HOUSE OF LORDS Library Briefing

Nationality and Borders Bill
HL Bill 82 of 2021–22

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Date published: 21 December 2021

The Government's Nationality and Borders Bill has three stated objectives:

- 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 more easily those with no right to be in the UK.

The bill would also make changes to nationality law and to processes for identifying and protecting victims of trafficking or modern slavery. The Government contends that the bill will deliver comprehensive reform to fix what it calls a dysfunctional asylum system.

However, several provisions in the bill have proven highly controversial. They include powers related to the so called 'pushback' of those seeking to cross the Channel in small boats, the creation of two tiers of those seeking asylum, and the Government's interpretation of the 1951 refugee convention. The bill has attracted criticism from refugee advocacy groups, the Joint Committee on Human Rights, the UN Refugee Agency, and others. Other political parties have been similarly critical. Labour, the Scottish National Party, and the Liberal Democrats all voted against the bill being given a second reading in the House of Commons. It passed by a margin of 366 votes to 265.

The Government subsequently moved over 100 amendments at committee and report stages, which have been incorporated into the bill. Some of these amendments were introduced to correct drafting errors or make minor administrative changes. However, a significant number were substantial, replacing 'placeholder' clauses that had previously been present in the bill, or introducing new policy provisions. These included the deprivation of British citizenship without notice, which again has generated significant debate.

A range of opposition amendments were also moved during these stages but were either withdraw or defeated at division. Opposition parties again voted against the bill at third reading, where it was passed by 298 votes to 231.

On 5 January 2022, the second reading of the bill is scheduled to take place in the House of Lords. This briefing concentrates on changes made to the bill during its passage through the House of Commons ahead of consideration in the Lords. Recent statistics on asylum and immigration, and links to further background reading and relevant documents, are also provided.

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1. What would the bill do?

The Nationality and Borders Bill was first published in July 2021.[1] It is intended to implement many of the provisions contained within the Government's New Plan for Immigration published in March 2021.[2]

According to the Government, the bill aims to increase the fairness of the system to better protect and support those in need of asylum; to deter illegal entry into the UK, thereby breaking the business model of people smuggling networks; and to remove more easily those with no right to be in the UK.[3] The bill would also make changes to nationality law and to processes for identifying and protecting victims of trafficking or modern slavery.

Following amendments made to the bill during its passage through the House of Commons, the legislation as introduced to the House of Lords contains seven parts (as opposed to six when it was first introduced).

Immigration and asylum policy are reserved matters and therefore most of the bill's provisions would apply across the UK. There are a small number of exceptions on the provision of civil legal services and certain measures related to modern slavery, which would apply to England and Wales. Changes were also made at report stage in the House of Commons to extend the bill's provisions to the Channel Islands and the Isle of Man.

The House of Commons has completed its scrutiny of the bill, with third reading taking place on 8 December 2021. The Government moved a significant number of amendments at committee and report stages which have been incorporated into the bill. What follows is an overview of the provisions in the bill as it has been introduced into the House of Lords and some brief commentary. The background to these changes is then explored as part of examining the bill's passage through the House of Commons, including the reaction of opposition parties.

1.1 Part 1: nationality (clauses 1 to 10 as introduced into the House of Lords)

The provisions in part 1 of the bill seek to remove historical anomalies and areas of unfairness in British nationality law.[4] Specifically, the provisions in the bill would create new routes for the registration of children of British

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[1] UK Parliament website, 'Nationality and Borders Bill', accessed 7 December 2021.
[2] Home Office, 'New Plan for Immigration', March 2021. A six-week consultation was held on the New Plan for Immigration in mid-2021. This page contains the consultation document and the Government's response.
[3] Explanatory Notes, p 5.
[4] ibid, pp 19–25.

Overseas Territories Citizens (BOTCs), (clauses 1 to 3) and for those born outside of British Overseas Territories (clause 4). The bill would provide new routes of citizenship for those previously unable to register because of familial circumstances and allows the secretary of state to grant citizenship to remedy historical legislative unfairness, an act or omission of a public authority, or other exceptional circumstances relating to the person's case.

The provisions in the bill would also amend the requirements for registering a stateless child as a British citizen (clause 10). Specifically, the provisions would prevent stateless children born in the UK from acquiring British nationality unless the home secretary is satisfied that the child is unable to acquire another nationality.[5]

At committee stage in the House of Commons, the Government also introduced a new clause to part 1 to specify circumstances under which the secretary of state would be able to deprive a person of their British citizenship without giving them notice (now clause 9). Under those powers, the home secretary would be able to remove British citizenship without notice if they do not have the information required to give such notice; if it would not be 'reasonably practicable' to give notice; or if giving notice would not be in the interests of national security, relations with another country, or otherwise in the public interest.[6]

Reaction to the proposals in part 1

The Joint Committee on Human Rights has been undertaking legislative scrutiny of the Nationality and Borders Bill. It published a report on the provisions in part 1 on 3 November 2021 (prior to report stage in the House of Commons).[7]

The committee found that the majority of the provisions in this part of the bill were positive from a human rights and anti-discrimination perspective, in that they seek to remove pre-existing discrimination in nationality law that can also affect the right to family life.[8] The committee did note that some elements would benefit from further clarification or amendment. This included whether fees might be charged for nationality applications made under the provisions and how the discretionary powers afforded to the secretary of state to award citizenship would be exercised.

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[5] Joint Committee on Human Rights, *Legislative Scrutiny: Nationality and Borders Bill (Part 1)—Nationality*, 9 November 2021, HL Paper 90 of session 2021–22, p 7.
[6] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 10.
[7] Joint Committee on Human Rights, *Legislative Scrutiny: Nationality and Borders Bill (Part 1)—Nationality*, 9 November 2021, HL Paper 90 of session 2021–22.
[8] ibid, p 5.

The committee said that it had more significant concerns over the provisions about stateless children. It said that these measures may not be in the best interests of the child or comply with article 3 of the UN Convention on the Rights of the Child or article 1 of the 1961 UN Statelessness Convention. Consequently, the committee called for the Government to amend these provisions:

> We consider that an amendment to this clause is necessary—preferably to delete clause 9 [as introduced in the Commons, now clause 10]. Alternatively, at a minimum, the clause would need amendment firstly to ensure that it complies with the rights of the child so that the best interests of the child are central to the decision-making and secondly to ensure that British citizenship is only withheld where the nationality of a parent is available to the child immediately, without any legal or administrative obstacles, in compliance with the UK's obligations under the UN Statelessness Convention.[9]

Concern has been expressed about the measures introduced at committee stage on the deprivation of citizenship without notice (clause 9). There was significant debate on these provisions and opposition parties and backbench Conservative members have both called for their removal from the bill.

Outside of Parliament, Frances Webber, the vice-chair of the Institute of Race Relations, contended that the provisions were unfair and likely to be discriminatory in their application, and would breach the UK's international obligations:

> This amendment sends the message that certain citizens, despite being born and brought up in the UK and having no other home, remain migrants in this country. Their citizenship, and therefore all their rights, are precarious and contingent.
>
> It builds on previous measures to strip British-born dual nationals (who are mostly from ethnic minorities) of citizenship and to do it while they are abroad, measures used mainly against British Muslims. It unapologetically flouts international human rights obligations and basic norms of fairness.[10]

In response to such concerns, the Government said these measures would be reserved for those who presented a threat to the UK and allowed for

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[9] Joint Committee on Human Rights, *Legislative Scrutiny: Nationality and Borders Bill (Part 1)—Nationality*, 9 November 2021, HL Paper 90 of session 2021–22, p 6.
[10] Haroon Siddique, 'New bill quietly gives powers to remove British citizenship without notice', *Guardian*, 17 November 2021.

circumstances where giving notice was not practicable:

> British citizenship is a privilege, not a right. Deprivation of citizenship on conducive grounds is rightly reserved for those who pose a threat to the UK or whose conduct involves very high harm. The Nationality and Borders Bill will amend the law so citizenship can be deprived where it is not practicable to give notice, for example if there is no way of communicating with the person.[11]

1.2 Part 2: asylum (clauses 11 to 38)

Measures in part 2 of the bill would provide for the different treatment of refugees depending on the nature of their arrival in the UK and the timeliness of their asylum claim. Under the provisions of clause 11, refugees could be classed as 'group 1' if they are considered to come under the scope of article 31 of the 1951 Convention on Refugees.[12] In other words, they have come to the UK directly from a country where their life or freedom was threatened and have claimed asylum without delay. A person who entered or is present in the UK unlawfully would also be required to show good reason for their unlawful entry/presence.

If a person cannot satisfy these criteria they will be classed as 'group 2'. The Government has said that all refugees will be given the entitlements and protections afforded by the 1951 refugee convention. However, a group 2 refugee could be granted less favourable treatment that includes, but is not limited to, the following:

- How much limited (ie temporary) permission to remain in the UK is granted in the event of a successful application.
- The eligibility criteria the refugee would need to satisfy to qualify for indefinite (ie permanent) permission to remain in the UK.
- Applying a 'no recourse to public funds' condition to permission to remain.
- What refugee family reunion rights might be given.[13]

The bill would allow for differential types of treatment to be set out in the immigration rules.[14]

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[11] Haroon Siddique, 'New bill quietly gives powers to remove British citizenship without notice', *Guardian*, 17 November 2021.
[12] United Nations Refugee Agency, 'The 1951 Refugee Convention', accessed 7 December 2021.
[13] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 24.
[14] Home Office, 'Immigration Rules', accessed 7 December 2021. As noted in the House of Commons Library analysis on the bill, statements of changes to the immigration rules are laid before Parliament and subject to a process similar to the negative resolution procedure (House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 24).

Clause 12 of the bill would also specify the type of accommodation provided to asylum seekers and refused asylum seekers who would otherwise be classed as destitute. In a departure from the current policy of predominantly housing asylum seekers in the community, and as set out in the New Plan for Immigration, the use of accommodation centres to house some asylum seekers (including those subject to the inadmissible procedure) would also be extended. These centres would provide "basic" accommodation and, in a further new development, allow for the onsite processing of cases.[15]

Measures in part 2 would also make changes to the rules about the admissibility of asylum claims (clauses 14 to 16). Specifically, the bill would prevent asylum claims from EU nationals unless there were exceptional circumstances and allow asylum claims made by connections to safe third states to be declared inadmissible. The bill would also mandate that those whose claims had been ruled inadmissible would be treated in line with those whose claims for asylum had failed and had exhausted their rights of appeal. These measures also reflect the policy approach taken in changes made to the immigration rules in December 2020.[16]

In addition, provisions in part 2 including clause 17 would make changes to the way in which a claimant can present evidence in support of their application. Specifically, the bill would require that the claimant presents evidence within a certain period, and that providing late evidence without good reason will not be in 'good faith' and should be taken into account by decision-makers.

Clauses 19 to 24 in part 2 would also introduce the concept of a 'priority removal notice' (PRN), which are intended to limit the scope to frustrate the removal of a failed applicant through successive or unmeritorious claims, appeals or legal action.[17] The bill would also require the Tribunal Procedure Rules Committee—the body which makes rules governing the practice and procedure in the First-tier Tribunal and the Upper Tribunal in asylum cases—to make rules for a new 'accelerated detained appeal' process. This would be used for appeals made from detention which the home secretary considers are suitable for a quick decision. The criteria for determining which cases are subject to this procedure would be set out in regulations.

The provisions in part 2 would also remove appeal rights for asylum and human rights claims certified as clearly unfounded according to criteria contained within the Nationality, Immigration and Asylum Act 2002 (clause 27). The Government also introduced an amendment at committee stage, now added to the bill (as clause 23), that would allow for the joining together of appeals being considered as part of the expedited appeals

[15] Home Office, 'New Plan for Immigration', last updated 2 December 2021.
[16] Home Office, *Statement of changes to the Immigration Rules*, 10 December 2020.
[17] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 32.

process.[18]

In addition, part 2 of the bill would make provision to support the removal of asylum seekers to safe third countries from which their claims can be processed (clause 28). Known as 'offshore processing', these measures would support the Government's objective of enabling asylum claims to be processed outside of the UK, provided that viable arrangements with overseas countries could be agreed. In the explanatory notes to the bill, the Government states that this would only be done when an individual will not be placed at risk and contends that the policy is consistent with the policy of 'non-refoulement' as they will not be returned to the country from which they are seeking asylum:

> These new subsections create an exemption to section 77 [of the Nationality, Immigration and Asylum Act 2002], allowing for the removal of an asylum seeker to a safe country, provided the individual is not a national or citizen of that country. Any such removal is only permitted to states where the individual will not be at risk of persecution for reasons of race, religion, nationality, membership to a particular social group or political opinion, in line with the article 1A(2) of the Refugee Convention, and from where they will not be returned to the country from which they are seeking protection, in keeping with the principle of "non-refoulement". Additionally, individuals may only be removed to states where their article 3 rights will not be breached and to states which will not remove them to countries where their article 3 rights may be breached. It is acknowledged that not all countries are signatories to the Refugee Convention, therefore the references to the Refugee Convention in this section refer to the principles of the Refugee Convention whether or not they are upheld by the relevant country.[19]

Changes to the UK's safe country list are made by statutory instrument. Additions to the list are subject to the affirmative resolution procedure.

Part 2 of the bill would also make provisions specifying how decision-makers should interpret and apply the 1951 refugee convention (clauses 30 to 37). This includes how the concepts that underpin the definition of a refugee should be interpreted and the circumstances under which a person who has committed a serious crime outside the UK (or in the UK prior to receiving confirmed refugee status) can be excluded from protection under the convention.

