UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22

September 2021

Introduction

1. The Nationality and Borders Bill[1] follows almost to the letter the Government's New Plan for Immigration Policy Statement,[2] issued on 24 March 2021, in some cases adding further restrictions on the right to claim asylum and on the rights of refugees. UNHCR must therefore regretfully reiterate its considered view that the Bill is fundamentally at odds with the Government's avowed commitment to upholding the United Kingdom's international obligations under the Refugee Convention[3] and with the country's long-standing role as a global champion for the refugee cause.

2. We set out below our main areas of concern, reflecting our supervisory role with regard to the 1951 Convention and its 1967 Protocol (together, "the Refugee Convention").[4] Due to the length and complexity of the Bill, it has not been possible to respond to all of its clauses in the limited time available. Our lack of comment on any particular clause of the Bill should not be construed as expressing tacit endorsement of it.

The "first safe country" principle is unworkable and would undermine global cooperation

3. The Bill is based on the premise that "people should claim asylum in the first safe country they arrive in".[5] This principle is not found in the Refugee Convention and there is no

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[1] Bill 141, 2021-22, available at: https://bills.parliament.uk/bills/3023/publications.
[2] Available at: https://www.gov.uk/government/consultations/new-plan-for-immigration
[3] *Nationality and Borders Bill Explanatory Notes*, para. 68 and 292, available at: https://bills.parliament.uk/bills/3023/publications; UNHCR's *Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom*, May 2021,available at: https://www.unhcr.org/uk/publications/legal/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk.html
[4] Under the 1950 Statute of the Office of the High Commissioner (UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V)), UNHCR has been entrusted with the responsibility for providing international protection to refugees, and together with governments, for seeking permanent solutions to their problems. As set out in the Statute (paragraph 8(a)), UNHCR fulfils its mandate by, inter alia, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto". UNHCR's supervisory responsibility is also reflected in Article 35 of the Refugee Convention and Article II of the 1967 Protocol, obliging State Parties to cooperate with UNHCR in the exercise of its functions, including in particular, to facilitate UNHCR's duty of supervising the application of these instruments. *Convention relating to the Status of Refugees* 189 UNTS 137 (1951 Convention), www.refworld.org/docid/3be01b964.html.
[5] See, for example, the comments of the Secretary of State for the Home Department during the introduction of the New Plan for Immigration in Parliament, in which she said, "People should claim asylum in the first safe country they arrive in. That is the point that we are making again and again." https://hansard.parliament.uk/Commons/2021-03-24/debates/464FFFBB-ECA5-4788-BC36-60F8B7D8D9D1/NewPlanForImmigration and her speech introducing the second reading of the Bill on 19 July 2021, available at: https://www.gov.uk/government/speeches/home-secretary-opening-speech-for-nationality-borders-bill ("People should be claiming asylum in the first safe country they reach, and not using the UK as a destination of choice."); UK Home Office, *Inadmissibility: safe third country cases,* Version 5.0, page 5, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947897/inadmissibility-guidance-v5.0ext.pdf; and Explanatory Notes (n 3), para. 21, 23 and 145.

such requirement under international law.[6] On the contrary, in international law, the primary responsibility for identifying refugees and affording international protection rests with the State in which an asylum-seeker arrives and seeks that protection.[7]

4. Requiring refugees to claim asylum in the first safe country they reach would undermine the global, humanitarian, and cooperative principles on which the refugee system is founded. The United Kingdom played a key role in developing these principles 70 years ago when it helped draft the Refugee Convention, and, together with the other members of the United Nations General Assembly, it recently reaffirmed them in the Global Compact on Refugees.[8] Asylum laws designed around the maxim that asylum-seekers "should claim asylum in the first safe country they reach" and can be penalised if they do not (including by being designated 'Group 2' refugees), impact not only refugees but also fellow host States and the ability to seek global, cooperative solutions to global challenges.

5. The expectation that refugees should claim asylum in the first safe country they reach is also unworkable in practice. There are 34.4 million refugees and asylum-seekers worldwide, and the vast majority of them - 73% - are already hosted in countries neighbouring their countries of origin. Eighty-six percent are hosted in developing countries.[9] To insist that refugees claim asylum in the "first safe country they reach" would impose an even more disproportionate responsibility on "first" safe countries both in Europe and further afield, and threaten the capacity and willingness of those countries to provide protection and long-term solutions. In turn, this would overwhelm these countries' hosting capacity, and encourage onward movement.[10] Even within Europe, most of the countries that refugees pass through on their way to the UK already host significantly more refugees and asylum-seekers per population than the UK does.[11]

The Bill would deny recognised refugees rights that are guaranteed to them under the Refugee Convention and international law

6. The Bill would also create a series of significant civil and criminal penalties that would target the majority of the refugees who will seek asylum in the United Kingdom. As set out in detail below, these penalties would target not just those who had entered the UK

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[6] See UNHCR, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers* (Lisbon Expert Roundtable, 9-10 December 2002), February 2003, para. 11, available at: www.refworld.org/docid/3fe9981e4.html.

[7] UNHCR, *Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries*, April 2018, para. 2, available at: https://www.refworld.org/docid/5acb33ad4.html; UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*, May 2013, para. 1, available at: www.refworld.org/docid/51af82794.html; *UNHCR Observations on the Proposal for amendments to the Danish Alien Act (Introduction of the possibility to transfer asylum-seekers for adjudication of asylum claims and accommodation in third countries),* 8 March 2021, para. 17, available at: https://www.refworld.org/docid/6045dde94.html

[8] Refugee Convention, (n 4), Preambular Paragraph 4. UNGA, '*Report of the United Nations High Commissioner for Refugees, Part II: Global compact on refugees*' A/73/12 (Part II*),* 17 December 2018, as part of its resolution on the Office of the High Commissioner for Refugees, A/RES/73/151, paras. 2, 4, 64, 67 and 70, available at: www.unhcr.org/gcr/GCR_English.pdf

[9] UNHCR, *Refugee data finder,* available at: https://www.unhcr.org/refugee-statistics/

[10] UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers*, September 2019, para. 44, 49, available at: www.refworld.org/docid/5d8a255d4.html (noting that onward movement can be encouraged where refugees see "no viable solutions within reach" and by poor reception conditions).

