

## Briefing note on the Nationality and Borders Bill

### Purpose:

The purpose of this briefing note is to support the Peer's contribution to a debate on the Nationality and Borders Bill.

### Summary:

The Nationality and Borders Bill allows the UK government to strip dual citizens of their British citizenship without warning and without notice<sup>1</sup>, introduces the primary use of 'basic full-board' accommodation centres<sup>2</sup> and makes it a criminal offence to arrive in the United Kingdom without permission, altering the maximum sentence from 6 months to four years<sup>3</sup>, among other changes.

- Overall, the Bill risks alienating minority communities and disproportionately affects millions of Black, Asian and minority ethnic citizens as well as disadvantaged women and girls<sup>4,5</sup>. Six million people, including half of British Asians and 39% of Black Britons, could be eligible to have their British citizenship removed without warning<sup>6</sup>, potentially leading to deportation<sup>7</sup>.
- The Bill focus on punishing asylum-seekers themselves rather than tackling the safety of a refugees journey or how it can be facilitated<sup>8</sup>. Public opposition to the Bill is fierce<sup>9</sup>. It has perceived significant rebuttal from Scotland and Wales<sup>10</sup>, with both devolved administrations urging the UK to reconsider its "hostile environment strategy" and instead to focus on developing "sufficient safe and legal routes" for asylum seekers<sup>11</sup>.
- The Bill is based on the unworkable "first safe country" concept, that would undermine global cooperation<sup>12</sup>. 73% of the 34.4 million refugees and asylum-seekers worldwide are already hosted in countries neighbouring their countries of origin<sup>13</sup> and out of 42 European countries, the UK is 21st in the number of refugees and asylum-seekers per population<sup>14</sup>.
- The Bill directly conflicts with the Refugee Convention<sup>15</sup> and the Human Rights Convention<sup>16</sup> and is incompatible with Home Office policy, UK case law, international standards on refugee protection and human rights.

Overall, this Bill criminalises seeking asylum<sup>17</sup>, through racist, xenophobic<sup>18</sup> practices and state-sanctioned murder<sup>19</sup>. The degrading treatment stemming from the passing of this Bill will lead to refugees adverse mental and physical health, social and economic marginalisation, and exploitation<sup>20</sup>.

### Evidence Summaries:

*Powers of the Secretary of State relating to citizenship etc*

**Notice of decision to deprive a person of citizenship (Clause 9).** Since 2016 the UK government has reserved the right to strip dual nationals of their British citizenship in circumstances "deemed to be conducive to the public good"<sup>21</sup>. The British Nationality Act 1981 requires the secretary of state to give a person written notice of a decision to deprive them of their British citizenship before a deprivation order can be made<sup>22</sup>. Under the provisions in this Clause individuals could be stripped of their British citizenship without warning and without notice, particularly in circumstances where someone is in a war zone, or informing them would reveal sensitive intelligence sources<sup>23</sup>.

- This Clause disproportionately affects millions of Black, Asian and minority ethnic citizens<sup>24</sup>. Six million people, including half of British Asians and 39% of Black Britons, could be eligible to have their British citizenship removed without warning<sup>25</sup> potentially leading to deportation<sup>26</sup>.
- The Clause is inconsistent with international human rights obligations<sup>27</sup>. Despite rebuttal from the Government<sup>28</sup> charities maintain that citizens can in effect be made stateless without notice because most cases will take place where the individual is overseas. Without notification, they will have no idea they have been removed<sup>29</sup>. Globally, no other county can make its citizens stateless<sup>30</sup>.
- The Government suggests that the provisions in this clause will only be used for the very worst, very rare case but the bill is framed widely and can affect many<sup>31</sup>. In its current form, it can be used beyond the national-security emergency scenario. Powers are based solely on the discretion of the home secretary<sup>32</sup>.

*Treatment of refugees; support for asylum-seekers*

**Differential treatment of refugees (Clause 11):** enables the Home Office to offer different levels of protection to refugees based on how they travelled to the UK and when they claimed asylum<sup>33</sup>. This clause creates a second-tier category of British citizenship<sup>34</sup>, with no access to public funds<sup>35,36</sup>, limited

family reunion rights, and no automatic right to settle for those arriving outside of the Government-administered resettlement scheme.