Amendments were also made to the provisions in part 2 through

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[18] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 4.
[19] Explanatory Notes, p 39.

government amendments at report stage in the House of Commons. They would move certain provisions on the inadmissibility of claims from the immigration rules to primary legislation in support of the Government's aim that asylum should be sought in the first safe country (clause 15). As amended, the bill would also now specify the factors that decision-makers must take into account which are damaging to a claimant's credibility when they assess a protection of human rights claim (clauses 17 to 18).

Government amendments at report stage also mean that the bill would now specify that judges should only remove an appeal from the accelerated or expedited process where there is no other way to secure justice (clause 22).

Reaction to the proposals in part 2

Several of the provisions in part 2 of the bill have proved controversial. In addition to the reaction from opposition parties and backbench members examined below, in a detailed legal opinion published in October 2021 (prior to report stage and third reading in the House of Commons) the UN High Commissioner for Refugees (UNHCR) criticised the 'first safe country' concept upon which many of the reforms are predicated—in other words, the notion that people should claim asylum in the first safe country they arrive in.[20]

The UNHCR said that this principle was absent from the 1951 refugee convention and that this could undermine global cooperation on the treatment of refugees. Further, it said that several measures in the bill, such as those creating different tiers of those seeking asylum, would deny recognised refugees rights that are guaranteed to them under the refugee convention and international law:

> UNHCR reiterates that the attempt to create two different classes of recognised refugees is inconsistent with the Refugee Convention and has no basis in international law. The Refugee Convention contains a single, unitary definition of refugee [which] defines a refugee solely according to their need for international protection because of feared persecution on the grounds of their race, religion, nationality, membership of a particular social group or political opinion. Anyone who meets that definition, and is not excluded […], is a refugee and entitled to the protections of the Refugee Convention. There is nothing in the Refugee Convention that defines a refugee or their entitlements under it according to their route of travel, choice of country of asylum, or the timing of their asylum claim.[21]

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[20] United Nations Refugee Agency, *UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–22*, October 2021.
[21] United Nations Refugee Agency, *UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–22*, September 2021.

Alongside arguing that the UK Government's approach was based on a misapplication of the refugee convention, the UNHCR's summary observations also contend that the bill would "impermissibly externalise the UK's obligations to refugees and asylum-seekers within its jurisdiction".[22]

The UNHCR has also been critical of the Government's plans for offshore processing. As it set out in its response to the Government's New Plan for Immigration, the UNHCR suggests such proposals risked exposing those seeking asylum to harm:

> As UNHCR has seen in several contexts, offshoring of asylum processing often results in the forced transfer of refugees to other countries with inadequate state asylum systems, treatment standards and resources. It can lead to situations in which asylum seekers are indefinitely held in isolated places where they are 'out of sight and out of mind', exposing them to serious harm.[23]

The Government has rejected these assertions. The European Convention on Human Rights (ECHR) memorandum published alongside the bill details its view on how the clauses in the bill are compatible with the 1951 refugee convention, including concerning differential treatment.[24] With respect to the latter, it states:

> The justification for the differentiation policy (which is consistent with article 31 of the Refugee Convention) is as follows:
>
> a) the UK has a legitimate interest in discouraging 'forum shopping' and encouraging asylum seekers to claim asylum in the first safe country they arrive in. As a result, there is justification for treating less favourably asylum seekers who have not come directly from a country where their life or freedom was threatened;
> b) the UK also has a legitimate interest in encouraging asylum seekers to present themselves to the authorities and make claims at the first available opportunity. As a result, there is justification for treating less favourably asylum seekers who have not presented themselves without delay to the secretary of state;
> c) the UK also has a legitimate interest in promoting lawful methods of entry. As a result, there is justification for treating less favourably asylum seekers who have no good excuse for not

[22] United Nations Refugee Agency, *UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–22*, September 2021.
[23] United Nations Refugee Agency, *UNHCR Observations on the New Plan for Immigration policy statement*, May 2021, p 3.
[24] Home Office, *Nationality and Borders Bill: European Convention on Human Rights Memorandum*, July 2021.

> using lawful means for entering the UK.[25]

On the extended use of accommodation centres, the Refugee Council, a UK based organisation which works with refugees and asylum seekers, has also called the proposal "ill-thought out and dangerous".[26] Estimating that between 5,900 and 14,200 people could be accommodated in such centres, they said:

> [The proposals] undermine the UK's duties to support and protect those making asylum claims. The current dispersal system, whereby people seeking asylum live in regular housing in the community, is much better for supporting future integration and ensuring that people seeking asylum are able to access services they need.[27]

In a letter from Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, to the Home Secretary, Priti Patel, the Scottish Government also outlined its concern on the bill's proposals.[28] On the differential treatment of asylum seekers, for example, it said:

> The differential treatment of refugees determined by how they arrived in the UK rather than their need for protection is inhumane and unfair. If implemented, people who are in need of sanctuary will be denied it. They will be placed in danger or left facing years in limbo, potentially without access to public funds or other essential services, when they could be getting on with their lives and contributing to our communities. There must be wholesale changes to this element of the bill to ensure that refugees seeking asylum through any route are provided with the protection they need.[29]

In a similar written statement that was highly critical of the UK Government's proposals in various areas of the bill, the Welsh Government also objected to the plans for accommodation centres:

> The bill's proposal to open "accommodation centres", including in Wales, will undermine our Nation of Sanctuary vision, by warehousing asylum seekers in large facilities—potentially indefinitely—away from

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[25] Home Office, *Nationality and Borders Bill: European Convention on Human Rights Memorandum*, July 2021, p 6.
[26] Refugee Council, 'Nationality and Borders Bill 2021–22—Second Reading (14 July 2021)', June 2021; and 'The impact of the New Plan for Immigration—Proposals on asylum', June 2021.
[27] Refugee Council, 'Nationality and Borders Bill 2021–22—Second Reading (14 July 2021)', June 2021.
[28] Scottish Government website, 'Letter from Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, to Priti Patel, Secretary of State for the Home Department about the Nationality and Borders Bill'. 1 September 2021.
[29] ibid.

> the wider Welsh community. This prevents the development of social support networks, informal language acquisition, and cross-fertilisation of culture, which are essential elements of integration.
>
> Unfortunately, we have seen first-hand just how damaging such "accommodation centres" can be. Last year, the Home Office's decision to use Penally Army training camp in Pembrokeshire, as an asylum centre caused disruption to community cohesion with protests outside the camp and damage to the mental health of the people accommodated there. We have seen a legacy of far-right activity in Pembrokeshire, long after the closure of Penally.[30]

Again, the UK Government has rejected such criticism. In its response to the consultation on the New Plan for Immigration, the Government said that it would ensure the support needs of those seeking asylum were met and that it would work with stakeholders on the design of this accommodation:

> [T]he Government will also ensure that asylum seekers and failed asylum seekers housed in accommodation centres are provided with a full package of support that ensures their essential living needs are met while their claim for protection is being decided. We will engage further on the design of the support package through the established forums used to consult stakeholders on support matters.[31]

1.3 Part 3: immigration offences and enforcement (clauses 39 to 47)

Part 3 of the bill would strengthen penalties for illegal entry to the UK and for the facilitation of that entry. Specifically, the bill would create a new offence of knowingly arriving in the UK without entry clearance (clause 39). It would also increase the maximum penalties for entering the UK in breach of a deportation order or without immigration permission.

In addition, the bill would increase the maximum penalty for existing facilitation offences from 14 years to life imprisonment (clause 40). It would also broaden the offence of facilitating an asylum seeker's entry to the UK by removing the requirement that a person is acting "for gain".[32]

Measures in part 3 would also provide immigration staff with new powers to search containers unloaded from ships and aircraft, and additional maritime enforcement powers (clauses 43 and 44, and schedule 6). These include controversial proposals to allow the so-called 'pushback' of boats that enter

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[30] Welsh Government, 'Written Statement: UK Nationality and Borders Bill', 6 December 2021.
[31] Home Office, *Consultation on the New Plan for Immigration: Government Response*, July 2021.
[32] Explanatory Notes, p 48.

UK territorial waters. The explanatory notes to the bill state:

> [These measures confer] powers to the relevant officer to stop, board, divert, detain, or require a ship to leave the UK territorial seas. The current maritime powers allow a ship to be required to be taken only to a port in the UK and detained there, therefore this paragraph provides the capability to require a vessel to be taken to a place outside of the UK. Any tactics employed to divert a ship will only be used where it was safe to do so, in line with international law, including UNCLOS [the United Nations Convention on the Law of the Sea], and a vessel would only be required to leave UK waters if there were no concerns about the vessel's ability to reach land or the welfare of those on board.[33]

These provisions were further amended by the Government at committee stage of the bill. In brief, that amendment removed the limitation on authorising the use of maritime enforcement powers to circumstances where the secretary of state considered that their exercise is permitted by the UN Convention on the Law of the Sea.[34]

Also, at committee stage, two 'placeholder' clauses in part 3 were replaced with substantive proposals through government amendments. Firstly, part 3 now includes provision on the authorisation to work in the territorial sea, to clarify the position that existing migrants need permission to work in UK territorial waters (clause 42). Secondly, the Government moved an amendment to broaden the early removal scheme for foreign national offenders, part of a package of changes that the Government contends would facilitate the removal of foreign national offenders from the UK as early as possible.[35] Under the provisions in the bill, foreign prisoners could be removed from the UK at any time after the prisoner has served the minimum pre-removal custodial period according to the conditions set out in part 3 (clauses 45 and 46).

Other provisions already in the bill would amend notice periods for people liable to removal from the UK and add new considerations to be taken into account when decisions on granting bail are made, including a failure to cooperate with the immigration process (clause 47).

Amendments were also made to various provisions in part 3 through government amendments at report stage. They included measures to protect those providing assistance at sea like the Royal National Lifeboat Institution (RNLI) from prosecution (see the next section) and to increase the maximum penalty for overstaying beyond their immigration permission

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[33] Explanatory Notes, p 48.
[34] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 22.
[35] ibid, p 24.

from six months to four years (clause 39). Government amendments were also moved to strengthen efforts to tackle clandestine migrants seeking to enter the UK in vehicles (schedule 4).

Reaction to the proposals in part 3

The proposals for criminal penalties to be imposed on those who have entered the country illegally has also generated a strong reaction inside and outside Parliament. Following on from its previous comments, the UNHCR suggested that the UK Government is seeking to "criminalise asylum", stating that:

> The bill would make it a criminal offence for an asylum-seeker who requires entry clearance (a visa) to arrive in the United Kingdom without it, even if they claimed asylum immediately upon arrival and regardless of their mode of travel. […] Given that there is no possibility under UK law of applying for entry clearance in order to claim asylum, no one from a country whose citizens normally need a visa would be able to come to the UK to seek asylum without potentially committing a criminal offence. Ninety percent of those who are granted asylum in the United Kingdom are from countries whose nationals must hold entry clearance (a visa) to enter the UK.[36]

The UNHCR has also been critical of the plans for 'pushback', stating that it could see few scenarios where such tactics could be legally employed:

> Once a boat enters the United Kingdom's territorial waters, it engages the country's jurisdiction and thus its primary responsibility for search and rescue. Under the law of the sea, States are obliged to proceed with all possible speed to the rescue of any person in distress at sea if it is safe to do so and disembark them at a port of safety. […] In light of the precarious type of vessels and numbers of persons on board them that have arrived in the UK across the English Channel in the past year—it is foreseen that there would be very few scenarios, if any, where the UK would have a legal basis to simply intercept and redirect small boats away from UK shores.[37]

The Joint Committee on Human Rights was also critical of the proposals in part 3 of the bill in its report on the provisions published on 24 November 2021 (again prior to report stage and third reading).[38] Specifically about 'pushback', the committee suggested these measures were incompatible with

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[36] United Nations Refugee Agency, *UNHCR Observations on the New Plan for Immigration policy statement*, May 2021, p 3.
[37] ibid.
[38] Joint Committee on Human Rights, *Legislative Scrutiny: National and Borders Bill (Part 3)—Immigration Offences and Enforcement*, 1 December 2021, HL Paper 112 of session 2021–22.

the UK's human rights obligations:

> The Channel crossing is a very dangerous route and small boat crossings already too often end in loss of life. The Government's legislation and policy intentions with regard to pushbacks at sea are likely to increase the danger of these crossings whilst failing to deter those who make the journey and the people smugglers who profit from them. We do not see how the Government's proposals as they stand are consistent with our human rights obligations.[39]

The committee made several further observations on maritime enforcement powers contained in the bill, questioning whether they could be compatible with obligations to combat modern slavery and protect children's rights.[40]

About the criminal offences on illegal entry to the UK, the committee agreed with the UNHCR that these were incompatible with the UK's obligations under the UN refugee convention.[41] It further drew attention, like other commentators, to the potential criminalisation of those, like the RNLI, who might provide assistance to those seeking to cross the Channel and thus 'facilitate' their entry to the UK:

> The bill would also make it a criminal offence to facilitate illegal arrival into the UK, potentially criminalising those who rescue migrants from the Channel and bring them to the UK, once again in contravention of the right to life under article 2 of the ECHR.[42]

The committee was also concerned about the measures in the bill governing immigration bail, arguing that the provisions "increased the risk that immigration detention will be used, and prolonged, where it is not necessary or proportionate".[43]

The Government introduced amendments at report stage concerning the position of those like the RNLI who provide assistance to those at sea.