[11] Combining UNHCR's figures for refugees and asylum seekers in Europe in 2020 (https://www.unhcr.org/refugee-statistics/download/?url=rEf0rO) and Eurostat population figures (https://ec.europa.eu/eurostat/databrowser/view/demo_pjan/default/table?lang=en) shows that out of 42 European countries, the UK is 21st in the number of refugees and asylum seekers per population, behind Turkey, Malta, Austria, Germany, Greece, Switzerland, Luxembourg, France, Belgium, the Netherlands, Spain, Bulgaria and Ireland, among others.

irregularly or who had made dangerous journeys, but also all those who have not come directly to the UK – regularly or irregularly - from a country or territory where their life or freedom was threatened, those who have delayed claiming asylum or overstayed, and even those who arrive in the UK without entry clearance and claim asylum immediately.

7. At the heart of the Bill is the creation of two tiers of refugee status under UK law, in which only those refugees who meet specific additional "requirements" will be considered "Group 1" refugees and benefit from the rights guaranteed to all refugees by the Refugee Convention. These requirements are that they:

   i) "have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention)", and
   ii) "have presented themselves without delay to the authorities" and
   iii) "where a refugee has entered or is present in the United Kingdom unlawfully, the additional requirement is that they can show good cause for their unlawful entry or presence". [**Clause 10(1)-(3)**]

8. The rest will be designated as "Group 2" refugees, and the Secretary of State will be empowered to draft rules discriminating against them with regard to their enjoyment of the rights to which they are entitled under the Refugee Convention, as well as with regard to the fundamental human right to family unity.

9. 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 is found at Article 1A(2). This 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 (see Articles 1D, 1E and 1F of the Convention), 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.

10. As a party to the Refugee Convention, the United Kingdom has binding legal obligations towards all refugees under its jurisdiction. These must be reflected in domestic law, regardless of the refugees' mode of arrival, or the timing of their asylum claim. These obligations are set out at Articles 3-34 of the Convention. They include, but are not limited to, the following obligations directly undermined by the Bill: providing refugees who are lawfully staying in the country with "public relief" on the same terms as nationals (Article 23); not expelling refugees who are lawfully in the territory except on grounds of national security or public order, and in accordance with due process safeguards (Article 32); and facilitating all refugees' integration and naturalisation (Article 34). The Bill, however, would empower the Secretary of State to enact immigration rules discriminating between "Group 1" and "Group 2" refugees and their family members, and gives the following examples of potential areas for discrimination: the length of the periods of limited leave to remain granted; the conditions for qualifying for settlement; a prohibition on access to public funds; and whether immediate family members are allowed to enter or remain in the UK.[12]

[12] The Bill specifically mentions the possibility of discrimination in terms of the length of periods of limited leave, [**Clause 10(5)(a)**]; the requirements for settlement, [**Clause 10(5)(b)**]; and whether family will be given leave to enter or remain in the United Kingdom, [**Section 10(5)(d)**]; but these are given as examples only of a more general

11. The official Explanatory Notes published alongside the Bill set out that the intention is to grant Group 2 refugees a precarious "temporary protection status", with no possibility of settlement for at least ten years.[13] This would deliberately impede their integration and naturalisation, rather than facilitating it as required by Article 34 of the Refugee Convention.

12. During these ten years, a refugee would "be expected to leave the UK as soon as they are able to or as soon as they can be returned or removed, once no longer in need of protection," according to the Explanatory Notes.[14] Although the language of this phrase is not entirely clear, UNHCR understands that the intention is to remove even recognised refugees if and when transfer to a third country becomes possible. The precise legal mechanism by which this would be done is not specified.[15] UNHCR reiterates that the Refugee Convention prohibits the expulsion of refugees lawfully in the country except on grounds of national security or public order (Article 32) and also sets out clear standards for when refugee status shall be considered to have ceased because a person is no longer in need of protection (Article 1C). Any "expectation" that a refugee leave the United Kingdom under any other circumstances, if enforced, would breach the Refugee Convention.

13. The Explanatory Notes further clarify that the Government intends to use the powers created by the Bill so as to "restrict" the rights of the family members of Group 2 refugees to enter or remain in the UK.[16] This would be at variance with the right to family life and the principle of family unity and would run counter to decades of international consensus, in which the UK has consistently participated, "that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee"[17] and that refugees should "benefit from a family reunification procedure that is more favourable than that foreseen for other aliens".[18]

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power to discriminate. **Clause 10(6)** would give the Secretary of State the same power to discriminate against the family members of Groups 2 refugees. At present, the Secretary of State's powers in this regard are constrained by Section 2 of the Asylum and Immigration Act 1993, which provides: "Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention," which would appear to preclude the adoption of some of the immigration rules suggested in the Explanatory Notes.

[13] *Explanatory Notes* (n 3), para. 19.

[14] Ibid.

[15] This would be in line with the New Plan for Immigration Policy statement, which proposed both that recognised refugees would be "reassessed for return to their country of origin or removal to another safe country" after each period of 30 months' limited leave to remain and, more broadly, that they would be "expected to leave the UK *as soon as* they are able to or *as soon as* they can be returned or removed" [emphasis added]. *New Plan for Immigration Policy Statement* (n 2), p. 20. In assuming that the intention of the Bill is the same as that announced in the Plan, we also rely on the Government's formal response to the consultation on the Plan, which stated that "we do not propose any changes to the underlying policies" with regard to two-tier status. *Consultation on the New Plan for Immigration: Government Response*, p.10, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005042/CCS207_CCS0621755000-001_Consultation_Response_New_Plan_Immigration_Web_Accessible.pdf.

[16] *Explanatory Notes* (n 3), para. 19.

[17] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at: https://www.unhcr.org/protection/travaux/40a8a7394/final-act-united-nations-conference-plenipotentiaries-status-refugees-stateless.html.

[18] *Tanda-Muzinga c. France*, Requête no 2260/10, Council of Europe: European Court of Human Rights, 10 July 2014, para. 75, available at: https://www.refworld.org/cases,ECHR,53be80094.html. See also See paras. 23-25, *FH (Post-flight spouses)* [2010] UKUT 275, available at: https://tribunalsdecisions.service.gov.uk/utiac/37657. This found that the de facto five-year bar on sponsoring a post-flight spouse that arose after refugees were granted limited leave to remain rather than Indefinite Leave to Remain would require clear justification and was likely to be a disproportionate interference with Article 8.

