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Joint Committee on Human Rights

Legislative Scrutiny: Nationality and Borders Bill: Government Responses to the Committee's Seventh, Ninth, Eleventh and Twelfth Reports

Tenth Special Report of Session 2021–22

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Joint Committee on Human Rights

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Tenth Special Report

Legislative Scrutiny: Nationality and Borders Bill: Government Responses

The Joint Committee on Human Rights published its Eleventh Report of Session 2021–22, *Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery* (HC 964/HL 135) on 21 December 2021. The Governemnt response was received on 23 February 2022. The Committee also published its Seventh Report Report of Session 2021–22, *Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality* (HC 764/HL 90) on 9 November 2021, its Ninth Report of Session 2021–22, *Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement* (HC 885/HL 112) on 1 December 2021 and its 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 (HC 1007/HL 143) on the 19 January 2022. The Government Response was received on 9 March 2022, all responses are appended below.

Appendix 1: Government response to Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery

I write in response to the recent reports published by the Joint Committee on Human Rights as part of the Committee's work on the Nationality and Borders Bill. In this letter, I would like to respond to the Committee's Eleventh Report (Part 5) – Modern Slavery. I thank the Committee for this report.

Deadlines and the impact of trauma on the ability of victims to disclose exploitation

1. **The Secretary of State should clarify whether there will be guidance on setting a "specified date" by which information under a slavery or trafficking information notice must be provided, whether it will allow for sufficient time for victims (who are known to take time to feel comfortable talking about slavery and trafficking experiences) to provide the required information, and whether extensions may be granted in certain cases.** (Paragraph 16)

When an individual registers a claim for asylum or has been refused human rights claim they will be served with a 'Slavery and Trafficking Information' (STIN Notice). This notice requires any new information to be raised that will support a referral into the National Referral Mechanism (NRM) if that has not already happened. It will apply to those already within the NRM system only if they want to raise new information relating to a new referral for a separate incidence of exploitation. There will be no delay in processing ongoing decisions or for people in accessing the support they require due to the service of these notices.

The Home Office will provide information regarding the Secretary of State's obligations to victims alongside the service of a STIN and give people adequate time and opportunity to seek clarity or assistance with any notices they do not understand. The STIN will not have unreasonable deadlines or notice periods attached and details on setting notice periods will be provided in guidance for caseworkers. Individuals who are served with the

STIN, and who are receiving legal aid advice on their human rights or asylum claim, will additionally be able to receive legal aid advice on the NRM. This is to support individuals in understanding if they may be a potential victim of modern slavery or human trafficking, and to support a referral into the NRM, where appropriate. This is in addition to the assistance offered with their asylum claims at interview and appeal in the form of interpreters and legal representation (subject to the legal aid means and merits test).

Those who are not able to adhere to the requirements of the slavery and trafficking notice for "good reasons" will be able to provide information later in the process. Specifying a period by which relevant information and evidence must be provided will ensure there is sufficient time for a person to bring their claim. This will support the early identification of victims and those in need of international protection.

All referrals will be appropriately considered regardless of when they are brought to make sure that those who need protection are afforded it.

2. **It is not clear whether 'slavery or trafficking information notices' will be served on all asylum applicants or only some. There is the potential for the effects of slavery or trafficking information notices to be discriminatory if they are only served on certain categories of person. This will especially be so if those categories of people are negatively impacted by their difficulty in meeting the deadlines imposed by the Home Office. There is the potential, therefore, for Article 14 ECHR (principle of non-discrimination), as read with Article 4 ECHR (prohibition on slavery), to be engaged by the application of clauses 57 and 58 in practice. We are concerned about the potential for discrimination in the application of this clause unless clear criteria are set as to how it will be applied and to whom.** (Paragraph 17)

We intend to serve the Slavery and Trafficking information Notice (STIN) on all those who have made an asylum, protection or human rights claim.[1]

The aim is to bring out relevant information to support referral at the earliest point in the immigration journey; this will allow both early identification and access to support for victims. As stated earlier, individuals who are served with the STIN, and who are receiving legal aid advice on their human rights or asylum claim, will additionally be able to receive legal aid advice on the NRM. This is to support individuals in understanding if they may be a potential victim of modern slavery or human trafficking, and to support a referral into the NRM, where appropriate.

When an individual registers a claim for asylum or has been refused a human rights claim that relates to their removal they will be served with a 'Slavery and Trafficking Information' notice. If an individual provides relevant information, they will be referred

1 For the purposes of Clause 57 the below definitions of human rights and protection claim apply
- "human rights claim" means a claim made by a person to the Secretary of State at a place designated by the Secretary of State *that to remove the person from or require him to leave the United Kingdom* [F2or to *refuse him entry into the United Kingdom] would be unlawful under section 6 of the Human Rights Act 1998 (c. 42)* (public authority not to act contrary to Convention) F3...,
- a "protection claim" is a claim made by a person ("P") *that removal of P from the United Kingdom—*
(i)would breach the United Kingdom's obligations under the Refugee Convention, or
(ii)would breach the United Kingdom's obligations in relation to a persons eligible for a grant of humanitarian protection;

into the National Referral Mechanism as appropriate. If someone is already in the National Referral Mechanism and they are served the notice, it will only apply if there is a subsequent referral required for a separate incidence of exploitation.

3. **The Secretary of State should produce guidance on how and when to submit a statement of reasons and what are likely to be considered "good reasons". The Secretary of State should clarify how vulnerable or traumatised people who provide information late due to their vulnerability or trauma will be treated under this provision.** (Paragraph 21)

We agree that vulnerable or traumatised people should have clarity on how they will be treated under this provision, and we will look to provide this clarity in guidance. Ensuring that decision makers take account of an individual's vulnerabilities is fundamental to our approach. This is why we have included the condition of "good reasons" in Clause 58 and ensured decision-makers have the flexibility and discretion to appropriately consider these without prejudging what that should cover.

What constitutes "good reasons" has purposefully not been defined in the Bill. The detail on how to apply "good reasons" will be set out in guidance for decision makers. This will give decision-makers the tools to, for instance, recognise the effect traumatic events can have on an individual's ability to accurately recall, share, or recognise such events, while maintaining a case- by-case approach.

Examples of what may constitute 'good reasons' for late disclosure of information include: where the victim was still under the coercive control of the trafficker, that they did not recognise themselves as victims at that point, or for reasons relating to capacity to understand the requirement or proceedings.

Setting the parameters of what can constitute 'good reasons' in guidance will allow decision makers the flexibility to take a case-by-case approach depending on a person's specific situation and vulnerabilities and will ensure that we also have the flexibility to update and add to the range of considerations undertaken by a decision maker in exercising discretion.

The Home Office will ensure that any changes to processes as a result of these measures are designed in a way that accounts for the impact of trauma. This includes ensuring individuals working within the system are aware of the factors which can affect the task of obtaining information, including the effects of traumatic events on people's ability to accurately recall such events. Decision makers are fully trained in making all National Referral Mechanism decisions. This training involves considering all information to assess the vulnerabilities of victims including the best interest of the child and takes into account the need to safeguard and promote the welfare of children.

4. **We consider that clause 58 should be amended so that it does not inadvertently remove protection from victims of slavery or human trafficking, contrary to the UK's obligations to combat slavery and human trafficking. This would also bring it closer in line with the established caselaw of the Courts in relation to how the words in this provision should be read. Clause 58 should be amended to replace "must take account, as damaging the person's credibility, of the late provision of the relevant status information" with "may take account, as potentially damaging the person's credibility, of the late provision of the relevant status information"**. (Paragraph 22)

We agree that all referrals will be appropriately considered regardless of when they are brought to make sure that those who need protection are afforded it.

If an individual raises late information without good reason, then this will have an impact on credibility and will be weighed in the balance with their overall information. This impact on credibility is not necessarily determinative of the case should other factors indicate the individual is a victim or potential victim of modern slavery. Where a person has raised evidence late, which causes delay and wasted resource, it is right that decision-makers consider whether there is any merit in the reasons for that lateness. To remove this aspect of the clause is to undermine the integrity of the clause and would remove the important deterrent aimed at stopping any potential misuse of the system.

Claimants will have the opportunity to set out those reasons in a statement that must accompany any late evidence. The "good reasons test" gives decision-makers the leeway to decide what is meritorious in the context of that case, taking into account the individual personal circumstances of any vulnerable claimant.

Any individual who has good reasons why the information was provided late, such as the effects of trauma, will not be subject to damaged credibility. We will set out in guidance the details of this approach giving decision-makers the tools to recognise the effect of exploitation and trauma and ensure decisions are based on an understanding of modern slavery and trafficking.

5. **We consider that clause 58 should be further amended to specify that it does not apply to child victims and victims of sexual exploitation, given the well-documented impact of trauma in delaying disclosure, especially on those two categories of victim**. (Paragraph 25)

Any individual who has good reason why the information was provided late, such as the effects of trauma, will not be subject to damaged credibility. We will set out in guidance the details of this approach, giving decision-makers the tools to recognise the effect of exploitation and trauma and ensure decisions are based on an understanding of modern slavery and trafficking.

To create a carve-out for any cohort of victim would create a two-tiered system based on the type of exploitation. The Government believes that all types of exploitation should be regarded equally, and no artificial distinctions should be made between them, given that this may inadvertently suggest a difference in their severity.

The one stop process currently applies to all individuals who are claiming asylum or have made a human rights claim, including children. The Bill does not change that.

The new and expanded 'one-stop' process seeks to ensure that asylum, human rights claims, and any other protection matters are made and considered ahead of any appeal hearing (where appropriate). The aims in terms of modern slavery and trafficking are to ensure that we are able to identify possible victims of modern slavery as early as possible in order to best support the needs of this group and to streamline decision making.

It is therefore right that children and victims of sexual exploitation are included in this process to aid early identification.

However, there are specific actions the Government is taking in relation to both these cohorts of victims to ensure they are identified as quickly as possible and receive appropriate protection.

Child victims

A child's welfare and their best interests will remain the primary consideration in any decision making. To provide further support to children in England and Wales, potential victims will be provided with an Independent Child Trafficking Guardian (ICTG), where the service is available, to support them to navigate the National Referral Mechanism. The Government remains committed to national roll out of the ICTG service.

When considering whether a child is a potential victim of trafficking or modern slavery at Reasonable Grounds decision, we already take into account the specific vulnerabilities of children, for example, by not requiring there to be any means of exploitation as children cannot give informed consent to engage in criminal or other exploitative activity. This position will not change.

Clause 57 ensures that child victims of modern slavery who have made a human rights or protection claim are identified at the earliest possible opportunity, which is imperative to ensure they receive the specific protection and support they need to assist in their recovery.

We will also make clear in guidance specifically how children, or those who were children at the time of their exploitation, should be considered, taking into account their particular vulnerabilities and specific needs.

Victims of sexual exploitation

The Government is committed to identifying victims of modern slavery as promptly as possible to ensure they quickly receive the help they need. This is why we have launched online training which follows a trauma-informed approach for First Responders. This assists in the identification of indicators of modern slavery at the earliest opportunity and supports a referral into the National Referral Mechanism whenever appropriate. The list of First Responder Organisations enabled to refer into the NRM includes various organisations, including NGOs, that are experienced at working with vulnerable people and looking for indicators of modern slavery.

Further, the Modern Slavery Statutory Guidance makes clear that victims can be reluctant to come forward, and that first responders should be mindful of that when considering whether an individual is a potential victim and could be referred into the NRM. However, we are continually looking to improve this system and have committed, as part of the New Plan for Immigration, to improving the training for First responders.

We do recognise that some people working in the sex and escort industry can face traumatic experiences and often have needs arising from their exploitation. The Government provides specialist support and advocacy services for victims of modern slavery, including sexual exploitation, to assist them in rebuilding their lives and reintegrating into local communities.