1.4 Part 4: age assessments (clauses 48 to 56)

Part 4, as it is currently drafted, was not included in the bill when it was first introduced in the House of Commons. It was created as part of government amendments tabled at committee stage, replacing a placeholder clause on

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[39] Joint Committee on Human Rights, *Legislative Scrutiny: National and Borders Bill (Part 3)—Immigration Offences and Enforcement*, 1 December 2021, HL Paper 112 of session 2021–22, p 6.
[40] ibid.
[41] ibid.
[42] ibid.
[43] ibid, p 7.

age assessments originally included in what was previously part 5 (miscellaneous).

Part 4 of the bill would introduce new processes for conducting age assessments for those who require leave to enter/remain and for whom there is "insufficient evidence" to be sure of their age.[44] The bill would specify powers and responsibilities on the secretary of state, local authorities, and 'designated persons' to carry out assessments, and would allow for the use of "scientific methods" in conducting such assessments.[45] The bill would also provide for the rights of appeal to such assessments and the use of legal aid for such appeals, and outline the scope for further assessments if new information comes to light. More detailed provisions about the conduct of age assessments are to be set out in regulations subject to the affirmative procedure.

Reaction to the proposals in part 4

These measures were the subject of considerable debate in the House of Commons. Commenting before report stage of the bill, the UNHCR outlined a range of concerns on the use of such assessments, including that medical age assessment methods are subject to a high margin of error, and that their evidential value remains contested by UK courts and in other jurisdictions.[46]

Similarly, the British Association of Social Workers (BASW), the professional association for social work and social workers (again commenting prior to report stage) criticised the proposals.[47] It said that the measures risked vulnerable individuals being subject to invasive procedures and that any form of age assessment should be based on a holistic approach:

> Age assessment is not straight-forward, nor is it an exact science. Social workers and other professionals involved in the wellbeing of a person must work together to carry out multi-agency, holistic assessments. The measures in this bill fail to recognise that it is impossible to determine age precisely and have instead ventured into the belief that it is a simple process either through 'scientific' methods or the sole view of a single social worker.[48]

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[44] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 25.
[45] ibid.
[46] United Nations Refugee Agency, *UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–22*, October 2021, p 71.
[47] British Association of Social Workers, 'Age assessments proposal within Nationality and Borders Bill: BASW UK Statement', 26 October 2021.
[48] ibid.

The statement from the Welsh Government cited above was similarly critical of the age assessment measures in the bill:

> We are concerned about the proposals, which are aimed at the age assessment process. As the registration of birth differs around the world, many children who come to the UK cannot provide documentation as evidence, either because they have never had it in the first place or it has been lost or destroyed.
>
> This has been established over many years of case law but the bill disregards these important cases. We urge the UK Government to consult the ethical committees of relevant medical, dental and scientific professional bodies and publish a report before making regulations.[49]

Again, the UK Government has rejected such arguments. A spokesperson for the Home Office said:

> These proposals would stop abuse of the system while supporting those in genuine need. […] We cannot allow asylum seeking adults to claim to be children or children being wrongly treated as adults, both of which present significant safeguarding risks.
>
> Age assessments are challenging, and we are taking a number of steps to improve them. This will widen the evidence base for social workers to consider when making assessments and lead to better informed decisions.[50]

1.5 Part 5: modern slavery (clauses 57 to 68)

The provisions in part 5 of the bill, as introduced into the House of Lords, address the issue of modern slavery. Specifically, the bill would provide for the terms 'victim of slavery' and 'victim of human trafficking' to be defined in regulations (clause 59). It would also introduce slavery or trafficking information notices, which will work in a similar way to earlier provisions in the bill, mandating that relevant evidence be produced by a relevant date (clauses 57 and 58). Again, a failure to do so would damage a person's credibility with decision-makers without good cause. The Government suggests that these notices will support the early identification of victims and reduce delays.[51]

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[49] Welsh Government, 'Written Statement: UK Nationality and Borders Bill', 6 December 2021.
[50] Community Care, 'Government age assessment changes would undermine social workers, campaigners warn', 2 November 2021.
[51] Explanatory Notes, p 48.

The bill would also amend the 'reasonable grounds' threshold in the Modern Slavery Act 2015, clarifying the point at which support can be given to those believed to be a victim of slavery or trafficking and reflecting the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).[52] The bill would put into primary legislation some of the key principles of the UK's approach to implementing ECAT, including amendments to existing provision about recovery periods for potential victims. Under the provisions in the bill, a person recognised as a potential victim of trafficking or slavery must be provided with a period of 30 days recovery and reflection during which they cannot be removed from the UK (clause 60). The current approach in England and Wales is for a minimum 45-day period.[53]

Provisions in part 5 would also mean that a person in receipt of a positive reasonable ground decision can be disqualified from the protections given to trafficking or slavery victims if they are a threat to public order or have raised their referral in "bad faith" (clause 62).[54] These measures would apply, for example, to those who have been sentenced to more than 12 months in prison in a different country. Similarly, additional provisions in part 5 would detail the circumstances in which a confirmed victim of slavery or trafficking must be given time limited permission to remain in the UK (clause 64). Again, a person will not be granted limited leave (and may have it revoked if already granted) if, for example, they are deemed to be a threat to public order or have raised relevant matters in bad faith.

Further measures in part 5 would also allow for individuals in receipt of legal aid for certain immigration or asylum matters to be given "add on" advice about the national referral mechanism for identifying and referring potential victims of modern slavery (clause 65).[55]

The Government moved a significant number of amendments to the provisions in part 5 at report stage. They are discussed in detail below, but those changes included: the removal of the requirement that there must be at least 30 days between the making of a positive reasonable grounds decision in relation to an identified potential victim of slavery or human trafficking and the making of a conclusive grounds decision (clause 60); replacement of the use of the term "social well-being" with "social harm" with reference to the assistance provided to victims of human trafficking (clause 63); and providing clarity that a trafficking victim may be removed to a country which is not a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings, if the UK has made an agreement with that country (clause 64).

[52] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 54.
[53] ibid.
[54] ibid.
[55] ibid.

Reaction to the proposals in part 5

Speaking in response to the publication of the New Plan for Immigration, the Independent Anti-Slavery Commissioner, Dame Sara Thornton, voiced concern over viewing victims of modern slavery through an immigration lens, and "ignoring the trauma and exploitation they have suffered as victims".[56] Writing in the *Times* about the bill's measures on 4 November 2021, Dame Sara raised particular concern over proposals on the removal of protections for those with criminal convictions:

> My gravest concern lies in clause 51 of the bill [now clause 62] which aims to disqualify potential victims with criminal records from state protection through the National Referral Mechanism. The bar for disqualification has been set very low—particularly for foreign victims who will be disqualified if they have been sentenced to 12 months in prison anywhere in the world.
>
> I am firstly concerned that we are suggesting that some victims are deserving of support and others are not—however awful or egregious the harm suffered. There are also practical reasons to be concerned about this proposal. There is a significant risk that this provision will undermine our ability to bring perpetrators to justice.[57]

Dame Sara also voiced fears that these new measures could slow decision-making when there are already significant backlogs.[58]

Four United Nations Special Rapporteurs, including Felipe González Morales, the UN Special Rapporteur on the human rights of migrants, have also written to the UK Government outlining their concerns with the provisions in the bill.[59] In that correspondence, they highlight a number of serious issues including that the bill does not distinguish between adult and child victims of trafficking, and suggest that it would not fulfil the UK's obligation to identify victims of trafficking and modern slavery.

In a statement on the modern slavery provisions in the bill, the Government suggested that it was committed to helping victims and that the measures represented a firm but fair approach:

> The Government is committed to effectively supporting victims of

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[56] Independent Anti-Slavery Commissioner, 'Dame Sara responds to New Plan for Immigration consultation', 10 May 2021.
[57] Dame Sara Thornton, 'Rushed borders bill will fail victims of modern slavery', *Times* (£), 4 November 2021.
[58] ibid.
[59] UN Human Rights Office, 'Letter from United Nations (UN) Special Rapporteurs to the UK Government on the Nationality and Borders Bill', 5 November 2021.

> modern slavery to help them recover from their exploitation and to support the prosecution of their exploiters. Our core principle is that the entitlements provided to victims are based on their needs, delivering a firm but fair approach, which provides temporary leave to remain where it is needed, while reducing any opportunities for the system to be misused.[60]

On 21 December 2021, shortly before the publication of this briefing, the Joint Committee on Human Rights published its analysis of the provisions of part 5 of the bill.[61] Whilst observing that the majority of the measures in this part of the bill appeared compatible with the UK's human rights obligations, the committee highlighted three areas where it had significant concerns.

First among these issues was the deadline that would be imposed (through clause 58) for the potential victims of human trafficking and modern slavery to disclose what had happened to them or face a new statutory obligation that late provision of evidence must damage their credibility. The committee described this as "unreasonable, unfair and contrary to the UK's protective and investigative obligations in relation to preventing and combatting slavery".[62] The committee recommended that the provision be amended so that late evidence "may" rather than "must" damage the credibility of a victim's case.

Secondly, the committee voiced concerns over the exclusion of those convicted of certain offences from human slavery and trafficking protections (clause 62):

> [T]he exclusion of a potentially very significant number of victims of slavery or human trafficking from protection under the guise of "public order" risks having negative effects on the UK's ability to take action against criminal gangs responsible for slavery and trafficking. It will also harm the ability of the relevant authorities to protect victims of those gangs, given the consequent impacts of this provision on investigations and prosecutions. We are concerned that, without amendment, clause 62 will be applied to victims who do not pose a current threat to public order in the UK, contrary to the UK's obligations under ECAT.[63]

Finally, the committee said there was uncertainty about the definition of "victim of human trafficking" and "victim of slavery" (clauses 59 and 68). The committee contended that, given their central importance to human rights and combatting slavery, "such important definitions ought to be defined in

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[60] Home Office, *Modern Slavery: Leave to Remain*, 3 December 2021.
[61] Joint Committee on Human Rights, *Legislative Scrutiny: National and Borders Bill (Part 5)—Modern Slavery*, 21 December 2021, HL Paper 135 of session 2021–22.
[62] ibid, p 3.
[63] ibid.

this bill, not at a later date in secondary legislation".[64] Further, the committee recommended that the definitions should include the terms in the relevant international instruments, such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the UN Palermo Protocol).

1.6 Part 6: miscellaneous (clauses 69 to 78)

Part 6 of the bill (part 5 as originally introduced) would introduce provisions on a range of miscellaneous matters. They include the introduction of powers for the home secretary to impose visa penalties on any country that does not cooperate with the removal of its nationals (clause 69). When the bill was introduced it included a placeholder clause on this matter which was replaced by substantive measures by a government amendment at committee stage. The provisions now provide details on the scope of those powers, including what factors the secretary of state must take into account and the scope of the penalty which may be imposed.

In addition, at committee stage the Government also introduced an amendment to replace a placeholder clause on electronic travel authorisations (ETAs). As now amended, the bill provides for the introduction of ETAs, digital visas which are part of the Home Office's plans to have a universal permission to travel scheme in place by 2025 for those entering and leaving the UK (clause 71).[65] Intended to enable earlier security checks and better informed decision-making, ETAs would mirror a similar approach already taken in the USA, Australia and Canada.[66] This is supported in the bill by measures that would extend the carriers' liability scheme, which penalises carriers who bring other inadequately documented travellers to the UK border (clause 72).[67]

Similarly, the Government introduced an amendment at committee stage to replace a placeholder clause on the powers of the Special Immigration Appeal's Commission. As now drafted, clause 73 would extend the remit of the Special Immigration Appeal's Commission to include immigration decisions that can only be challenged through judicial review (where the case is certified on security/public interest grounds).[68]

Now removed from part 6 of the bill, again through a government amendment at committee stage, was a clause originally included on 'good faith'. This measure would have specified that all claimants engaging with the

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[64] Joint Committee on Human Rights, *Legislative Scrutiny: National and Borders Bill (Part 5)—Modern Slavery*, 21 December 2021, HL Paper 135 of session 2021–22, p 3.
[65] Mark Townsend, 'Patel unveils digital visa to help 'count people entering and leaving UK'', *Guardian*, 23 May 2021.
[66] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 59.
[67] Explanatory Notes, p 71.
[68] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 59.

UK authorities on immigration matters, including in protection-based claims, act in good faith. Ministers have said this clause was removed after consideration of its impact and views expressed by stakeholders.[69]

At committee stage, the Government also introduced a new amendment to the bill on counterterrorism questioning of detained entrants from the place of arrival. As amended, the bill would now amend the Terrorism Act 2020, broadening the definition of 'ship'. This would enable a person who has arrived in the UK within the previous five days, and whom is being detained under immigration powers, to be questioned about involvement in terrorism (clause 74).[70]

A new clause (now clause 75) was also introduced to the bill through a government amendment at report stage clarifying the roles of justices of the peace and lay magistrates in relation to immigration matters in Northern Ireland.

Other provisions included in part 6 of the bill would provide First-Tier and Upper Tribunals (Immigration and Asylum Chamber) with a new power to charge a participant in proceedings for wasted or unnecessary tribunal costs (clause 76). The bill would also impose a requirement for the Independent Tribunal Procedure Committee to introduce procedural rules to ensure that immigration judges will consider making a charge in response to certain conduct by participants to an appeal (clause 77).[71]

Finally, part 6 of the bill would also introduce a Henry VIII power (enabling the amendment or repeal of previous legislation) giving the home secretary the authority to make amendments to immigration legislation, with a view to consolidating and simplifying such legislation (clause 78). The regulation-making power provided for in the bill is broad but limited according to various conditions, including that regulations cannot be made which change the substantive effect of the law.[72]

1.7 Part 7: general (clauses 79 to 84)

Part 7 of the bill provides for the territorial extent of the provisions and commencement arrangements. These were amended during report stage to extend the provisions to the Channel Islands and the Isle of Man.