- This directly conflicts with the Refugee Convention, which states that the status of an asylum claim should not be dependent on the mode of entry into a country<sup>37</sup> and has no basis in international law<sup>38</sup>. The UK is a party to the Refugee Convention, and so has binding legal obligations towards all refugees under its jurisdiction. This must be reflected within domestic law. The limits on family reunion rights also conflict with the Parliamentary Assembly of the Council of Europe<sup>39</sup> Resolution 2243 (2018) on Family reunification of refugees in the Council of Europe member States<sup>40</sup>.
- The two-tier system impedes refugees integration and naturalisation and stigmatises them as unworthy and unwelcome<sup>41</sup>. This degrading treatment will lead to adverse mental and physical health, social and economic marginalisation, and exploitation<sup>42</sup>.

**Accommodation for asylum-seekers etc (Clause 12):** introduces 'basic full-board' hostel-type accommodation centres<sup>43</sup> where certain groups of people seeking asylum will live. Under this Clause, the Home Secretary will have the power to impose restrictions on movement so they cannot leave the centre at certain times of day<sup>44</sup> and extend the current maximum length of stay of six months to any length of time chosen. The format of this accommodation is inappropriate for those that are vulnerable because of the damaging impact on the mental and physical health of those made to stay in such accommodation<sup>45,46</sup>. Shared accommodation also creates additional difficulties for refugees communication with legal support.

#### *Inadmissibility*

**Asylum claims by persons with connection to safe third State: inadmissibility (Clause 15)** declares asylum claims inadmissible if someone has passed through a or has a connection to, a safe third State, that the refugee could have claimed asylum in. This is aimed particularly at those who travel across Europe and attempt to cross the English Channel. Since 2014 166 people have been recorded as either dead or missing after trying to cross the English Channel<sup>47</sup>. This is a problem that needs addressing, however the Bill focus on punishing the asylum-seekers themselves rather than tackling the safety of a refugees journey or outlining how it can be facilitated<sup>48</sup>.

- The "first safe country" concept is unworkable and would undermine global cooperation<sup>49</sup>.<sup>50</sup> Of the 34.4 million refugees and asylum-seekers worldwide 73% are already hosted in countries neighbouring their countries of origin<sup>51</sup>. 86% of these are hosted in developing countries. These countries often become overwhelmed and refugee movement ensues and so the concept of seeking refuge in the first safe country is not practical or workable<sup>52</sup>. Most European countries host more refugees and asylum-seekers per population than the UK does<sup>53</sup>. Out of 42 European countries, the UK is 21st in the number of refugees and asylum-seekers per population<sup>54</sup>.
- The UK has a lack of safe and legal routes and refuses to commit to resettling a specific number of refugees each year via resettlement schemes<sup>55</sup>. On average 5,000 refugees have been resettled to the UK each year however this is likely to be closer to 3,000 for 2021-22. Specific aspects of the Bill, for instance, the limiting of rights to refugee family reunion further reduce the safe and legal routes for women and children who want to join loved ones in the UK.

#### *Appeals*

**Accelerated detained appeals (Clause 26)** will reintroduce a 'fast-track' asylum appeals process for people in detention. A similar previous process has been ruled unlawful and abolished by the government. Such a process would be operated in breach of the European Convention on Human Rights as far as women subject to it are concerned<sup>56</sup>.

#### *Interpretation of Refugee Convention*

**Article 1(A)(2): persecution (Clause 31)** introduces a heightened test for establishing whether a person seeking asylum has a well-founded fear of persecution and requires protection in the UK.

**Article 1(A)(2): reasons for persecution (Clause 32)** changes how 'particular social group' is interpreted within the Refugee Convention. Gender is not listed as a reason for persecution in the definition. Many survivors of gender-based violence rely on the 'particular social group' ground in their asylum claims, which campaigners say could mean that more women are wrongly refused asylum<sup>57</sup>.