Defining "*victim of slavery*" and "*victim of human trafficking*"

6. **The definitions of "victim of slavery" and "victim of human trafficking" are central to the treatment of victims of slavery and human trafficking, and how the Bill will operate in protecting those victims. At a minimum, the definitions used in legislation should comply with those contained in the relevant international treaties, such as the definition of "human trafficking" in the UN Palermo Protocol**. (Paragraph 33)

7. **At a minimum, the definitions used in legislation should comply with those contained in the relevant international treaties, such as the definition of "human trafficking" in the UN Palermo Protocol. The Government should consider amending the Bill to include definitions of "victim of slavery" and "victim of human trafficking"**. (Paragraph 33)

We are committed to safeguarding victims and are acutely aware of the particular vulnerabilities that children present. The definition of "victim" will be in accordance and alignment with our international obligations and will be subject to both stakeholder consultation and affirmative parliamentary procedure.

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 Council of Europe Convention on Action against Trafficking in Human Beings obligations.

The definition of "victim of slavery" or "victim of trafficking" for the purposes of the Bill will be set out in affirmative regulations and will therefore be subject to affirmative parliamentary procedure.

The process for determining whether a person is a victim of slavery or human trafficking

8. **The Secretary of State should explain how she envisages clause 61 working. She should explain how she justifies including a discretion in clause 61, as to whether a potential victim will be protected from removal, where a conclusive grounds decision is pending. We consider that the test for providing further protection under clause 61 should be amended to ensure that victims of slavery and human trafficking are given the protection they need**. (Paragraph 42)

The purpose of including Clause 61 is to provide clarity under what circumstances individuals should and should not receive multiple recovery periods under the National Referral Mechanism (NRM) following any sequential positive Reasonable Grounds decisions. This also aims to ensure we close off any opportunities for potential misuse particularly by those wishing to delay their removal from the UK.

Therefore, including Clause 61 in the Bill provides the circumstances when individuals may not receive multiple recovery periods under the National Referral Mechanism following any sequential positive Reasonable Grounds decisions.

Clause 61 does not preclude individuals who have been re-trafficked or experienced repeated exploitation since their recovery period, from receiving a further recovery period. The application of this clause is discretionary, and there may be specific vulnerabilities or circumstances where it is appropriate for an individual to receive multiple recovery periods. Clause 61 does not therefore remove protections where individuals need them, but only does so where the provisions of the NRM are not necessary because the individual's needs have already been met.

9. **The Secretary of State should explain how the test of appropriateness in clause 63 (new section 50A(4)) will be applied and if it will ensure that assistance and support will be provided in all cases where this is necessary.** (Paragraph 45)

Clause 63 enshrines in legislation that those identified as potential victims, following a Reasonable Grounds decision, will be entitled to support and assistance during the 30 days (45 days in guidance) of the recovery period.

Following a positive Reasonable Grounds decision a potential victim will receive a Recovery Period of at least 45 calendar days. This period begins on the date the decision was made.

This support continues from when they are first identified until a final Conclusive Grounds decision is taken, at which point a confirmed victim's ongoing recovery needs are assessed and a clear plan set out to help them transition out of support and back into a community. This needs-based approach ensures that the Government provides tailored support to enable victims to recover and rebuild their lives.

A minimum of 45 days of 'move on' support is maintained for confirmed victims following receipt of the Conclusive Grounds decision.

All confirmed adult victims of modern slavery who are receiving support through the Modern Slavery Victim Care Contract will have their support needs assessed through the Recovery Needs Assessment, including those in both outreach support and those provided with accommodation through the Modern Slavery Victims Care Contract.

The Recovery Needs Assessment process ensures that support is personalised to the victim's individual recovery needs and informs a tailored move-on plan to help them transition out of Modern Slavery Victims Care Contract support and back into a community, as appropriate.

The victim's support worker can request any or all three pillars of Modern Slavery Victims Care Contract support – accommodation, financial support and support worker contact – where appropriate for any confirmed victim undergoing the Recovery Needs Assessment process, for up to six months at a time.

Victims that won't receive protection: the public order and bad faith exceptions

10. **Clause 64(6) and (7) provide that any duty to provide a person with leave to remain does not apply where the Secretary of State is satisfied that a person is a threat to public order or has claimed to be a victim in bad faith. However, the amended clause 62(2)(b) already provides for this, it is therefore unclear whether clause 64(6) and (7) have any effect separate to clause 63(2)(b). *The Secretary of State should clarify the drafting intention as between clause 62(2)(b) and clauses 64(6) and (7).*** (Paragraph 48)

Clause 62(2)(b) stipulates that where the subsection regarding disqualification from protection applies to a person, any requirement under section 64 to grant the person limited leave to remain in the United Kingdom ceases to apply.

Clause 64 sets out the circumstances in which the Secretary of State must grant limited leave to confirmed victims, and the circumstances in which the Secretary of State is not required to grant leave under subsection (2). Clause 64 subsection (6) and (7) provide

that where the Secretary of State is satisfied that the individual is a threat to public order then they are not required to grant leave, and if leave has already been granted it may be revoked.

11. **Excluding certain victims from protection increases the likelihood that their cases will not be adequately investigated or prosecuted and, therefore, that action will not be taken against organised gangs exploiting these victims of slavery or human trafficking. Such an approach therefore runs counter to the UK's obligations under ECAT and Article 4 ECHR, as well as leaving gaps in enforcing action against traffickers. We are concerned that such an approach will leave a loophole for those responsible for exploiting people in slavery and human trafficking to evade investigation and prosecution, by targeting those with a criminal past**. (Paragraph 53)

Clause 62 is compliant with our international obligations, including ECAT and ECHR Article 4. We have drafted the clause to specifically enable consideration of the individual circumstances of each case, rather than imposing a blanket exemption. This will allow decision makers to make a holistic assessment on a case-by-case basis including considerations around the needs of each individual, and whether protection and support are necessary for ongoing investigations. This approach will ensure that people who genuinely require protection and support receive it, and that needed investigations can continue where appropriate.

It is a priority for this Government to increase prosecutions of perpetrators of modern slavery and the measures included within the Nationality and Borders Bill are designed to support these aims.

We are committed to strengthening the criminal justice response to modern slavery, including by ensuring victims have the support they need to engage with the system so that offenders face justice. That is why we launched a grant, open to police forces in England and Wales and the Gangmasters and Labour Abuse Authority, to fund initiatives to support victims of modern slavery within the criminal justice system.

This builds on existing work to support the police response to modern slavery and drive-up prosecutions, including a total of £15m Home Office funding since October 2016, which has helped to drive the increase in modern slavery investigations.

This Government's commitment to supporting victims is precisely why the Nationality and Borders Bill also makes clear that, where a public authority is pursuing an investigation or criminal proceedings, confirmed victims who are co-operating in this activity and need to remain in the UK in order to do so, will be granted a form of temporary leave to support this crucial endeavour. These measures build upon support and investment to strengthen the police response to modern slavery, including initiatives to help victims engage in the criminal justice system so more offenders can face justice.

12. **More must be done to ensure that victims of slavery or human trafficking are not prosecuted due to conduct they were compelled to undertake as part of their exploitation. Prosecuting trafficking victims is wrong because it wrongly punishes them for doing something they may have been compelled to do as victims. Moreover, this is of concern in light of clause 62, since, if convicted, a victim may then also lose their protection and support (which itself can have ramifications for the investigation and prosecution of the perpetrators). It is not compatible with ECAT or Article 4**

ECHR to remove protection from victims of slavery or human trafficking, other than for those posing a current threat, and for the most serious offending. Protection should not be removed from victims for activities caused by being a victim of slavery or human trafficking. (Paragraph 61)

Clause 62 is compliant with our international obligations under ECAT and ECHR Article 4.

Potential and confirmed victims of modern slavery may have been convicted of serious criminal offences or be involved in terrorism offences. It is right that the Government should be able to withhold protections from those individuals who pose a threat to public order or national security. This is set out in the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). However, this is not a blanket disqualification.

Decisions to withhold recovery periods on public order grounds will be made on a case-by-case basis. This will balance the need to safeguard exploited individuals against public protection concerns and will allow the Secretary of State to withhold the protections of the National Referral mechanism where the circumstances of the individual mean it is appropriate to do so.

The corresponding guidance will be very clear on the need to carefully consider the individual circumstances of each case to make sure that people who genuinely require protection and support receive it; this includes consideration as to whether their crime was committed as part of their exploitation.

The disqualification laid out in this clause is separate to the Section 45 defence. The Section 45 defence provides for a statutory defence for adult and child victims who have been forced to commit crimes as a result of their exploitation in certain circumstances. The definition for the public order disqualification includes offences set out in Schedule 4 of the Modern Slavery Act, such as sexual offences or offences involving serious violence. The Section 45 defence does not apply to those serious crimes set out within Schedule 4. Therefore, Clause 62 is a distinct process, separate to the use of Section 45 as a defence.

The Section 45 defence is applicable at the time of prosecution, whereas the public order disqualification is a different process and will be considered where there is a conviction or specific terrorism notices have been served.

Any decision to withhold a Recovery Period as a result of an individual committing a Schedule 4 offence is taken at a later stage, post-conviction, and will still be considered on a discretionary basis, taking the individual's vulnerabilities and circumstances into account.

There are no current plans to amend the section 45 provisions in the Modern Slavery Act, which were introduced to provide a defence for victims of trafficking forced to commit crimes as a result of their exploitation. However, the Home Office will continue to monitor the effectiveness of these provisions.

13. **The Secretary of State should explain whether there will be any further clarification given as to what "bad faith" means for the purposes of section 62(1) NBB**. (Paragraph 62)

We will set out in guidance the considerations for decision makers in determining 'bad faith', which will be considered on a case-by-case basis.

14. **The wide definition of "public order" contained with the Bill risks catching levels of behaviour that fall below what we consider to be the appropriate threshold to deprive a person of protection as a victim of slavery or human trafficking. For example, clause 62(3) catches historic offending, minor offending, offending where a person was compelled to do so by their captors in a slavery or human trafficking situation, cases where there has been no conviction, and cases relying on unsafe convictions from overseas. Moreover, it is important to recall that Article 13 ECAT only permits these exceptions where "grounds of public order prevent it"—therefore, even for those individuals who may fall within one of the limbs in clause 62(3), a person should not be excluded unless it is additionally shown that they, as an individual, present such an ongoing risk to public order as to enable the UK to avail itself of the exception in Article 13 ECAT**. (Paragraph 69)

We agree that the public order disqualification should apply on a case-by-case basis. Recognising the individual nature of each case, decision makers will have discretion on whether to apply the disqualification, taking account of the individual facts of each case. This is what the current drafting of Clause 62 allows for.

It's right that we can withhold support from individuals on grounds of Public Order, particularly where they are serious criminals or pose a threat to the UK and where those referrals are unmeritorious and designed to frustrate the removal process.

Indeed, the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) envisages that the recovery period should be withheld on grounds of public order and improper claims. However, our international obligations do not include a definition of "public order", and to date, this has hindered our ability to disqualify suitable individuals in practice.

This clause in our domestic legislation will provide a definition for public order and make it operationally possible to withhold the recovery period in certain circumstances, in line with the provision set out in ECAT. We are satisfied that the current definition of Public Order in the Nationality and

Borders Bill does comply with ECAT. Where individuals do meet the definition set out within this clause, decisions will be made on a case-by-case basis, balancing the public order risk and the need to safeguard individuals.

15. **The Public Order disqualification covers those convicted in other countries for equivalent offences rather than a wholesale approach to 12-month sentences, as we recognise that other countries have different sentencing approaches - the relevant line in the Bill is clause 62(5)(b). We recommend that clause 62 be amended so that it complies with ECAT and is limited only to those posing a current and ongoing serious threat to public order. Such an amendment should additionally ensure that clause 62 does not to apply to minor offending or historic offending. Clause 62 should additionally be amended so that victims are not excluded from protection for any conduct they were compelled to undertake as a victim of slavery or human trafficking**. (Paragraph 70)

While ECAT does not contain a definition of public order, we are satisfied that the current definition of public order in the Nationality and Borders Bill does comply with ECAT.

Potential and confirmed victims of modern slavery may have been convicted of serious criminal offences or be involved in terrorism offences. It is right that the Government should be able to withhold protections from those individuals who pose a threat to public order or national security.