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[69] Public Bill Committee, *Nationality and Borders Bill*, 2 November 2021, session 2021–22, 14th sitting, col 577.
[70] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 25.
[71] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 60.
[72] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 60.

Changes were also made at report stage to bring specified regulation-making powers in the bill into force upon royal assent. (The regulations themselves would come into force at later dates) These amendments are discussed briefly below.

1.8 Other measures in the New Plan for Immigration

There were several measures in the New Plan for Immigration which do not require primary legislation, or which are not directly addressed by provisions in the bill. These includes strengthening resettlement routes and enhancing support to victims of modern slavery.[73]

Specifically, the Government intends to "broaden the scope of the UK's protection offer" to encompass persecuted refugees from a broader range of minority groups.[74] Under the New Plan for Immigration, refugees who are resettled into the UK will be granted indefinite leave to remain and receive enhanced integration support. The provisions can be summarised as follows:[75]

- A commitment to provide an unspecified number of refugee resettlement places and to review support for eligible refugees to come to the UK through the points-based system.
- An intention to grant resettled refugees immediate indefinite leave to remain upon arrival in the UK and enhancing integration support.
- An intention to review refugee family reunion rules.
- A commitment to consider a new process to enable people in urgent need of protection to travel directly to the UK from their country of origin.

The Government have also said that the UK's commitment to resettling refugees will continue to be a multi-year commitment, "with numbers subject to ongoing review guided by circumstances and capacity at any given time".[76]

In addition, on modern slavery, the Government plans to provide "enhanced support" to victims.[77] This includes commitments to ensure that victims' overall support packages are more tailored to individual need from the outset, and that they have ready access to specific mental health provision. The Government also wishes to improve the support given to child victims of modern slavery, including those involved in county lines exploitation.

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[73] Explanatory Notes, p 10.
[74] ibid.
[75] House of Commons Library, *Nationality and Borders Bill*, 15 July 2021, p 23.
[76] ibid.
[77] ibid.

Further, Government intends to provide increased support to first responders within the immigration system to enable them to identify victims earlier. A new way of identifying child victims of modern slavery is also being piloted, enabling decisions to be taken within existing safeguarding structures by local authorities, police, and health workers to promote the welfare of children. Ministers have also said that additional funding will be provided to increase prosecutions and build policing capability to investigate and respond to organised immigration crime. In addition, the Government intends to review the 2014 modern slavery strategy.

2. Consideration of the bill in the House of Commons

2.1 Second reading

Second reading of the bill in the House of Commons took place over two days on 19 and 20 July 2021.[78] Speaking to the aims of the bill, the Home Secretary, Priti Patel, claimed it would introduce overdue reforms:

> The bill will finally address the issues that over a long period of time, cumulatively, have resulted in the broken system that we have now. It is a system that is being abused, allowing criminals to put the lives of the vulnerable at risk, and it is right that we do everything possible and find measures to fix this and ensure that a fair asylum system provides a safe haven to those fleeing persecution, oppression and tyranny.[79]

Opposition parties were highly critical of the provisions in the bill. The then Shadow Home Secretary, Nick Thomas-Symonds, moved a motion that would have declined to give the bill a second reading. Speaking to that motion, he said the bill failed on several key grounds:

> [It] 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.[80]

Similarly, Stuart C McDonald, the Shadow SNP Spokesperson for Home Affairs, said the bill was "anti-refugee" and contravened the 1951 convention:

> There are eight welcome clauses on nationality, but thereafter what we see risks trampling international convention after international convention, and vulnerable children, stateless children and victims of trafficking will all pay a penalty. Nowhere is the retreat from international law, international co-operation, and basic human decency more apparent than in the absolute trashing of the refugee convention as it approaches its 70th birthday. A convention that has saved and

[78] UK Parliament website, 'Nationality and Borders Bill: 2nd reading', accessed 9 December 2021.
[79] HC *Hansard*, 19 July 2021, col 709.
[80] ibid, col 719.

> protected countless millions of people is being undermined by one of its first champion countries.[81]

The Liberal Democrat Shadow Justice Spokesperson, Wera Hobhouse, was equally critical of the bill, indicating that she and her party would vote against it.[82]

Mr Thomas-Symonds' motion was subsequently defeated, and the bill was given a second reading on 20 July 2021 by 366 votes to 265.[83]

2.2 Committee stage

Consideration of the bill in a House of Commons public bill committee took place over 16 sittings between 21 September and 4 November 2021.[84] In the first four sittings, evidence was heard from a variety of witnesses.[85]

The Government moved a significant number of amendments during committee stage. Some of these were to replace six placeholder clauses that had been included in the bill as drafted on the following issues, as highlighted above:

- Authorisation to work in UK waters
- Prisoners liable to removal
- New processes for conducting age assessments
- New powers to impose visa penalties
- Introduction of an electronic travel authorisation requirement. This is supported by an extension of the carriers' liability scheme.
- Expanding the remit of the Special Immigration Appeals Commission[86]

The Government also tabled new clauses on the following areas:

- Notice of decision to deprive a person of citizenship
- Expedited appeals: joining of related appeals
- Counterterrorism questioning of detained entrants[87]

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[81] HC *Hansard*, 19 July 2021, col 729.
[82] ibid, col 750.
[83] HC *Hansard*, 20 July 2021, division 58.
[84] UK Parliament website, 'Nationality and Borders Bill: committee stage', accessed 9 December 2021.
[85] ibid.
[86] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 8.
[87] ibid.

The Government also moved several drafting and miscellaneous amendments. For example, the drafting of two clauses on accelerated and detained appeals, and on removals notice requirements, was rectified by the insertion of new clauses that replaced the previous provisions.[88]

All the government amendments were accepted and added to the bill. The resulting changes made to the bill are set out in section 1 of this briefing.

Several non-government amendments were also moved and debated, though none were added to the bill. The House of Commons Library's briefing examining developments at committee stage provides the following summary of the issues those amendments focused upon:

- 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[89]

For reasons of brevity and the fact that many of these issues were raised again at report stage, this briefing does not examine the arguments made at committee stage in depth. For such a discussion, please see: House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021.

2.3 Report stage

Report stage for the bill in the House of Commons was held over two days on 7 and 8 December 2021.[90]

Almost 80 government amendments were added to the bill at report stage, as follows:

- **Amendments to part 1** to correct drafting errors in clause 9

[88] House of Commons Library, *Nationality and Borders Bill: Progress of the Bill*, 2 December 2021, p 8.
[89] ibid, p 9.
[90] UK Parliament website, 'Nationality and Borders Bill: report stage', accessed 9 December 2021.

(government amendments 17 and 18).

- **Amendments to parts 2, 3, 4 and 6** on: the admissibility of asylum claims; priority removal notices; the appeals process; penalties for overstaying; protecting those who provide rescue at sea; tackling vehicle entry; and additional drafting and technical changes (government new clause 20, amendments 19 to 25, 26, 27 to 38, 44 to 45 and 91 to 93, amendments 39, 40 to 43, 46 and 47, amendments 48 to 50, amendments 51 to 59 and 60 to 63, and amendments 94 and 95).
- **Amendments to parts 5 and 7** on: recovery periods from exploitation and trafficking; definitions to define the impact of human trafficking and exploitation; territorial application and commencement (government amendments 64 to 66; 67 to 69; 71; 72, 76 and 77; 67, 68 and 70, 73 to 75, 78, 79, 81 to 83; 84; 85 to 87 and 88 to 90).

The effects of these amendments are discussed below.

Several non-government amendments were also moved and pressed to a division, but none were added to the bill.

2.3.1 Report stage day 1: amendments related to part 1 (nationality)

Government amendments

Corrections to clause 9 (government amendments 17 and 18)

Government amendments 17 and 18 corrected drafting errors in clause 9 of the bill concerning the description of the right of appeal. Both amendments were accepted and added to the bill without division.[91]

Non-government amendments

Notice of deprivation of citizenship (amendment 12)

A significant part of the debate on this first group of amendments on part 1 of the bill on nationality focused on clause 9 on the removal of British citizenship without notice, and the related amendment 12 which would remove clause 9 from the bill. Tabled by David Davis (Conservative MP for Haltemprice and Howden), amendment 12 had cross-party support including from the Labour and Liberal Democrat front benches.

[91] HC *Hansard*, 7 December 2021, col 270.

Speaking to his amendment, Mr Davis noted that his amendment would not take away the right of the home secretary to remove British citizenship, but would take away the right to do so without notice. Noting that the individual involved would not even be able to appeal the decision until they became aware of it, he said that this mechanism was flawed and did not adhere to the principles of transparent justice:

> This is an uncivilised, legally disputable removal of the rights of people. They may not be good people; if so, we should put them in front of our courts and punish them. That is how British justice should work. That is how British democracy should work. That is what we should do today.[92]

Shadow Home Affairs Minister, Bambos Charalambos, was similarly critical of the powers provided by clause 9, which he described as "dangerous and unprecedented".[93] Noting the conditions in the bill that notice of citizenship removal could be denied for reasons of practicality, the public interest, or in the interest of foreign relations, he accused ministers of effectively seeking to deny the right of appeal:

> Effectively, this means that the home secretary can strip someone of their citizenship without informing them because it would be internationally embarrassing for her to do so. This abhorrent proposal therefore enables the Government to remove basic fairness, on top of an already dangerous power.
>
> Like many measures in the bill, there is no practical reason for this change. Present rules already allow for citizenship deprivation letters to be delivered to an individual's last known address. The real purpose of this rule appears to be to introduce measures that remove the right to appeal.[94]

Speaking for the Liberal Democrats, Alistair Carmichael (Liberal Democrat MP for Orkney and Shetland) said that the removal of citizenship without notice was objectionable and should not be used as a method of punishment:

> We should not be using citizenship as some sort of tool for further punishment; there are plenty of other ways in which people who have done wrong can be punished. However, we do not use fundamental concepts of domestic and international law, such as citizenship, as a tool to do that.[95]

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[92] HC *Hansard*, 7 December 2021, col 228.
[93] ibid, col 221.
[94] ibid.
[95] ibid, col 238.

Several other members also spoke in favour of amendment 12.

In response, Kevin Foster, Parliamentary Under Secretary of State at the Home Office, said that removing clause 9 would undermine the integrity of the immigration system and the Government's efforts to keep dangerous people out of the country.[96] He said that clause 9 would mean no change in the scope of who could potentially be deprived, no change in the criteria, or to appeal rights, only on when notice should be given.

Amendment 12 was not pressed to a division and so was withdrawn.

Stateless children (amendments 2, 111 and 110)

There was also significant debate around clause 10 in the bill on stateless children, and the related amendments 2, 111 and 110. Amendment 2, a cross-party amendment tabled by Alistair Carmichael, would have removed clause 10, which restricts entitlement to British citizenship for children born stateless in the UK, from the bill. Amendments 111 and 110 were moved by Harriet Harman (Labour MP for Camberwell and Peckham), again with cross-party support, and were intended to achieve the following:

- To implement the recommendation of the Joint Committee on Human Rights (of which Ms Harman is a member) to ensure that, in compliance with article 1 of the 1961 UN Statelessness Convention, British citizenship is only withheld from a stateless child born in the UK where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles. (amendment 111).
- To implement the recommendation of the Joint Committee on Human Rights to ensure that the best interests of the child are central to decision-making in deciding whether to grant or decline an application for British citizenship by a stateless child who was born in the UK. (amendment110).

Bambos Charalambos indicated the Labour front bench's support for these amendments. He said clause 10 created unnecessary and unjustified barriers to stateless children being registered as British citizens:

> Clause 10 requires the secretary of state to be satisfied that a child was unable to acquire another nationality before being permitted to register as a British citizen. This creates an additional and unjustified hurdle to stateless children's registration as British citizens. Rather than ease the process and reform the current system to help children attain citizenship, the Government are intent on putting up more

[96] HC *Hansard*, 7 December 2021, col 257.

> barriers and making it more difficult for children under 18 to be registered. Why? Because they have a handful of anecdotal examples of parents who appear to be using the system, as far as they are concerned, to jump the queue.[97]

He added that he had asked the Government at committee stage for further evidence of this problem, but that it had not been forthcoming.[98]

In response, the minister said that the Government was seeing an increasing trend of applications for children whose parents did not take the step of registering their child's birth with their embassy or high commission, leaving their child without a nationality. Noting the request for data, Mr Foster said concerns about the use of that route were confirmed by Home Office sampling:

> Of more than 200 cases sampled, 96% of parents were Indian or Sri Lankan. Crucially, a child born in the UK to a parent from those countries can only access their citizenship if the parent registers the birth at the relevant high commission. To register the child's birth, they would need to comply with the requirements set. Within the sample, 90% of Indian and Sri Lankan parents had chosen to contact the high commission to obtain letters to show their child was in fact not a citizen, and so clearly had no problem in approaching their authorities. In many cases, the parents had, I think it is safe to say, a chequered immigration record, with only 16% of parents having permission to be in the UK at the time of the child's birth. In 67% of the cases, the parents had obtained leave to remain in the UK as a result of the child's applications. That points to why we believe this is a clear concern.[99]

On amendments 111 and 110, Mr Foster said that in practical terms this would mean that parents who had chosen not to register their child's birth could argue it was not in their child's best interest to have their nationality. He contended this could raise "obvious issues and concerns […] when in reality that is not something they should be doing—certainly not for an immigration benefit".[100]

None of these amendments were pressed to a division and so were withdrawn.

