



THE JOINT COUNCIL
for THE WELFARE
OF IMMIGRANTS

Nationality and Borders Bill 2021: Second Reading Briefing

[July, 2021]

Background

The Nationality and Borders Bill makes significant changes to the UK asylum system and significantly curtails the rights of refugees. It represents a fundamental challenge to the principle of refugee protection in the UK, introducing a two-tier system where any refugee reaching the country who has not benefited from a place on a resettlement programme may have their claim deemed inadmissible and be expelled to another country, or eventually granted a temporary status with restricted rights to family reunification and financial support. It introduces an institutional model for asylum accommodation and makes provision for the offshore processing of asylum applications. It will increase pressure on the judicial system through an accelerated appeals process that represents a deliberate attempt to reduce access to justice and makes procedural changes that put refugees at greater risk of being denied the protection they vitally need. It introduces more severe penalties which will further criminalise asylum seekers for exercising their legal right to seek asylum. The Bill will increase delays within the Home Office, add to the backlog of asylum claims and leave many in limbo, while doing nothing to address the culture of disbelief that results in poor-quality decision-making.

The impacts of these measures are likely to be so severe that the UN Refugee Agency (UNHCR) has taken the unusual step of strongly and publicly opposing the plans, stating in its [response to the consultation](#) on them *“UNHCR is concerned that the plan, if implemented as it stands, will undermine the 1951 Convention and international protection system, not just in the UK, but globally.”* JCWI joins the UNHCR, along with unanimous [expert civil society voices](#), in urging Parliamentarians to oppose the provisions of this Bill.

The Bill, if passed, will place on a statutory footing inadmissibility rules that introduce a six-month ‘long stop’ on all asylum claims made by people who have not come to the UK through resettlement, while the Secretary of State seeks to make a deal to remove them to any other country that may accept them. **JCWI strongly opposes this abdication of the UK’s responsibility to people seeking protection on our shores.**

The Bill is founded on third country deals which do not currently exist. If no other country can be persuaded through the negotiation of complex international agreements to take on our asylum responsibilities for us within six months, asylum claims will be assessed in the usual way, but those recognised as refugees will be granted a less generous protection status. **JCWI believes recognised refugees should always receive a status that provides the long-term stability and support they need.**

Many of the refugees who thrive in our communities today, such as [Waheed Arian, now an NHS doctor](#) who fled forced conscription to the Taliban as a child and made an irregular journey, would be potentially expelled under the provisions in the Bill, instead of offered the protection and opportunity this country has historically provided. The Bill will not end irregular journeys, however, because only a new approach that offers a real alternative to dangerous crossings with smugglers can begin to do that.

JCWI urges Parliamentarians to defend the principle of international protection based solely on need and reject any attempt to divide refugees fleeing persecution into deserving and undeserving groups.

Inadmissibility Rules

The Bill places on a statutory footing [inadmissibility rules](#) which came into effect through secondary legislation in January 2021. The rules produce a two-tier system of refugee protection that limits protection based not on need, but on a refugee's method of travel. They are based on the false premise that a refugee who has sought to escape persecution and danger through an irregular journey to the UK ought not to receive protection in the UK, either at all, or equal to someone who has a place on a resettlement program.

The government has not provided a target or estimate for the number of people it will provide resettlement to per year under its new system, so it is impossible to assess its scope or ambition. Between 2014 and 2020 [the UK assisted 22,157](#) refugees through its two resettlement programmes, amounting to an average of well under 4,000 people per year. Since the closure of these schemes, in part due to the pandemic, resettlement numbers have not recovered to even these modest levels. In the absence of any commitment and taking these numbers as a baseline, **JCWI is concerned the Government plans to preside over an unprecedented reduction in access to asylum in the UK.**

Any asylum seeker who has not entered the UK through resettlement may have their claim deemed inadmissible, meaning the Home Office will seek to find another country which is considered safe to remove them to. If within a 'reasonable time frame' ([six months](#)) the Home Office has not successfully found another safe country willing to admit the asylum seeker, they will have their claim assessed in the UK in the usual way. The government has failed to publish an impact assessment of its inadmissibility rules, but the Refugee Council [estimates](#) that between 9,000 and 21,600 asylum seekers may be impacted per year. From their entry into force in January until March, the Home Office had [issued 1,503 asylum seekers](#) with 'notices of intent' informing them that their case was being reviewed for removal on inadmissibility grounds.

