

Nationality and Borders Bill: House of Lords committee stage briefing

25 January 2022

About Freedom from Torture

Freedom from Torture is the only human rights organisation dedicated to the rehabilitation of torture survivors who seek refuge in the UK. Each year we support more than 1,000 torture survivors, primarily through psychological therapies, forensic documentation of torture, legal and welfare advice, and creative projects. To accompany this briefing, Matrix Chambers has provided us with a legal opinion of the Bill¹ clarifying the implications of the proposals in relation to international refugee and human rights law.

Executive summary

The proposals within the Nationality and Borders Bill constitute the greatest threat to the UK's asylum system in a generation. They will limit access to protection in the UK, criminalise people seeking safety, increase the risk of return to persecution, hold asylum seekers in a prolonged limbo, curtail the rights of refugees, isolate refugees in harmful 'camps', condemn refugees to poverty and cripple the asylum system with delays and inefficiencies.

This Bill will not deliver on the stated objectives. It will do nothing to increase the fairness of the asylum system, improve the quality of decisions or enhance the protection offered to refugees. This Bill will not break the business model of smuggling, but instead will increase the vulnerability and exploitation of those who will continue, in the absence of any other option, to move irregularly to seek protection. The Bill will not reduce the Home Office's current backlog of **83,733** outstanding asylum cases² and will make it no easier to remove those with no right to be in the UK. The Government's own Equality Impact Assessment³ (EIA) recognises that "*evidence supporting the effectiveness of this approach [increased deterrence to encourage people to claim asylum elsewhere] is limited*".

Freedom from Torture supports the call for a global resettlement target of 10,000 places per year. A fit-for-purpose global resettlement scheme is a straightforward reform that does not require legislation and does enjoy significant public and cross-party support. Unlike the proposals in this Bill, it would contribute to the delivery of the Home Office's objective to provide a safe route for some of the most vulnerable people seeking protection in the UK. The issue of irregular arrivals taking dangerous routes to safety in the UK is a complex one and will not be addressed by resettlement alone. We all want to see an end to the deaths in the Channel, but investment in one safe route must not come at the expense of access to protection for those who arrive in the UK clandestinely.

In seeking to penalise those who arrive in the UK by irregular means this Bill represents the biggest legal assault on international refugee law ever seen in the UK. It is a betrayal of the letter and spirit of the 1951 Refugee Convention, which was drafted in the wake of the holocaust, to ensure that the impossibility of pre-authorised travel would be no barrier to accessing protection from persecution. If this Bill is passed, every year thousands of refugees will be denied the opportunity to secure protection, and to recover from persecution because the UK has reneged on its commitment to assess or recognise the protection needs of those who arrive on its shores.

The Government insists that this Bill is compliant with our international obligations but this has been refuted by, among others, the United Nations High Commissioner for Refugees (UNHCR)⁴, former UN Secretary General Ban Ki-moon⁵, the Law Society, the Joint Committee on Human Rights (JCHR)⁶, and the Lords' Constitution Committee.⁷ The Bill is part of a concerted effort to push through an array of legislation that reduces our human rights and limits our ability to challenge abuses that occur. This encompass parts of the Policing Bill, restrictions on judicial review, and proposals to reform the Human Rights Act. When taken as a whole, the impact of this regressive package of

¹ The Matrix Chambers [joint legal opinion](#) of the Nationality and Borders Bill available at:

² <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2021/how-many-people-do-we-grant-asylum-or-protection-to>

³ Nationality & Borders Bill Equality Impact Assessment: [//publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf)

⁴ UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022

⁵ <https://theelders.org/news/elders-call-greater-ambition-and-empathy-world-leaders-refugees>

⁶ Joint Committee on Human Rights, Legislative Scrutiny: Nationality and Borders Bill, published 19th January 2022

⁷ House of Lords Select Committee on the Constitution, 11th Report of Session 2021-22, Nationality and Borders Bill

legislation will be to harm the most vulnerable, undermine the global system of refugee protection and do lasting damage to the UK's reputation.

This briefing focuses on Clauses 11 (differential treatment) and 15 (inadmissibility)

Clause 11: Differential treatment of refugees

Clause 11 authorises the Secretary of State, for the first time, and inconsistently with the Refugee Convention, to discriminate between two groups of refugees based upon mode of arrival. Someone is a 'Group 1' refugee if they have (i) come to the UK directly from a country or territory where their life or freedom was threatened; (ii) they have presented themselves 'without delay' to the authorities, and (iii) where relevant, they are able to show 'good cause' for their unlawful entry or presence. If these conditions are not met then a person will be a 'Group 2' refugee. A 'Group 2' refugee may be granted temporary protection status with limited leave to remain (no less than 30 months⁸), no automatic path to settlement, limited family reunion rights and no recourse to public funds (NRPF). Further differences in treatment can be set out in the immigration rules.

