



HOUSE OF LORDS

House of Lords [HLJusticeHomeAffairs@parliament.uk](mailto:HLJusticeHomeAffairs@parliament.uk)  
London @lordsjhaom  
SW1A 0PW [www.parliament.uk/lords](http://www.parliament.uk/lords)

Rt Hon Priti Patel MP  
Home Secretary  
Home Office  
2 Marsham Street  
London SW1P 4DF

8 December 2021

Dear Home Secretary,

I am writing to you regarding so-called ‘turn around’ tactics in relation to boats carrying migrants across the English Channel. You will recall that the Justice and Home Affairs Committee raised this with you in our meeting on 27 October 2021.

We fully endorse the recently published report of the Joint Committee on Human Rights on the Nationality and Borders Bill which examines this issue in detail.<sup>1</sup> Knowing, though, that responses to reports can take months, we have identified some key questions below, which require urgent answers.

We would be grateful for a response to this letter by 5 January 2022.

Since our meeting, many lives have been lost in the Channel by individuals trying to enter the UK. While there is no suggestion that these tragic events are linked to ‘turn around’ tactics, they starkly demonstrate the dangers people making the perilous crossing are facing, regardless of their legal status under the terms of the 1951 UN Convention and its 1967 Protocol. At our meeting you explained that the decision to deploy these tactics, or not to do so, lies with the individual commander at sea. These statements notwithstanding, we are not convinced, as yet, that having a policy where boats can be ‘turned around’ is safe and/or lawful.

You will recall telling us that “there is a legal basis” for the policy, and this statement has been repeated by Baroness Williams, Minister of State for the Home Office in the House of Lords Chamber. We note too that the Prime Minister’s spokesperson has stated that the policy is “safe and legal”. However, we are not aware that the Government have published any arguments to substantiate the claim that a legal basis currently exists.

Clause 44 of the Nationality and Borders Bill currently before Parliament would amend the 1971 Immigration Act, granting powers to use enforcement tactics to ‘turn around’ vessels. This has not, as yet, become UK law. These powers would be new, as is outlined in the

---

<sup>1</sup> Joint Committee on Human Rights, ‘Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement’, 1 December 2021:  
<https://committees.parliament.uk/publications/8021/documents/82695/default/>

explanatory notes to the Bill: “At present, the enforcement powers which can be exercised by relevant officers do not extend to ships that are in foreign or international waters...”

As the law stands currently, under what powers can ‘turn around’ tactics be used?

While a necessary first step, the simple act of establishing a legal basis for action does not in and of itself solve the question of the legality of the application of the policy (in that a legally based policy could be illegal in the way it is applied). Having established the power to act, the power must be exercised lawfully within the norms imposed variously by UK public law (the principles of illegality, procedural unfairness, and irrationality), the Human Rights Act (including the principle of proportionality and the ECHR rights addressing the right to protection of life, the right to liberty, and the prohibition on inhuman treatment), and, where appropriate, other sources of international law.

With regard to safety at sea, we note that Article 98 of the UN Convention on the law of the sea confers a “duty to render assistance”, which requires vessels to:

- assist anyone found in danger at sea;
- proceed to rescue people in distress, if informed of their need for help and if this may reasonably be expected of the vessel; and,
- assist and follow procedures in the event of a collision.

You have reported to us the French authorities’ assessment of the “unseaworthy conditions” facing those crossing the Channel in October. With these, and other considerations of the practical position - the fragility of the vessels concerned; weather and sea conditions; the vulnerability of the passengers; overloading; the absence in most instances of anyone with experience in charge of the vessel; and the large number of large vessels using this busy shipping route – it is hard to imagine a situation where boats carrying migrants are not found to be “in danger at sea.”

Carrying out the ‘turn around’ policy would as we understand it involve blocking the passage of these boats, possibly with border officials on jet skis, to leave them no option but to turn back. When you spoke to us in October you stated that the “key thing” was that Government policy was “based on saving lives and preventing people drowning”. It is difficult to see how the practical ramifications of the tactics tally with the duty to render assistance.

In the context of the practical considerations to which I have referred, how will the use of ‘turn around’ tactics provided by the Bill be compatible with the principles of national and international law outlined above?

You have told us that the decision of whether or not to use the ‘turn around’ tactics was down to the individual commander at sea. The Nationality and Borders Bill contains proposed provisions conferring immunity from criminal and civil liability on “relevant officers” “for anything done in the purported performance of functions under this Part of this Schedule [to the Immigration Act 1971 as amended]” when a) the act was done in good faith and b) there were reasonable grounds for doing it.<sup>2</sup>

---

<sup>2</sup> Nationality and Borders Bill, Schedule 6

In what circumstances would it be reasonable for a border force official not to rescue an individual in distress at sea? What would be the position if an official should carry out Home Office directives which may later be found to have been illegal?

For convenience, our specific questions have been underlined. I would welcome your response by no later than 5 January 2022.

I am copying this letter to the Rt Hon. Elizabeth Truss MP, Secretary of State for Foreign, Commonwealth and Development Affairs; the Rt Hon. Yvette Cooper MP, Chair of the House of Commons Home Affairs Committee; the Rt Hon. Harriet Harman, QC MP, Chair of the Joint Committee on Human Rights; the Rt Hon. Baroness Anelay of St Johns DBE, Chair of the House of Lords International Relations and Defence Committee; and the Earl of Kinnoull, Chair of the House of Lords European Affairs Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sally Hamwee', written in a cursive style.

Baroness Sally Hamwee,  
Chair, House of Lords Justice and Home Affairs Committee