However, this is not a blanket disqualification. Our approach to Clause 62 is discretionary and there will not be a blanket disqualification on the basis of "public order". We want all victims of modern slavery to continue to come forward for identification and support regardless of their personal circumstances or the circumstances of their exploitation. We will communicate clearly in guidance that decisions will be taken on an individual basis and we expect this to reassure victims to come forward despite previous convictions. We will also work with stakeholders and First Responders to ensure this is clearly communicated.

16. **Clause 62 should be amended to ensure that it does not place the competent authority in a difficult position of having to make determinations in relation to terrorism or national security; such determinations should be made by the Secretary of State following clear decision-making processes**. (Paragraph 71)

Competent Authority decision makers will be provided with the information necessary to make decision about an individual's modern slavery exploitation, and any consideration of public order exemptions. They will be supported by clear decision-making guidance and escalation processes as required, making these decisions on behalf of the Secretary of State. Trained decision-makers will carefully consider each individual case and take into account the specific vulnerabilities and needs of each individual. The Recovery Period may be withheld following a Reasonable Grounds decision and the rights that flow from a Conclusive Grounds decision may be withheld at that stage, if relevant disqualifications apply.

We will set out the detail in guidance but decisions in relation to withholding support on public order grounds will consider the full circumstances of the case, including if an individual is appealing their conviction.

17. **The Secretary of State should clarify whether guidance will be issued to explain when and how the discretion in clause 62 will be exercised to ensure that it complies with the UK's obligations to combat slavery and human trafficking and to protect the victims of such practices**. (Paragraph 72)

We are satisfied that the current definition of public order in the Nationality and Borders Bill does comply with ECAT.

The aim is to have a clear definition in domestic legislation to support decisions. However, recognising the individual nature of each case, decision makers will have discretion on whether to apply the disqualification, taking account of the individual facts of each case.

We are working to develop guidance which will provide more detail on how the public order disqualification should be applied and the other considerations to be taken into account.

18. **The Secretary of State should clarify what protections will be in place, such as instructions as to how to apply any discretion, to ensure that unsafe convictions overseas do not lead to a person's victim status being removed under clause 62**. (Paragraph 75)

The public order disqualification covers those convicted in other countries for equivalent offences rather than a wholesale approach to 12-month sentences, as we recognise that other countries have different sentencing approaches.

Any decision on applying a disqualification to the Recovery Period will be discretionary and considered by the decision-maker on a case-by-case basis, taking into account the full facts of the case, and will be balanced with our priority to safeguard victims.

We will fully address these issues in policy guidance to ensure that due account is taken of the circumstances, so that any punitive actions, including prosecutions, are proportionate and in the public interest.

19. **Clause 62, as currently drafted, does not adequately appreciate how trafficking and slavery can affect children, and does not comply with the rights of the child, under the UNCRC**. (Paragraph 79)

20. **Clause 62 should be amended so that it does not apply to child victims of slavery or human trafficking, in order to comply with the UNCRC. Such an amendment would also go some way to addressing concerns about the application of clause 62 to children exploited by non-state armed groups**. (Paragraph 79)

Children will be considered under this policy on the basis of whether they meet the threshold defined under "threat to public order". However, particular consideration will be given to the specific need to safeguard children.

Potential and confirmed victims of modern slavery may have been convicted of serious criminal offences or be involved in terrorism offences, and this includes children. It is right that the Government should be able to withhold protections from those individuals who pose a threat to public order or national security. However, this is not a blanket disqualification.

Following a National Referral Mechanism Referral, the specific circumstances and vulnerabilities of each individual case will be carefully considered to make sure that people who genuinely require protection and support receive it. This will balance the need to safeguard exploited individuals against public protection concerns. Further details of how to apply this discretionary element will be outlined in guidance for decision makers. This will include consideration of the particular vulnerabilities of children and, for example, whether individuals are assisting with prosecutions.

As set out in the modern slavery statutory guidance, the support local authorities provide to child victims is not dependent on a child remaining in the NRM. As such, children will continue to be supported in their existing situation by local authorities under their statutory duty to safeguard and promote the welfare of looked after children in their area. Support may continue until children reach the age of 25 where the child was looked after, or until the age of 18 otherwise.

Teams across Government and our wider operational partners are working closely together to ensure that we reflect the specific vulnerabilitiesof children and any vulnerability to criminal exploitation, in the guidance provided to decision-makers.

Decisions to withhold recovery periods on public order grounds from children and adults will be made on a case-by-case basis. And the Home Office is also continuing to work across Government and with operational partners to raise the profile and improve the safeguarding response to child criminal exploitation.

Support for victims of slavery and human trafficking

21. **We are concerned that clause 64(2)(a), as currently drafted, does not give full effect to the obligation in Article 14(1)(a) ECAT to give a victim of slavery or human trafficking leave to remain, as necessary, owing to their personal situation**. (Paragraph 87)

Clause 64 provides a domestic interpretation of the obligations in Article 14 ECAT regarding residence permits to certain confirmed victims. By including Clause 64 in the Bill we aim to provide clarity for decision makers and victims concerning the circumstances in which confirmed victims qualify for temporary leave to remain.

Clause 64 is compatible with the obligations set out in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings.

22. **We recommend amending the language in clause 64(2)(a) so that it is clear that it covers the obligations in Article 14 ECAT**. (Paragraph 87)

The temporary leave to remain policy will set out, for the first time in domestic legislation, clarify the policy currently set out in guidance. Clause 64 provides a domestic interpretation of the obligations in Article 14 ECAT regarding residence permits to certain confirmed victims. By including Clause 64 in the Bill we aim to provide clarity for decision makers and victims concerning the circumstances in which confirmed victims qualify for temporary leave to remain.

Clause 64 is compatible with the obligations set out in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings.

23. **In order to comply with the UK's obligations under ECAT and the UNCRC toward child victims of slavery and human trafficking in the UK, clause 64 should be amended to include a requirement for residence permits for child victims of slavery or human trafficking to be granted in accordance with the best interests of the child, and renewed where appropriate**. (Paragraph 89)

As under the current modern slavery discretionary leave guidance Discretionary leave for victims of modern slavery (publishing.service.gov.uk), (Version 5.0 published 10 December 2021) discretionary leave decisions for child victims of slavery and human trafficking will continue to be taken with the best interests of the child as a primary consideration.

Clause 64 applies equally to adult and child confirmed victims of modern slavery. We will continue to factor the best interests' of the child into our consideration of grants of leave for child victims and decision makers always consider the circumstances of a child to make sure their best interests are considered when deciding on appropriate leave. We will further make this clear in the Immigration Rules that this is the underpinning principle when considering leave for children.

Decision makers are fully trained in making all leave to remain decisions, including considering all information to assess the best interest of the child as well as account for the need to safeguard and promote the welfare of children. Decision makers will receive training and up-to-date guidance on the policy.

We will ensure that children continue to be supported and protected through existing mechanisms in local authorities.

It continues to be a core principle of our approach to modern slavery that support provided in the UK should only be available to victims who need it.

24. **Clause 64(8) provides that leave to remain may be revoked in circumstances as may be prescribed in the Immigration Rules. It is unclear what these circumstances would be and how they would comply with the UK's duties to victims of slavery or human trafficking under ECAT. The Secretary of State should clarify how this discretion will be exercised and how she will ensure that the Rules and the exercise of this discretion will respect the UK's obligations under ECAT**. (Paragraph 90)

Clause 64 is compatible with the obligations set out in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings.

This Clause is subject to exemptions contained in other clauses in the Bill. This includes clause 61, which sets out under what circumstances individuals should and should not receive multiple recovery periods under the National Referral Mechanism following any sequential positive Reasonable Grounds decisions, and Clause 62, which sets out the withholding of the Recovery Period on public order grounds.

Within our international obligations, there is provision within Article 14 (3) for the non-renewal or withdrawal of a residence permit subject to the conditions provided for by our internal law.

We will set out in the Immigration Rules and underpin in guidance for decision makers, when leave can be withdrawn or not renewed. This is the appropriate place, giving the Government the flexibility to meet the needs of victims or respond to changing criminal activity that may seek opportunities to misuse the National Referral Mechanism. All decisions will balance the need to safeguard individuals with removing the opportunities for misuse of the generous protections the National Referral Mechanism provides.

25. **The Secretary of State should confirm whether "necessary assistance and support" will include all of the types of assistance listed in Article 12 ECAT and whether this will be made clear in the arrangements and Regulations made under section 49 and 50 MSA.** (Paragraph 95)

Following a positive Reasonable Grounds decision, a potential victim will receive a Recovery Period for at least 30 days (set at 45 days in guidance) or up to the point a Conclusive Grounds decision is made, whichever is longer, unless disqualifications apply. We will, for the first time, place on a statutory footing the access to support and protection from removal from the UK that is available through the National Referral Mechanism in Clauses 60 and 63.

This Bill confirms that where necessary support is provided from the recovery period to the Conclusive Grounds decision. After receiving a positive Reasonable Grounds decision,

potential victims can access a wide range of specialist support services through the Modern Slavery Victim Care Contract to help rebuild their lives. This support includes safehouse accommodation, financial support, and access to a support worker. This is in line with our international obligations under Article 12 of the Council of Europe Convention on Action against the Trafficking of Human Beings.

Legal aid

26. **We welcome the changes to legal assistance being introduced by clauses 65 and 66. However, we are concerned about the impact of "legal aid deserts" and note that these provisions do not help victims of slavery or human trafficking who may need advice but are not already in receipt of legal aid. Advice on entering into the NRM process for victims of slavery or human trafficking should be free for all potential victims (including those in wholly domestic situations, such as those being used by criminal gangs in the UK).** (Paragraph 101)

We are grateful for the Committee's positive comments that these clauses will help ensure access to legal aid for victims of modern slavery with insecure immigration status.

Unidentified victims of modern slavery who have insecure immigration status are a particularly vulnerable category as without identification, they will not be able to benefit from the support of the National Referral Mechanism and may face removal from the country. This includes the fact that whilst a decision from the National Referral Mechanism is outstanding, an individual cannot be removed from the UK.

The Government is clear that victims of modern slavery can access free and impartial legally aided advice in order to make the Home Office aware of their whole situation and ensure that they are supported at every instance.

This builds on existing legal aid provision, ensuring that individuals can receive advice on the National Referral Mechanism before entering it, allowing them to make an informed decision.

27. **The Bill should be amended to provide victims of slavery or human trafficking with an equivalent amount of civil legal services support as for those receiving a priority removal notice.** (Paragraph 101)

An individual who is served with a priority removal notice and a trafficking information notice together will be entitled to seven hours of advice under Clause 24 as they will be at risk of priority removal from the country.

Where immigration matters are out of scope, legal aid may be available via the Exceptional Case Funding scheme where failure to provide legal aid would risk breaching the individual's human rights. We do not recognise the Committee's claim that exceptional case funding is "extremely difficult to secure in practice". In 2020, 85% of applications for exceptional case funding in immigration matters were granted.

Legal aid has and will continue to be available for asylum cases, where someone is challenging a detention decision, and where the individual is a victim of modern slavery or domestic abuse. The Legal Aid Agency (LAA) regularly monitors capacity in the legal aid market and the provision of legal aid services across England and Wales. The LAA will take immediate action should gaps appear.