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[97] HC *Hansard*, 7 December 2021, col 230.
[98] ibid.
[99] ibid, col 260.
[100] ibid.

Acquisition by registration: descendants of those born on British Indian Ocean Territory (new clause 2)

Henry Smith (Conservative MP for Crawley) moved a cross-party amendment (new clause 2) that would have allowed anyone who was descended from a person born before 1983 on the British Indian Ocean Territory to register as a British Overseas Territories citizen. The amendment would also have allowed such individuals to register as a British citizen at the same time and both applications would be free of charge.[101]

Speaking to the amendment, Mr Smith raised the case of the Chagos islanders who he said had suffered "half a century of injustices" because of the decisions of previous British governments' to displace them from their homes, compounded by a failure to provide adequate compensation and resettlement.[102]

The amendment was supported by the Labour party. Shadow Home Affairs Minister, Bambos Charalambos, said that the fact British citizenship did not automatically pass to second and third generation Chagossians despite some of them migrating to the UK with their British parents as very young children was "nothing short of a scandal".[103] He added that he hoped members across the House would support the amendment. Anne McLaughlin, SNP Spokesperson on Immigration, Asylum and Border Control, also indicated that her party supported the amendment.[104]

In response, Kevin Foster, Parliamentary Under Secretary of State at the Home Office, said that the Government was concerned that the amendment could undermine a long-standing principle of British nationality law dating back to 1915, under which nationality or entitlement to nationality was not passed on to the second and subsequent generations born and settled outside the UK and its territories.[105] However, he said that the Government would consider what more it could do in this area, "particularly given the low uptake of the £40 million Foreign, Commonwealth and Development Office fund designed to assist this diaspora community".[106]

The House divided on new clause 2 where it was defeated by 309 votes to 245.[107]

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[101] HC *Hansard*, 7 December 2021, cols 216–17.
[102] ibid, col 220.
[103] ibid, col 221.
[104] ibid, col 231.
[105] ibid, col 258.
[106] ibid.
[107] ibid, cols 262–5.

Children registering as British citizens: fees (new clause 8)

Bell Ribeiro-Addy (Labour MP for Streatham) moved new clause 8, which, with respect of children registering as British citizens, would have prevented the Home Office from charging a fee that exceeds the cost of processing the application. It would also abolish such fees altogether for looked-after children until they reach the age of 21 (or 25 if in full-time education) and would require the Government to produce a report setting out the effect of such fees on children's human rights.

Kevin Foster said that he welcomed the opportunity to debate the issue, but that the Government was awaiting a judgement from the Supreme Court on this issue, after which ministers would look to respond.[108]

New clause 8 was moved to a division where it was defeated by 323 votes to 237.[109]

Former British-Hong Kong service personnel: right of abode (new clause 4), and British National (Overseas) visas: eligibility (new clause 5)

Andrew Rosindell (Conservative MP for Romford) moved new clause 4, which would have allowed all former British-Hong Kong service personnel plus their spouses and dependents right of abode in the UK. He said that a significant number of ex-service personnel were currently denied this right—estimated to be around 301 individuals with family members taking the total to approximately 1,000.

In response, Kevin Foster said that the Government remained grateful to former British Hong Kong service personnel, but that most of them should already hold British Overseas National (BNO) status, and thus be eligible for the BNO route of immigration to the UK. Again, he said the Government was worried about the precedent the acceptance of this amendment would generate. However, he said that the home secretary had identified an option that will enable the Government to treat this group of personnel in a similar way to other non-UK service personnel who were based in Hong Kong before the handover. This would be on top of the existing pathways they were already eligible for, including the BNO visa route and any other route. He said that he hoped to provide further details to the House as soon as he was able, with a view to a solution being found by the end of the next calendar year (2022).

The amendment was subsequently withdrawn without division.

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[108] HC *Hansard*, 7 December 2021, col 260.
[109] ibid, cols 266–9.

Also, on matters related to Hong Kong, Damien Green (Conservative MP for Ashford) moved new clause 5, a cross-party amendment that would have enabled any persons from Hong Kong who have at least one parent who is a British national overseas to apply for the BNO visa. Mr Green said this measure would provide greater protections for those "bravely fighting oppression" in Hong Kong, noting that many of the dissenters and demonstrators are under 25 and thus too young to have qualified under the BNO visa process.[110]

Noting that Labour had supported similar provisions at committee stage, Bambos Charalambos said it also supported this amendment.[111]

In response, the minister said that there were issues with the clause as drafted, given that it did not contain an age limit and its scope could extend even to those who have never set foot in Hong Kong.[112] However, whilst emphasising the other routes available to those concerned, he said that the Government would investigate what further measures could be taken to aid this group.

The amendment was withdrawn without division.

2.3.2 Report stage day 1: amendments related to parts 2, 3, 4 and 6 (asylum; immigration control; age assessments; and miscellaneous provisions)

Opening debate in the second part of report stage on 7 December 2021 (day 1), the Parliamentary Under Secretary of State, Tom Pursglove, moved a large number of government amendments. Some of these amendments were substantive whilst others were minor and technical in nature, as detailed below.

Government amendments

Admissibility of claims; priority removal notices; appeals process; penalties for overstaying; protecting those who provide rescue at sea; tackling vehicle entry; and drafting and technical changes (new clause 20, amendments 19 to 25, 26, 27 to 38, 44, 45 and 91 to 93, amendments 39, 40 to 43, 46 and 47, amendments 48 to 50, amendments 51 to 59 and 60 to 63, and amendments 94 and 95)

Speaking first to new clause 20, Tom Pursglove said this was a minor, technical amendment (to part 6 of the bill) that would ensure a small number of references to justices of the peace in immigration legislation in

[110] HC *Hansard*, 7 December 2021, col 232.
[111] ibid, col 225.
[112] ibid, col 259.

the context of obtaining entry and search warrants in Northern Ireland instead become references to lay magistrates.[113]

On government amendments 19 to 25, Mr Pursglove said these would make amendments to clause 12 (on accommodations for asylum seekers in part 2 of the bill) which were needed to cater for the fact that certain provisions relating to accommodation support for asylum seekers and failed asylum seekers may not be in force by the time clause 12 is commenced.[114]

Government amendment 26 to clause 15 (on the inadmissibility of asylum claims by persons with connection to a safe third state in part 2) would remove the power of the secretary of state to consider an asylum claim that they have previously declared inadmissible, where they determine that it is unlikely to be possible to remove the claimant to a safe third state "within a reasonable period".[115] Speaking to the amendment, Tom Pursglove said the Government was clear that people should claim asylum in the first safe country they reach, rather than make dangerous journeys to the UK to claim asylum here. He contended that inadmissibility is a long-standing process designed to prevent secondary movements across Europe, and measures were being moved from the immigration rules into primary legislation to support this process.[116]

The minister noted that government amendments 27 to 38, 44, 45 and 91 to 93 related to the evidence notice and the priority removal notice provisions in part 2 of the bill. They relate to the factors that decision-makers must take into account which are damaging to a claimant's credibility when they assess a protection of human rights claim. For example, amendment 27 would ensure that if a claimant provides evidence to a First-Tier Tribunal, Upper Tribunal or Special Immigration Appeals Commission in support of their claim after the required date, they must also provide reasons for it being late.[117]

Speaking to the group of amendments, Mr Pursglove said they were designed to make these factors clear:

> Those behaviours include concealing information, obstructing or delaying the handling of a claim, providing late evidence, and not acting in good faith, along with behaviours that are designed or are likely to mislead. It is right that all decision makers, including the tribunal, should clearly set out when and how they have taken into account the claimant's credibility when they assess a protection of human rights

[113] HC *Hansard*, 7 December 2021, col 288.
[114] ibid, col 289.
[115] Nationality and Borders Bill amendment paper, 7 December 2021.
[116] HC *Hansard*, 7 December 2021, col 289.
[117] Nationality and Borders Bill amendment paper, 7 December 2021.

> claim.[118]

He added that the remainder of the government amendments in this group were minor and technical and were intended to make sure that all the measures that relate to the priority removal notice (PRN) operate in the manner intended.[119]

On government amendments 39, 40 to 43, 46 and 47 (to clauses 22, 23 and 26 in part 2 of the bill on asylum measures), the minister said these would clarify the Government's intention that appeals should remain in the expedited appeal process wherever possible. He said the revised text, which reflects wording in the primary legislation that sets the statutory framework for tribunal rules, would specify that judges should only remove an appeal from the accelerated or expedited process where there is no other way to secure that justice be done.[120]

Speaking to amendments 48 to 50, the minister said these were minor and technical amendments to clause 34 (in part 2 of the bill) on the interpretation of the principle of internal relocation. He said they would clarify ambiguity in the current drafting that has the potential to be interpreted in an unintended way, where an individual could only be internally relocated within a country where they had previously been in that part of the country.[121]

Mr Pursglove said that the purpose of amendments 51 to 59 (to clause 39 of part 3 of the bill) would be to increase the maximum penalty for the existing statutory offence of overstaying. The current maximum penalty is six months' imprisonment, which he contended was no longer sufficient. He said that the Government wished to increase this to four years to bring this provision into line with other comparable measures:

> That maximum penalty dates back to the original legislation—the Immigration Act 1971—and is no longer considered sufficient for the present day. Given how much the world has changed over the past 50 years, the existing penalty hinders our ability to deter overstayers, and we consider that raising it would encourage better compliance. Clause 39 introduces a new maximum penalty of four years to align with illegal entry and other similar offences that have already been amended during the passage of the bill.[122]

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[118] HC *Hansard*, 7 December 2021, col 289.
[119] ibid.
[120] ibid, col 292.
[121] ibid.
[122] ibid, col 293.

In addition, the minister noted a commitment that he had given at committee stage to bring forward proposals to protect the crews of RNLI vessels rescuing persons at sea and those in charge of vessels who find stowaways on board. These measures were government amendments 60 to 63, which would add two new sections into the Immigration Act 1971 to provide for exclusions or defences to the offences of facilitating illegal entry or the entry of asylum-seekers in circumstances where:

> (1) a person rescues another person at sea, or
> (2) a ship's master carries a stowaway into the UK or a person on board a ship assists a stowaway for humanitarian reasons.[123]

The minister concluded his remarks by addressing government amendments 94 and 95 (to schedule 4 of the bill), which he said were among a number of measures being brought forward to strengthen efforts to tackle clandestine migrants seeking to enter the UK in vehicles. Mr Pursglove said that the Government would be working with transport industry representatives on new regulations to address this issue:

> We will work with representatives of the transport industry to devise and set out new regulations that detail how to secure a vehicle, conduct checks on vehicle security, report attempts of unauthorised access, and keep evidence of steps taken to prevent unauthorised access to the vehicle. These changes are necessary, as a high proportion of drivers and hauliers continue to fail to secure their vehicle properly, and often run the risk of being targeted by migrants who rely on going undetected. There is a human cost to this traffic. Criminal gangs are preying on vulnerable people and shipping them across the UK border like human cargo. We must all take responsibility for preventing that.[124]

All these government amendments were added to the bill without division.

Non-government amendments

Advertising assistance for unlawful immigration to the United Kingdom on social media (new clause 50)

Shadow Home Affairs Minister, Bambos Charalambos, moved new clause 50 (to amend part 3 of the bill), which would have made advertising people-smuggling routes on social media an offence. He said this was a growing

[123] Nationality and Borders Bill amendment paper, 7 December 2021.
[124] HC *Hansard*, 7 December 2021, col 293.

problem, where social media companies had been slow or refused to act:

> Smugglers and trafficking gangs are putting people's lives at risk, and they use social media to promote, encourage, advertise and organise these dangerous crossings. Too often, when the National Crime Agency asks Facebook, TikTok and others to take down dangerous material, they refuse. We have to strike at the heart of this illegal and dangerous operation. That is why we propose a new, additional criminal offence; it would not replace existing offences. The new offence would make it clear beyond doubt that such material is illegal and dangerous, that we will prosecute those responsible for it, and that we expect social media companies to take it down.[125]

Tom Pursglove did not address this amendment specifically in his remarks at the close of the debate. The *Daily Mail* reported on 1 December 2021 that the Prime Minister, Boris Johnson, had been critical of a failure of social media companies to act and said that the Government intended to legislate in this area through the draft Online Safety Bill.[126]

New clause 50 was moved to a division where it was defeated by 314 votes to 235.[127]

Recommendations from the Joint Committee on Human Rights on 'pushback' (amendments 96 to 100, and 102)

Harriet Harman moved several amendments to give effect to recommendations made by the Joint Committee on Human Rights on the issue of 'pushback' and related matters. They included amendment 98 which would amend the bill to ensure the maritime enforcement powers cannot be used in a manner that "could endanger lives at sea".[128] Other provisions would specify that these powers could not be used against unseaworthy vessels and could only be employed in a way that was compatible with international law.

