)

Blomfield, Paul *(Sheffield Central)* (Lab)

Charalambous, Bambos *(Enfield, Southgate)* (Lab)

Coyle, Neil (Bermondsey and Old Southwark) (Lab)

Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)

Gullis, Jonathan *(Stoke-on-Trent North)* (Con)

Holmes, Paul *(Eastleigh)* (Con)

Howell, Paul *(Sedgefield)* (Con)

Lynch, Holly *(Halifax)* (Lab)

McLaughlin, Anne *(Glasgow North East)* (SNP)

McDonald, Stuart C. (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP)

Owatemi, Taiwo *(Coventry North West)* (Lab)

Pursglove, Tom (Parliamentary Under-Secretary of State for the Home Department)

Richards, Nicola *(West Bromwich East)* (Con)

Whittaker, Craig (Lord Commissioner of Her Majesty's Treasury)

Wood, Mike *(Dudley South)* (Con)

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