Disapplication of certain rights and obligations under the EU Trafficking Directive

28. **As the Government has set out, from the current state of UK law in relation to the human trafficking directive, "it is not clear what from the Directive, if anything, applies" and the Government recognises that the current state of UK law in this respect "brings little legislative certainty, so it is difficult for victims to interpret the legislation and their entitlements"**. (Paragraph 108)

29. **We are concerned that clause 67 NBB, as read with section 4 EUWA, lacks sufficient clarity and accessibility to be compatible with the rule of law and moreover does not allow the Committee to know the extent to which human rights, for example the rights of victims of slavery or human trafficking, might be negatively affected by this clause. We are further concerned that the Government itself is unable to explain what, of the Trafficking Directive, applies in UK law. We encourage the Government to ensure better transparency and clarity in legislating by ensuring the impact of provisions are clear and by providing Memoranda explaining the impacts of provisions where necessary**. (Paragraph 109)

30. **It is not entirely clear to us why clause 67 is present in the Bill, given that section 5(1) of the EU (Withdrawal) Act would seem to already achieve the effect of the later NBB taking precedence over earlier retained EU law**. (Paragraph 110)

31. **The Government should clarify its intentions with regard to the Trafficking People for Exploitation Regulations 2013, which implement the Trafficking Directive**. (Paragraph 111)

The clause seeks to only disapply the EU Trafficking Directive to the extent that it is incompatible with the clauses in the Bill. This means that any provisions in the Directive that have effect (and we do not believe that any do) and remain compatible will be unaffected by this Clause. This is an important point of legal clarity to ensure victims are clear on their entitlements and reduce unnecessary litigation where we are clear on the rights we are providing and that these are in line with our international obligations.

We are not therefore removing any entitlements from victims.

In future, should it be required, and parliamentary time allows, we will consider whether further legislation is needed to clarify other elements of the EU Trafficking Directive. Here, we are seeking to provide clarity on the specific measures within this Bill.

Other matters arising

32. **The Government should provide a Memorandum setting out how it has given effect to each provision of ECAT and the UN Palermo Protocol in order to improve transparency and to assist the Committee in holding the Government to account for complying with international human rights standards in combatting slavery and human trafficking.** (Paragraph 115)

These measures will supplement what the Government has already done to give effect to modern slavery obligations under ECAT and the UN Palermo Protocol, not least through the Modern Slavery Act 2015.

33. **We are concerned that the creation of a separate body to the Single Competent Authority, may indicate a different level of treatment, or a different approach, for certain victims of slavery and human trafficking. This will be even more concerning if this approach leads to lower standards being applied to one group of victims of slavery or human trafficking. The Government should clarify why it considers it necessary and justified to create a separate Immigration Enforcement Competent Authority to determine the cases for certain victims or potential victims of slavery and human trafficking**. (Paragraph 121)

34. **The Government should clarify why it considers it necessary and justified to create a separate Immigration Enforcement Competent Authority to determine the cases for certain victims or potential victims of slavery and human trafficking. Absent compelling reasons, we cannot see how a separate body can be justified, and the Government should reconsider its approach**. (Paragraph 121)

The creation of the Immigration Enforcement Competent Authority is an internal restructure within the Home Office. When a potential victim of modern slavery is referred into the National Referral Mechanism, it is important that they receive a decision as quickly as possible to provide certainty and secure the correct support to assist with their recovery.

This new team will streamline decision-making and ensure, wherever possible, that the various factors which may be pertinent to decisions about an individual are taken by those who can consider their circumstances most fully.

All decisions will continue to be made in line with the definitions and standards of proof in the published Modern Slavery Statutory Guidance and quality assurance activity will be consistent across the competent authorities. We will ensure consistency in the decision-making process in both competent authorities, and all decision makers will receive consistent training (including on any new measures coming in through the Bill) and be held to the same standards across the Home Office, operating within the same legal systems.

Tom Pursglove MP

Minister for Justice and Tackling Illegal Migration

Appendix 2: Government response to Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality, (Part 3) – Immigration offences and enforcement and (Parts 1, 2 and 4) – Asylum, Home Office Decision Making, Age Assessments, and Deprivation of Citizenship Orders

I write in response to the recent reports published by the Joint Committee on Human Rights as part of the Committee's work on the Nationality and Borders Bill. In this letter, I would like to respond to the Committee's Seventh Report (Part 1) Nationality; Ninth Report (Part 3) – Immigration Offences and Enforcement; and Twelfth Report (Parts 1, 2 and 4) – Asylum, Home Office Decision-Making, Age Assessments, and Deprivation of Citizenship Orders. I thank the Committee for these reports.

Seventh Report (Part 1): Nationality

We recommend that the Home Office consider how best to ensure that the intention to treat those previously discriminated against equally well as those not previously discriminated against, is made clear in the drafting of clause 1. (Paragraph 20)

We have closely considered the drafting of Clause 1 and are satisfied that the wording achieves its intended purpose. The provision applies to someone who would have been a citizen had their parents been treated equally, which means a situation where the law applied equally to mothers or fathers, male or female.

The term "parents" is consistent with the wording used in Section 23 of the British Nationality Act 1981, which determined which citizens of the United Kingdom and Colonies became British dependent territories citizens at commencement (one of the three conditions that a person needs to meet in order qualify for registration under this new Clause is that they would have become a British dependent territories citizen under Section 23 (1) (b) or (c) of that Act).

Those lacking full capacity should always have the requirement for full capacity waived if it is in their best interests to do so. We propose an amendment to section 44A BNA so that the Secretary of State "should" waive the requirement for a person to have full capacity if it is in the applicant's best interests, so as not to unfairly disadvantage those lacking full capacity. (Paragraph 22)

Since 2006, the Secretary of State has had discretion to waive the full capacity requirement in respect of a particular applicant if she thinks doing so would be in the applicant's best interests. This discretionary power has been more than adequate in allowing decisions to be taken in the best interests of the applicant, in line with the principles set out in the Mental Capacity Act 2005 and the Adults with Incapacity (Scotland) Act 2000.

No applications have been refused on full capacity grounds since 2005, which indicates that the discretion to waive this requirement is being exercised where appropriate. We will continue to operate this requirement reasonably and with the necessary sensitivity and flexibility. We therefore do not see that this needs to be a statutory requirement, rather than a discretionary power.

The Home Secretary should make clear how the discretion in clause 7 (new sections 4L and 4H BNA) will be exercised, for example by issuing guidance. (Paragraph 24)

We intend to publish full guidance for these provisions.

The Home Office must make clear whether or not any fees will be charged for an application under Part 1 of the NBB and, in particular, clauses 1, 2, 3 or 7. We urge the Home Secretary not to charge a fee for applications under this Part of the Bill as it would be wrong to charge people for rectifying historical discrimination against them. If any fees are charged, they must be set at affordable rates that do not effectively prevent certain categories of people, especially children, from accessing their right to nationality. (Paragraph 28)

The Nationality and Borders Bill corrects historical anomalies in nationality law and where we have the capability, it is our intention that there should be no fees for applications where a person would have become a British citizen automatically but for historical legislative unfairness. We are exploring opportunities to do so using usual procedures in fees regulations. British Overseas Territories fees are the responsibility of the Overseas Territories and we will work with them on this.

We consider that it is unlawful discrimination, contrary to Article 14 as read with Article 8 ECHR, to require a person to prove good character when remedying previous unlawful discrimination against that person. We therefore recommend that the clause 3(4) of the Bill be deleted. (Paragraph 35)

Clause 3 (4) applies the nationality good character requirement to new Section 4K of the British Nationality Act 1981. This allows a person to apply to register as a British citizen having acquired British Overseas Territories citizenship through the new routes established by Clauses 1 and 2 of the Bill. To remove the good character requirement from this cohort would be unfair and inconsistent with the approach for British Overseas Territories citizens who can apply to become British citizens by virtue of Section 3 of the British Overseas Territories Act 2002 and who are subject to the good character requirement.

Where a person would have become British automatically, had women and unmarried fathers been able to pass on citizenship at the time of their birth, the good character requirement does not apply. Where a person would have had an entitlement to register as a British Overseas Territories citizen if their parents were married, there will be a need for them to meet the good character requirement if it applies to their registration route.

The good character requirement has been recognised by the courts as pursuing a legitimate aim and one which is capable of pursuing that aim in a reasonable and proportionate way. See, for example, R (on the application of Howard) v SSHD [2021] EWHC 1023 (Admin) at para 24:

> *"The good character requirement at paragraph 1(1)(b) of Schedule 1 to the British Nationality Act 1981 Act plainly pursues a legitimate objective; requirements of this type are commonplace in legislation governing acquisition of nationality. They reflect one of the general interests of any state to regulate the circumstances in which nationals of other states may acquire the advantage of their nationality. Further, as enacted, paragraph 1(1)(b) of*

> *Schedule 1 to the 1981 Act is capable of pursuing that purpose in a reasonable and proportionate way. The paragraph requires the Home Secretary to apply a good character requirement but leaves it open to the Home Secretary to identify the specifics of that requirement either in Regulations made in exercise of the power under section 41 of the 1981 Act or (as has in fact been the case) through a policy adopted for that purpose."*

The Secretary of State should clarify how she will exercise this discretion in clause 7 to take into account whether an applicant is of good character. (Paragraph 40)

Guidance on application of the good character requirement is available on GOV.UK at:

https://www.gov.uk/government/publications/good-character-nationality-policy-guidance

This will be updated once the Bill is given Royal Assent, to ensure that the new provisions relating to discretionary consideration of the good character test are applied fairly and consistently by decision-makers.

The Home Secretary should review the application of the good character requirement in Part 1 of the Bill and the BNA to ensure that it does not risk being applied in a way that risks perpetuating discrimination or in a way that would be contrary to the best interests of a child in an individual case. (Paragraph 41)

The good character test only applies to new provisions introduced in this Bill to resolve historical discrimination, where it applies to the current route the person would have been entitled to register under had the discrimination not existed. If the person would have become British automatically had the discrimination not existed, then they will not have to now meet the good character requirement.

The good character requirement applies to those aged 10 and over as that is the age of criminal responsibility in England and Wales. The Government remains of the view that the application of the good character test to children aged 10 or over is not at odds with the statutory obligation in Section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children who are in the UK.

Where a child has been convicted of a criminal offence, sentencing guidelines require that any custodial or non-custodial sentence is adjusted to take into account the child's age and particular circumstances and any mitigating factors such as their ability to understand the consequences of their actions. Therefore, although the same policy applies to children and adults alike, the lesser sentences handed down to children will frequently mean they are less likely to meet the threshold for refusal of citizenship.

The Government should clarify what steps it considers it is reasonable to expect a stateless child to take to acquire another nationality and whether there will be guidance making this clear. (Paragraph 56)

We will publish guidance to set out examples of what we consider to be reasonable steps that someone, or someone acting on a child's behalf, can take to acquire citizenship.

It is difficult to see how clause 9 complies with the UK's obligations under both the 1961 Stateless Convention and the UN Convention on the Rights of the Child. Clause 9 should be amended—preferably to delete the clause altogether. (Paragraph 57)

Our nationality laws contain protections for stateless children. However, this clause has been developed in response to concerns that a number of non-settled parents, many of whom did not have permission to be in the UK at the time of their child's birth, have chosen not to register their child's birth with their own authorities. Doing so would have acquired their own nationality for their child. This means that the child can register as a British citizen under the statelessness provisions after 5 years in the UK, whereas other children either have to wait until their parents become settled or they reach the age of 10. Home Office sampling has shown that parents with poor immigration histories are benefitting by deliberately not seeking a nationality for their child. To register their child's birth, they would have needed to complete a form and provide supporting information about their identity, status and residence, and the child's birth – we do not believe this is an onerous expectation.

The UNHCR has published a document entitled "Guidelines on Statelessness no. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness". Those guidelines cover situations where it is possible to acquire the nationality of a parent by registration. They provide that responsibility to grant nationality to children who would otherwise be stateless is not engaged where a child is born in a state's territory and is stateless but could acquire a nationality by registration with the state of nationality of a parent, or a similar procedure. They go on to say that it is acceptable for contracting states not to grant nationality to children in these circumstances if the child concerned can acquire the nationality of a parent immediately after birth and the state of nationality of the parent does not have any discretion to refuse the grant of nationality.

However, this does not apply if a child's parents are unable to, or have good reasons for, not registering their child with the state of their own nationality. This needs to be determined depending on whether an individual could reasonably be expected to take action to acquire the nationality in the circumstances of their particular case. The effect of our proposal therefore reflects the approach recommended by the UNHCR.

We want those who are genuinely stateless to still be able to benefit. But we want to change the registration provisions so that parents cannot effectively choose statelessness for their child and then benefit from these provisions. We think that families should take reasonable steps to acquire a nationality for their child. We will set out in guidance the sort of steps that we think are reasonable, and applications will be considered on an individual basis.