14. In the UK, the right to respect for family life is protected by Article 8 of the European Convention on Human Rights, to which the UK is a party and with which public authorities must comply in accordance with Section 6 of the Human Rights Act 1998. In October 2018, the Parliamentary Assembly of the Council of Europe (of which the United Kingdom remains a member) adopted Resolution 2243 (2018) on *Family reunification of refugees and migrants in the Council of Europe member States.* This concluded:

> *Hindrances to the protection of family life are not admissible under Article 8 of the European Convention on Human Rights to deter migrants or refugees and their family members.*[19]

15. The European Court of Human Rights has held that Article 8 requires that decision-making in refugee family reunion applications be "flexible, swift and effective".[20] Any "restriction" on refugee family reunion as a penalty for claiming asylum in the UK rather than elsewhere, for delaying a claim or for unlawful entry or presence is likely to breach the UK's obligations under Article 8 and violate Article 6 of the Human Rights Act.[21]

16. It is therefore difficult to see how the assertion that under the Bill "[a]ll individuals recognised as refugees by the UK will continue to be afforded the rights and protections required under international law, specifically those afforded by the 1951 Refugee Convention" can be sustained.[22] The express intention is to deny them many of those rights.

Practical consequences of Group 2 status

17. The Bill envisions that Group 2 status will be imposed on recognised refugees– that is, on people who are at risk of persecution, who have been forcibly separated from their homes, their families, and their livelihoods, and who in many cases have suffered trauma. The mental health challenges they face are well documented,[23] yet the Bill will stigmatise them as unworthy and unwelcome and if the intentions expressed in the Explanatory Notes were carried out, maintain them in precarious status for ten years, deny them access to public funds unless they were destitute, and restrict their access to family reunion.

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[19] Available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25185&lang=en

[20] For this reason, a processing time of over three years was found to be unlawful. *Tanda-Muzinga*, para 82, http://hudoc.echr.coe.int/eng?i=001-145358

[21] We note that at paragraph 12 of its *Nationality and Borders Bill European Convention on Human Rights Memorandum*, available at: https://publications.parliament.uk/pa/bills/cbill/58-02/0141/ECHRmemo.pdf, the Government suggests that the proposed restrictions on refugee family reunion are consistent with Article 8 because 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", "encouraging asylum seekers to present themselves to the authorities and make claims at the first available opportunity", and promoting lawful methods of entry". However, it is axiomatic that identifying a legitimate interest is not sufficient to make an interference with Article 8 lawful. The interference must also be rationally designed to promote that interest and be proportionate in its application. See, e.g. *MM (Lebanon) v SSHD,* available at: https://www.supremecourt.uk/cases/docs/uksc-2015-0011-judgment.pdf The existence of a general consensus (as there is in favour of refugee family reunion), moreover, is likely to limit a state's "margin of appreciation" under Article 8. *Case of M.A. v Denmark* (Application no. 6697/18, EctHR (Grand Chamber), para. 151, available at: http://hudoc.echr.coe.int/fre?i=001-211178

[22] *Explanatory Notes* (n 3), *para*. 146.

[23] See, e.g. Public Health England, *Mental health: migrant health guide,* available at: https://www.gov.uk/guidance/mental-health-migrant-health-guide; World Health Organization, , *Mental health promotion and mental health care in refugees and migrants: Technical guidance,* 2018, available at: https://www.euro.who.int/__data/assets/pdf_file/0004/386563/mental-health-eng.pdf

18. The initial challenges refugees in the UK face in re-entering the workforce are also well-documented:[24] their skills, qualifications and work experience may not be recognised, and they will have had no opportunity for work or training while awaiting a decision on their asylum claims. Multiple studies have shown, moreover, that precarious status itself is a barrier to integration and employment.[25] Yet, in spite of these challenges, the Bill will specifically empower the Secretary of State to attach a "No Recourse to Public Funds" condition on the grant of leave of Group 2 refugees, and, according to the Explanatory Notes, their status "may only allow access to public funds in cases of destitution".[26]

19. The adverse consequences of a "No Recourse to Public Funds" condition will fall not only the refugees themselves, but also on their families, including on any children who travel with them, are able to join them later, or are born in the UK. These consequences have been documented in numerous studies as well as in the context of litigation. They include difficulty accessing shelters for victims of domestic violence,[27] denial of free school meals where these are linked to the parents' benefit entitlement,[28] and de facto exclusion from the job market for single parents (largely women) who have limited access to government-subsidised childcare, as well as significant risks of food poverty, severe debt, sub-standard accommodation, and homelessness. [29] These consequences, in turn, hinder integration and increase financial costs to local authorities, who in many cases have statutory obligations towards children and adults

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[24] See UNHCR, *Tapping Potential: Guidelines to Help British Businesses Employ Refugees*, 2019, available at: https://www.unhcr.org/publications/brochures/5cc9c7ed4/tapping-potential-guidelines-to-help-british-businesses-employ-refugees.html; Tweed, A., & Stacey, S., *Refugee Employment Support in the UK: Insights into services, barriers, and best practice to support refugees into employment across the UK*, commissioned by the Refugee Employment Network, March 2018, available at: https://transitions-london.co.uk/wp-content/uploads/2019/02/Refugee-Employment-Support-2018.pdf ; Kone, Z et al, *Refugees and the UK Labour Market*, April 2019, ECONREF, COMPAS, University of Oxford, https://www.compas.ox.ac.uk/wp-content/uploads/ECONREF-Refugees-and-the-UK-Labour-Market-report.pdf, Vargas-Silva, C. and Ruiz, I, *Differences in labour market outcomes between natives, refugees and other migrants in the UK*, 2018, Journal of Economic Geography, available at; https://doi.org/10.1093/jeg/lby027

[25] Australian Human Rights Commission, *Lives on Hold: Refugees and asylum seekers in the 'Legacy Caseload'*, 2019, pp. 73-77, available at: https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy;
Yevgeniya Averhed, *The breathing space or impact of temporary protection on integration from the perspective of refugees*, School of Advance Study, University of London, available at: https://sas-space.sas.ac.uk/9453/ . The Home Office's own Indicators of Integration Framework identifies "secured immigration status" as a key outcome indicator for stability which "is necessary for sustainable engagement with employment or education and other services." Home Office, *Indicators of Integration framework 2019*, Third Edition, Pg. 52, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835573/home-office-indicators-of-integration-framework-2019-horr109.pdf

[26] *Explanatory Notes*, (n 3), para. 19. The official ECHR Memorandum accompanying the Bill further clarifies that this power "will not be exercised where to do so would lead to destitution that would otherwise breach Article 3 ECHR," which prohibits inhuman and degrading treatment. *ECHR Memorandum*, (n 21), para. 11.