#### *Immigration offences and penalties*

**Illegal entry and similar offences (Clause 39)** criminalises people for arriving in the UK to claim asylum without some form of permission to enter the country. Criminalising people for coming to the UK to seek safety won't prevent people from doing so. It will make journeys more dangerous and punish people for actions they had no choice in taking.<sup>58</sup>

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- <sup>1</sup> The Muslim Council of Britain (2021). [United against un-British and sinister Nationality and Borders Bill](#)
- <sup>2</sup> Refugee Action (2021). [ALL PUNISHMENT, NO PROTECTION. WHY THE ANTI-REFUGEE BILL SHOULD BE SCRAPPED](#)
- <sup>3</sup> Prabhat, D. (2021). [Stripping British citizenship: the government's new bill explained](#). The Conversation Trust
- <sup>4</sup> Hansard (2021). [Nationality and Borders Bill. Volume 705: debated on Tuesday 7 December 2021](#)
- <sup>5</sup> Hilton, T. R. (2021). [Guest blog: Breaking down the effects of the Nationality and Borders Bill](#). Race Equality Foundation
- <sup>6</sup> Merwe, B. VD. (2021). [Exclusive: British citizenship of six million people could be jeopardised by Home Office plans](#). Politics
- <sup>7</sup> Asumadu, S (2021). [Why we need to join forces to oppose the Nationality and Borders Bill](#). OpenDemocracy
- <sup>8</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>9</sup> Charities that oppose the Bill include the Rainbow Migration, Women's Aid, Media Diversified, the Muslim Association of Britain, the End Violence Against Women coalition and LGBT Foundation
- <sup>10</sup> Hutt, J & Antoniw, M (2021). [Written Statement: UK Nationality and Borders Bill](#). CABINET STATEMENT
- <sup>11</sup> Webster, L (2021). [Nationality and Borders Bill: Activists block Home Office building in Glasgow](#). The National
- <sup>12</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>13</sup> UNHCR (2021). [Refugee Data Finder](#). UNHCR 2001-2021
- <sup>14</sup> Refugee Law Initiative (2021). [From the Consultation for a New Plan for Immigration to the Nationality and Borders Bill](#). New Plan for Immigration.
- <sup>15</sup> Explanatory Notes, (n 3) para. 19 and ECHR Memorandum (n 21), para. 12.
- <sup>16</sup> Politics.co.uk staff (2021). [Nationality & Borders Bill 'harmful & discriminatory' towards women, claim](#)
- <sup>17</sup> Home Office. (2021). [Asylum and resettlement datasets](#). Statistical data set
- <sup>18</sup> White, N (2021). ['The most racist legislation in my lifetime': Protest at Nationality and Borders Bill reaches Downing Street](#). Independent
- <sup>19</sup> The Canary Media Ltd (2021). [Extinction Rebellion block Home Office building to protest Nationality and Borders Bill](#).
- <sup>20</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>21</sup> Gower, M. & McGuinness, T. (2017). [Deprivation of British citizenship and withdrawal of passport facilities \(parliament.uk\)](#) House of Commons Library
- <sup>22</sup> Matrix Chambers (2021). [HIGH COURT QUASHES REGULATION GOVERNING NOTICE IN DEPRIVATION OF CITIZENSHIP CASES](#)
- <sup>23</sup> House of Commons (2021). [Nationality and Borders Bill](#).
- <sup>24</sup> BARRADALE, G (2021). [Plans to remove British citizenship without notice 'would repeat Windrush mistakes'](#). The Big Issue
- <sup>25</sup> Merwe, B. VD. (2021). [Exclusive: British citizenship of six million people could be jeopardised by Home Office plans](#). Politics
- <sup>26</sup> Asumadu, S (2021). [Why we need to join forces to oppose the Nationality and Borders Bill](#). Open Democracy
- <sup>27</sup> UK Government and Parliament (2021). [Remove Clause 9 from the Nationality and Borders Bill](#). Petition
- <sup>28</sup> Hansard (2021). [Nationality and Borders Bill. Volume 705: debated on Tuesday 7 December 2021](#)