The Home Office currently has no agreements in place with other countries to return asylum seekers, either to countries of transit in Europe or with any other safe country. For the time being, therefore, 1,503 or more people's claims for international protection are already on hold with no realistic prospect of removal or solution, adding to the backlog in the asylum system. This backlog is now at [record levels](#), despite a recent drop in numbers of applications.

Several European countries, including France, have already [ruled out](#) striking a bilateral deal on returns of asylum seekers with the UK and further negotiations with France are reported to be ["non-existent."](#) While the government has managed to join Denmark in discussions about jointly offshoring our asylum responsibilities further afield such as in Rwanda, the government of Rwanda has already responded to clarify that [there is no agreement](#) to create such a hub under existing Memoranda of Cooperation. Wealthy nations such as Denmark and the UK attempting to transfer responsibility for asylum seekers to other countries has been declared [unconscionable](#) by human rights groups, and to pursue non-existent agreements causes unacceptable further delays to refugees left in limbo in the UK. Despite this, the Immigration Minister [could not provide any assessment](#) that has been carried out into the impact of the delays caused by the rules, instead denying that any significant delays will occur.

It is wrong to suggest that only refugees accessing resettlement programmes are legitimate, as in most cases these options are inaccessible to people fleeing for their lives. It is often impossible for a refugee escaping persecution to make any type of formal application, nor to access a camp where they could eventually participate in a resettlement scheme. Some refugee-producing countries, such as Iran – the [number one country of origin](#) for asylum seekers in the UK since 2016 – have no obvious refugee camps where such a scheme may be operational adjacent to the country.

Many of the refugees currently living destitute in Northern France and hoping to enter the UK had in fact already been [turned away from overcrowded refugee camps](#) from-which they may have been able to access a UK-government operated scheme. Evidence provided to the Home Affairs Select Committee by Home Office's own officials in September 2020 [confirmed](#) that the majority of people entering the UK on small boats from Calais are extremely likely to be recognised as refugees. This means that the people being assessed for removal to other countries right now are likely to be refugees in need of international protection who had no other option available to them aside from irregular travel to the UK. **JCWI urges Parliamentarians to ensure these claims are assessed without further delay, so they can begin to rebuild their lives in safety as soon as possible.**

Case Study:

There are good reasons why many refugees are forced to take clandestine journeys. Often this happens because they are the victims of targeted, individualised danger and must escape quickly, as was the case for Zaman, a 19-year-old refugee from Syria represented by JCWI. Aged 18, he received a notice from the Syrian authorities calling him up for compulsory military service. Knowing that he has two sisters living in the UK who would be able to look after him, his only option was to flee immediately and to pay an agent to arrange his travel to reach the UK.

Zaman has been issued with a 'notice of intent' from the Home Office, following his screening interview, informing him of the government's intention to return him to France, Austria, or Bulgaria. As a Syrian national who can prove his identity and has family in this country, he would have a very strong likelihood of being recognised as a refugee and being able to rebuild his life here in safety. Instead, because of the inadmissibility rules, his life is on hold. Zaman's mental health has deteriorated significantly since his arrival, since he feels that his application for asylum is stuck, and he has no idea what will happen to him. In effect, the consideration of Zaman's claim has been unnecessarily frozen for the next six months, while the British government seeks to pursue his removal to any one of several countries where he has no family connections and that are under no legal obligation to accept him. Cases such as this are already creating needless additional bureaucracy and suffering in our asylum system.

Recommendation: Scrap the inadmissibility rules and reaffirm the UK's commitment to offering a prompt and fair asylum determination process to all applicants regardless of method of flight.