At a minimum two amendments should be made to clause 9(4). Firstly, to ensure that the best interests of the child are more central to decision-making, by adding into new paragraph 3A, sub-paragraph (2) of Schedule 2 BNA "(d) in all the circumstances, it would be in the best interests of the child for it to acquire the nationality in question". Secondly, to ensure that, in line with the 1961 Statelessness Convention, British citizenship is only withheld where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles, by inserting into new paragraph 3A, sub-paragraph (2)(b) of Schedule 2 BNA, after "birth", "without any legal or administrative obstacles". (Paragraph 58)

Adding in a statutory assessment of a child's best interests is not necessary; the Home Secretary already has relevant duties under Section 55 of the Borders, Citizenship and Immigration Act 2009. Including this requirement could cast doubt on the application of Section 55 in other areas where this duty is not expressly required.

The second proposed amendment would add in a new condition to this clause (which is now Clause 10), so that a child is only defined as being able to acquire a nationality from birth if there were no legal or administrative barriers to them doing so. This would mean that parents could in theory benefit from the stateless child provisions by not registering their child's birth because that would require an administrative process, such as making an application or paying a fee. And again, we do not think it is difficult for parents to complete a form or to provide supporting evidence to register their child's birth.

Clause 10 already reflects our expectation that children who cannot reasonably acquire another nationality should not be excluded. I would also add that the UNHCR's "Guidelines on Statelessness no. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness", recognises that the responsibility to grant nationality to children who would otherwise be stateless is not engaged where a child could acquire the nationality of a parent through registration or a "similar procedure".

Ninth Report (Part 3): Immigration Offences and Enforcement

Maritime enforcement and human rights

The Government should respect its obligations under refugee law and human rights law to undertake individual assessments of asylum seekers, as well as its obligations not to frustrate the object and purpose of Protocol 4 relating to collective expulsions. It is now 58 years since the UK signed Protocol 4 to the ECHR; the Government should act promptly to ratify it. (Paragraph 68)

The Government should explain what action it would take in respect of children on a small boat crossing the Channel—and in particular how it would ensure that such actions respected the rights of the child as well as the human rights of all people in board. (Paragraph 70)

We have a range of advanced surveillance and other technologies that will help identify people seeking to enter the UK and disrupt the organised crime groups before people start these dangerous crossings. While I cannot go into the detail here of operations, upstream disruption will be key to tackling this challenge. These methods have been trialled and practised by Border Force Maritime Command, and we have consulted with British armed forces and maritime experts across the UK Government and beyond.

We have also ensured that all officers responsible for delivering turnaround tactics have been fully trained in modern slavery / human trafficking awareness and the necessity to identify potential victims of trafficking / modern slavery are built into the operating guidance for the use of maritime tactics exercisable under these powers.

All of the policies set out in the New Plan for Immigration are compatible with our international obligations, including the European Convention on Human Rights (ECHR) and as such we feel it unnecessary to specify individual obligations.

Maritime enforcement powers in the Nationality and Borders Bill

The Home Secretary should provide a detailed memorandum setting out clearly how maritime enforcement powers under amended Schedule 4A to the Immigration Act 1971 will be exercised, how human rights would be engaged by such maritime enforcement activity, and in particular how she will ensure that such powers are not exercised in a way that would violate human rights. She should also reflect on whether all these powers are needed or whether they can be subject to conditions to ensure that they are only used in a way that respects human rights, and in particular the right to life. (Paragraph 86)

Although Border Force has a range of powers and resources to deal with illegal migration, we are strengthening their maritime powers in response to the increased threat posed by cross-Channel illegal migration over the past few years. Our measures will introduce extended powers aimed at stopping people seeking to enter the UK illegally, assisted by organised criminal gangs, from attempting to enter the country using any vessel capable of completing sea crossings across the Channel. Border Force will therefore gain additional powers to forcibly intercept vessels in international waters as well as UK seas, in order to divert them away from UK seas and potentially take them to non-UK ports in order to facilitate the removal of people seeking to enter the UK illegally. I cannot comment in detail on operational matters, but I can assure you that officers will go through specialist training for the operation of their powers at sea and will be operating those powers within official domestic guidance which explicitly outlines the requirement to take full account of the Human Rights Act, and therefore the European Convention on Human Rights when considering their use.

Given the particular risks to life posed by using force at sea, we recommend that Schedule 4A to the Immigration Act 1971 be amended to specify that force must not be used if it would endanger life at sea. Additionally, we would suggest an amendment, ideally to all parts of Schedule 4A to the Immigration Act 1971, to read "The powers set out in this Part of the Schedule must not include any activity that could endanger life at sea." (Paragraph 87)

I note this recommendation, but do not believe that such an amendment is necessary. This is because we are already committed to adhering to the ECHR, noting particularly in this context Article 2 (right to life).

The Government should clarify why it felt it necessary to introduce this amendment to new section 28LA to remove the requirement in existing law for the Home Secretary to grant authorisations for maritime enforcement only where to do so would be compatible with international law, under UNCLOS. Alternatively, similar drafting to that which appears in section 28M(4), 28N(4) and 29O(4) of the Immigration Act 1971 should be added to new section 28LA in Schedule 6. (Paragraph 90)

We are committed to our international obligations, and in our view, it is not necessary for us to recite those obligations in domestic law. I would also like to reassure members that the safety of life at sea will always be the priority for any interceptions of small boats crossing the Channel to facilitate illegal migration and the use of these tactics will always be in compliance with our international obligations, including in the context of maritime safety.

We therefore recommend amending that paragraph to read "The Home Office, rather than an individual officer, is liable in civil proceedings for anything done in the purported performance of functions under this Part of this Schedule." (Paragraph 96)

We therefore recommend that an amendment is made to remove any risk of immunity from prosecution for criminal offences committed by immigration officers or enforcement officers whilst undertaking pushbacks or other maritime enforcement operations. (Paragraph 98)

The measures we are proposing are not new and simply reflect those already contained in legislation. Border Force have existing powers under the 1971 Act to intercept vessels in UK territorial seas and an officer is not liable in any criminal or civil proceedings if the court is satisfied that the act was done in good faith, and there were reasonable grounds for doing it. It is right that the court decides whether it is satisfied that the officer was acting in the purported performance of their function, acted in good faith and had reasonable grounds for doing so. This also means that any officials carrying out Home Office directives, which may later be found to have been unlawful, would be protected from personal criminal liability, as long as they were done in the purported performance of their functions under this part of the Act.

Paragraph 8 of Schedule 6 should be amended so that it reads: "ship" includes every description of vessel (including a hovercraft) used in navigation, but does not include any vessel that is not seaworthy or where there could otherwise be a risk to the safety of life and well-being of those onboard". (Paragraph 101)

This wording was developed in consultation across Government with the Department for Transport and the Foreign, Commonwealth and Development Office. The definition had to be broad enough to encompass the very wide range of vessel types that have been encountered carrying migrants on irregular journeys across the Channel.

The fact is that we need the powers to be wide enough to capture the use of non-formal "vessels". There have been examples of single person kayaks, li-lo and even paddling pools being used by migrants to cross the Channel.

The Government should do everything it can to prevent more individuals losing their life while trying to cross the Channel or attempting to enter the UK by other means. (Paragraph 111)

We do not want people to undertake these dangerous, unnecessary journeys across the Channel. I know that the Committee will understand that we cannot comment on the specific details of operational tactics used to secure the border, as we do not want to give organised criminal groups any advantages. But I would like to assure you that we are working with our French counterparts to stop these crossings and crack down on the organised criminal gangs facilitating them. This includes improved intelligence sharing, increased patrols in Northern France and investigations by Immigration Enforcement and the NCA. The French are stopping increasing numbers of migrants leaving their beaches, beaches, stopping over 23,000 crossing attempts in 2021, compared to 7,000 in 2020.

The Government should consider whether the stated aim of deterring people smugglers by making the Channel an "unviable" route while still fulfilling their obligations to protect life could be better served by alternative means. A range of alternative options

have been provided in written evidence to this inquiry, such as creating more safe and legal routes for refugees or enabling asylum seekers to obtain visas to come to the UK from France to claim asylum. (Paragraph 113)

We already have a number of safe and legal routes to the UK – including economic routes, family routes and routes for refugees in need of protection in the UK. We welcome people at risk through the UK Resettlement Scheme (UKRS), Community Sponsorship and the Mandate Resettlement Scheme – and since 2015 we have resettled the most people in Europe. The UK has also recently expanded safe and legal routes through a further commitment to resettle up to 20,000 people at risk, through the Afghan Citizens' Resettlement Scheme (ACRS), which we launched on January 6. We will continue to work with partners such as UNHCR to ensure our resettlement schemes are accessible and fair, resettling people at risk from countries where the need is greatest. I would also add that in addition to our resettlement schemes, we have granted over 39,000 visas since 2015 through our refugee family reunion route – around half to children.

I must however point out that permitting claims to our asylum system to be made from France would not be viable and that it would not be supported by the French Government. It has been the position of successive UK Governments that people cannot claim asylum in the UK outside of the country. Indeed, I would draw attention to remarks made by Interior Minister Darmanin to Calais MP, Pierre-Henri Dumont, at the French Parliament on 7 December, Minister Darmanin making it clear that "the UK will not send British officers to Calais to process asylum claims" saying "that will never happen" and it would be "unacceptable".

I must also observe that to stop these crossings we need a long-term approach and a tougher stance towards illegal entry and the criminals behind it.

The Bill introduces a number of measures to do just this. A good example is its overhaul to the Clandestine Civil Penalty Regime process, to go further in encouraging vehicle drivers, owners and operators to do more to secure their vehicles. The Bill does this firstly by introducing a new offence of failure to secure a goods vehicle, even if there is no clandestine present. We are also imposing a stricter liability basis for the current offence where a clandestine is found on board a vehicle so that steps taken to secure a vehicle are no longer a defence against a penalty. This will enable liability for a civil penalty to arise in all cases where a clandestine is found on board, save where there is evidence of duress.

Criminal offences

To ensure that it does not violate the UK's obligations in international law, clause 39 should be amended to remove the offence of arriving in the UK without valid entry clearance. The Bill should also provide for the amendment of section 31 of the Immigration and Asylum Act 1999 so that the defence it contains is available in respect of all offences relating to unauthorised entry, including offences under section 24 of the Immigration Act 1971. (Paragraph 137)

To ensure compliance with international human rights obligations, and in particular the right to life, clause 39(4) and clause 40(2) must be removed from the Bill. (Paragraph 160)

I note these recommendations but strongly disagree. Indeed, I must tell the Committee that I am convinced that these amendments would simply play into the hands of facilitators,

who will continue to encourage migrants to make the perilous journey across the Channel, without giving them adequate means to complete that journey, so that we potentially end up with more men, women and children dying.

We maintain that people in need of protection should avoid making dangerous journeys and claim asylum in the first safe country they reach – that is the fastest route to safety. We must deter those people crossing from risking their lives and those of their families in taking this dangerous route to the UK and we must take back control of our borders.

Regarding the existing offence of arriving in the UK without valid entry clearance, the fact is that the current offence of knowingly entering the UK without leave is no longer entirely apt given the changes in ways people seek to come to the UK through irregular routes, particularly through the use of small boats. Many of the individuals involved are intercepted in UK territorial seas and brought into the UK. As a result, they arrive in, but may not technically "enter" the UK. Organised criminal gangs are sophisticated and well aware of that. And by ensuring their human cargo is put into the invidious situation of requiring rescue rather than safely landing in the UK, the facilitators can escape prosecution. We will therefore close this loophole. And so, I cannot agree to removing Clause 39 (4), which would remove this important provision from the Bill.

Regarding the defence at Section 31 of the 1999 Act (defences based on Article 31 (1) of the Refugee Convention), it has not previously been required under international law to extend this defence to illegal entry offences and I do not think that is the case now. I believe it is sufficient to rely on the safeguard of prosecutorial discretion to meet our international obligations. In cases where a statutory defence is not available to a refugee, the purposive and humanitarian aims of the Refugee Convention should be borne in mind by prosecutors when considering the public interest test.

