

Nationality and Borders Bill 2021-22 - Second Reading (14 July 2021)

Introduction and background

In the last year, there has been a renewed focus on the UK's asylum system. Government has made a wide range of commitments to change asylum and refugee policy, first through its [New Plan for Immigration](#), and now enacting some parts of that plan through a new [Nationality and Borders Bill](#).

However, the basis on which much of the case for these reforms has been made has often lacked context and detail, particularly about the scale of asylum applications in this country, and how and why people come to the UK to seek asylum. This context is important, alongside recognising the human impact of any changes, and the overall importance of the UK maintaining its commitments to refugee protection.

In total, the UK receives a much lower number of asylum applications than other comparable countries in Europe. The latest published figures show that the UK received 26,903 applications in the year to March 2021, which is the fifth highest number in Europe, and the 17th highest in terms of per head of population.

In the calendar year 2020, the latest for which there are pan-European comparisons, while the UK received 29,456 asylum applications, more than three times that amount were made in France (95,600 claims). Furthermore, the UK's figure was much lower, even as a proportion of the population, than in a larger country like Germany, which had the most claims in the EU (122,170 claims). Even much smaller countries like Spain (88,530 claims) and Greece (40,560 claims) saw a higher number of asylum claims than were made in the UK.¹ These numbers are also only a very small proportion of those who have been forced from their homes globally, where there are close to 80 million displaced people, including 26 million refugees.

Every asylum application is a person or family seeking international protection after fleeing war and persecution. This is a legitimate thing to do, no matter how someone arrives in the UK. The international norm, as set out in the 1951 Refugee Convention, is to accept asylum applications regardless of the mode of arrival, and it is how many millions are able to claim asylum around the world each year. International refugee law recognises that people will have to arrive in countries irregularly in order to make a claim for asylum.

The Government has framed its new Nationality and Borders Bill as a package of measures that seeks to undermine the operations of people smuggling networks and prevent people from entering the UK who have no right to be here, while extending the safe and regular routes by which refugees are able to reach safety.

Unfortunately, the actual effects of the bill in its current form will be to punish refugees who have been recognised as such under international law, and actually reduce safe and regular routes to the UK as refugee family reunion rights become more limited.

There is an understandable and widespread concern for the safety of refugees crossing the English Channel on small boats, but these measures will offer no solution to this issue, nor any greater protection. Reducing the rights that

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refugees have if they arrive in the UK irregularly (such as by boat or in lorries) will not reduce the numbers fleeing war and persecution, nor will it make their travel routes any safer.

There is no evidence from anywhere in the world that reducing the rights of refugees in a country will stop them from making journeys. What the bill does mean is that many thousands of refugees who come to the UK each year will not be offered a clear route to settlement in the UK, but will be living in a temporary situation, unable to properly recover from their experiences or build for their futures.

This precarious existence will be cemented by the fact that refugees arriving irregularly will be unable to be reunited with their family members, even though we know that is a key measure to aid integration.

The bill also proposes that refugees arriving in this way will be housed in accommodation centres, rather than in regular housing in the community, as has been the model to date. This is despite the many problems that refugees have faced in places like the Napier military barracks, including a lack of access to legal support and other services.

Key measures

This bill brings forward a wide range of measures, not all of which can be covered in this briefing. Below sets out some key measures on the asylum system, though changes to areas such as supporting evidence, appeals, and priority removal notices will be covered by other organisations.

For greater detail on the proposed measures proposed relating to age assessments of unaccompanied children, please see our briefing as part of the Refugee and Migrant Children's Consortium [here](#). For detail on changes to refugee family reunion, please see the Families Together briefing [here](#).

Inadmissibility of asylum claims and differential treatment of refugees

Since 31st December 2020, a new Immigration Rule has been in place that means the UK Government can class someone's asylum claim as inadmissible if they have travelled through, or have a connection to, what is deemed a 'third safe country'.ⁱⁱ The new rules also give the Home Office the power to remove people seeking asylum to a safe country that agrees to receive them, even if they have never been there or have any connections to it.

Under this rule, if someone has not been removed from the UK after six months, as currently set out in guidance, their asylum claim will be heard here. At present, the UK has no bilateral removal agreements with other 'safe third countries', so the result will be to add months to the asylum process, increasing the waiting time for individuals and the record-high backlog on asylum claims.ⁱⁱⁱ

The bill puts this rule in primary legislation, and also introduces a further measure that will undermine the ability of those who arrive in the UK to claim asylum. People who have not travelled directly from a country or territory where their life or freedom is threatened, and/or have not made an asylum claim without delay, will be recognised as refugees under international law, but classified as a 'Group 2 refugee'. This will affect a large number of current people who currently claim asylum, for example those who enter the UK without a valid visa, as is an accepted norm for people seeking protection across the world.

At present refugees coming through the asylum system are given five years' leave and then the right to apply for Indefinite Leave to Remain, but this will not apply to Group 2 refugees.

Group 2 refugees will not have an automatic right to settle, instead receiving up to 30 months of leave, and individuals will be regularly reassessed for removal from the UK at the end of each period of leave. We understand

that they will only be able to apply to settle permanently after ten years. They will also have limited family reunion rights and more limited access to financial support.

This central proposal completely undermines the principle of asylum protection in the UK and runs counter to one of the basic tenets of the 1951 Refugee Convention – that someone’s mode of arrival should have no influence on whether they have a right to make an asylum claim, or whether they are recognised as a refugee.