Increased Sentencing

The Bill introduces severe new sentences for irregular entry to the UK and for smuggling offences. While purportedly aimed at people endangering life by facilitating illegal entry to the UK, in reality, punitive sentences for irregular entry are being intentionally used to [unjustly penalise people exercising their right to seek asylum](#) and do nothing to combat dangerous criminals. The government has been using legal instruments aimed at smugglers to pursue refugees themselves in the courts, including people who may be victims of trafficking and slavery. **JCWI believes the government should prioritise evidence-based approaches to weakening the control of smuggling gangs over vulnerable people instead of increasing sentencing targeted at their victims.**

Drone footage is being used to single out refugees with their hand on the tiller of small boats at sea and prosecute them under legislation that had previously been used against members of organised crime networks bringing migrants into the UK for profit. There is no evidence, however, that these people are members of smuggling gangs. The Independent Chief Inspector of Borders (ICIBI) [found](#) that *"there were no organised crime group members onboard the boats."* And the National Crime Agency has also [confirmed](#) that it has received intelligence that asylum seekers are being forced to

carry out work without pay for smuggling gangs in Northern France. One Yemeni man described the ordeal in an investigation carried out by [The Independent](#), *“They took our money, they used us to work for free, they threatened us... [The smuggler] told me, ‘I can kill you here, no one will identify me and I will escape.’ He took videos of me and of my friends while we were preparing boats for other journeys. He said, ‘I could now accuse you of being a smuggler, you could be in jail.”* **JCWI urges parliamentarians to protect these victims, rather than doing exactly what the smuggler threatened them with.**

This testimony demonstrates how the zeal with which the Home Office has pursued the criminal prosecution of Channel crossers has led to a failure to identify potential victims of trafficking and forced labour, and the prosecution of victims for the crimes of their perpetrators. The risk of such prosecutions was foreseen when the Refugee Convention was drafted, precisely because refugees are, by definition, forced into dangerous and risky situations during their flight. [Article 31](#) of the 1952 Convention is intended to protect refugees from prosecution for irregular entry, but it is [not fully transposed](#) into UK law.

In June 2021, the Home Office dropped the prosecution of a further 11 asylum seekers on ‘facilitation’ charges, in response to the [acquittal of Iranian asylum seeker Fouad Kakaie](#), who had previously pled guilty to steering a small boat across the Channel and been imprisoned. Mr. Kakaie had already served 17 months in prison for [steering the dinghy](#) because he *“didn’t want to die at sea.”*

Following pre-action correspondence by JCWI, the Crown Prosecution Service (CPS) recently issued [clarified guidance](#), confirming that *“In cases involving the use of a boat where the sole intention is to be intercepted by Border Force at sea and brought into port for asylum claims to be made, no breach of immigration law will take place ... the same applies where the intention is to sail the boat to a designated port of entry in order to claim asylum.”* This guidance is in clear conflict with provisions in the Bill that seek to further criminalise asylum seeker journeys that are not connected to crime or profit.

Recommendation: Scrap all plans to further criminalise refugee journeys.

Recommendation: Introduce measures to improve screening procedures for the identification of victims of trafficking and their adequate protection at every stage of the asylum and immigration system.

Asylum Accommodation

The Bill introduces provisions for asylum accommodation in reception centres and accommodating asylum seekers outside the UK during the determination of their application. None of the proposed measures will address long-standing problems in asylum accommodation, and risk exacerbating them.

In April 2021, the [British Red Cross](#) published a report that decried *“vermin-infested accommodation, ceilings falling in, pregnant women struggling to access healthcare and survivors of torture and human trafficking being forced to share a bedroom with strangers.”* These conditions are wholly unsuitable even for short periods of time, but the fact that the system is plagued by delays and slow and [unsatisfactory decision-making result in asylum seekers often being housed in these conditions for long stretches of time](#), with hugely detrimental impacts to their mental health and wellbeing. **JCWI believes asylum seekers should be housed in decent, community-based accommodation and**

that reforms should be focused on reducing the long delays that prevent them from moving on, rather than on an institutional accommodation model.

The government has trialled the use of institutional accommodation for asylum seekers in disused army barracks since September 2020 and the conditions raise major concerns about this approach. In June 2021 a High Court [judgment in a case brought by six asylum seekers](#) who had been housed in the Napier Barracks in Kent found inadequate health and safety conditions, a failure to screen victims of trafficking and other vulnerabilities, and false imprisonment of residents. Evidence presented to the court showed the Home Office continued to house people at the barracks against advice from Public Health England. A Covid outbreak was found by the court to be “inevitable” and did in fact occur in January 2021, with nearly 200 people testing positive. Despite this, the Home Office continues to house people at the “detention-like” site with “basic” facilities. The judgment came after the Independent Chief Inspector of Borders (ICIBI) and Her Majesty’s Inspectorate of Prisons (HMIP) took the unusual step of publishing an [emergency report](#) which raised “serious safeguarding concerns.”