Finally, I cannot agree to removing Clause 40 (2) from the Bill. This is the provision that introduces life sentences for people smugglers. We must do everything we can to tackle these heinous gangs and to clamp down on the trade they conduct in human misery. This clause is directed at criminals acting to exploit and endanger people, not humanitarian charity workers. There is already provision in the existing legislation for persons acting on behalf of organisations which aim to assist asylum-seekers and do not charge for their services. The Committee will also know that we introduced an amendment during the Bill's Common's passage to provide protections for the RNLI and individuals who are acting to rescue persons in danger or distress at sea, or who are bringing stowaways to the UK.

Removals and notice periods

The Bill should be amended to make plain that the right to access justice must be respected in any decision on providing notice to an individual liable to removal. It should also be emphasised in the policy guidance that accompanies the power to detain that detention should not be maintained for 21 days in advance of a removal date where that detention is not necessary and proportionate in the individual case. (Paragraph 176)

The Bill will create a statutory guarantee that people being removed under the new process will receive a minimum amount of time to seek legal advice prior to their enforced removal. This means that some people will in fact get more time to access justice compared to the current policy. I would also like to assure the Committee that the *Hardial Singh* principles

ensure that a person can only be held in immigration detention if there is a realistic prospect of removal within a reasonable timescale. Detention is, therefore, used sparingly and for the shortest period necessary, with each case being considered on its individual merits. We are held to account on this by the courts, and by a series of safeguards that ensure proper scrutiny of decisions to detain, and on-going detention. This is already set out in our published detention guidance and we will provide updated guidance in due course.

Immigration detention and bail

The Government must take action to ensure that people are not being detained unlawfully. (Paragraph 182)

We have made and are continuing to make significant changes to our immigration detention system, including strengthening our detention safeguards and exploring alternatives to detention and improving support for those who wish to return voluntarily. We already use immigration detention sparingly, with 95% of people who are liable to be removed from the UK managed in the community whilst their cases are progressed. All decisions to detain are made in line with detention safeguarding policies and processes. We are committed to ensuring that anyone who is detained is treated with dignity and is housed in facilities that are safe, secure and decent.

We recommend that clause 47 be removed from the Bill to improve safeguards against detention in breach of Article 5 ECHR. (Paragraph 190)

Our immigration system must encourage compliance. Clause 47 (matters relevant to decisions relating to immigration bail) has been included within this Bill to ensure that in all decisions on whether a person should be granted bail, appropriate weight is given to evidence that a person has been non-compliant – without reasonable excuse – with our immigration or returns processes. This clause does not change our powers of detention, and we do not and cannot detain indefinitely. I would also like to emphasise that this clause will not mean that bail will be automatically refused for all people who are non-compliant with immigration and removal processes where there is reasonable excuse. This will instead be one of several factors that must be considered when deciding whether to grant bail. Removing this clause would allow abuse of the current system to continue, and so I cannot agree with this recommendation.

<u>Twelfth Report (Parts 1, 2 and 4) – Asylum, Home Office Decision-Making, Age Assessments, and Deprivation of Citizenship Orders</u>

Asylum decision-making

Home Office data shows that approximately 65% of asylum applicants awaiting initial decisions had been waiting more than six months and that the average time to make an initial decision is now more than a year. This is clearly concerning. Delays can have a significant adverse impact on the wellbeing and mental health of asylum applicants (which is protected by Articles 3 and 8 ECHR), and whilst awaiting decisions they are generally not permitted to work, begin the family reunification process and cannot access the entitlements guaranteed in the Refugee Convention. (Paragraph 35)

The Home Office are pursuing a programme of transformation and business improvement initiatives that will speed up decision-making, reduce the time people spend in the system and reduce the numbers who are awaiting an interview or decision. This includes almost doubling the number of decision-makers and providing improved training and career progression opportunities to aid retention of staff. This investment in our people will speed up processing times and increase the throughput of asylum decisions.

There are many factors that can delay and contribute to the length of time to process asylum claims. Some applicants have complex needs, safeguarding issues, are extremely vulnerable or have a modern slavery claim attached to their protection claim. We therefore take full consideration of these facts when prioritising and progressing outstanding asylum claims and that can lead to longer waiting times for some. I would observe that asylum- seekers may work if they have been waiting for a decision on their claim for 12 months or longer, where delay is through no fault of their own.

I hope the Committee will be reassured to know that we are prioritising cases with high harm, acute vulnerability, and those in receipt of the greatest level of support, including Unaccompanied Asylum-Seeking Children. Additionally, we are prioritising older cases and cases where an individual has already received a decision, but a reconsideration is required.

I would also like to tell the Committee that we understand that many asylum-seekers have experienced challenging circumstances when making their way to the UK. We take our responsibility towards vulnerable asylum-seekers seriously, ensuring that staff are trained to identify and support the most vulnerable as they make their way through their asylum journey.

We therefore work closely with authorities with statutory responsibility for vulnerable asylum-seekers, including local authorities and medical practitioners. We make referrals to those agencies where there is a clear need and encourage all asylum-seekers to access mainstream healthcare, including mental health provision as appropriate. More broadly, we are also investing an additional £2.3 billion a year into mental health services by 2023/24 – the largest increase in mental health funding in NHS history – including an additional £57 million to support local suicide prevention plans and establish suicide bereavement support services in all areas of the country through the NHS Long Term Plan. We will continue to support conversations on improving the mental health of refugees and asylum-seekers via the Refugee Council chaired Mental Health Forum. This taskforce brings together representatives from across the NGO sector, Home Office, Department of Health and Social Care, Public Health England and NHS England and NHS Improvement, to consider approaches to mental health support.

We support the Chief Inspector of Borders and Immigration's recommendation that a new published service standard must be introduced as a matter of urgency. That service standard should set realistic targets which take into account the human rights of applicants and the severe impacts that lengthy waits for decisions can have. (Paragraph 36)

We have been working to reintroduce a service standard, as per the recommendation from the recent Independent Chief Inspector of Borders and Immigration's (ICIBI) published report "An inspection of asylum casework (November 2021)". The new service standard will also align with changes being introduced through the Nationality and Borders Bill.

Following a period of consultation and design work, a proposed service standard was developed, however the testing of this was delayed due to Covid-19. I would however like to tell the Committee that a new accelerated service standard is currently being trialled within two of our asylum decision-making teams. This pilot is testing the impact of a range of streamlined initiatives with the aim of making decisions on new flow cases within a shorter specified time period. The pilot spans the implementation of a significant number of initiatives across the end-to-end asylum process, including the increased use of technology, improved screening and accelerated decision-making procedures. This process re-design is being complemented by a significant recruitment programme under which we aim to increase the number of asylum decision-makers. Once we have evaluated the outcome of the pilot and have undertaken any necessary consultation, we will work to publish the new standard and our performance against it.

As recommended by Wendy Williams in her Windrush Lessons Learned Review, Home Office decision-making should be based on the principles of "fairness, rigour and humanity". (Paragraph 45)

The Home Office remains committed to delivering a fair and humane asylum system that is sensitive to the needs of the claimants, and which enables sufficient information to be obtained to facilitate fair, humane and sustainable decisions on asylum claims. We ensure that asylum-seekers are given every opportunity to disclose information relevant to their claim before a decision is taken, even where that information may be sensitive or difficult to disclose.

Current Home Office policy guidance contains detailed instructions on how asylum decision-makers are expected to approach claims, including those where there are safeguarding issues or where a claimant has acute vulnerabilities. The policies make clear that when assessing such claims, decision-makers are expected to ask appropriate and sensitive questions.

The Home Office must establish why the proportion of initial decisions found to be flawed has been gradually increasing and what they plan to do to improve the quality of asylum decision-making. This plan must include providing adequate support and training to staff who are handling difficult cases on a day-by-day basis and may be suffering from 'compassion fatigue'. The Home Office should promote a human rights culture where the rights and dignity of asylum applicants is at the heart of decision-making, as opposed to a culture in which staff are treated as and perceive of themselves as 'gatekeepers' of the asylum system. (Paragraph 46)

We are committed to ensuring that all asylum claims are considered without unnecessary delay, so that those who need protection have their claims granted as soon as possible and can start to integrate and rebuild their lives.

We continue to work to improve the quality of decision-making to ensure that we get decisions right the first time and that we properly consider all evidence provided.

We aim to reduce the proportion of allowed appeals by analysing the reasons appeals are allowed and using this to inform and further improve guidance and training. Similarly, the Home Office's country information and guidance is kept under review.

We have an internal audit process which assesses the quality of decisions, interviews and the application of Home Office policy. We have senior case-worker assessments as well as independent Home Office audits on asylum cases with quarterly reports. The quality of asylum decisions is systematically assessed against a detailed audit framework drawn up in consultation with external partners, including the UNHCR, which includes checks on compliance with existing asylum polices, relevant case law and the appropriate country of origin information reports.

All new asylum decision-makers undertake the five-week foundation training programme with additional consolidation and mentoring support. The intensive course provides staff with training on all aspects of asylum decision-making. Additional training and support is provided to those more experienced decision-makers who deal with claims from unaccompanied asylum-seeking children.

Our processes are underpinned by a robust framework of safeguards and quality checks, ensuring that all asylum claims are properly considered, decisions are sound, and that protection is granted to those who genuinely need it.

Most of our decisions are well reasoned and properly consider evidence provided by the claimant against country information available. Where we get decisions wrong we learn from this by addressing issues through improved guidance, training and our established quality audit process.

Differential treatment

Clause 36 requires amendment to ensure that it does not contradict the protection Article 31 provides to asylum seekers who have passed through other countries on their way to the UK or are passing through the UK on their way to their destination. (Paragraph 75)

Clause 11 should be removed from the Bill. (Paragraph 87)

I cannot agree to removing Clause 11, as this would remove key provisions in the Bill, relating to the differential treatment of refugees.

We believe it is self-evident that those in need of protection should claim in the first safe country they reach. The first safe country principle is widely recognised internationally. It is also a fundamental feature of the Common European Asylum System, implemented through the Dublin regime. Without any enforcement of it, we simply encourage criminal smugglers to continue exploiting vulnerable migrants.

With particular respect to your comments on Clause 36 (4), our rationale is very clear: in the same way that we will not tolerate smugglers exploiting vulnerable people to come to the UK when a claim could easily be made in another safe country, we will not tolerate those migrants who transit through the UK, having previously travelled through European countries, to reach places like Canada or the USA. They must claim in the first safe country they reach.

In terms of Clause 36 more broadly, the Convention does not explicitly define what is meant by "coming directly" in Article 31 (1). It is therefore ultimately for our sovereign Parliament to set out its interpretation of international obligations, subject only to the principles of treaty interpretation in the Vienna Convention – and that is what we are doing with this Bill.

Turning to your comments about our international obligations, I would like to reassure you once again that everything we are doing under this Bill will uphold our international obligations. The best interests of the child are particularly important, and are recognised in UK statute via Section 55 of the Borders, Citizenship and Immigration Act 2009, which flows from our obligations under the UN Convention on the Rights of the Child. In respect of compliance with Article 8 of the ECHR, family reunion will be granted to Group 2 refugees if it would be a breach of this obligation to refuse such an application. I therefore cannot agree that this policy is inconsistent with our international obligations. It is firm and it is fair.

It is imperative that the Government learns from the poor treatment of asylum seekers housed in former military barracks. If accommodation centres are to be used to house those awaiting asylum decisions and appeals or awaiting removal from the UK the conditions must ensure that residents are free to come and go, treated with respect, provided with adequate access to healthcare and legal advice and not prevented from mixing with the rest of society. (Paragraph 91)

The Government has a statutory obligation to provide safe and secure accommodation whilst meeting the essential living needs of asylum-seekers who would otherwise be destitute. Hotels are currently being used to meet some of these duties, but this is not sustainable in the longer term. Part of the solution is to increase the stock of dispersal accommodation (flats and houses), but accommodation centres are also a key part of our on-going work to build capacity in the asylum estate.