Article 31(1) immunity from penalties

While it is the Government's view that "nothing in [the] differentiation policy constitutes a penalty",⁹ the UNHCR and the JCHR are clear the administrative disadvantages listed above, do constitute a penalty under Article 31 of the Refugee Convention.

The criteria that apply to differentiation appear to track the terms of Article 31, but at Clause 36 the Bill contains a statutory codification of the component parts of the Article (particularly "coming directly") which is narrower in scope than, and therefore inconsistent with, the Article as properly interpreted. **This means that many refugees who, under international law should benefit from Article 31 protection from penalty, will find themselves in 'Group 2', and will be denied the rights and protections under the Convention.**

Clause 36 of the Bill seeks to re-interpret Article 31 of the Refugee Convention by outlining the circumstances in which an individual is or is not immune from penalties, on the basis of their illegal entry or presence. The removal of the protection from penalisation from refugees on the basis that they "stopped" in another country and could reasonably be expected to have "sought" protection in that country or (in the case of those with a *sur place* claim) failed to make a claim before the expiry of their existing leave to remain, is a misconstruction of Article 31. This interpretation affords the claimant no element of choice as to where to claim, contrary to the judgments in *Asfaw*¹⁰ and *Adimi*,¹¹ and to the views of the drafters of the Convention, respected academics and UNHCR.

In direct contrast to the Government's insistence that refugees must apply for protection in the first safe country they reach, the criteria for application of Article 31 have been broadly interpreted in international and domestic case law allowing for some element of choice as to where the refugee may claim asylum.¹² The "coming directly" requirement in Article 31 was never meant to preclude passage through a "safe", intermediate country; **the critical question is not whether a person could - or even should - have sought asylum elsewhere, but whether they had already found secure asylum, such that there is no protection-related reason for irregular onward movement.**

First safe country

The 'first safe country' principle does not, and could not, ever exist in the manner in which the Government has presented it and is seeking to legislate for. It would be impossible to build a system of international cooperation on a presumption that territories neighbouring the country or region of origin would take all the refugees. Under Dublin¹³, family unity, the best interest of the child and time spent on the territory of the State all limited the extent

⁸ Letter from Tom Pursglove, to the Bill committee chairs on 26th October 2021

⁹ Letter from Tom Pursglove MP, relating to Part 2 (Asylum) and Part 5 (Modern Slavery) of the Nationality and Borders Bill, dated 25 November 2021

¹⁰ *R v Asfaw* [2008] 1 AC 1061

¹¹ *R (Adimi) v Uxbridge Magistrates Court & Anor* [2001] QB 667

¹² *R v Uxbridge Magistrates Court*, ex parte Adimi [1999] Imm AR 560. See also UNHCR Executive Committee Conclusion No.15 (1979);

¹³ The Dublin Regulation (also known as Dublin III) is EU law setting out which country is responsible for looking at an individual's asylum application.

to which irregular entry could be used to justify transfer, as part of an individualised assessment. In Commons Committee, the Minister stated that “representations [...] about why inadmissibility processes should not be applied in their case, including any connections they may have to the UK, will be considered ahead of any removal to a safe third country” but the clause only allows for ‘exceptional circumstances’ to be taken into account. The measures in this Bill are not intended to facilitate responsibility sharing or ensure that those most in need will secure protection, but rather to offload our responsibility to other States.

Clause 11 is profoundly unfair

The majority of people who make an asylum claim in the UK have entered irregularly.¹⁴ The top five nationalities arriving by small boat are people from Iran, Iraq, Sudan, Syria and Afghanistan.¹⁵ These nationalities top the referral list to Freedom from Torture’s therapeutic rehabilitation services,¹⁶ and we know that many of our clients have arrived irregularly in the UK. The majority of asylum claims in the UK are successful¹⁷ and the grant rate is even higher for those who secure one of our expert medico-legal reports to evidence their experience of torture.¹⁸

Contrary to the Government’s claims, **it is the most vulnerable who will be penalised by these measures.** Women, children, victims of sexual violence and survivors of torture are often compelled to travel irregularly to seek asylum. This is often because alternative routes to protection are not available or accessible to these groups. The difficulty of identifying someone as a survivor of torture and the administrative demands of the resettlement process can often stand in the way of selection for what is currently the only real alternative route to safety.