Models of institutional and off-shore asylum accommodation have been mooted as proposals [without success in the UK for decades](#) and have had disastrous results elsewhere. In Australia, the off-shore model has resulted in severe [human rights violations](#) and in Ireland the ‘Direct Provision’ model is being [wound down](#) after years of objections from civil society. Following the scandal that took place in Napier barracks, this country should also return to a community-based model for accommodation.

Recommendation: Scrap provisions that allow for processing of asylum claims to take place outside the UK.

Recommendation: Introduce a centrally funded dispersal system that houses asylum seekers in decent accommodation in communities across the country.

Temporary Protection for Refugees

Under the provisions of this Bill, asylum seekers entering the UK who have not benefited from access to resettlement but go on to be recognised as refugees will be given a temporary protection status. They will only grant limited leave to remain with no automatic path to settlement and restrictions on family reunification and access to financial support.

Limiting family reunification rights will prevent some of the most vulnerable people who currently obtain protection in the UK from entering through safe routes. Often, families send one member ahead to make the risky journey to seek protection, in the hope that the most vulnerable, including women and children, will be able to join them later through family rights. This route currently benefits [more vulnerable people per year](#) than resettlement does. Up to 3,500 fewer people per year will be able to benefit from family reunion if it is denied to those being granted temporary protection under this new plan, and [90% of those are women and children](#).

Refugees entering through resettlement routes, in contrast, will be treated as all refugees were before 2005 and granted Indefinite Leave to Remain once their claim had been accepted. The [decision to reduce](#) the length of refugee protection leave to five years in 2005 was criticised at the time on the basis that it risked hampering integration and recovery from trauma for refugees, and there is [evidence](#) that this has indeed come to pass. The policy, however, has had no significant impact on its stated aim of reducing numbers and facilitating returns, it has only caused [further](#)

[instability and stress](#) for refugees, and greater bureaucracy for the processing of applications to extend people's leave.

The new proposal limits most refugees' period of leave far more dramatically, to just 30 months on a ten-year route to obtaining a permanent status. This will significantly increase bureaucracy for the Home Office and precarity among refugees. It will negatively impact their ability to obtain jobs, stable housing, and education opportunities. There is a significant body of [research](#) showing that the ten-year route to settlement, punctuated by renewals every 30 months, is an extremely stressful and difficult experience for other migrants who are subject to it currently, [especially children](#). Far from reducing abuses of the system, it is often the [reason why people end up living undocumented](#) in our communities, after failing to renew at some point along this difficult, decade-long journey – and victims of the [Hostile Environment](#). **JCWI strongly opposes the cruel and counter-productive extension of the 10-year route to settlement to refugees.**

Case Study:

Ahmed, a gay refugee and client of JCWI's from Iran was granted just six-months' leave to remain after his refugee status was revoked. This has made Ahmed's life incredibly difficult and stressful, as with limited leave to remain he is unable to get stable work or housing. Meanwhile, the Home Office now intends to reassess his need for international protection after six months, where it is obvious that the danger for gay men in Iran is not going to change so quickly. This absurd situation could be resolved by granting Ahmed a long-term status that reflects the fact that it will continue to be unsafe for him to return to Iran for the foreseeable future.

Refugees granted temporary protection will also be subject to No Recourse to Public Funds (NRPF) conditions. Up to [3,100 more people per year](#) may be subject to these conditions which [estimates suggest](#), currently affect 'millions' of UK residents. NRPF already causes debt and deep, long-term poverty among [thousands of migrant families](#) and shifts the cost and responsibility for [housing destitute families](#) to Local Authorities that struggle to cope. Applying these conditions to refugees is particularly cruel and counter-productive, as they will have been denied the right to work during the determination of their asylum claim and will be recovering from the trauma of the persecution they have fled and thus need time and support to recover or will be made destitute in large numbers. There is already a problem for [recently recognised refugees becoming destitute](#) at the point of being recognised, and this system will only force more people to apply to have their NRPF conditions lifted immediately, creating anxiety, the risk of delays leading to destitution, and yet more bureaucracy for the Home Office.

