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Joint Committee on Human Rights  
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25<sup>th</sup> November 2021

Dear Harriet,

Thank you for your letter of 17 November, seeking clarification on Part 2 (Asylum) and Part 5 (Modern Slavery) of the Nationality and Borders Bill. Please see below answers to the questions raised in your correspondence.

**1. Is it the Government's intention in clause 36 of the Bill to narrow the established legal interpretation of "coming directly" under Article 31 of the Refugee Convention with respect to where refugees are required to claim asylum to avoid penalty?**

This clause clarifies the UK's interpretation of the criteria set out in Article 31(1) of the Refugee Convention, including "coming directly". The Government's view is that nothing in differentiation policy constitutes a penalty.

**2. What safeguards will the Government put in place to ensure that claims that should be dealt with by the UK are not declared inadmissible, and that asylum seekers are not sent to locations that are unsafe or cannot offer an effective asylum system?**

- a. What steps will be taken to ensure that asylum claims are not declared inadmissible when there is no practical possibility of another State taking responsibility for them?
- b. What is the timeframe expected for identifying safe third countries and ensuring return agreements are in place?

Inadmissibility on safe third country grounds is a longstanding process. At present, it operates on the basis of provisions in the Immigration Rules, supported by published policy. This framework makes clear that where return to a safe third country cannot be agreed within a reasonable period, an inadmissibility decision must not be made. In such circumstances, the asylum claim is admitted to the UK system for substantive consideration. Additionally, if a claim is properly treated as inadmissible but a change in situation means that return is no longer possible within a reasonable period, again the claim is entered to the substantive consideration process. We will

support the measures in relevant clauses with similar safeguards in the Immigration Rules and/or policy guidance.

Inadmissibility decisions will continue to be assessed on a case-by-case basis. The UK will also remain compliant with its obligations under the Refugee Convention and the European Convention on Human Rights (ECHR) and will only remove a claimant to a safe country.

The timescales applicable to obtaining return agreements for a particular claimant in the inadmissibility process will need to take account of individual circumstances and our experience in working with our partners in other safe countries. However, we anticipate being able to set broad limits to the time most claimants considered for inadmissibility action should expect to wait, as part of the safeguards mentioned.

**3. What safeguards will the Government put in place to ensure that the imposition of new deadlines for those that claim asylum will not result in unfairness in individual cases, and will allow asylum seekers to effectively present their claims and appeals? Will this involve guidance to decision makers on how to ensure fairness when taking procedural matters into account in the assessment of credibility and evidential weight?**

The effect of these provisions is to encourage people making a protection or human rights claim to engage with the system in good faith and provide evidence in support of their claim in a timely manner.

An expanded legal aid offer will make sure that those who are entitled to legal aid advice in respect of their asylum claim will also be given advice on the National Referral Mechanism (NRM) to ensure any information relevant to being a victim of modern slavery is raised at the earliest opportunity. Those who raise an asylum claim in response to receiving a priority removal notice will also receive a new legal aid offer of 3-7 hours of advice, which can cover any matter relating to their immigration status.

Where claimants provide good reasons why evidence has been provided late in response to an evidence notice or a priority removal notice, their credibility will not subsequently be damaged. Decision-makers will be best placed to determine whether a claimant has good reasons for lateness and will be able to take into account the particular facts and circumstances of each case. To further support effective decision-making, claimants will be required to provide a statement of reasons where late evidence is provided, to make sure that any relevant reasons are fully considered before a final decision is made on a claim.

Any changes made to the asylum process through the Nationality and Borders Bill will be reflected in guidance and training for asylum decision makers.

**4. How does the Government intend to ensure that the new accelerated appeals process does not create the same unfairness that led to the suspension of the DFT?**

We have considered the legal challenges to the Detained Fast Track carefully and we are confident that the new accelerated detained appeals route will ensure fairness as well as improving speed. The courts have been clear in upholding the principle that an accelerated process for appeals made in detention, operated within certain safeguards, is entirely lawful.