In the absence of accessible alternative routes to safety, Clause 11 will privilege well-to-do refugees, who can buy air tickets and obtain entry clearance (for example as businessmen or investors), and will penalise the less well-off, whose families typically club together to fund dangerous land journeys as a route of last resort.

Penalising refugees who do not present their claim ‘without delay’ following arrival risks further punishing the most vulnerable. It is clinically recognised that an experience of torture or trauma will lead to avoidance behaviours and interfere with the person’s ability to disclose. The Bill’s EIA recognises that there is a risk of indirect discrimination against certain groups with protected characteristics. During Commons committee stage the Minister argued that the proposal to differentiate will be ‘sensitive to certain types’ and that decision makers will be able to take vulnerabilities into account. Again, this safeguard will be left to the immigration rules and policy guidance, as he refused to build any protections into the clause on the justification that such safeguards would be abused.

In fact, it is too often the safeguards that fall short. Our clients’ experience suggests that operational guidance will not provide sufficient protection from discrimination. Failings in the current asylum process contribute to the delayed identification of vulnerable people, such as difficulty finding legal advice, inadequate screening processes, or a poor quality interview. Freedom from Torture’s Beyond Belief¹⁹ research found that asylum caseworkers failed to apply the mandated principles and standards for interviews with the result that torture survivors were unable to give a full account. Torture was not consistently identified as a key fact in the asylum interviews and caseworkers too often failed to follow up a disclosure of torture to find out more and to signpost claimants to further help.

In his recent inspection of adults at risk in immigration detention²⁰ the Independent Chief Inspector of Borders and Immigration (ICIBI) found a culture of suspicion in the Home Office that hampered the effective implementation of the safeguarding mechanisms used to identify and protect vulnerable detainees. An increase in the reliance on medico-legal reports to secure the release from detention of vulnerable people has led to an assumption that this safeguard is being abused. Rather than seek to understand the cause of this increase and on the basis of unreliable evidence, the Home Office has taken steps to restrict access to this essential safeguard.

¹⁴ In the year ending September 2019, 62% of asylum claims were made by those who entered the UK without authorisation. [Migration Observatory](#)

¹⁵ Nationality & Borders Bill Equality Impact Assessment: [//publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf](#)

¹⁶ <https://www.freedomfromtorture.org/news/where-does-torture-happen-around-the-world>

¹⁷ The overall grant rate for asylum claims made in 2019 was 65%: [How many people do we grant asylum or protection to? - GOV.UK \(www.gov.uk\)](#)

¹⁸ Freedom from Torture’s ‘[Proving Torture](#)’ research in 2016 found that 76% of cases, for which the final outcome was known, were granted asylum following a successful appeal.

¹⁹ [Beyond Belief: how the Home Office fails survivors of torture at the asylum interview](#), Freedom from Torture, 2020 accessed here:

²⁰ Second annual inspection of ‘Adults at risk in immigration detention’ July 2020 – March 2021, Independent Chief Inspector of Borders and Immigration, October 2021

Inadequate vulnerability screening resulted in survivors of torture and trauma being accommodated in Napier barracks contrary to the suitability assessment criteria. Over 80 individuals with underlying vulnerabilities (including evidence of trafficking, torture and mental health issues) were only transferred out of the barracks after legal proceedings were threatened or issued.²¹ The joint HMIP and ICIBI report on Penally Camp and Napier²² found that:

"A third of the residents responding to our survey said they had experienced mental health problems. All residents who responded said they had felt depressed during their stay at the Barracks [...] .In one case, the Home Office decided that a resident was a potential victim of trafficking, but he remained at the Barracks for a further 10 weeks"

Clause 11 will cause harm and retraumatisation

The Minister explained that a shorter period of leave is appropriate for 'Group 2 refugees' because it provides the Secretary of State with more opportunities to see if the country situation has changed, but offered no justification that links the need for this measure to the method of arrival. For a torture survivor, repeated grants of temporary leave would have such a harmful impact, including by denying them full access to healthcare and the stability required to rehabilitate, that it would likely constitute inhuman and degrading treatment and be contrary to Article 14 UN Convention Against Torture (right to rehabilitation).