Recommendation: Scrap 'temporary protection' and reaffirm the UK's commitment to offering stable, long-term protection to all refugees.

Recommendation: Reduce the route to permanent settlement for all migrants to a maximum of five years and scrap NRPF.

A Missed Opportunity to Break the Business Model of Smugglers and Traffickers

This Bill is an opportunity to break from the deterrence model that has characterised successive governments' failed approach to irregular migrant crossings from France. The evidence of the last three decades of pursuing of ever harder border restrictions is that it has been a demonstrable failure. In 2019, the Foreign Affairs Select Committee [warned](#) that *"a policy that focuses exclusively*

on closing borders will drive migrants to take more dangerous routes, and push them into the hands of criminal groups." It is disappointing that the UK government is continuing to pursue this disastrous approach, despite [copious evidence from civil society](#) that makes the same warning.

The government is missing the opportunity to use this Bill instead to introduce a new, evidence-based approach, that provides [meaningful alternative travel options](#) to refugees seeking to enter the UK from Europe, and further afield, without relying on smugglers.

A recent report in the Guardian highlighted how criminal gangs exploit the ever more restricted legal pathways to asylum to extort ever higher sums from asylum seekers. [Smugglers interviewed](#) for the report explain the situation in plain terms, *"Prices went up with each new bout of security spending"* and *"We thank your government for our full pockets."*

The fact that smugglers are able to reap such large financial benefits is directly linked to our refusal to offer regulated means to enter the country from France for people wishing to seek asylum in this country. This approach not only doesn't work, but is deadly. [Almost 300 people are known to have died](#) attempting the crossing in the last 20 years and more are sure follow if the government does not take this opportunity to change its approach. The UK receives far [fewer asylum applications per year than France](#) does, and those who do seek to leave France to enter the UK generally have good reason to do so, including family ties, and linguistic and post-colonial links.

A piece of research [commissioned by the Home Office](#) itself in 2002 came to the same conclusions as to what motivates people to choose the UK as their destination. Similarly, the [International Organisation for Migration](#) has also found that asylum seekers have very limited knowledge of the detail of refugee protection in different countries and do not make decisions of where to go based on that, but rather on links to and perception of a country overall. Many of these refugees simply believe that the UK is a country where their human rights will be respected and JCWI believes we should not be seeking to prove them wrong. Meanwhile in France, migrants [including children](#), may have suffered [degrading conditions](#) in formal or informal camps and at the hands of the French authorities. JCWI believes a new approach to our border is urgently needed to resolve the long-standing inhumane conditions that exist for migrants on our doorstep.

Finally, this Bill also misses the opportunity to introduce measures that would protect victims of trafficking and help loosen the control that human traffickers and abusers hold over their victims in this country, by failing to include provision for a comprehensive data-sharing firewall between public services, labour inspectorates and immigration enforcement. Currently, victims of modern slavery and forced labour are [excluded from the protection of the state](#) if they seek to report and escape from their abusers, as they are [likely to be targeted themselves](#) for arrest and deportation on immigration grounds. Police officers are actively encouraged to turn victims and witnesses of crime over to the Home Office if they suspect them of immigration offences, despite the [NPCC's own guidance](#) acknowledging how this deters people from seeking their assistance. **JCWI urges parliamentarians to introduce safeguards to ensure victims of crime are always able to safely report the criminals who have harmed them, without fear.**

Recommendation: End the anomaly of no access to asylum at the UK's externalised border in France. Introduce a legal travel permit for the purpose of seeking asylum in the UK to give people a meaningful alternative to travelling with smugglers.

Recommendation: Introduce a firewall between the police, labour inspectorates and victim support services and the Home Office to ensure victims of trafficking and abuse can come forward in safety.

Procedural Changes

The Bill makes numerous changes to procedural aspects of the determination of asylum claims. None of these changes will address the serious existing issues that result in [long delays](#) and [poor-quality decision-making](#) in the asylum system. Instead, they introduce new complications that will put refugees fleeing serious danger at greater risk of failing to obtain the protection they need.