[27] https://www.nrpfnetwork.org.uk/information-and-resources/policy/support-for-victims-of-domestic-abuse; *Nowhere to Turn 2021, Women's Aid,* p. 25 available at:https://www.womensaid.org.uk/wp-content/uploads/2021/07/Nowhere-to-Turn-2021-WIP-4-copy_FINAL.pdf (describing NRPF as a "key barrier" to accessing domestic violence refuges) and *Nowhere to Turn for Children and Young People,* Women's Aid, 2020, p. 31, available at: https://www.womensaid.org.uk/wp-content/uploads/2021/09/Nowhere-to-Turn-for-Children-and-Young-People-Updated-July-2021.pdf (reporting that only 4% of vacancies listed on Routes to Support are open to those with NRPF, and even in those cases, victims may need to have other forms of financial support in place before being accommodated).

[28] https://guidance.nrpfnetwork.org.uk/reader/practice-guidance-families/eligibility-for-other-services/#136-free-school-meals

[29] *Access Denied: The cost of the 'no recourse to public funds' policy*, the Unity Project, available at: https://static1.squarespace.com/static/590060b0893fc01f949b1c8a/t/5d0bb6100099f70001faad9c/1561048725178/Access+Denied+-+the+cost+of+the+No+Recourse+to+Public+Funds+policy.+The+Unity+Project.+June+2019.pdf; Morris, M and Qureshi,A. *Locked out of a Livelihood: The Case for Reforming 'No Recourse to Public Funds',* Institute for Public Policy Research, September 2021, available at: https://www.ippr.org/files/2021-09/locked-out-of-a-livelihood.pdf

with care needs.[30] It is also worth noting that among the public relief measures defined as "Public Funds" in this context are those specifically intended to support children, such as Child Benefit, and the particularly vulnerable, such as carer's allowance and personal independence payment.[31]

20. Children born to Group 2 refugees in the UK, moreover, will normally have no right to British nationality for ten years, or until their parents are granted settlement.[32] Given that refugees may put their status and perhaps security at risk were they to approach the embassy of their country of origin to register their children, many will have no effective nationality at all.[33]

21. With the possibility of applying for family reunion foreclosed, moreover, more women and children are likely to attempt dangerous journeys, either at the same time as the men who might previously have sponsored them under current rules, or to join them afterwards.[34] This risk has been recognized by the Council of Europe,[35] among others, and has been borne out in Australia, where the abolition of family reunion rights for holders of "Temporary Protection Visas" was followed by a threefold increase in the percentage of refugees trying to reach Australia who were women and children.[36]

22. In short, "Group 2" status is not only inconsistent with the Refugee Convention. It is also a recipe for mental and physical ill health, social and economic marginalisation, and exploitation. The human cost to the refugees and their families (including their children) is obvious enough and – given the deterrent purpose of the Bill set out in the Explanatory

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[30] Morris and Qureshi (n 29), p. 2. See also, *ST & Anor v Secretary of State for the Home Departmen*t [2021] EWHC 1085 (Admin), para. 116, available at: https://www.bailii.org/cgi-bin/format.cgi?doc=%2Few%2Fcases%2FEWHC%2FAdmin%2F2021%2F1085.html (reporting that "The Home Office had been told anecdotally that many children of parents who were subject to a NRPF condition were supported by local authorities under section 17 of the Children Act 1989.")

[31] Public Funds, https://www.gov.uk/government/publications/public-funds--2/public-funds

[32] Children born in the UK are not British by birth unless one of their parents is either British or settled at the time of their birth, although they will be entitled to apply for registration as a British citizen if one of their parents is later granted settlement, or if they have lived in the United Kingdom for ten years without being absent from the country for more than 90 in any of those years. British Nationality Act 1981, section 1, https://www.legislation.gov.uk/ukpga/1981/61 The cost of an application for registration as a British citizen is currently £1012. https://www.gov.uk/government/publications/fees-for-citizenship-applications/fees-for-citizenship-applications-and-the-right-of-abode-from-6-april-2018

[33] Where the parents' nationality requires registration of births abroad, the children will be stateless.

[34] Over 90% of refugee family reunion grants are for women and children. Home Office statistics show that from 2015 – Q2 2021 there were 34,562 family reunion visa grants to women and children of a total of 37,841 grants. Home Office, Family Reunion Visa Grants, Year Ending June 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1011729/family-reunion-visa-grants-datasets-jun-2021.xlsx. See also, UNHCR, *Position on Safe and Legal Pathways*, 8 February 2019, para. 24, available at: https://www.refworld.org/docid/5ce4f6d37.html.

[35] Parliamentary Assembly of the Council of Europe, Resolution 2243(2018) (n 19), para. 2.

[36] Senate Legal and Constitutional Affairs Committee, *Questions Taken on Notice, Budget Estimates Hearing 21–24 May 2012*, Immigration and Citizenship Portfolio, available at: http://www.aph.gov.au/~/media/Estimates/Live/legcon_ctte/estimates/bud_1213/diac/BE12-0265.ashx; Kaldor Research Centre, UNSW Sydney, *Research Brief: Temporary Protection Visas (TPVs) and Safe Haven enterprise Visas (SHEVs),* available at: https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Research%20Brief_TPV_SHEV_Aug2018.pdf; Sue Hoffman, *Temporary Protection Visas & SIEV X*, Sievx.com, 6 February 2006, available at: http://sievx.com/articles/challenging/2006/20060206SueHoffman.html; Sue Hoffman, *The Myths of Temporary Protection Visas*, 14 June 2011 available at: https://www.abc.net.au/news/2011-06-14/hoffman---the-myth-of-temporary-protection-visas/2757748.