The Minister clarified that the NRPF condition will not apply to anyone who was in receipt of section 95 support, which includes the majority of those awaiting an outcome on their asylum claim.²³ This clarification is welcome, but this condition could still result in up to 3,100 more people per year living in poverty, debt and exploitation.²⁴ The denial of security and the threat of impoverishment is likely to drive more people into conditions of forced labour, trafficking and abuse. This will hit the most vulnerable the hardest, and particularly those struggling with the disabling trauma resulting from persecution and torture and enduring delayed or interrupted access to support and rehabilitation. Our Poverty Barrier²⁵ research with torture survivors in the UK revealed incidences of informal work, transactional relationships, sex-for-money, violence and rape resulting from destitution.

The Minister denied that the Bill will remove family reunion rights because they will be protected in line with Article 8 of the European Convention on Human Rights. Not only is Article 8 currently interpreted narrowly by decision makers, but the efforts of this government to limit Article 8 rights through proposed reforms of the Human Rights Act indicate its intention to further restrict access to this protection. While family reunion is not an express right provided in the Refugee Convention (because the drafters thought it unthinkable that states would keep refugee families apart) the academic literature emphasises the importance of family support, social assistance and stability in promoting the integration of the refugee, and in assisting recovery from the trauma of ill treatment suffered.

The powers in the Bill leave discretion for the Secretary of State to impose conditions 'as appropriate', and this will be set out in the immigration rules and policy guidance. This means that we may see further conditions being applied to 'Group 2 refugees', without parliamentary scrutiny to consider the implications. This could include anything from withdrawal of the right to work to the imposition of healthcare charges.

Clause 11 is fundamentally at odds with the Refugee Convention

According to the UNHCR *"There is in the convention only one refugee definition, which does not touch on the issue of how a person arrived or in which country if that person were to seek asylum, and one set of rights that accrue to a person who has been recognised as a refugee in a given country. There are no other options, and any attempts at curtailing rights is unavoidably in breach of the convention."*²⁶

²¹ NB [2021] EWHC 1489 (Admin)

²² An inspection of contingency asylum accommodation: HMIP report on Penally Camp and Napier Barracks (November 2020 - March 2021), ICIBI, July 2021

²³ At end September 2021, 62,651 people were awaiting a decision on their asylum claim and were in receipt of support. Immigration Statistics, year ending September 2021.

²⁴ New Plan for Immigration – Impact Analysis – June 2021. www.refugeecouncil.org.uk/information/resources/new-plan-for-immigration-impact-analysis/

²⁵ The Poverty Barrier: the right to rehabilitation for survivors of torture in the UK, Freedom from Torture, 2013. www.freedomfromtorture.org/news/the-poverty-barrier-report

²⁶ Evidence provided by Rossella Pagliuchi-Lor to the Joint Committee on Human Rights, Legislative Scrutiny: Nationality and Borders Bill, published 19th January 2022

During Commons Committee Stage, the Minister explained that “*section 2 of the Asylum and Immigration Appeals Act 1993 prevents us, in implementing this policy, from doing anything in the immigration rules that is contrary to the refugee convention*”. This protection applies only to the immigration rules and any administrative practice or procedure, which means that in passing this clause the Government will, in effect, have authorised discrimination within primary legislation that will then be enacted through rules that will be passed through negative resolution procedure and with little parliamentary oversight. If the Government were committed to preventing any breach of our obligations under the Refugee Convention, it would incorporate this protection in to primary legislation.

The Minister explained that it is for Parliament to determine precisely what is meant by our international obligations, subject only to the principles of treaty interpretation in the Vienna Convention. These principles require that a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. **Clause 11 is not a good faith interpretation of the Refugee Convention, it is an attempt to re-write it.**

Clause 11 does not offer a solution to the shortcomings of the UK asylum system

These proposals will not contribute to the creation of a better, more efficient asylum system. The Home Office is already struggling to process the volume of asylum claims currently in the system.²⁷ These proposals envisage repeating the decision-making process for people with Temporary Protection Status as regularly as every two and a half years. This would cripple the Home Office apparatus and leave many thousands in limbo²⁸, at risk of destitution and exclusion from vital public services and support. By actively constraining the assimilation and naturalisation of refugees, this clause is also inconsistent with Article 34 of the Refugee Convention.