I would like to assure you that accommodation providers have considerable experience of managing our asylum accommodation estate. Those accommodated at the centres will receive support to cover their essential living needs – generally through "in-kind" provision but supplemented by some cash where appropriate. It is intended that providing support in accommodation centres will enable caseworkers and voluntary sector staff to be located on-site. This will in turn enable faster and more effective information gathering, particularly regarding matters such as travel document interviews, which are necessary to enable the individual's removal from the UK if their asylum claim is found to be inadmissible or otherwise rejected. These efficiencies are intended to lead to faster resolution of asylum claims and reduced support costs.

I would like to confirm that those accommodated at the centres will be free to leave them if they wish. People who are resident at the centres will also have the same access to services in the local community as those in other types of asylum accommodation.

There are no plans to require all asylum-seekers and failed asylum-seekers to live in accommodation centres. Those who can obtain accommodation with friends or family remain will continue to be able to do so. Individuals applying for asylum support because they would otherwise be destitute will have the opportunity to provide information and

supporting evidence as to why they should not be housed in accommodation centres because of their particular circumstances. The normal "dispersal accommodation" will be available for these cases.

Inadmissibility and offshore processing

Clause 15 should be amended to ensure that claims cannot be declared inadmissible on the basis of the Home Office's view that it would have been reasonable to expect the claimant to have claimed elsewhere. The clause also requires amendment to prevent asylum seekers being removed to countries other than the one with which they are considered to have a connection. The definition of safe third country must ensure that the state in question provides effective protection against human rights abuses and access to an effective asylum system that fully complies with the Refugee Convention. (Paragraph 105)

I cannot agree to these amendments to Clause 15. This is because we want to ensure that those who have travelled through or have a connection to a safe country, such as France or Belgium, will continue to be considered inadmissible to the UK's asylum system.

If an individual believes they did not have an effective opportunity to claim asylum in a country, they will be able to make representations to that effect. The Secretary of State will then have to consider those representations when deciding whether it was reasonable to expect them to claim asylum in that country. An inadmissibility decision made on that basis will be subject to judicial review and will therefore have to stand up to general public law tests of rationality and reasonableness.

We will seek the rapid removal of these individuals to the safe country from which they travelled to the UK or to another safe country. Removing an individual to a country they may not have a connection to is considered reasonable when taking into account the public interest of achieving the objectives of this policy of reducing irregular onward movement. We will only remove an individual to a country that is safe for them in their particular circumstances.

If we cannot remove someone to a safe country, we will consider their claim. For people who have their cases considered, but refused, we will seek rapid removal to their country of origin. We are taking these steps because we think our asylum system should not reward those who enter the UK illegally or overstay their visas, while other vulnerable people are stuck in the asylum queue.

I would like to assure the Committee that Clause 15 (7) contains provision so that a claim that has been declared inadmissible under this clause may nevertheless be considered under the Immigration Rules if the Secretary of State determines that there are exceptional circumstances that mean that the claim should be considered.

I would also like to say that Clause 15 (4) as currently drafted sets out what we mean by a "safe third State". This makes it clear that a "safe third State" is one in which:

a) the claimant's life and liberty are not threatened in that state by reason of their race, religion, nationality, membership of a particular social group or political opinion,

b) the state is one from which a person will not be sent to another state—

i) otherwise than in accordance with the Refugee Convention; or

ii) in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment); and

c) a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that state.

This definition of a safe third country is a long-standing one and is not out of step with other countries; it is indeed used within the EU Procedures Directive.

For these reasons, we consider there are adequate safeguards to meet these concerns. I am therefore satisfied that the clause as drafted is appropriate. Like the rest of the Bill, it complies with our obligations under the ECHR and the Refugee Convention.

Suspending an asylum claim for 6 months when there is no real prospect of it being considered by another state amounts to an unjustified delay. It does not appear to be consistent with complying with the Refugee Convention 'in good faith'. It also places the mental and physical health of vulnerable asylum seekers at risk, potentially resulting in violations of Article 8 or even Article 3 ECHR. (Paragraph 111)

The Bill should be amended to prohibit any asylum claimant being provided with a notice of intent or assessed as inadmissible unless a return arrangement has already been put in place with the relevant third country. (Paragraph 112)

I cannot agree to this amendment as it would constrain the operational effectiveness of the inadmissibility process.

I make no apology for providing officials with time to assess whether these individuals can be removed to a safe country, and do not agree this is an unjustified delay. These individuals have travelled via safe countries, where it is reasonable to expect them to have claimed asylum.

The "notice of intent" provides individuals with clarity as to how their case is being handled, clearly identifying the country or countries to which they may be removed. In so doing, it allows individuals the opportunity to state why the inadmissibility provisions should not be applied to them or why in their particular circumstances they should not be removed to the safe country or countries identified.

Any vulnerabilities, such as mental or physical health issues, will be taken into consideration, and any oral or written representations from the claimant about why inadmissibility processes should not be applied in their case will be considered ahead of any removal to a safe third country.

Turning to returns agreements more generally, we are clear that all countries have a moral responsibility to tackle the issue of illegal migration. We expect our international partners to engage with us, building on our good current cooperation, and continue to highlight the importance of having effective returns agreements to stop people making perilous crossings. This is an established principle of any functioning migration relationship and enables us to maintain public confidence in our immigration system.

We have agreed a joint political declaration with the EU, which makes clear the UK's intention to engage in bilateral discussions with the most concerned Member States to discuss suitable practical arrangements on asylum, family reunion for unaccompanied minors or illegal migration. We will continue to work with our international partners to meet this joint challenge.

I would also like to tell the Committee that agreements by a safe third country to accept an asylum-seeker may not always be via a reciprocal arrangement, and so we believe it is right to also seek returns on a case by case basis where appropriate. Doing so has formed a part of our inadmissibility process since the changes to our Immigration Rules in December 2020. Therefore, where we do not have broad return agreements, we will continue to seek returns on a case-by-case basis.

It is recognised and accepted that if agreement to an individual's removal to a safe country of removal cannot be agreed, or an individual cannot be removed following an inadmissibility decision, the individual will be admitted to the UK asylum system for determination of their claim, in accordance with the UK's obligations under the Refugee Convention.

The UK risks doing damage to the shared responsibility that underpins the Refugee Convention if it proceeds with plans for the offshore processing of asylum claims. The Bill should be amended to remove the power to remove an asylum seeker from the UK while their claim is pending, unless compliance with human rights standards, including the Refugee Convention, in any future arrangements can be unequivocally guaranteed. (Paragraph 122)

I cannot accept this amendment, because it would amount to reciting our international commitments in domestic legislation, which is not necessary.

I would also respectfully observe that it is not correct to say that Schedule 3 "would remove the current prohibition on removing an asylum-seeker from the UK while their claim is pending", as stated in paragraph 113 of this report. There are already long- standing provisions in UK domestic legislation that allow, following a certification, an individual who has a pending asylum claim to be removed from the UK to a safe third country (see paragraphs 4, 9, 14 and 18 of Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004). The Bill provisions are intended to remove the need to certify in every case, thus making it easier to remove and to support the future policy objective of third country processing. However, just as under current law, the Bill provisions as drafted already ensure that removal can only take place if doing so would comply with the UK's obligations under the Refugee Convention and the ECHR.

Overseas asylum processing is one part of a system-wide reform designed to break the business model of people smugglers and disincentivise unwanted behaviours. Establishing asylum processing overseas would send a clear message to those who are risking their lives and funding criminal gangs both here in the UK and abroad, or else otherwise abusing the asylum system, that this behaviour is not worth it. We must make it easier to ensure such people are not simply allowed to remain in the UK.

Interpretation of the Refugee Convention

Clause 31 should be amended to confirm that the standard of proof for establishing a well-founded fear of persecution remains a composite standard of 'reasonable likelihood'. (Paragraph 136)

Raising the standard of proof against which the first element of a claim is assessed to the balance of proof threshold will help us to ensure that weak and largely unsubstantiated claims are not rewarded. This will enable us to focus our resources on those who have a genuine claim and require protection in the UK.

We do not consider that genuine claimants will be disadvantaged by this change. We understand the difficulty for some individuals to articulate their claims, and our policies and processes are set up to support claimants. For example, our policy on conducting asylum interviews instructs Home Office staff on how to provide claimants with a safe and appropriate environment to fully explain the reasons why they require protection in the UK. This policy has been carefully developed over time with the input of external stakeholders from refugee groups. See:

https://www.gov.uk/government/publications/conducting-the-asylum-interview-process

Decision-making staff within Asylum Operations receive extensive training before interviewing claimants or making decisions. This includes for example on how to determine a claim where there is a lack of tangible evidence, such as by carefully interviewing claimants to understand their personal journey. Decision-makers also receive regular refresher training, often based on trends identified by our effective internal assurance methods. All staff who act under the new system, including making decisions, will be trained in detail on every provision, including the well-founded fear test.

I am satisfied that the existing drafting complies with our international obligations, and I am confident in the Home Office's ability to support claimants in demonstrating that they qualify for refugee status in a safe and appropriate environment. I therefore do not agree that it is necessary to amend the Bill as proposed.

Despite the presumption that a person who has committed such a crime amounts to a 'danger to the community' remaining rebuttable, the proposal to lower the threshold for what constitutes a 'particularly serious crime' to any offence receiving a 12-month sentence would not be consistent with the language of Article 33(2) or with the humanitarian purpose of the Refugee Convention. The combination of the new threshold with provisions expressly denying an individual the opportunity to prove that he has not committed a 'particularly serious' offence would 'expand the scope' of Article 33(2) and 'correspondingly weaken the principle of non-refoulement itself'. The Bill requires amendment to remove the lowering of this threshold. (Paragraph 142)

We are amending the statutory definition of what we consider is a "particularly serious crime" for the purposes of removing a refugee from the UK in accordance with the Refugee Convention. The UK has a proud history of providing protection to those who need it, for as long as it is needed. However, where someone commits a particularly serious crime and is a danger to the community or represents a threat to our national security, they may be removed as they no longer deserve our protection.

As permitted by Article 33 (2) of the Refugee Convention, it is current Home Office policy to consider the removal of refugees who, having been convicted of a particularly serious crime, constitute a danger to the community in the UK or who there are reasonable grounds for regarding as a threat to national security.

A "particularly serious crime" is currently defined as one which led to a sentence of at least two years' imprisonment. This means that individuals who commit serious crimes but who are sentenced to less than two years' imprisonment continue to enjoy the generous benefits of refugee status in the UK.

We are therefore amending the definition of a "particularly serious crime" to include instances where an individual is sentenced to a period of imprisonment of at least one year. We consider this new lower threshold will bring into scope offending which is serious.

It is important to note that when deciding on an appropriate sentence, courts consider the full facts of the case (including all aggravating and mitigating factors). Some offences which resulted in a 12-month custodial final sentence being imposed in 2020 include:

- Child abduction
- Actual bodily harm
- Grievous bodily harm (without intent)
- Threats to kill
- Arson (endangering and non-endangering life)
- Violent disorder
- Engaging in controlling/coercive behaviour in an intimate/family relationship
- Breach of a sexual harm prevention order
- Burglary in a dwelling (combined for triable either way and indictable offence)

We believe that this is an appropriate starting point for considering removal to the country of origin, given that courts will only deprive someone of their liberty in the most serious of cases, having taken into account all mitigating and aggravating factors. I would also say that sentencing is a decision for the Courts and that it is inappropriate to reopen the reasoning of the Court to debate again whether a crime is serious.

Lowering the threshold in this way will bring more offending into scope for consideration as to whether it should lead to removal of individuals from the UK, therefore ensuring that we remove dangerous criminals at the earliest opportunity. But I would like to confirm that the UK will continue to comply with its obligations under the Refugee Convention. Only where a refugee commits a particularly serious crime and constitutes a danger to the community in the UK will they be considered for removal from the UK. The UK will also remain compliant with its obligations under the ECHR, for example by not removing any individuals who would be at real risk of a threat to life or subject to torture, inhuman and degrading treatment upon return. I would also say that we believe that the rebuttable

presumption of whether a refugee constitutes a danger to the community in the UK is a sufficient safeguard to prevent the wrongful application of Article 33 (2) of the Refugee Convention. I am therefore satisfied that no amendments are required.