Notes[37] and the ECHR Memorandum[38] – deliberate. Because by definition refugees cannot "go home", the economic and social costs of their immiseration will ultimately be borne by local authorities, communities, and the National Health Service.

The Bill relies on a fundamental misapplication of Article 31(1) of the Refugee Convention

23. Because the additional requirements to qualify for "Group 1" status use some of the same phrases as Article 31 of the Refugee Convention, the Government describes the Bill as "aligned with", "based on" and "consistent with" Article 31(1).[39] It is not.

24. Article 31(1) of the Refugee Convention prohibits penalising refugees for their unlawful entry or presence if they come directly from a country where their life or freedom was threatened, present themselves to the authorities without delay, and show good cause for their unlawful entry or presence. This article was intended to address the situation of refugees who were lawfully settled, temporarily or permanently, in another country and had already found protection there and who decided to move onward irregularly for reasons unconnected to their need for international protection. To them, administrative penalties for unlawful entry or presence could be applied. It has since been understood also to apply to those who failed to seek asylum in a timely fashion or at all, in a country where they could reasonably have done so.[40] The UK High Court in *Adimi* introduced three benchmarks to interpret "coming directly": 1) the length of stay in the intermediate country; 2) the reason for the delay; 3) whether or not the refugee sought or found protection *de jure* or *de facto.*[41]

25. However, any penalties for unlawful entry or presence must not undermine the right to seek and enjoy asylum or be at variance with other provisions of the 1951 Convention (or, more broadly, with international human rights standards), and in particular must not exclude refugees from the benefit of entitlements under the Convention or other international human rights instruments.

26. The Bill is inconsistent with Article 31(1) in five significant ways:

i) It targets "Group 2" refugees not only for unlawful entry or presence, but also for their perceived failure to claim asylum elsewhere or to claim asylum promptly, even if they entered and are present in the UK lawfully; [**Clause 10(2)**]
ii) It would empower the Secretary of State to impose a type of penalty for belonging to "Group 2" that is at variance with the Refugee Convention: namely, the denial of rights specifically and unambiguously guaranteed by the Convention to recognised refugees; [**Clause 10(5)(a)-(c)**];
iii) It would further empower the Secretary of State to impose a penalty on Group 2 refugees that would be inconsistent with international human rights law, namely, restrictions on their right to family unity [**Clause 10(5)(d) and Clause 10(6)(a)**];

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[37] *Explanatory Notes* (n 3), para. 145: "The purpose of this [Clause 10] is to discourage asylum seekers from travelling to the UK other than via safe and legal routes. It aims to influence the choices that migrants may make when leaving their countries of origin - encouraging individuals to seek asylum in the first safe country they reach after fleeing persecution, avoiding dangerous journeys across Europe."
[38] *ECHR Memorandum* (n 21), para.12, describing the three purposes of Clause 10 as "discouraging 'forum shopping' and encouraging asylum seekers to claim asylum in the first safe country they arrive in"; "encouraging asylum seekers to. . .make claims at the first available opportunity", and "promoting lawful methods of entry."
[39] *Explanatory Notes*, (n 3) para. 19 and *ECHR Memorandum* (n 21), para. 12.
[40] UNCHR, *Observations on the New Plan for Immigration* (n 2), para. 13.
[41] *R v. Uxbridge Magistrates Court and Another, Ex Parte Adimi*, [1999] EWHC Admin 765; [2001], p.773. Q.B. 667, United Kingdom: High Court (England and Wales), 29 July 1999.

iv) It creates a new offence of "arriving" in the UK without a visa (where one is required), [**Clause 37**], to which there would be no defence based on article 31(1);[42] and
v) It would clarify that there is no defence under section 31 of the Immigration and Asylum Act 1999 (which is entitled "Defences based on Article 31(1) of the Refugee Convention") for offences committed while seeking to leave the UK [**Clause 34(4)]** - something that the House of Lords found would be inconsistent with the Refugee Convention.[43] In UNHCR's view, refugees who leave a country in contravention of exit rules and who are present without authorization may be protected from penalization under Article 31(1) of the 1951 Convention, particularly when they are transiting en route elsewhere to claim asylum, and despite the fact that they have not presented themselves to the authorities without delay when entering.

27. UNHCR also notes with regret that at the same time as it amends section 31 of the 1999 Act so as to make its defences unavailable for offences committed while leaving the UK, **Clause 34(4) of** the Bill does not amend that section to bring it into line with Article 31(1) of the Refugee Convention by bringing within its scope the very offences named that Article: illegal entry and illegal presence (offences under Section 24(1) of the Immigration Act 1971).[44]

28. Finally, at Clause 34, the Bill would interpret Article 31(1) to mean that "A refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country." As set out in our observations of May 2021, this interpretation of "coming directly" would be inconsistent with Article 31(1) of the Convention unless it continued to be interpreted in line with the current UK jurisprudence. This defines the term "directly" broadly and purposively, such that refugees who have crossed through, stopped over or stayed in other countries en route to the country of intended sanctuary may still be exempt from penalties.[45]

The Bill would impermissibly externalise the UK's obligations to refugees and asylum-seekers within its jurisdiction

29. The Bill would lay the legislative basis for externalising the UK's obligations under the Refugee Convention by authorising the transfer of asylum-seekers to "safe countries"