Speaking to the amendments, Ms Harman noted that the Government had accepted that those attempting to cross the Channel faced perilous journeys and she contended that these proposals, tabled by a cross-party committee of MPs, would help to make those in small boats safer whilst also conforming to the Government's stated objectives. She said that she hoped ministers

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[125] HC *Hansard*, 7 December 2021, col 295.
[126] Katie Feehan, 'Prime Minister criticises Facebook and social media companies over migrant trafficking adverts and says Online Safety Bill will empower the Government to force tech giants to remove them', *Daily Mail*, 2 December 2021.
[127] HC *Hansard*, 7 December 2021, cols 325–9.
[128] ibid, col 306.

would consider the changes:

> Our amendments allow for the new powers, but make them compliant with international law and make them safe. The Government have no reason to oppose the amendments, so I hope that the Minister will say to his colleagues and his civil servants that he wants to reflect on them because he does not want to stand in the way of putting the Government's intentions on the face of the bill.[129]

In response, Tom Pursglove said that the committee raised important matters, but some of the provisions were unnecessary because the Government had always complied with international law:

> On the international convention for the safety of life at sea and search-and-rescue operations, that has consistently been, and will continue to be, the position in the work that we do.[130]

Amendment 98 was moved to a division where it was defeated by 313 votes to 235.[131]

Indefinite leave to remain payments by Commonwealth, Hong Kong and Gurkha members of armed forces (new clause 24), and non-UK service personnel: waiver of fees (new clause 52)

New clause 24, tabled by Holly Lynch (Labour MP for Halifax), would ensure that Commonwealth, Hong Kong and Gurkha veterans applying for indefinite leave to remain following four years of service will only pay the unit cost of an application. Similarly, new clause 52, tabled by Johnny Mercer (Conservative MP for Plymouth Moor View), would waive immigration fees for those who do not hold British citizenship but who are serving, or have in the past served in the UK armed forces for a minimum period of five years, and for their dependants.

Speaking to his amendment, Johnny Mercer said the "moral and financial case for this measure has never been clearer".[132] He noted what he called a wide-spread consensus on the issue that included parties from across the House and external stakeholders such as the Royal British Legion:

> There has been wide, broad, and deep support for action on this issue over the past few days, including from people who really do not like to get involved in politics. Whether it is the Royal British Legion, Help for Heroes and the veteran community or beyond, in our communities up

[129] HC *Hansard*, 7 December 2021, col 306.
[130] ibid, col 324.
[131] ibid, cols 348–51.
[132] ibid, col 299.

> and down the country, people recognise the morality behind the issue of charging those who serve to live in this country.[133]

He added further on the figure of £160 million that he said had been provided by the Government on the potential cost of the measures:

> On that £160 million, the Royal British Legion has studied the figures. If someone who served in the military in this country applies for a visa, all their dependants use a special code. Someone can only use that code if they have served or they are a dependant, so we can pull the data between 2016 and 2020. It has never cost more than £1 million a year, so the majority of those fees are profit—a charge on our service personnel to stay here.[134]

Responding for the Government, Tom Pursglove said the Government remained deeply grateful for the contribution made by overseas personnel. He said that was why the Ministry of Defence, together with the Home Office, ran a public consultation between 26 May and 7 July 2021 about a policy proposal to waive settlement fees for non-UK service personnel in Her Majesty's armed forces.[135] He said that a response to that consultation would be issued shortly.

The House divided on new clause 52 where it was defeated by 296 votes to 251.[136] New clause 24 was not moved to a division and thus was subsequently withdrawn.

Preventing the criminalisation of those seeking asylum (amendment 116)

Stuart C McDonald, Shadow SNP Spokesperson for Home Affairs, moved amendment 116, which would seek to exempt those seeking asylum or humanitarian protection from the criminal penalties which would be imposed by clause 39 on those knowingly arriving in the UK without a valid entry clearance. The amendment was drafted to specifically exempt certain groups from criminalisation such as Afghan and Syrian nationals, Uighurs and converts to Christianity, yet would also extend to:

> Persons who are in need of international protection; or who are refugees because they are outside of their country of nationality for fear of persecution for a Convention reason as set out in article 1 of the Refugee Convention.[137]

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[133] HC *Hansard*, 7 December 2021, col 299.
[134] ibid.
[135] ibid, col 323. See: Ministry of Defence and Home Office, 'Immigration Fees Public Consultation', 26 May 2021.
[136] HC *Hansard*, 7 December 2021, cols 330–2.
[137] ibid, col 285.

Speaking to the amendment, Mr McDonald described the provisions in clause 39 as deeply flawed:

> For those seeking asylum in the UK who do get here, is it not outrageous that they will be criminalised under an offence in clause 39 punishable by up to four years in prison? That is why our amendment 116 states clearly and simply that if Afghans, Syrians, Uyghurs, Christian converts or others are at risk of persecution in their countries of nationality, their mere entry or arrival for the purposes of seeking asylum is not a crime. Is it not extraordinary that that very idea has to be debated?[138]

The minister did not specifically address amendment 116 as part of his closing remarks. It was pressed to a division and was defeated by 318 votes to 233.[139]

Family reunion and resettlement: unaccompanied minors (new clause 48), and co-operation with the European Union on family reunion arrivals and safe returns (new clause 49)

Bambos Charalambos also spoke to new clause 48 (to amend part 3 of the bill), which would have allowed unaccompanied children to have access to family reunion with close relatives in the UK (known as the 'Dubs amendment' after the similar legislative provision on unaccompanied children campaigned for by Lord Dubs).

The opposition's new clause 49 would have also required the Government to produce a negotiating mandate setting out a proposed reciprocal arrangement with the European Union for safe returns and safe legal routes, to cover the issues previously covered by the Dublin III agreement which has now ended.

Speaking to those amendments, Mr Charalambos said that a failure to provide for unaccompanied minors risked forcing "hundreds of vulnerable children to turn to people-smuggling gangs for assistance in travelling to Britain, placing them at greater risk of trafficking".[140] On new clause 49, he added that it was "ridiculous that the Government are resorting to dangerous tactics such as push-backs in the channel, when we used to have civilised reciprocal agreements with our geographical neighbours".[141]

Again, these amendments were not addressed directly by the minister in his remarks. They were withdrawn without division.

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[138] HC *Hansard*, 7 December 2021, col 301.
[139] ibid, cols 339–42.
[140] ibid, col 295.
[141] ibid.

Application of the Human Rights Act, Convention for the Protection of Human Rights and Fundamental Freedoms, retained EU law, and the refugee convention to the removal of asylum seekers to a safe third country (amendment 150)

Sir William Cash (Conservative MP for Stone) moved amendment 150, which would have ensured that the provisions in clause 28 and schedule 3 on the removal of asylum seekers to a safe third country were not open to judicial interpretation or disapplication under the measures listed in subsection (2) of the amendment, as follows:

> (2) This section and Schedule 3 will have effect notwithstanding—
>
> a) the Human Rights Act 1998;
> b) the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom, including any Protocol to that Convention;
> c) EU derived law and case law retained under sections 2 to 7 of the European Union (Withdrawal) Act 2018; and
> d) the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol.

Speaking to his amendment, Sir William said the amendment was intended to address those seeking to abuse existing legal protections:

> The amendment is not against genuine persecuted refugees; this is about economic migrants who claim that they are within the legal framework of protected refugees. The illegal traffickers convince them to use our human rights laws to come over to our shores in the certain knowledge that they will be protected by our judicial system.[142]

In response, Tom Pursglove said that the Government agreed with the sentiments expressed in the amendment and confirmed that ministers were committed to consult on substantial reform to the Human Rights Act and would review the application of the European Convention on Human Rights.[143] In light of these commitments, and the Government's ongoing work to resolve concerns on the application of retained EU law, he said he hoped that the amendment would be withdrawn.

Amendment 150 was not moved to a division and was subsequently withdrawn.

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[142] HC *Hansard*, 7 December 2021, col 304.
[143] ibid, col 322.

2.3.3 Report stage day 2: amendments related to parts 5 and 7 (modern slavery and general provisions)

The Government also moved a significant number of amendments during day 2 of report stage on 8 December 2021. These related to matters related to modern slavery, including the recovery period (from which a person is protected from removal) provided to suspected victims of human trafficking and exploitation, and definitions used in the bill to define the impact of human trafficking and exploitation. The Government also moved amendments on the territorial application of the bill and commencement arrangements. All were added to the bill without division.

Several opposition amendments were discussed and three were pressed to a division on day 2, as discussed below. None were added to the bill.

Government amendments

Recovery periods from exploitation and trafficking; definitions to define the impact of human trafficking and exploitation; territorial application and commencement (amendments 64 to 66; 67 to 69; 71; 72, 76 and 77; 67, 68 and 70, 73 to 75, 78, 79, 81 to 83; 84; 85 to 87 and 88 to 90)

The summary effect of the amendments moved by the Government on the second day of report stage was as follows:

- Removal of the requirement that there must be at least 30 days between the making of a positive reasonable grounds decision in relation to an identified potential victim of slavery or human trafficking and the making of a conclusive grounds decision (amendment 64). The Government also moved a consequential amendment to ensure that an identified potential victim is entitled to a recovery period (giving protection from removal) of at least 30 days even where a conclusive grounds decision is made within 30 days of the positive reasonable grounds decision (amendment 66).
- A drafting amendment to make it clear that the prohibition on removal of an identified potential victim does not apply where they are disqualified from protection under clause 62 as a threat to public order or for having acted in bad faith (amendment 65).
- Amendments to the entitlements and protections for people who receive a further positive reasonable grounds decision. (amendments 67 to 69).
- Provision that, if an identified potential victim is disqualified from protection (on the grounds of public order or acting in bad faith) but goes on to receive a positive conclusive grounds decision, any requirement to grant them leave to remain in the United Kingdom that would otherwise arise under clause 64 ceases to

apply (amendment 71).

- Replacement of the use of the term "social well-being" with "social harm" with reference to the assistance provided to victims of human trafficking (amendments 72, 76 and 77).
- Further drafting and consequential amendments on recovery period and human trafficking provisions (amendments 67, 68 and 70, 73 to 75, 78, 79, 81 to 83).
- Providing clarity that a trafficking victim may be removed to a country which is not a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings, if the UK has made an agreement with that country (amendment 80).
- Extension of the bill's provisions to the Isle of Man and the Channel Islands (amendment 84).
- Amendments to commencement arrangements, so that powers to make regulations can be brought into force on royal assent. This is so that the regulations can be prepared in advance of the substantive provisions being commenced. The regulations themselves will not be commenced for at least two months after royal assent (amendments 85 to 87 and consequential amendments 88 to 90).

Speaking to the Government's amendments, Parliamentary Under Secretary of State, Rachel Maclean, noted that amendments 64, 71, and 73 to 75 (which would make changes to clauses 60 to 63 of the bill's provisions on modern slavery) were technical amendments that sought to "provide greater clarity on the protections provided to possible victims through the recovery period" and on when those rights can be withheld, and to "ensure that we have flexibility in decision making".[144] She added:

> Specifically, they enable the conclusive grounds decision to be made in the recovery period, while still providing for a minimum recovery period of 30 days, which is effectively 45 days in guidance. The second part makes clear our position that, in specific circumstances, as set out in clauses 61 and 62, we can withhold the recovery period and the protection from removal that it provides. Those changes allow us to respond to modern slavery as an evolving crime.[145]

On government amendments 72 and 76 to 83, which all related to specific temporary leave to remain for confirmed victims of modern slavery, the minister said that the Government's aim was to "clarify our international obligations with regard to the provision of temporary leave to remain for confirmed victims".[146]

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[144] HC *Hansard*, 8 December 2021, col 425.
[145] ibid.
[146] ibid.

Rachel Maclean noted that government amendments 78 and 81 to 83 were minor technical drafting amendments. Similarly, amendment 79 updated the wording of clause 64 to reflect government amendment 56 (added to the bill during day 1 of report stage).

More substantially, the minister spoke to government amendments 76 and 77 which sought to remove the wording "social well-being" from subsection (2)(a) of clause 64 on the temporary leave to remain. Rachel Maclean contended this was an "over-broad concept that lacked clarity" and which left the eligibility criteria for a grant of leave under the clause unclear for victims and decision makers, which she said undermined the aim of the clause. She added that the Government would continue to support those who needed to recover from the harms caused by their exploitation:

> I reassure hon. Members that we remain in line with our international obligations. We will continue to support, via a grant of temporary leave to remain, those who have a need to be in the UK to recover from physical and psychological harm caused by their exploitation.[147]

Similarly, she said government amendment 72 would amend the wording in clause 63 on providing assistance and support to victims of trafficking from social "well-being" to social "harm". Again, she sought to provide reassurance to MPs by stating that "the clause will be underpinned by the immigration rules, which will provide more guidance on the issue for decision makers".[148]

Government amendment 80 would make clear that a trafficking victim may be removed to a country which is not a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings, if the UK has made an agreement with that country. On this point, the minister said that decision makers would assess potential returns on a case-by-case basis following an individualised assessment in line with guidance and available country information.[149]

Speaking for the Labour party, Holly Lynch, Shadow Minister at the Home Office, noted her party's opposition to amendment 80, and the way in which the Government had tabled a large number of amendments at report stage:

> Government amendment 80 makes provisions for a survivor of trafficking to be removed to a country that is not a signatory to the Council of Europe convention on action against trafficking in human beings, if the UK has made an agreement with that country. This is one of around 80 amendments tabled after the line-by-line scrutiny of the

147 HC *Hansard*, 8 December 2021, col 425.
148 ibid.
149 ibid.

> bill in committee and days before report that have potentially massive implications. This is quite frankly an outrage. I have written to the Procedure Committee to express my concern at the disregard for parliamentary scrutiny we have seen with this bill. I simply ask the Minister to outline what, if any, agreements have been made, and with which countries. What are the details of those agreements? We should have had this detail on second reading and in committee, and we wish to put strongly on record our opposition to this amendment, as I suspect the Minister cannot begin to answer my questions.[150]

All of these government amendments were added to the bill without division.