The Refugee Convention protects refugees from being punished for entering a country without prior permission e.g. through clandestine means or using false documents. It also confirms that states with refugees in their territory should provide ‘the same treatment with respect to public relief and assistance as is accorded to their nationals.’

By thinking this will reduce irregular arrivals, the plan completely misunderstands how and why refugees flee their homes. When fleeing persecution, people will use any means to get to safety, including irregular journeys. The vast majority of the world’s refugees have found safety in this way.

Moreover, with regards to ‘inadmissibility’, it should be made clear that there is no obligation in international law on people to make an asylum claim in the ‘first safe country’ in which they arrive. Refugees are trying to arrive in the UK for a range of reasons, including because family members live here, or because they speak English, or they feel a connection to the country as people from former British colonies.

This approach also sends a dangerous message to countries with far larger refugee populations, legitimising the avoidance of international responsibilities and potentially endangering the lives of thousands.

The UK currently has not negotiated any removal agreements with countries like France that would allow them to remove people who arrive irregularly. In that context, the ‘inadmissibility’ proposals would simply add 6 months onto the asylum process, at a point at which the backlog of asylum claims awaiting a decision is at a 10-year high.

Criminalisation of people who enter irregularly

The bill includes criminal offences for knowingly arriving or entering the UK without leave or a valid entry clearance – with a potential four-year prison sentence. Currently people arriving in the UK to claim asylum are not routinely charged with ‘entering illegally’ (the current offence) but would now be criminalised.

This proposal is deeply inhumane, and criminalises people who are seeking the protection of the UK. Rightfully there was international outrage when the USA, in recent years, started more forcefully criminalising those seeking asylum, imprisoning adults and separating them from their children, who were then moved into foster care. Any approach that has those implications would deeply damage the UK’s standing in the world.

Moreover, criminalising vulnerable people in this way is deeply costly and resource-intensive; those arriving will not currently be able to be removed (because those removal agreements with the rest of Europe do not exist), and so would still be present in the UK – just at great cost moving through the courts and prison systems.

Safe and legal routes

As part of its New Plan for Immigration, Government has been keen to emphasise its desire to increase safe and regular routes under which refugees can arrive directly and safely in the UK. However, the bill does not introduce any new route of this kind, nor does it increase the numbers already coming via the UK’s resettlement scheme.

In recent years, the UK has resettled approximately 5,000 refugees each year, making it a world leader in refugee resettlement. Unfortunately its plans for this financial year have seen this fall significantly, and the overall total will likely be closer to 3,000, though this is unconfirmed.

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This drop of capacity by about 40% is worrying, particularly in the context where refugee resettlement dropped to a twenty-year low as a result of the pandemic, and where some countries such as USA, Canada, and Norway are increasing their resettlement targets for 2021/22 to make up for the shortfall in 2020.

Current resettlement figures for this year, up to May 2021, show that our commitment has reduced; 516 refugees have been resettled to the UK, compared to 1,611 to the USA, 1,462 to Sweden, and 1,179 to Canada, while Germany and Norway have also resettled more refugees.^{iv}

If Government is serious about refugee resettlement, and about ensuring that the UK is once again a leader in this area, it should commit to resettling 10,000 refugees each year, on an ongoing basis. That target is important to drive performance and to make the scheme accountable. It helps local authorities and other key stakeholders plan, and gives a clear picture of the numbers of people who will be supported in coming years. Government has indicated that it will make an announcement on refugee resettlement in July, and we hope that will include a target and a long-term commitment.

Measures in the bill also seek to reduce another safe and legal route – that of refugee family reunion. Although Government has promoted the importance of this, and noted that it has supported 35,000 people in the last five years to arrive in the UK through this route, refugee family reunion will now be further limited for Group 2 refugees. The bill does not set out how it will be limited, and urgent clarity is needed on this.

Refugee family reunion is a key measure to support integration, as refugees are better able to make links in the community, look to the future, and be supported when they are with their family. Without it, family members in other parts of the world are actually likely to take more dangerous journeys in order to join family members. Our impact assessment^v of the plans suggests that each year, many thousands will be affected by this measure.

Accommodation centres

The bill includes new powers to create ‘accommodation centres’ to hold people who are at different stages in the asylum process, or who have ‘inadmissible’ claims, although more detail is still needed.

The use of large-scale accommodation – such as military barracks - to hold people in the asylum system has come under increased scrutiny and criticism as its use has increased during the COVID-19 pandemic.^{vi} Stakeholders, including the Home Affairs Select Committee, have repeatedly shown that care of individuals has been poor, with a lack of access to legal advice and support services. Individuals have generally had very little information about their claims, leading to poor mental health and general distress.

Proposals to extend these forms of accommodation are ill-thought out and dangerous, and 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.

ⁱ See <https://www.unhcr.org/uk/uk-immigration-and-asylum-plans-some-questions-answered-by-unhcr.html>

ⁱⁱ <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1043-10-december-2020>

ⁱⁱⁱ <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/07/01191305/Living-in-Limbo-A-decade-of-delays-in-the-UK-Asylum-system-July-2021.pdf>

^{iv} Data available here: <https://rsq.unhcr.org/>

^v <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/05/27161120/New-Plan-for-Immigration-Impact-Analysis-June-2021.pdf>

^{vi} For example, see <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-military-barracks-home-office-b1862538.html>