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[42] The UK's "Defences based on Article 31(1) of the Refugee Convention" are found at section 31 of the Immigration and Asylum Act 1999, available at: https://www.legislation.gov.uk/ukpga/1999/33/section/31. They are not available for any offences committed under Sections 24 of 1971 Immigration Act.
[43] *R v. Asfaw,* [2008] UKHL 31, United Kingdom: House of Lords (Judicial Committee), para. 26 and 59, available at: https://www.refworld.org/cases,GBR_HL,4835401f2.html
[44]Section 24 of the Immigration Act 1971 is available at: https://www.legislation.gov.uk/ukpga/1971/77/section/24. In the leading case of *Asfaw* in the House of Lords, Lord Bingham noted this significant omission, commenting, "I am at a loss to understand why . . . [the offence of illegal entry under Section 24(1) of the 1971 Act] has been omitted from section 31 of the 1999 Act] since section 24, like section 24A, falls four-square within the terms of article 31. Article 31 is designed indeed for precisely that kind of offence." *R v. Asfaw*, [2008] UKHL 31, para. 77, available at: https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080521/asfaw-1.htm
[45] *R v. Uxbridge Magistrates Court and Another, Ex parte Adimi* [1999] EWHC Admin 765; [2001] Q.B. 667, United Kingdom: High Court (England and Wales), para. 18, available at: www.refworld.org/cases,GBR_HC_QB,3ae6b6b41c.html; *R v. Asfaw* [2008] UKHL 31, United Kingdom: House of Lords (Judicial Committee), 21 May 2008, para. 15 and 36, available at: www.refworld.org/cases,GBR_HL,4835401f2.html; *R. and Koshi Pitshou Mateta and others* [2013] EWCA Crim 1372, United Kingdom: Court of Appeal (England and Wales), 30 July 2013, para. 12-15 and 21(iv), available at: www.refworld.org/cases,GBR_CA_CIV,5215e0214.html; *Decision KKO:2013:21*, Finland: Supreme Court, 5 April 2013, available at: www.refworld.org/cases,FIN_SC,557ac4ce4.html; also see UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers*, para. 39, September 2019, www.refworld.org/docid/5d8a255d4.html.

(which may include territories that are not, legally, States), without clearly stipulated requirements that they offer minimum reception conditions, access to a fair and efficient asylum procedure, or international protection where needed, in line with obligations under the Refugee Convention or, indeed, protection against any human rights abuses other than persecution on Refugee Convention grounds, inhuman and degrading treatment in violation of Article 3 ECHR, or removal to face these human rights abuses elsewhere.

30. Nor would there be any requirement for a consideration of whether the transfer was safe or reasonable in the individual asylum-seeker's circumstances, or of any prior connection between the asylum-seeker and the territory. A "connection" to another State (in the limited sense given to that term by the Bill) is only required in the context of a finding of inadmissibility, as discussed below. The possibility of the transfer of asylum-seekers to third countries appears in a separate clause of the Bill and is not confined – either in its own terms or the Explanatory Notes – to those whose claims have been found inadmissible.

31. The most immediate method of externalisation set out in the Bill are its provisions on "inadmissibility", which would deny access to asylum procedures in the UK to asylum-seekers with any one of five different types of "connection" to a "safe third State".[46] UNHCR recognises that the onward movement of refugees and asylum-seekers creates significant challenges for States and for the international protection system as a whole. Where asylum-seekers lodge multiple claims in different States, move onwards after claiming asylum or receiving protection, or refrain from seeking international protection in a State where they had an effective opportunity to do so, it results in inefficiencies, administrative duplication, delays and significant costs, as well as additional demands on reception capacities and asylum systems in different countries.[47]

32. However, the UK's inadmissibility rules have a far broader reach. [**Clause 14]** In the first place**,** they create a low standard for when a State would be considered "safe" for a particular claimant. The criteria for a State to be considered "safe" in this context for a particular applicant are that their "life and liberty are not threatened there by reason of their race, religion, nationality, membership of a particular social group or political opinion", that the State is one from which "a person" will not be removed in breach of non-refoulement obligations under the Refugee Convention or the ECHR, and that "a person" may apply for refugee status there and, if recognized, receive protection in accordance with the Refugee Convention.[48] Thus, a country could still be considered safe even if the applicant had been, and perhaps continues to be, at real risk of being subjected to human rights violations there that either fall short of threats to life and liberty, or to which they were not exposed for reasons of a Refugee Convention ground. In addition, although the State must be one in which in general "a person may" apply for refugee status and receive protection "in accordance with the Refugee Convention", it is not clear from the terms of the Bill that this possibility needs be available to the particular applicant. From the wording of the Bill ("a person") it appears it may arguably be sufficient that in general there is the possibility of applying for refugee status in that State.

33. In addition, in order to be found to have a "connection" to a safe third State, the particular applicant need not have had a reasonable opportunity to access refugee status there.

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[46] These enact into legislation the immigration rules on inadmissibility that have been in effect since 11:00pm on 31 December 2020. See Paragraphs 345A-345D of the immigration rules, available at: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum

[47] UNHCR, *Guidance on Responding to Irregular Onward Movement* (n 10), para. 1.

[48] The definition of a safe State would be contained in a new Section 80B of the Nationality, Immigration and Asylum Act 2002, introduced by Clause 14 of the Bill, while the five connections to such a state that would trigger inadmissibility are listed at Section 80C.

Although the State would have to be one in which, in general, the possibility existed for a person to apply for refugee status, an individual claimant could be found to be inadmissible because they had received nothing more than protection against removal in violation of the Refugee Convention or Article 3 ECHR, or had made or had a reasonable opportunity to make a "relevant claim" for such protection there. [**Clause 14, Section 80C(2)-(6)**]

34. Moreover, mere presence in a "safe" State where it would have been reasonable to expect the applicant to make a "relevant claim" would be sufficient to establish a 'connection' and trigger inadmissibility, [49] as would an otherwise unelaborated "connection" such that, in the claimant's particular circumstances, it would have been reasonable for them to have gone there to make such a claim, even if they have never been there.[50]

35. In a significant and highly problematic departure from international practice and UK caselaw,[51] it is irrelevant whether the claimant would be admitted to the safe third State in question. While a "connection" (in the limited sense of proposed new Section 80C) between the applicant and the "safe third State" is required for a claim to be declared inadmissible, the Secretary of State may still remove the applicant to any other "safe" third State. The 'connection' requirement therefore appears to be meaningless in terms of ensuring the reasonableness and appropriateness of actual transfers.

36. The result of a finding of inadmissibility is that, unless the Secretary State decides there are "exceptional circumstances", the claimant will be denied access to the UK asylum system for a "reasonable period" (currently defined as six months by Home Office policy, but not defined in the Bill), while the UK seeks to transfer them to "any other safe country". [52] In the first six months after the implementation of the inadmissibility provisions of the immigration rules (which are echoed in these statutory provisions), the asylum claims of over 4,500 people were put on hold by the issuance of notices of potential inadmissibility, but the UK only sought to transfer seven of them.[53]

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[49] Mere transit of a safe third country has been found to be an insufficient connection to ground a finding of inadmissibility under European law. *LH v Bevándorlási és Menekültügyi Hivatal* Case C-564/18 (19 March 2020), para. 51, available at: https://curia.europa.eu/juris/document/document.jsf;jsessionid=4073A92D43091E82AED6B6122C524FE2?text=&docid=224585&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8994431

[50] Condition 5 is: "in the claimant's particular circumstances, it would have been reasonable to expect them to have made a relevant claim to the safe third State (instead of making a claim in the United Kingdom)."