Non-government amendments

Creating an offence of human trafficking for sexual exploitation (new clause 3, and amendments 5 to 7); and removing provisions on information relating to being a victim of slavery or human trafficking, and late compliance with a slavery or trafficking information notice causing a damage to credibility (amendments 127 and 128)

Dame Diana Johnson (Labour MP for Kingston Upon Hull North) moved new clause 3, which would have created a specific offence for trafficking for the purposes of sexual exploitation. Speaking to the amendment, Dame Diana said that, although the Modern Slavery Act 2015 covers exploitation broadly, the "catastrophically high number of women and girls trafficked into the UK for the sex industry means that it merits a specific offence".[151]

She said that the amendment would help to tackle the scourge of human trafficking and violence against women and girls:

> New clause 3 would ensure that the link between human trafficking and sexual exploitation is acknowledged. It would aid efforts to combat the scourge of human trafficking and broader violence against women and girls by providing a framework that would ensure that the authorities respond to individuals who may have been previously viewed as criminals as though they are, in fact, victims of sexual exploitation.[152]

Dame Diana also spoke to amendments 5 to 7, the focus of which was on stopping late disclosure affecting credibility and providing guidance to help the relevant authorities to identify victims. She argued that the amendments would stop late disclosure from affecting the credibility of a claim of being

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[150] HC *Hansard*, 8 December 2021, col 404.
[151] ibid, col 395.
[152] ibid.

trafficked for the purpose of sexual exploitation and set out how a person who makes a late disclosure might be better identified by any relevant authority. Amendment 7 would have also required the secretary of state to issue guidance on the specific factors that may indicate that somebody was a victim of human trafficking for the purposes of sexual exploitation.

Taken together, Dame Diana argued these amendments would help the authorities tackle the perpetrators of human trafficking:

> [Ministers] argued against these amendments in the bill committee, stating that the Government did not want to create a "two-tiered system" based on the exploitation that a victim had faced. I think that is simply wrong. Acknowledging the distinct features of trafficking for the purposes of sexual exploitation, as opposed to, for example, forced labour, would improve the authorities' response and the ability to prosecute and find the perpetrators. Recognising and identifying difference would not create a hierarchy; rather, it would make the system more effective and accurate. The minister also stated that delineating between trafficking for sexual exploitation and trafficking for other purposes would motivate individuals to put forward falsified referrals. However, all the evidence shows that victims of trafficking for sexual exploitation need more encouragement to come forward, not less.[153]

Stuart C McDonald extended the SNP's support to new clause 3. He also moved amendment 127, which would have removed clause 57 from the bill, on information relating to being a victim of slavery or human trafficking, and amendment 128, which would have removed clause 58 on late compliance with slavery or trafficking information notice resulting in a damage to credibility.[154]

In response, Rachel Maclean said that the Government was committed to tackling all forms of modern slavery. She said that ministers recognised the "specific and horrific circumstances that victims of sexual exploitation have gone through" but believed the right tools and a compassionate approach was in place to help them.[155] She contended that "our people are fully trained to take a trauma-informed approach to advocate for them with compassion to help them to rebuild their lives and to reintegrate in their communities".

The House divided on new clause 3, where it was defeated by 288 votes to 236.[156]

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[153] HC *Hansard*, 8 December 2021, cols 396–7.
[154] ibid, col 410.
[155] ibid, col 426.
[156] ibid, cols 429–32.

The House also divided on amendment 128, which was defeated by 300 votes to 231.[157]

Exemption for child victims of modern slavery, exploitation or trafficking (new clause 6)

Shadow minister Holly Lynch moved new clause 6 for Labour, which would have exempted victims of modern slavery, exploitation or trafficking from many of the provisions in part 5 of the bill—such as those on slavery or trafficking information notices and positive reasonable grounds decisions—if they were under 18 when they became a victim.

In speaking to the amendment, Holly Lynch noted the debate that had taken place in committee stage on the provisions in part 5. She argued that these measures would make it more difficult to protect the victims of exploitation:

> Provisions in part 5 will make it harder to identify, safeguard and support victims of modern slavery in securing prosecutions against their abusers. Our new clause 6 will ensure that no child victim of trafficking or modern slavery is denied protection because of those provisions. The new clause follows the many battles that we had in Committee in calling on the Government to hear the pleas of organisations such as The Children's Society and Every Child Protected Against Trafficking, and those of the Independent Anti-Slavery Commissioner, Dame Sara Thornton, and to recognise the vulnerability of child victims of trafficking and modern slavery, something that they have failed to do throughout the bill's passage so far.[158]

Holly Lynch noted the vulnerability of children to exploitation, including from so-called county lines gangs. She said that a failure in the bill to make a distinction between adults and children who are victims of trafficking and slavery was a "glaring omission", which should be rectified.[159]

Responding for the Government, Rachel Maclean repeated that safeguards were built into the bill's provisions, and that decisions will be made on a case-by-case basis with appropriate levels of care. She noted that it was the Government's clear duty to safeguard and protect child victims of that "appalling exploitation".[160] She added:

> The people who are dealing with those victims are professionals who will use their discretion and, again, a trauma-informed approach. They

[157] HC *Hansard*, 8 December 2021, cols 438–41.
[158] ibid, col 402.
[159] ibid.
[160] ibid, col 426.

> fully understand and appreciate the experience of those children—those vulnerable victims—and will ensure that they get the right support and approach to rebuild their lives.[161]

The House divided on new clause 6, where it was defeated by 293 votes to 234.[162]

Support and leave to remain for confirmed victims of slavery or human trafficking (new clause 47)

Sir Iain Duncan Smith (Conservative MP for Chingford and Woodford Green) moved new clause 47, which would have provided new statutory support for modern slavery and human trafficking victims in England and Wales after a conclusive grounds decision. It would have provided leave to remain for all victims with a positive conclusive grounds decision for at least 12 months to receive support, assist police with their enquiries or seek compensation.

Speaking to his amendment, Sir Iain noted cross-party support for the measure, which he said had two key objectives:

> First, it deals with the issue of giving people who have gone through the national referral mechanism, who are therefore rightly in the system, longer to be able to settle and to be properly helped and supported. That is a humanitarian position, having already decided that such people have suffered as a result of modern-day slavery. […]
>
> The second aspect is very important. The police keep telling us that, if they had more time to help those people to give testimony, we would get many more prosecutions and we would, ironically, shut down more of the ghastly criminal channels that are bringing these people in. This is about being strong in both prosecution and humanitarian terms, and that is the purpose of the new clause.[163]

He added that he intended to press new clause 47 to a division, "unless the Government make it clear that they have listened very carefully to this and other debates on the subject".[164] He said the minimum guarantee would serve as a "major stabiliser", and that if the Government were prepared to accept that, and perhaps table an amendment in another place, "I shall be prepared to wait and see what happens".

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[161] HC *Hansard*, 8 December 2021, col 426.
[162] ibid, cols 434–7.
[163] ibid, col 397.
[164] ibid.

Dame Diana Johnson declared Labour's support for new clause 47,[165] as did Stuart C McDonald for the SNP.[166]

In response, the minister said that the Government shared the common aim of bringing the perpetrators of human exploitation to justice and of supporting victims to rebuild their lives. She said ministers were "absolutely committed" to ensuring that those victims of modern slavery have the support that they need to assist their recovery and the support that they need when they are engaging with the police and through the criminal justice process.[167]

She added that the bill contained measures to allow temporary leave to remain while investigations were carried out:

> It is a priority to increase prosecutions of perpetrators of modern slavery […] which is why we are making it clear for the first time that, where a public authority such as the police is pursuing an investigation, those victims who are co-operating and need to remain will be granted temporary leave to remain. Our legislation also makes it clear that leave will be granted where it is necessary to assist an individual in their recovery from any physical or psychological harm arising from the relevant exploitation or where it is necessary to seek compensation from their perpetrators. It is right that leave is granted to those who need it—that is firm but fair.[168]

She also spoke to the role for victim navigators, which had been raised by Sir Iain Duncan Smith, and said that to reflect the need for that specialist expertise, the Home Office funding provides a bespoke modern slavery intelligence hub with regional analysts, operational coordinators and improved training to support police forces and increase prosecutions. Finally, she said all those who receive a positive conclusive grounds decision and need tailored support would receive appropriate individualised support for a minimum of 12 months, and that further details would be set out in relevant guidance.[169]

Sir Iain said he welcomed the minister's comments. However, he said if amendments were not introduced in the House of Lords, he would be among those to seek another vote in the House of Commons on the issue.[170] Therefore, he did not move new clause 47 to a division and it was subsequently withdrawn.

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[165] HC *Hansard*, 8 December 2021, col 397.
[166] ibid, col 410.
[167] ibid, col 426.
[168] ibid, cols 426–7.
[169] ibid, col 427.
[170] ibid.

Identified potential victims—disqualification from protection (new clause 39 and amendment 3)

Richard Fuller (Conservative MP for North East Bedfordshire) moved new clause 39. The new clause would have replaced clause 62 in the bill, which provides that a person in receipt of a positive reasonable grounds decision can be disqualified from the protections given to trafficking or slavery victims if they are a threat to public order or have raised their referral "in bad faith".

New clause 3 would have introduced several measures intended to ensure that the power currently provided for in clause 62 is "exercised in line with the UK's obligations under article 13 of the Trafficking Convention".[171] The amendment would also protect child victims of modern slavery from disqualification from protection.

Speaking to his amendment, Richard Fuller noted that it had been backed by others from across the House, and said it would provide the Government with an opportunity to achieve their objectives but "on a more considerably secure legal footing" than their current proposals would permit.[172] He added that the amendment had been shaped by concerns raised by the Independent Anti-Slavery Commissioner, Dame Sara Thornton, and concerns over the justification provided to remove protections under the national referral mechanism:

> My first concern with clause 62 as proposed is to ask: where is the evidence? Where is the evidence that access to the national referral mechanism is being abused, and where is the evidence from the Government on the impact of their proposal? My second concern with clause 62 is that it does not appear to address vexatious or unwarranted claims regarding access to the national referral mechanism.[173]

He added that clause 62 presented a "very low bar for disqualification" based on criminal sentencing and failed to adequately provide for sufficient evidence to be collated to bring successful prosecutions against the coordinators of crimes of modern slavery and exploitation.[174] Richard Fuller voiced concerns that, despite the bill's focus on immigration, the provisions in clause 62 would in fact affect those already in the UK, including British citizens. He added that the amendment would remove children from the scope of clause 62, allowing the most vulnerable victims of modern slavery, including children, to come forward without fear of punishment to be identified, to access safeguarding and support, and to have the opportunity

[171] HC *Hansard*, 8 December 2021, col 392.
[172] ibid, col 428.
[173] ibid, col 405.
[174] ibid, col 406.

to engage and support criminal justice processes.

Mr Fuller also said that, given new clause 3 would not be moved to a division, it was "important that this House sends a clear and unequivocal cross-party message to the other House, where this issue can perhaps be looked at anew".[175]

Alistair Carmichael also moved amendment 3, which would have removed clause 62 from the bill entirely. Speaking to his amendment, Mr Carmichael said that he agreed with Richard Fuller that clause 62 was the wrong measure in the wrong place, that "breaks our obligations to support the victims of human trafficking and undermines the fight against slavery and human trafficking".[176]

Holly Lynch declared Labour's support for new clause 39.[177] Similarly, Stuart C McDonald expressed the SNP's support for new clause 39 and amendment 3.[178]

In response, Rachel Maclean said that she appreciated concerns about clause 62, but said it was "right that we should be able to withhold protection from serious criminals and those who pose a national security threat to the UK".[179] She sought to reassure members that the Government's approach was not to have a blanket disqualification based on public order, but "to take a case-by-case approach to decisions and consider the individual's circumstances".

New clause 39 was not moved to a division and thus was subsequently withdrawn. Similarly, amendment 3 was also withdrawn without division.

2.4 Third reading

Third reading of the bill took place following the conclusion of report stage on 8 December 2021. The Home Secretary, Priti Patel, reiterated her belief that the bill would "bring in a new, comprehensive, fair but firm long-term plan that seeks to address the challenge of illegal migration head on".[180]

Speaking for Labour, the new Shadow Home Secretary, Yvette Cooper, argued that the bill would make existing issues worse rather than better, contending that the measures would "severely limit our ability to convict

[175] HC *Hansard*, 8 December 2021, col 405.
[176] ibid, col 415.
[177] ibid, col 404.
[178] ibid, col 410.
[179] ibid, col 428.
[180] ibid, col 455.

perpetrators and dismantle organised crime groups".[181]

At the culmination of the debate, opposition parties again voted against the progression of the bill. It was given a third reading by 298 votes to 231.[182]

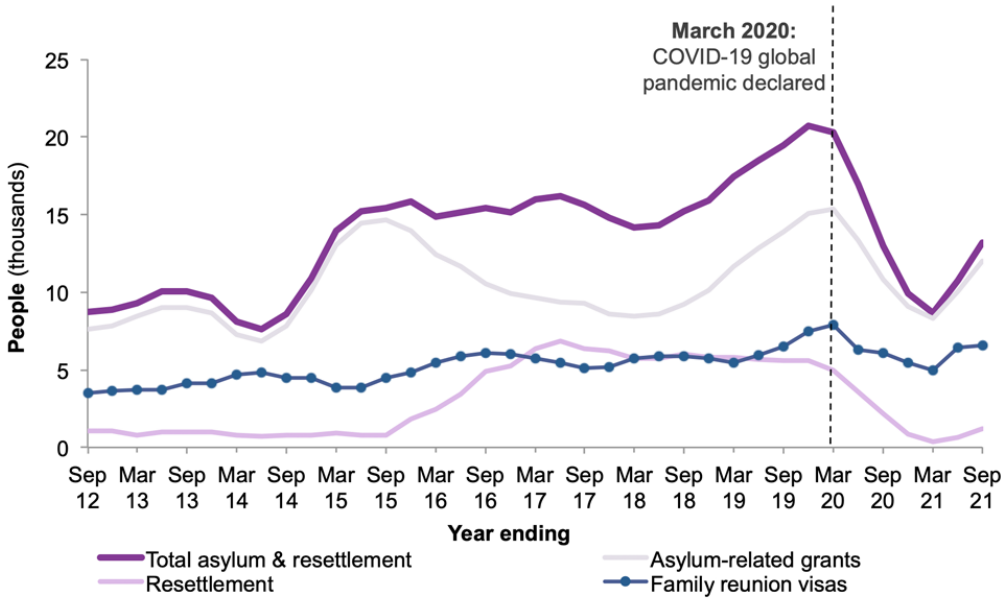
[181] HC *Hansard*, 8 December 2021, col 448.
[182] ibid, cols 449–52.