The standard of proof in asylum applications has historically been deliberately set at the threshold of demonstrating a “reasonable likelihood” of persecution. This is intended to reflect the life-threatening risks entailed in wrongly refusing a refugee, alongside the inherent difficulty of bringing evidence for individuals taking on the state in a complex and potentially traumatising procedure. There has long been a problem of Home Office decision-makers [misapplying the standard of proof](#) and perpetuating a [culture of disbelief](#) towards asylum seekers, which will be exacerbated by this Bill. The [Home Affairs Select Committee warned](#), after the Windrush scandal, that Home Office officials treat applicants automatically with suspicion and scepticism, and civil society has long [cautioned that this applies equally](#) to people seeking protection from persecution and victims of trafficking.

Despite these warnings, the Bill re-introduces a split standard of proof for different parts of an asylum claim, raising the standard to that of a balance of probabilities for the historical facts of a claim and maintaining the “reasonable likelihood” threshold regarding risk in the future. This split approach aims to make it more difficult for refugees to prove their need for protection and is likely to result at best in complex, expensive and time-consuming litigation, and at worst in the refoulement of refugees unable to meet higher standards of proof nonetheless at real risk. **It is JCWI’s experience that refugees in real need of protection already struggle and sometimes fail to meet evidence requirements within the culture of disbelief that permeates the Home Office and that this provision will exacerbate the risk of refoulement.**

The Bill further seeks to establish the principle that evidence submitted late without good reason should be given only “minimal weight” by asylum judges. This “one stop” approach is both an unnecessary and dangerous step. Asylum seekers [have already been required since 2002](#) to submit all arguments and evidence for appealing an asylum refusal at an early stage and are asked to justify any delay or late submissions. The principle that the Bill is seeking to introduce appears to require judges to have minimal regard for evidence that is submitted late, regardless of how robust or important that evidence is. **JCWI is deeply concerned that evidence demonstrating that a refugee is at risk of violence, persecution or death must never be given minimal weighting, regardless of when it is submitted, in order to ensure protection from refoulement.** The measures contained within the Bill challenge the judiciary’s constitutional responsibility to make fair and impartial decisions based on all the individual circumstances of a case. This is of particular concern in trafficking cases, as there is no formal right of appeal against a decision not to treat someone as a victim of trafficking.

There are numerous reasons why refugees may be unable to provide all the evidence and information regarding their case at one early stage in the procedure. This includes a simple lack of knowledge of the system and what constitutes evidence, as well as the significant obstacle to immediately disclosing information for [survivors of trauma](#) including and especially [women](#) and [survivors of sexual violence](#). [The UNHCR has clear guidance](#) urging states not to deny claimants the benefit of the doubt on the basis of delays in supplying evidence for these very reasons.

Finally, the Bill seeks to introduce a new fast-track process of “accelerated detained appeals” for migrants in detention and introduce “priority removal notices” limiting access to justice by removing

access to the First Tier Tribunal. These plans replicate elements of the “Detained Fast Track” process that was [declared unlawful by the High Court](#) in 2015 and found to be “[structurally unfair.](#)” Any attempt to deport people seeking asylum faster with fewer opportunities to obtain competent legal representation and challenge poor decisions increases the risk of returning people to extremely serious danger and will inevitably penalise victims of trauma to the greatest extent.

Recommendation: Scrap proposals for a split-standard of proof in asylum claims, abandon the principle that judges must disregard credible evidence of risk based on when it is submitted and reverse plans to re-introduce detained fast-track appeals procedures

Recommendation: Implement an independent external audit of the application of the standard of proof in asylum claims and take real steps to combat the culture of disbelief among Home Office case workers to get more decisions right first time

Conclusion

This Bill fails to take the steps needed to address the weaknesses of the UK’s asylum system. It will fail to end the dangerous journeys migrants are forced to take with the assistance of smugglers, and it will exacerbate the suffering and delays facing refugees when they get here.

JCWI firmly believes that refugee protection should always be granted in the UK based solely on need, but this guiding principle is under threat because of this unjustified attempt to divide refugees arbitrarily based on their method of flight. The provisions in this Bill seek shamefully to absolve this country of our responsibilities towards people fleeing persecution. It will introduce far greater delays and bureaucratic demands on our asylum system, and when refugees are granted only a temporary status, will hamper their integration and recovery from trauma. For these reasons JCWI urges parliamentarians to oppose the Bill.

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