[51] *RR (Refugee - Safe Third Country) Syria v. Secretary of State for the Home Department*, [2010] UKUT 422 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 13 November 2010, available at: https://www.refworld.org/cases,GBR_UTIAC,4cffa9892.html ("*the type of case with which we are concerned here, involving intended expulsion of a refugee, tends only to arise as a matter of international state practice in situations where the person concerned has some connection with the third state which is said to be safe, based on nationality, prior residence, marriage, entitlement to residence, historical ties etc. it does not arise simply because there is a safe third country somewhere.")* Although the EU Procedures Directive allows for a finding of inadmissibility on the grounds of ties to a third state, this must be a state to which the asylum seeker will be admitted. The finding of meaningful connections to one safe state cannot, under European law, legally found the transfer to another. Nor, in fact, are the "safe third country" rules permitted by the Procedures Directive reflected in most countries' national laws or, even where reflected in law, employed in practice. UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, p. 60, available at: https://www.refworld.org/docid/4bab55752.html

[52] Section 80B(6).

[53] https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2021/how-many-people-do-we-grant-asylum-or-protection-to As the UK does not yet have any transfer or readmission agreements with "any other safe country", the effect of the current inadmissibility rules has been to place asylum seekers in limbo for six months. This has already placed additional pressure on asylum accommodation, and it is likely to have had adverse effects on the mental and physical health and future integration prospects of asylum seekers and their families.

37. Nor would it be only those whose claims are declared inadmissible who would be at risk of transfer to a third country. **Schedule 3**[54] of the Bill would permit the removal of an asylum-seeker to any "safe" territory. Although the Explanatory Notes suggest the intention is to provide for "extraterritorial processing models to be developed in the future", [55] there is nothing in the language of the Bill itself that would limit removals to such a purpose.

38. The minimum standards for a safe country of transfer under Schedule 3 are even lower than those for a "safe third State" to which the applicant has a prior "connection" (whether a country in which the applicant was previously present or not) under clause 14. The Secretary of State will be empowered to create lists of "countries" – whether States or territories - where (i) "a person's life and liberty are not threatened" on Refugee Convention grounds, (ii) from which a person will not be removed elsewhere other than in accordance with the Refugee Convention; (iii) where a person can be transferred without being put at real risk of inhuman and degrading treatment (in violation of Article 3 ECHR); and (iv) from which they will not be removed in violation of their ECHR rights.[56] There is no requirement that the territory be a State or a party to the Refugee Convention,[57] or that it offer the possibility of applying for refugee status or otherwise recognise the rights guaranteed to refugees in the Refugee Convention. There is no consideration of the reasonableness of the transfer in any individual case, and in direct contradiction to established international practice and UK caselaw, the law provides an opportunity for a person to show that "in their particular circumstances" they would be at risk of violations of their rights under the ECHR, but provides no such opportunity with regard to the risk of persecution or onward refoulement or expulsion prohibited under the Refugee Convention.[58]

39. Transferring asylum-seekers or recognised refugees[59] to territories with which they have no prior connection and without an individualised consideration of safety, access to fair and efficient asylum procedures and to international protection, or reasonableness is at odds with international practice and risks denying them the right to seek and enjoy asylum, exposing them to human rights abuses and other harm, delaying durable solutions to forced displacement, and encouraging onward movement. To transfer asylum-seekers and refugees to countries that are not parties to the Refugee Convention, and without any expectation, let alone commitment, that they will provide a fair asylum procedure and treatment in line with the Refugee Convention would be an

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These adverse effects are likely to be increased by the possibility set out in the Bill of providing asylum seekers in the "inadmissibility process" with reduced financial support and accommodation in "basic" reception centres that are designed to facilitate expedited processing and removal

[54] This would amend section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending) to allow removal to any "State" that met the conditions set out in a new subsection 77(2A). These "States" – which could include territories that are not States – would be identified by the Secretary of State for the Home Department and published in lists laid before Parliament.

[55] *Explanatory Notes* (n 3), para. 21.

[56] Section 77(2B) (created by Schedule 3 of the Bill).

[57] Section 77(2C)(c) and (d) and Schedule 3(5).

[58] New Section 77(2C)(a). For caselaw establishing that presumptions of compliance with international obligations must be rebuttable in individual cases, see, e.g. *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform* , C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011, para. 104, available at: https://www.refworld.org/cases,ECJ,4ef1ed702.html; M.S.S. v. BELGIUM AND GREECE - 30696/09 [2011] ECHR 108 (21 January 2011), available at: https://www.bailii.org/eu/cases/ECHR/2011/108.html ; *R (on the application of EM (Eritrea)) v Secretary of State for the Home Department* [2014] UKSC 12, para. 41, available at: https://www.supremecourt.uk/cases/docs/uksc-2012-0272-judgment.pdf

[59] See the concerns expressed above at paragraph 12 about the possibility that the Bill would allow Group 2 refugees to be removed to "safe" countries, in line with intentions expressed in the New Plan for Immigration.

abdication of the United Kingdom's responsibilities under international law towards refugees and asylum-seekers under its jurisdiction.

The Bill would criminalise seeking asylum

40. 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. Although the Explanatory Notes state that "This will allow prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don't technically "enter" the UK,"[60] its reach is much wider. 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.[61] 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.[62]

41. The maximum sentence for this offence would be four years' imprisonment, which would also become the maximum sentence for the existing offences of entering the UK unlawfully or remaining in the UK without leave. There would be no defences based on Article 31(1) of the Refugee Convention for any of these offences.

