

The Nationality and Borders Bill, Clause 11: The differential treatment of refugees

March 2022

Summary

The Nationality and Borders Bill is expected shortly to go before the House of Commons for Consideration of Lords Amendments. The Bill is a key instrument in a wider overhaul of the asylum system proposed in the government's New Plan for Immigration. This legislation focuses on creating barriers to international protection. It shows no respect for human dignity, justice, or the protection of human life. A key area of concern is differential treatment for different groups of refugees (clause 11), primarily depending on how they got to the UK. This approach ignores the reality of forced migration, abandons the very principle of international protection, and contravenes Refugee Convention. **The current crisis in Ukraine powerfully demonstrates that it is profoundly problematic to require refugees to gain formal authorisation prior to travel.**

Recommendation: Support Amendment 28, which would remove Clause 11 from the Bill. Speak against clause 11.

“Creating arbitrary divisions based on people’s method of entry will have profound implications for those who need our support most. Many families and individuals have no choice in the route that they take and to penalise them on this basis dangerously undermines the principle of asylum.”

Bishop Paul McAleenan, Bishops’ Conference of England & Wales, and Bishop William Nolan, Catholic Bishops’ Conference of Scotland.ⁱ

Differential treatment of refugees

The Bill makes provision for differential treatment of people recognised as refugees on the basis of how they got to the United Kingdom and the point at which they presented themselves to authorities. Those who travelled via a third country, do not have documents, or did not claim asylum immediately would routinely be designated “Group 2” refugees. Length of limited leave, access to indefinite leave, family reunion, and access to public funds are named as likely areas for discriminating against “Group 2” refugees.

- **By penalising refugees for how they are able to get to the UK, this legislation builds walls against people in need of protection and slams the door shut on many seeking a safe haven.** Most refugees have no choice of how they travel.
- **Global provision for refugees could not function if all refugees claimed asylum in the first safe country they came to.** Most refugees are hosted in developing countries, and the UK receives fewer asylum applications than most other European countries.ⁱⁱ
- **Non-penalisation of refugees who arrive irregularly is a central aim of the Refugee Convention.**ⁱⁱⁱ The Refugee Convention does not state that refugees must claim asylum in the first safe country they come to and permits refugees to cross borders irregularly to claim asylum.
- **Difficulties faced by Ukrainian refugees seeking to come to the UK demonstrates why refugees must be permitted to travel without prior authorisation.** Even if an appropriate visa exists, those fleeing their homes will often struggle to reach somewhere they can apply; if they do, they then face delays and further precarity as they navigate a complex visa process.
- **Discriminating against refugees obliged to arrive spontaneously will not prevent desperate people from making dangerous journeys.** There is strong evidence that a policy focused on closing borders forces migrants and refugees to take more dangerous journeys and leaves them more vulnerable to traffickers.^{iv}

- Proposed strictures on ‘Group 2’ refugees are cruel and obstruct integration: **Barriers to settlement in the UK**^v would force refugees to live under perpetual threat of expulsion, denied a chance to rebuild their lives. **Subjecting refugees to No Recourse to Public Funds conditions**^{vi} would leave refugees vulnerable to destitution and exploitation. **Reducing family reunion rights**^{vii} interferes with right to family life and is cruel. It constitutes a reduction of safe, managed routes for people seeking sanctuary.

Aaron’s experience

Aaron¹ is a refugee who travelled *via* other countries.

Aaron was a young teenager when he had to leave Eritrea without his family. Aaron’s father had been conscripted into the country’s brutal military service. He came home to see his family. When he left again, he told his family that he was going back to his base but he never showed up there. The family didn’t know anything about his whereabouts. The military came to Aaron’s house looking for his father and told Aaron’s mother that they would take her children, including Aaron if they couldn’t find his father. Aaron had no choice but to leave. “People really suffer”, he says. “They don’t want to leave their country but their country forces them because military service in Eritrea is the worst thing. You have to serve the military forever. There is no life, there is nothing.” He left Eritrea and spent two years looking for safety before he arrived in the UK. He travelled via Sudan and Libya, both of which were very dangerous. He then went to Italy, where he felt unsafe sleeping outside under bridges, and to France, where he ended up in the Calais jungle. “They didn’t treat us like human beings” he explained. He came to the UK in the back of a lorry. “I wasn’t expecting anything,” he remembers. “I just escaped to keep my life, to be safe. That’s the most important thing.” Aaron was in the UK asylum system for 7 years before finally being recognised as a refugee, and as having been one all along. He was initially refused asylum and had to submit a fresh claim. Now, he plans to study IT.

About JRS UK

The Jesuit Refugee Service (JRS) is an international Catholic organisation, at work in 50 countries around the world with a mission to accompany, serve and advocate on behalf of refugees and other forcibly displaced persons. JRS in the UK has a special ministry to those seeking asylum who are destitute as a consequence of government policies and those detained for the administration of immigration procedures. JRS UK runs a drop in, activities, hosting scheme (*At Home*), and legal advice project for destitute asylum seekers, most of whom are pursuing fresh claims, and destitute newly recognised refugees; and detention outreach services to Heathrow IRC. We currently run an outreach service to Napier barracks.

ⁱ Catholic Bishops’ Joint [Letter](#) to the Home Secretary on the New Plan for Immigration, May 2021.

ⁱⁱ In 2019 there were approximately, 128,940 asylum applications in [France](#) compared with 35,566 in the UK.

ⁱⁱⁱ Dr Cathryn Costello, “Article 31 of the 1951 Convention Relating to the Status of Refugees”, UNHCR Legal and Protection Policy Research Series (July 2007), p.5.

^{iv} See e.g. Foreign Affairs Select Committee, “[Responding to Irregular Migration](#): a diplomatic route” 2019; JRS Europe, “Forgotten at the gates of Europe: ongoing protection concerns at the EU’s external border” 2018, p.7.

^v Clause 11, subsections 5a and 5b.

^{vi} Clause 11, subsection 5c.

^{vii} Clause 11, subsection 5d.