- <sup>29</sup> Free Movement (2021). [How is the government using its increased powers to strip British people of their citizenship?](#)
- <sup>30</sup> Open Democracy (2021). [Patel's citizenship-stripping bill would accelerate UK race to the bottom](#)
- <sup>31</sup> Prabhat D. (2020) [Political Context and Meaning of British Citizenship: Cancellation as a National Security Measure](#). *Law, Culture and the Humanities*.16(2):294-312.
- <sup>32</sup> Prabhat, D. (2021). [Stripping British citizenship: the government's new bill explained](#). The Conversation Trust
- <sup>33</sup> Law Society of Scotland (2021). [Society attacks bill's two-tier asylum system](#) [Society attacks bill's two-tier asylum system](#)
- <sup>34</sup> Dunt, I (2021). [Priti Patel's new powers in the Borders Bill will create a second-tier category of British citizenship](#). i
- <sup>35</sup> Unity Project. [Access Denied: The cost of the 'no recourse to public funds' policy](#).
- <sup>36</sup> Morris, M and Qureshi, A. (2021). [Locked out of a Livelihood: The Case for Reforming 'No Recourse to Public Funds'](#). Institute for Public Policy Research.
- <sup>37</sup> UN General Assembly (1951), [Convention Relating to the Status of Refugees](#), United Nations, Treaty Series, vol. 189, p. 137
- <sup>38</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>39</sup> Of which the United Kingdom remains a member
- <sup>40</sup> Parliamentary Assembly (2018). [Family reunification of refugees and migrants in the Council of Europe member States](#). Resolution 2243 (2018)
- <sup>41</sup> Electronic Immigration Network. (2021). [UNHCR says Nationality and Borders Bill would undermine established refugee protection rules and practices and would break international law](#)
- <sup>42</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>43</sup> Independent (2021). [Home Office facing legal battle over decision to continue using 'prison-like' barracks to house asylum seekers](#)
- <sup>44</sup> Refugee Action (2021). [ALL PUNISHMENT, NO PROTECTION. WHY THE ANTI-REFUGEE BILL SHOULD BE SCRAPPED](#)
- <sup>45</sup> Refugee Council. (2021). [The Nationality and Borders Bill – A devastating day for refugee protection](#)
- <sup>46</sup> MSF - Doctors without Borders (2021). [Tell the UK Government to fix its inhumane 'Borders Bill'](#)
- <sup>47</sup> Webster, L (2021). [Nationality and Borders Bill: Activists block Home Office building in Glasgow](#). The National
- <sup>48</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>49</sup> Refugee Action (2021). [ALL PUNISHMENT, NO PROTECTION. WHY THE ANTI-REFUGEE BILL SHOULD BE SCRAPPED](#)
- <sup>50</sup> Refugee Convention. (2018). ['Report of the United Nations High Commissioner for Refugees. Part II: Global compact on refugees'](#). Office of the High Commissioner for Refugees.
- <sup>51</sup> UNHCR (2021). [Refugee data finder](#)
- <sup>52</sup> UNHCR (2021). [Refugee data finder](#). Query permalink
- <sup>53</sup> Eurostat. (2021). [Data Browser](#). Population on 1 January by age and sex
- <sup>54</sup> United Nations High Commissioner for Refugees (2021). [UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)
- <sup>55</sup> Refugee Council (2021). [Government fails to address the concerns raised by thousands of people in the consultation on the New Plan for Immigration](#)
- <sup>56</sup> Refugee Women (2021). [LEGAL OPINION: THE NATIONALITY AND BORDERS BILL WILL HARM WOMEN](#). Executive summary
- <sup>57</sup> Women for Refugee Women (2021). [Written evidence submitted by Women for Refugee Women \(NBB12\)](#). Evidence to the Nationality and Borders Public Bill Committee
- <sup>58</sup> Refugee Action (2021). [ALL PUNISHMENT, NO PROTECTION. WHY THE ANTI-REFUGEE BILL SHOULD BE SCRAPPED](#)