



From Rt Hon Harriet Harman MP, Chair

Home Office

2 Marsham Street
London
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By email only

23 February 2021

Dear Home Secretary,

The Committee was grateful for the Human Rights Memorandum¹ and Supplementary Human Rights Memorandum² prepared by your officials in respect of the Nationality and Borders Bill. We were particularly pleased that Human Rights Memorandum considered not only the European Convention on Human Rights, but also the Refugee Convention, the UN Convention on the Rights of the Child, the Council of Europe Convention on Action Against Trafficking in Human Beings and the UN Statelessness Conventions.

However, as has been made clear in exchanges with the Committee and in debates in the House of Lords, the analysis provided does not provide sufficient reasoning to enable Parliament to understand how the Government has found it is able to assert that the Bill is compatible with the Refugee Convention. We note, for example, Lord Anderson's recent request for more clarity, offering up examples of principles on which the Government might base their conclusion (namely, state practice in accordance with Article 31.3 of the Vienna Convention on the Law of Treaties or 'de facto reservations' to the Refugee Convention).³

We should note that the oral evidence provided to us, while welcome, was no more enlightening. On 1 December, Tom Pursglove, Parliamentary Under Secretary of State at the Home Office, when asked specifically about apparent inconsistency between elements of the Bill and the Refugee Convention, was able only to "restate the point that we are very firmly of the view that the legislation we are proposing is fully compliant...".⁴ Whilst we recognise that the Government may choose not to disclose legal advice, this does not, of course, prevent it explaining its position, including its reasoning. The failure to do so adequately continues to be an impediment to adequate parliamentary scrutiny of the Nationality and Borders Bill.

The Committee has set out its understanding of the human rights framework relevant to the Bill and has raised specific concerns in its Reports on the Bill.⁵ Whilst we have recently

¹ [ECHRmemo.pdf \(parliament.uk\)](#)

² [Nat & Borders supp ECHR memo \(parliament.uk\)](#)

³ HL Deb, 8 February 2022, [cols 1427-1428](#) [Lords Chamber]

⁴ [Oral evidence taken on 1 December 2022](#), HC 588, Q46 [Tom Pursglove MP]

⁵ Joint Committee on Human Rights, Seventh Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Part 1)— Nationality [Legislative Scrutiny: Nationality and Borders Bill \(parliament.uk\)](#); Joint



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received a letter in response to the Report on Modern Slavery, we have not yet received a response from you or your Department in relation to the other three Reports. Given the Bill is approaching the end of its scrutiny in the House of Lords, and given the outstanding issues and concerns surrounding the compatibility of the Bill with human rights protections, the Government must swiftly set out the reasoning that it claims supports its position in order to address the valid concerns of parliamentarians.

I would like to draw your attention in particular to the continued concerns about further measures to penalise asylum seekers. The Committee has set out its concerns about this in Chapter 5 of our Report published on 1 December that “Setting up a system whereby refugees are unable to travel to the UK to claim asylum without committing a criminal offence is inconsistent with the overall purpose of the Refugee Convention 1951. More specifically, it is inconsistent with Article 31 of the Refugee Convention.”⁶ The Committee also raised concerns about the proposed differential treatment of recognised refugees (clause 11 in the Bill as brought from the Commons) and its compliance with Article 31 of the Refugee Convention in Chapter 3 of our Report published on 19 January. We noted, amongst other things, that the Government’s reinterpretation of Article 31 in clause 36 of the Bill “is starkly inconsistent with the interpretation of Article 31 preferred by experts assembled by the UNHCR in 2001, who concluded, following analysis of the travaux préparatoires, that “the drafters [of the Refugee Convention] only intended that immunity from penalty should not apply to refugees who found asylum, or were settled, temporarily or permanently, in another country.”⁷ ⁸

Home Office Ministers and officials have to date failed to provide sufficient explanation or reasoning as to how you consider these measures are justified and compliant with the Refugee Convention. We note an undertaking in the House of Lords to provide further explanations.⁹ We look forward to receiving these detailed explanations, whether as a supplementary Human Rights Memorandum or as a response to our Report, as soon as possible to assist meaningful parliamentary consideration of this matter in the House of Lords.

Committee on Human Rights, Ninth Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Part 3)— Immigration offences and enforcement [Legislative Scrutiny: Nationality and Borders Bill \(parliament.uk\)](http://www.parliament.uk); Joint Committee on Human Rights, Eleventh Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery [Legislative Scrutiny: Nationality and Borders Bill \(parliament.uk\)](http://www.parliament.uk); and Joint Committee on Human Rights, Twelfth Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office Decision-Making, Age Assessments, and Deprivation of Citizenship Orders [Legislative Scrutiny: Nationality and Borders Bill \(parliament.uk\)](http://www.parliament.uk).

⁶ Joint Committee on Human Rights, Ninth Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Part 3)— Immigration offences and enforcement [Legislative Scrutiny: Nationality and Borders Bill \(parliament.uk\)](http://www.parliament.uk), at paragraph 124. See also our conclusion at paragraph 137.

⁷ Summary Conclusions: Article 31 of the 1951 Convention (adopted at the expert roundtable organised by the UNHCR and the Graduate Institute of International Studies, 8–9 Nov 2001), para 10(c)

⁸ Joint Committee on Human Rights, Twelfth Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office Decision-Making, Age Assessments, and Deprivation of Citizenship Orders [Legislative Scrutiny: Nationality and Borders Bill \(parliament.uk\)](http://www.parliament.uk), at paragraph 68. See also [our conclusions at paragraphs 73 and 74.](http://www.parliament.uk)

⁹ Per Baroness Williams, HL Deb, 10 February 2022, [col 1985](http://www.parliament.uk) [Lords Chamber]



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From Rt Hon Harriet Harman MP, Chair

Yours sincerely,

A handwritten signature in black ink that reads "Harriet Harman".

Rt Hon Harriet Harman QC MP
Chair, of the Joint Committee on Human Rights