All Home Office decisions to detain are made in accordance with the Adults at Risk in Detention Policy and reviewed by the independent Detention Gatekeeper.

Changes made to the screening process, drawing upon lessons learned, will enable us to identify appellants who are unsuitable for the accelerated detained appeals route at the earliest opportunity.

Suitability will be reviewed on an ongoing basis and the Tribunal will also have the power to transfer a case out of the accelerated route where necessary to ensure that justice is done.

**5. How does the Government intend to mitigate the risks involved in offshore asylum processing, and ensure compliance with human rights obligations, particularly with respect to the right to life (Article 2 ECHR), freedom from torture and inhuman or degrading treatment (Article 3 ECHR), and the right not to be arbitrarily detained (Article 5 ECHR)?**

Changes set out in the Nationality and Borders Bill will make it easier to remove an individual to a safe third country, where their claim would be considered under that country's asylum system. This will help to break the business model of people smuggling and deter people from undertaking dangerous journeys by encouraging people to avail themselves of a safe and legal route to the UK or claim asylum in the first safe country they reach.

We will fully consider all claims to asylum made in the UK in accordance with our international obligations. We will also ensure that all removals are compliant with the ECHR. I can also clarify that we would only ever work with countries with effective asylum systems compliant with international law, including the Refugee Convention and relevant international human rights laws.

We will continue to be mindful of our international obligations as we develop plans to operationalise these measures. This is a shared international challenge and we continue to work with other countries to meet it.

**6. Is the Government satisfied that reducing the threshold for 'particularly serious crimes' is consistent with Article 33(2) of the Refugee Convention?**

As permitted by Article 33(2) of the Refugee Convention, it is current Home Office policy to consider the removal of refugees who commit particularly serious crimes and are a danger to the community in the UK or a threat to national security. A 'particularly serious crime' is defined as one which led to a sentence of at least two years' imprisonment. This means that currently many refugees who commit serious crimes who are sentenced to less than two years' imprisonment continue to enjoy

the generous benefits of refugee status in the UK. Lowering the threshold in this way will bring more offending into scope for consideration as to whether it should lead to removal from the UK. The provisions in the Bill will only apply, and we will only seek to refool, if individuals have both committed a particularly serious crime and constitute a danger to the community in the UK.

The UK will remain compliant with its obligations under the ECHR and the Refugee Convention, and will not remove any individuals who would be at real risk of a threat to life or subject to inhuman and degrading treatment upon return.

**7. Why is the Government proposing that the definitions of the important terms “victim of slavery” and “victim of human trafficking” should be defined by the Secretary of State in Regulations rather than contained within the Bill itself?**

To underpin the measures in the Bill, we are creating a power to make regulations which will define the meaning of “victim” in accordance with our obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). The definition of “victim of slavery” and “victim of trafficking” for the purposes of the Bill will be set out in affirmative regulations – this means that they will be subject to affirmative Parliamentary procedure, and we will be engaging with stakeholders throughout the development of these terms. This will provide greater flexibility to adapt terms to changing needs in the future, in this nascent area of law.

**8. Can the Government provide a memorandum setting out which rights under the EU Trafficking Directive were retained by s. 4 EUWA and which of those rights will cease to have effect under clause 67 of the Nationality and Borders Bill?**

We would agree that it is not clear what from the Directive, if anything, applies, and that brings little legislative certainty, so it is difficult for victims to interpret the legislation and their entitlements. We are therefore making clear in the Nationality and Borders Bill that to the extent that a provision of the Directive does apply in the UK; and where it is incompatible with a provision in this Bill it is disapplied. This does not affect the effect of ECAT or Article 4 of the ECHR.

I hope that this letter is helpful and look forward to appearing before the Committee.

With best wishes,

Yours ever,



**Tom Pursglove MP**  
**Minister for Justice and Tackling Illegal Migration**