3. Recent statistics on immigration and asylum

The Home Office published statistics in November 2021 on asylum and immigration as part of its regular series of releases. Extracts from that release providing the most recent data available are included below.

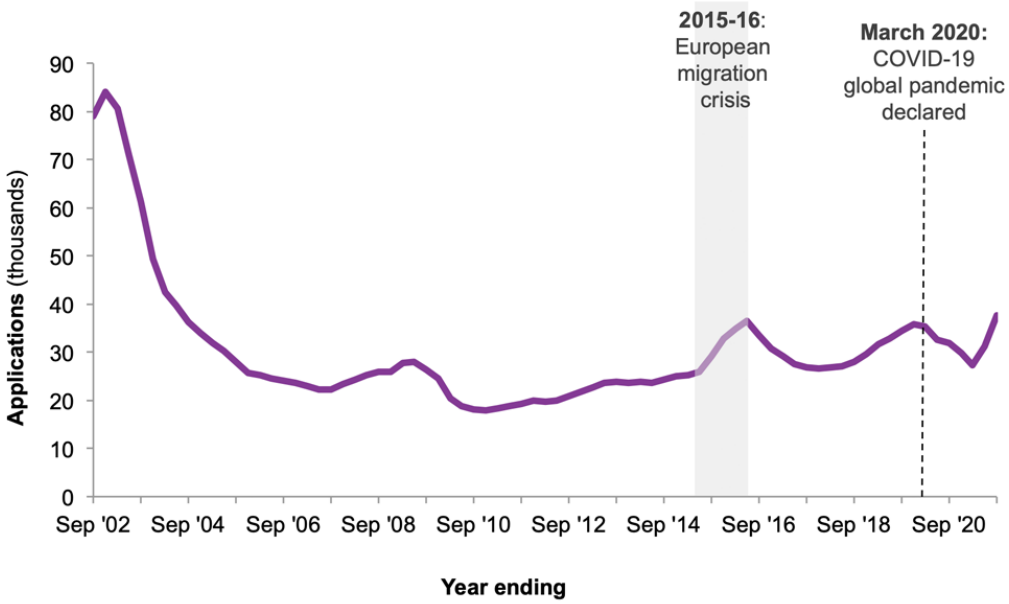
3.1 Asylum and resettlement

Figure 1: People granted asylum-related protection, resettlement and family reunion visas in the UK, years ending September 2012 to September 2021



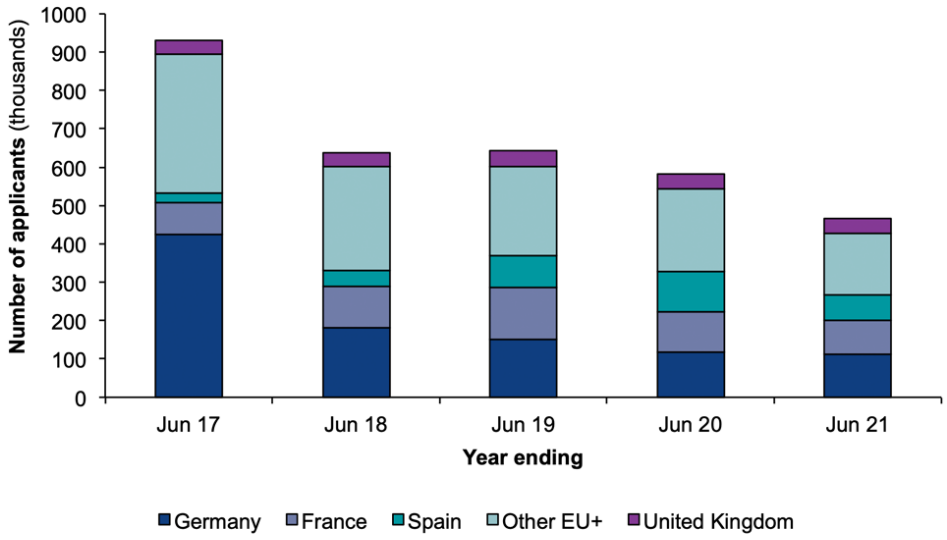
Source: Home Office, 'How many people do we grant asylum or protection to?', 25 November 2021. (Please see the original release for data caveats. Data source: Asylum applications, initial decisions and resettlement – Asy_D02 [Excel file])

Figure 2: Asylum applications lodged in the UK, years ending September 2002 to September 2021



Source: Home Office, 'How many people do we grant asylum or protection to?', 25 November 2021. (Please see the original release for data caveats. Data source: Asylum applications, initial decisions and resettlement – Asy_D01 [Excel file])

Figure 3: The number of asylum applicants to the top three countries in the EU+ and the UK, year ending June 2017 to June 2021



Source: Home Office, 'How many people do we grant asylum or protection to?', 25 November 2021. (Please see the original release for data caveats. Data sources: Eurostat Asylum statistics and Asylum applications, initial decisions and resettlement – Asy_D01 and Asy_D02 [Excel file])

The release also provides the following top-level findings on the outcomes of asylum applications (it should be noted in each case that the Covid-19 pandemic is likely to have impacted these figures):[183]

- In the year ending September 2021, there were 14,758 initial decisions made on asylum applications. The number of decisions was 6% fewer than the previous year (in part due to the Covid-19 pandemic).
- Almost two-thirds (64%) of the initial decisions in the year ending September 2021 were grants of asylum, humanitarian protection or alternative forms of leave. The proportion of grants is higher than the previous year (49%), and higher than levels prior to 2019, when around a third of initial decisions were grants. (The Home Office states this is in part because the number of grants has increased, returning to levels similar to those prior to the Covid-19 pandemic, while the number of refusals has decreased, remaining below pre-pandemic levels.)
- There were 4,282 appeals lodged on initial decisions in the year ending September 2021. This is 30% fewer than the previous year. (Again, the Home Office states that in part this reflects the smaller number of applications processed due to the pandemic and the smaller number of applications refused in the latest year, but contends that this continues a downward trend for numbers of appeals lodged since 2015.[184])
- Of the appeals resolved in the year ending September 2021, almost half (48%) were allowed (meaning the applicant successfully overturned the initial decision). (The Home Office notes that the proportion of appeals allowed has risen from 29% in 2010, when the timeseries began.)
- At the end of September 2021, there were 67,547 cases (relating to 83,733 people) awaiting an initial decision (41% higher than the previous year). The number of cases awaiting an initial decision has shown an overall increase in the last 10 years, and more rapidly since 2018.[185]
- At the end of September 2021, there were 62,651 individuals awaiting a decision on their asylum application who were in receipt of support, 10% higher than the previous year. Of those individuals:
    - 92% were in receipt of support in the form of accommodation and subsistence (including 16,794 who were in receipt of temporary support under section 98 of

[183] Home Office, 'How many people do we grant asylum or protection to?', 25 November 2021.
[184] ibid.
[185] ibid.

the Immigration and Asylum Act 1999).
- 8% were in receipt of subsistence only.

In addition, there were 6,096 people in receipt of section 4 support (provided to individuals whose asylum application has been refused but they are destitute and there are reasons that temporarily prevent them from leaving the UK).

Finally, on inadmissibility, the Home Office notes that from 1 January 2021, following the UK's departure from the EU, strengthened inadmissibility rules came into effect. The release notes that from Q1 to Q3 (January to September) 2021:[186]

- 7,006 asylum claimants were identified for consideration on inadmissibility grounds.
- 6,598 'notices of intent' were issued to individuals to inform them that their case was being reviewed in order to determine whether removal action on inadmissibility grounds was appropriate and possible.
- 48 individuals were served with inadmissibility decisions, meaning the UK would not admit the asylum claim for consideration in the UK system, because another country was considered to be responsible for the claim, owing to the claimant's previous presence in or connection to a safe country.
- 10 individuals were returned.
- 2,126 individuals were subsequently admitted into the UK asylum process for substantive consideration of their asylum claim.

The number of returns includes both enforced and voluntary returns. Enforced returns were made to Denmark, Ireland, Italy, Slovenia, Spain, and Sweden.

3.2 Immigration detention and returns

The Home Office provides the following data on immigration detention, revealing that numbers have risen over the course of the most recent year but suggesting this was down on previous years:[187]

- The number of people entering detention in year ending September 2021 was 21,365, 24% higher than the previous year. Although in part affected by the Covid-19 pandemic, the Home

[186] Home Office, 'How many people do we grant asylum or protection to?', 25 November 2021.
[187] Home Office, 'Immigration Statistics: year ending September 2021—summary of latest statistics', 25 November 2021.

Office contends this continued a downward trend since 2015 when the number entering detention peaked at over 32,000.

- As at 30 September 2021, there were 1,410 people in immigration detention, 42% more than at 30 September 2020 (990) but 14% fewer than at 31 December 2019 (1,637), pre-pandemic.
- In the year ending September 2021, 20,878 people left the detention estate (up 15%). Over two-thirds (72%) had been detained for seven days or fewer, compared with 48% in the preceding year. The Home Office observes this was in part due to an increasing proportion of detainees being those detained for short periods on arrival to the UK before being bailed, typically while their asylum (or other) application is considered.

On returns, the data reveals the following:[188]

- In the year ending June 2021, enforced returns from the UK decreased to 2,910, less than half the number (44% fewer) than in the previous year. The Home Office notes that the vast majority of enforced returns over the year were of Foreign National Offenders (FNOs). Although the number of enforced returns has been declining since the peak in 2012, again the department contended that the sharp fall in the latest year was related to the impact of the Covid-19 pandemic. The release notes that there were just 361 enforced returns in 2020 Q2 (April to June), immediately following the outbreak. Although numbers did increase in Q3 (839) and Q4 (804) they decreased to 423 in 2021 Q1, coinciding with the lockdown imposed in early January 2021. Numbers of enforced returns increased again to 844 in the second quarter of 2021.
- In the year ending June 2021, 2,809 FNOs were returned from the UK, 27% fewer than the previous year (3,827). The Home Office observes that FNO returns had fallen to 5,128 in 2019, following a steady increase between 2011 and 2016 due to more FNOs from the EU being returned. (FNO figures are a subset of the total returns figures and constitute 37% of enforced and voluntary returns, with the majority being enforced returns.)

[188] Home Office, '[Immigration Statistics: year ending September 2021—summary of latest statistics]', 25 November 2021.

4. Read more

The following reports and correspondence are relevant to the provisions in the bill. This list is not exhaustive, but is intended to provide material helpful when considering the issues raised above:

- Home Office, 'New Plan for Immigration', last updated 2 December 2021; and *Nationality and Borders Bill: European Convention on Human Rights Memorandum*, July 2021
- Joint Committee on Human Rights, *Legislative Scrutiny: Nationality and Borders Bill (Part 1)—Nationality*, 9 November 2021, HL Paper 90 of session 2021–22; and *Legislative Scrutiny: National and Borders Bill (Part 3)—Immigration Offences and Enforcement*, 1 December 2021, HL Paper 112 of session 2021–22
- United Nations Refugee Agency, *UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–22*, October 2021; and *UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–22*, September 2021
- Independent Anti-Slavery Commissioner, 'Dame Sara responds to New Plan for Immigration consultation', 10 May 2021
- Joint Committee on Human Rights, 'Letter from the Harriet Harman, chair of the Joint Committee on Human Rights, to Tom Pursglove, Minister for Justice and Tackling Illegal Migration, relating to Part 2 (Asylum) and Part 5 (Modern Slavery) of the Nationality and Borders Bill', 17 November 2021
- Joint Committee on Human Rights, 'Letter from Tom Pursglove, Minister for Justice and Tackling Illegal Immigration, to Harriet Harman. chair of the Joint Committee on Human Rights, relating to Part 2 (Asylum) and Part 5 (Modern Slavery) of the Nationality and Borders Bill', 25 November 2021
- Home Affairs Committee, *Oral Evidence: Channel Crossings, Migration and Asylum-seeking Routes through the EU, HC 194*, 17 December 2021
- Welsh Government, 'Written Statement: UK Nationality and Borders Bill', 6 December 2021
- Scottish Government website, 'Letter from Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, to Priti Patel, Secretary of State for the Home Department, about the Nationality and Borders Bill', 1 September 2021

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