There is no evidence that granting Temporary Protection Status will act as a deterrent and reduce irregular journeys to the UK. Between 1999 and 2008, the Australian government operated a system of Temporary Protection Visas (TPVs) as a way of deterring irregular arrivals. In 2000, there were 2,939 arrivals. In 2001 arrivals rose to more than 5,000. TPVs did not ‘break the business model’ of smuggling to Australia and did not stop deaths at sea. Many of the women and children who drowned in October 2001 were the family members of TPV holders.²⁹ Ultimately, the policy was futile, as 90% of TPV holders were granted permanent protection.³⁰

The UK must remain a place of hope and sanctuary for people fleeing persecution and torture and that means holding on to the principles of protection and international solidarity that guided the drafting of the Refugee Convention. Reform must happen, but the Government should apply the following principles:

- **Enhance the ability of refugees to seek protection in Britain.** People seeking asylum should feel safe when they arrive, and have their refugee application considered fairly and efficiently, no matter how they got here.
- **Put in place a fairer, faster and more independent system to decide on people’s claims for protection.** People claiming asylum should receive quality legal advice, humane treatment and fast, accurate decisions.
- **Ensure that people can live in safety and dignity while waiting for their claim to be decided.** They should have a safe and dignified home within a local community, enough food and essentials, and the right to work.
- **Support refugees to build new futures in Britain as part of their community.** Policies should support people to realise their full potential and empower them to make a positive contribution to their communities.
- **Respect the dignity, liberty and humanity of those found not to be in need of protection.** People refused asylum should not be detained and be treated in a safe, dignified and humane way at all times.
- **Champion global solidarity and responsibility sharing** – the UK should play a role in providing sustainable solutions to forced migration, including through the resettlement of at least 10,000 refugees per year.

²⁷ At end September 2021, 56,520 people had been waiting for a decision for more than 6 months. Immigration Statistics, year ending September 2021.

²⁸ The Refugee Council predicts that up to 9,200 per year could receive temporary protection status, *ibid*.

²⁹ Asylum Seeker Resource Centre, What are Temporary Protection Visas? <https://asrc.org.au/resources/fact-sheet/temporary-protection-visas/>

³⁰ www.unitingjustice.org.au/refugees-and-asylum-seekers/information-and-action-resources/item/931-temporary-protection-visas-tpvs-fact-sheet

Case study: Zaki Haidari, Afghan refugee living on temporary protection status in Australia

Zaki left Afghanistan at the age of 17 after his brother was killed and his father was kidnapped by the Taliban.

“As an Afghan citizen there are no visas for us to apply for to leave the country, there are no legal ways for us to seek asylum. We are forced to chose the hard way to leave and it is not an easy choice. I didn't know anything about Australia before I arrived, I just knew that I was at risk of dying if I stayed in Afghanistan. [...] When I arrived in Australia there was a policy that all boat arrivals would never be granted refugee status. Instead I was granted a temporary visa (TPV). There are many challenges living as a temporary person. I cannot reunite with my family as I am not allowed to sponsor them. It has been very difficult to secure permanent employment as no one will hire you without a permanent status.

“I have lost 15 friends from Afghanistan over the last decade [who were on TPVs]. They ended their lives because of this Australian policy. For them humanity was dead. They left Afghanistan in the hope of living somewhere where they would be treated like a human. Instead they were treated as temporary people who could never reunite with their wives or children. They felt they could not protect their families or themselves anymore. I see so many people who have emotionally drowned from this policy.”

“I can see that my mother and sibilings could be slaughtered by the Taliban at any time. I have been living in Australia for 10 years, working and paying taxes but I am unable to protect my family. I have friends who are in the same situation and cannot reunite with their wives. If Australia does not end its policy it will see many more people end their lives over the years. I hope that no country would follow Australia's lead, or they will also be responsible for people dying because of their policies.”

Recommendations:

1. **Support the ‘stand part’ amendment tabled by Lord Paddick and press for removal of Clause 11 from the bill.**
2. **Support Baroness Chakrabarti’s new clause requiring compliance with the Refugee Convention.**
3. **Support Baroness Lister’s probing amendments seeking to ascertain how vulnerable groups will be affected by the ‘without delay’ condition, and how the No Recourse to Public Funds condition will apply.**
4. **Support Baroness Hamwee’s amendments to remove providing different lengths of leave, different routes to settlement and different family reunion entitlements.**
5. **Seek responses from the Minister:** Would you consider making the interventions below:
 - a. Can the Minister confirm that the approach mandated under Clause 11 is designed to and will in practice punish those arriving in the UK irregularly regardless of whether they have good cause for doing so, and explain how this is consistent with our obligations under Article 31 of the Refugee Convention? Can the Minister share the legal advice that the Government received on this matter?
 - b. Can the Minister confirm whether Clause 11 intends to alter (and if so in what respects) the well-established and authoritative domestic case law on the issue of non-penalisation under Article 31 of the Convention?
 - c. Can the Minister set out the evidence that shows how reducing the rights and entitlements of refugees will have the effect of deterring dangerous journeys?
 - d. What estimate has the Home Office made of the cost of conducting a further level of assessment, following the refugee status determination, to decide if someone is a Group 1 or 2 refugee, and then dealing with associated appeals against said categorisation, and then needing to reassess protection needs every two and a half years? And when does the Minister intend to publish the economic impact assessment?
 - e. What mechanisms does the Minister intend to employ to identify and safeguard those with vulnerabilities that would put them in a category already identified as at risk of discrimination under Clause 11, and how would these mechanisms differ from the current vulnerability screening tools that are so consistently failing to protect the most vulnerable? How will this impact be monitored when current Home Office data capture and reporting does not identify vulnerabilities including mental health problems, torture and trauma?

Clause 15: Asylum claims by persons with connection to safe third State: Inadmissibility

Clause 15 allows for a claim to be declared inadmissible if the applicant has travelled through, or has a connection to, a safe third country where they could have claimed asylum. It also allows the Secretary of State to remove people seeking asylum to a safe country that agrees to receive them, even if they have no connection to it.

The objective behind Clause 15 is to deter irregular arrivals, to allow for protection to be offered to those who arrive through 'regular' routes, and to facilitate more removals under 'safe third country' arrangements. In the first three quarters of 2021, 6,598 'notices of intent' were issued to people seeking asylum to inform them that their claim was being considered for inadmissibility. Of these, 48 people were declared inadmissible and only ten were removed. Over 2,000 people were readmitted to the UK asylum procedure for consideration of their claim, presumably because no return agreement could be secured.³¹ In the absence of readmission agreements this policy is unworkable at scale, is ineffective as a deterrent and is cruel in the way it holds refugees in limbo. And as a penalty imposed on all who arrive irregularly, this clause breaches Article 31 of the Refugee Convention.

During Commons report stage, the Government amended Clause 15 to remove the power of the Secretary of State to consider an asylum claim that she has previously declared inadmissible where she determines that it is unlikely to be possible to remove the claimant to a safe third State within a reasonable period. This means that anyone whose claim is declared inadmissible but for whom no general or specific readmission agreement can be secured, will languish in limbo indefinitely. In addition to the human cost of such insecurity, under this clause the Home Office will have to support the majority of these inadmissible but unremovable cases under section 4 of the Immigration and Asylum Act 1999 (including financial support and accommodation) for an indefinite period.

Subjecting asylum seekers to long periods of uncertainty and anxiety is detrimental to their physical and mental health and will damage their ability to successfully integrate into the UK once status is recognised. The evidence suggests that most of those routed through this procedure will be granted status in the UK. The implications of Clause 11 will mean that their status (as Group 2 refugees) will be precarious and offer little security and stability.

Clause 15 sets an unacceptably low standard for when a State will be considered 'safe' for a claimant and contains no safeguards to prevent onward refoulement, risking a breach of Article 33 of the Refugee Convention (non-refoulement). The prohibition on refoulement must apply to all refugees, including those whose status has not yet been recognised, which means that any inadmissibility arrangement must include a requirement for the decision-maker to consider whether removing an asylum-seeker to a third country carries a real risk of direct and indirect refoulement. There must be a requirement to consider the adequacy of the refugee status determination procedure in a potential 'safe third country'. In defining a 'connection' to a safe third country, the Government has set no standard for how to interpret a 'reasonable' expectation that someone could have made an asylum claim in that State, which could conceivably be a country in which the claimant has never set foot.

The idea that the inadmissibility process will act as a deterrent to those arriving irregularly is unproven and misguided. Refugees are unlikely to have much knowledge of the UK asylum procedure before deciding to embark on a journey to safety. The Home Office's own research has found that refugees have little knowledge of UK asylum procedures; entitlements to benefits in the UK; or the availability of work.³²

Recommendation: please support the 'stand part' amendment tabled by Lord Rosser and press for removal of Clause 15 from the bill.

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³¹ Immigration Statistics, year ending September 2021.

³² Understanding the decision making of asylum seekers, Home Office research study 243, July 2002