42. Facilitating another person's arrival in the UK without entry clearance would also be made a criminal offence. The most obvious target is refugees who assist each other to come to the United Kingdom to claim asylum, something the Canadian Supreme Court has found violates Article 31 of the Refugee Convention.[63] Friends, family members and others with purely humanitarian motives would also be criminalised.[64] Even trafficking victims could face criminal penalties under this new provision.[65] The maximum sentence of imprisonment for this offence will rise from 14 years to imprisonment for life.[66] Finally, it would no longer be an element of the criminal offence of assisting an asylum-seeker to come to the UK to claim asylum (lawfully or unlawfully) that the assistance was provided "for gain".[67]

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[60] *Explanatory Notes* (n 3), para. 388.
[61] The list of visa nationals is found at Paragraph VN.1 of Appendix Visitor to the immigration rules. It contains 111 of the world's 195 countries. https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-visa-national-list
[62] https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement;
https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-visa-national-list
[63] *R. v. Appulonappa*, 2015 SCC 59, Canada: Supreme Court, 27 November 2015, para. 43, available at: https://www.refworld.org/cases,CAN_SC,56603caa4.html and *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, Canada: Supreme Court, 27 November 2015, available at: www.refworld.org/cases,CAN_SC,56603be94.html.
[64] See, e.g. *Sternaj v. Director of Public Prosecutions*, [2011] EWHC 1094 (Admin), United Kingdom: High Court (England and Wales), 12 April 2011, available at: https://www.refworld.org/cases,GBR_HC_QB,535e75c54.html in which a parent who had claimed asylum in the UK was prosecuted for facilitating the illegal entry of his two-year-old son, on whose behalf he also made an asylum claim.
[65] Schedule 4(17) of the Modern Slavery Act 2015 expressly prevents those charged under section 25 of the Immigration Act 1971 from relying on the defence that they were compelled to commit the offence because they were victims of slavery or trafficking. *Modern Slavery Act 2015*, Section 45, and Schedule 4, available at https://www.legislation.gov.uk/ukpga/2015/30/section/45/enacted and https://www.legislation.gov.uk/ukpga/2015/30/schedule/4/enacted
[66] Clause 38(1).
[67] Clause 38(2).

The Bill would make it harder for refugees who are admitted to the UK to access international protection

43. This array of measures meant to deter refugees from seeking protection in the UK and to externalise the UK's obligations towards those who nonetheless arrive is supplemented by a series of changes that would make it more difficult for refugees who are admitted to the UK to be recognised as such. These include departing from well-established principles of UK law by importing the higher standard of proof used in civil litigation into the refugee determination process[68] and narrowing the definition of "particular social group", [69] creating accelerated appeal procedures for reasons unrelated to the merits of the claim,[70] directing decision-makers (including judges) to consider giving "minimal weight" to evidence[71] or make adverse credibility findings[72] under circumstances that carry a real risk of unfairness, and lowering the standard for when a crime would be considered serious enough to justify removing a recognised refugee even where doing so would put them at risk of persecution.[73]

The Bill is not well designed to reduce dangerous journeys, tackle human trafficking or fix a "broken" asylum system

44. Finally, UNHCR notes that in spite of the Government's repeated references to deterring dangerous journeys and targeting criminal gangs, few of the Bill's punitive provisions are clearly related to the safety of a refugee's journey or how it was facilitated. Instead, they focus on punishing the asylum-seekers themselves.[74]

45. The Bill is premised on the claim that the asylum system is "broken"[75] and in need of "urgent" reform.[76] Such reform, however, is already underway at the Home Office, which is currently piloting a broad range of expedited and more efficient asylum procedures. The First-tier Tribunal, similarly, introduced fundamental procedural reforms just last year, and these are already leading to improvements in speed and efficiency, including a significant increase in the number of asylum appeals that are resolved without the need for a full hearing.[77] These reforms – and others which UNHCR proposed in February of this year[78] - have the potential to determine asylum claims more fairly as well as more quickly, reducing the costs to the public of asylum support and litigation, moving those in need of international protection towards integration more swiftly, and discouraging unmeritorious asylum claims through rapid but fair refusal decisions.

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[68] Clause 29.
[69].Clause 30.
[70] Clause 21(1) and Clause 24(3)
[71] Clause 23(2).
[72] Clause 17 and Clause 20.
[73] Clause 35.
[74] According to the Explanatory Notes, only 40% of asylum applicants in 2019 arrived clandestinely. *Explanatory Notes* (n 3), para. 15. Many of the Bill's punitive measures are entirely unrelated to the nature of the journey. These include the criminalization of arriving in the United Kingdom without entry clearance, and the imposition of the penalty of Group 2 status on refugees who have overstayed their visas or delayed in claiming asylum, and the possibility of finding a claim inadmissible because a person has a "connection" to a "safe" country, including one where they have never been.
[75] See the speech of the Home Secretary introducing the Bill (n 5).
[76] *Consultation Response* (n 15), pp. 4 and 10.
[77]. https://www.gov.uk/government/collections/tribunals-statistics.
[78] UNCHR, *UNHCR's Guide to Asylum Reform in the United Kingdom*, 23 February 2021, available at: https://www.unhcr.org/uk/publications/legal/60942d8e4/unhcrs-guide-to-asylum-reform-in-the-united-kingdom.html?query=asylum%20reform

Resettlement programmes cannot compensate for the UK's proposed abdication of responsibilities towards refugees within its jurisdiction

46. Resettlement programmes, while welcome, are, by themselves, an inadequate means for fairly distributing global responsibilities towards refugees and sharing the burden currently shouldered by major host countries. Between 2017 and 2021, the UK resettled just over 19,000 refugees, including 823 in 2020, and 653 thus far in 2021.[79] Although we welcome its generous response to the current crisis in Afghanistan, it has made no firm commitment as to how many refugees overall it may resettle in the future.[80] To put this in context, there are 26.4 million refugees worldwide today, while another 48 million people are displaced within their own country.[81] With States unable or unwilling to accept more than a handful of refugees through resettlement programmes, many will inevitably continue to seek asylum on their own initiative.

47. For all of these reasons, the Bill undermines, rather than promotes, the Government's stated goal of improving the United Kingdom's "ability to provide protection to those who would be at risk of persecution on return to their country of nationality.[82]

[79] https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets
[80] The Government's consultation response acknowledged a desire for a numerical resettlement target but explained that it did not consider this possible. *Consultation response* (n 15), p. 7.
[81] UNHCR, *Refugee data finder* (n 9)
[82] *Explanatory Notes* (n 3), para. 13.