Procedural changes

The Bill should be amended to remove the provisions that emphasise damage to credibility and weight of evidence as a result of delay. If the Government is intent on penalising late submission of evidence, it should only introduce penalties that do not impact on consideration of the substantive asylum claim. At the very least, the Bill must be amended to clarify that a failure to meet a deadline 'may' be damaging to the applicant's credibility or to the weight given to evidence, rather than that it must. (Paragraph 163)

I cannot agree to remove or amend these provisions, as this would undermine a key purpose of the Bill, which is to reduce the extent to which people can seek to frustrate their removal from the UK through repeated, meritless claims, often made very late in the removals process.

Our intention is to create a new evidence notice for protection and human rights claims, as well as the priority removal notice (PRN). All relevant evidence must be provided in support of a claim before the date specified in the relevant notice. Where evidence is provided late without good reason, this should be taken into account by the decision-maker as damaging to a claimant's credibility, whether that decision-maker is the Home Office or the Courts. The decision-maker must also have regard to the principle that minimal weight should be given to that evidence. The requirement to consider certain behaviours as damaging to a claimant's credibility is not new. These provisions strengthen the existing credibility provisions in section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. I would, however, like to clarify that where there is good reason for evidence being provided late, there will be no damage to that claimant's credibility, nor must decision-makers have regard to the minimal weight principle. Moreover, regardless of the new provisions on late evidence and credibility, all late claims will be substantively considered and those who qualify for international protection will be given it.

These measures will help achieve efficiencies in the asylum system, decreasing costs for the taxpayer, as well as freeing up finite judicial resources. They will allow decision- makers to consider all of the evidence upfront and, where appropriate, grant leave. That is in the best interests of the claimant and the effective function of the immigration and asylum system overall.

The proposed accelerated detained appeals process would significantly contract the timeframe for the asylum application and appeals procedure. This has implications for the ability of those genuinely fleeing persecution to be able to present their claims effectively, potentially denying them the sanctuary to which they are entitled in international law. In the absence of clear safeguards that would restrict the use of the accelerated detained appeals process to appeals that are clearly unfounded and without merit, we consider that the process poses too great a risk of unfair decisions resulting in exposure to human rights violations. (Paragraph 171)

Clause 26 requires substantial amendment to limit the cases that are brought within the accelerated detained appeals process, to ensure that cases are removed from the

process where the interests of justice and fairness requires it and to ensure that the process itself is not so accelerated as to risk unfair decision making and consequential human rights violations. If this is not possible, clause 26 should be removed from the Bill. (Paragraph 172)

The courts have been clear in upholding the principle that an accelerated process for appeals made in detention, operated within certain safeguards, is entirely legal. The new accelerated detained appeals route will contribute significantly to the timeliness with which appeals are decided for some of those in immigration detention. It will allow us to swiftly remove from the country people found not to be eligible to remain in the UK, while those people with valid claims can be released from detention more quickly.

Currently, all immigration and asylum appeals are subject to the same procedure rules. Appeals involving detained appellants are prioritised by Her Majesty's Courts and Tribunals Service, but there are no set overall timeframes. It often takes months for detained appeals to be determined, resulting in people spending prolonged periods in detention, or being released from detention before their appeals are concluded. We want to change this.

We will ensure, through regulations and guidance, that only suitable cases will be allocated to the accelerated route. Cases will be assessed for whether they are likely to be decided fairly within the shorter timeframe, and individuals will be assessed for removability as well as vulnerability and other factors which may impact their ability to engage with an accelerated process. As an additional safeguard, the tribunal will be able to decide to remove cases from the accelerated route if they consider it is the only way for justice to be done in a particular case.

I am therefore satisfied that appropriate safeguards are in place and that amendments are not necessary.

Age assessments

We suggest that refusal to consent to scientific procedures should not be taken into account when assessing the credibility of an age-disputed person who may be a child. (Paragraph 220)

We want to put in place measures to stop asylum-seeking adults claiming to be children, which creates a safeguarding risk and reduces the resources available to help genuine children. We also cannot allow children to be wrongly treated as adults.

Many of those arriving in the UK who claim to be children do not have clear evidence like a passport to back this up. While many are clearly children, for some it is less clear. Assessing the age of a person is a very challenging task. Currently, no single assessment technique is likely to determine an individual's age with precision. The approach as it stands can vary substantially depending on the experience and expertise of those undertaking the assessment.

The Committee considered the important issue of the threshold above which an immigration official may assess someone claiming to be a child as an adult on the basis of their physical appearance and demeanour. It is important to recognise the distinction between these types of age assessments and those age assessments conducted by social

workers. I can confirm that the Government has now changed the threshold from "25 and over" to "significantly over 18". This change was introduced through guidance that came into effect on 14 January 2022 and it is not the Government's intention to introduce further legislative measures to address this issue. As the Committee indicated, in the case of BF Eritrea, the Supreme Court disagreed with the previous Court of Appeal decision and strongly endorsed the Home Office's "significantly over 18" approach. I would also like to clarify that the "significantly over 18" threshold is specifically formulated to afford the person claiming to be a child with the benefit of the doubt. That is why the threshold is set at "significantly" over 18. Indeed, the Supreme Court judgment noted the lawful way in which the guidance set out "the relatively generous degree to which the benefit of the doubt should be allowed to an immigrant who claims to be a child". It also noted that the policy contains a number of other important safeguards, such as that two immigration officers of specified seniority should separately reach the same conclusion. If there remains doubt about the individual's age then the official must treat the person as a child, pending a holistic age assessment known as a Merton assessment.

Whilst the Government accepts that there are risks in wrongly assessing children as adults, our view is that the reverse risks should not be downplayed. Placing adults in spaces and services designed for children can present a very serious risk to those who are children and the Government is not prepared to tolerate abuse of the system in this way. It is also deeply unfair that people falsely claiming to be children are treated more favourably than other people of the same age, who play by the rules. This is why the Government felt that the previous threshold of "25 and over" did not strike the right balance. However, I do recognise that this change alone will not bring about the type of change we want to see in the age assessment system.

Currently, where there is doubt about whether a person claiming to be a child is an adult or a child, they are temporarily treated as a child until further consideration of their age is undertaken and they are referred into the care of local authority children's services. Local authority social workers will usually proceed to conducting a Merton assessment. Age assessment is a challenging and resource intensive process and those assessing age need to have specific skills and expertise to assess age to the highest possible standards. Unfortunately, due to the varying experience and capacity of assessing social workers in undertaking these assessments, the approach to age assessments varies significantly between local authorities.

The establishment of the National Age Assessment Board (NAAB) aims to significantly improve the age assessment process. The NAAB will primarily consist of a body of experienced social workers dedicated to age assessments and, by building upon the experience of key local authorities, will aim to achieve a more consistent approach to the task of age assessment. The process for recruiting these social workers will be conducted carefully and we will continue to work closely with local government as these proposals are developed.

Although the NAAB will be located in the Home Office, its assessments and members of staff will be distinct from the Home Office's asylum decision-making function. The primary considerations are the aims of achieving accurate age assessments and safeguarding and promoting the welfare of children. The Home Office has a statutory commitment in relation to safeguarding the welfare of children and the NAAB will be conducting age assessments in line with existing case law or, in future, in accordance with any regulations made under

Clause 52 of the Bill. It should also be noted that the Home Office already leads on other vulnerability areas. This includes Independent Child Trafficking Guardians, who provide advice and support for trafficked children, irrespective of nationality, and the National Referral Mechanism.

Turing to the use of scientific methods, I would like to clarify that we are seeking to supplement, rather than replace, the social worker assessment through the use of these methods, to enable more informed decision-making as part of a fully holistic assessment. Prior to making any regulations (which will be subject to affirmative resolution by Parliament) about which scientific methods to use, the Secretary of State will consult the Home Office Chief Scientific Adviser, who in turn has set up an independent Age Estimation Scientific Advisory Committee tasked with reviewing those scientific methods, including their accuracy and ethical considerations.

An individual's reasons for refusing to undergo a scientific age assessment are likely to differ on a case-by-case basis. Rather than specify what constitutes reasonable grounds in detail, we feel that it is right for decision-makers to consider such circumstances individually. We will issue further guidance on this in due course. We would however contest the idea that the consequence of an adverse inference may apply undue pressure to the individual to consent. There is precedent, both in domestic legislation and international examples, of where scientific age assessments are carried out, of obtaining valid consent from individuals, even where an adverse inference may be drawn from that person's refusal to submit to a physical examination. In addition, a refusal to undergo a scientific age assessment without reasonable grounds would not automatically preclude the claimant being considered a child. The decision-maker will assess all relevant factors holistically, including a person's refusal to consent to a scientific method without reasonable grounds, and make a decision about their age. If individuals, such as those misrepresenting their age, were able to freely refuse to undergo a scientific age assessment without consequence, this could undermine our ability to prevent adults from accessing children's services. We believe that a negative credibility inference in respect of someone's claimed age, where a person refuses to undergo a scientific age assessment without good reason, is a necessary, logical, and proportionate step to ensure the integrity of any scientific method.

Deprivation of citizenship orders

We suggest that Clause 9 should be deleted from the Bill. If Clause 9 is to be retained in the Bill, at a minimum, the Secretary of State should be required to take reasonable steps to give notice of deprivation of citizenship orders. (Paragraph 235)

If clause 9 is to be retained in the Bill, we suggest that it would be fairer and clearer to include provision that the time limits only start running from the date of knowledge of the deprivation of citizenship order. (Paragraph 243)

If clause 9 is to be retained, we suggest that it should not have retrospective effect, to avoid the risk of infringing Article 6 in the vent of pending legal proceedings. (Paragraph 246)

As set out above, we suggest that Clause 9 is removed from the Bill. (Paragraph 247)

If clause 9 is retained in the Bill we suggest it must be amended to:

a) ***place obligations on the Secretary of State to take reasonable steps to give notice of deprivation of citizenship orders;***

b) ***remove the broad exemptions of "national security", "foreign relations" and "public interest" which allow the Secretary of State to avoid giving notice;***

c) ***ensure the right of appeal is meaningful by providing that time limits do not run until the individual has been notified of the deprivation decision; and***

d) ***remove the retrospective validation of unlawful deprivation of citizenship orders.*** (Paragraph 248)

Deprivation of citizenship on "conducive to the public good" grounds is reserved for those who pose a threat to the UK or whose conduct involves very high harm, for example in response to activities such as those involving national security, including espionage and acts of terrorism, unacceptable behaviour such as the "glorification" of terrorism, war crimes and serious and organised crime.

Deprivation of citizenship on "fraud" grounds is for those who obtained their citizenship fraudulently and so were never entitled to it in the first place.

From 2010 to 2018 (the latest figures on record), on average only around 19 people a year were deprived of their citizenship on "conducive to the public good" grounds. An individual in the UK who has been deprived of their British citizenship no longer has any UK immigration status – though they might still be granted leave to remain or steps could be taken to remove them. If they are overseas, they cannot re-enter the UK using a British passport.

Clause 9 is essential to meet the Government's top priorities of maintaining our national security and keeping the public safe. It allows the Home Office to deprive someone of their citizenship without prior notification but only in exceptional circumstances. The Bill does not change any existing appeal rights or the reasons for which a person could be deprived of their citizenship.

I note the Committee's recommendation that we amend this clause, so that "at a minimum, the Secretary of State should be required to take reasonable steps to give notice". I would like to assure the Committee that we will always try to tell an individual that they are to be deprived of their British citizenship, and so I do not think this amendment is necessary. Clause 9 will only apply in exceptional circumstances, where notification may not be possible because, for example, we do not know the person's whereabouts, or because they are in a war zone where we cannot get in touch with them, or because informing them would reveal sensitive intelligence sources. Clause 9 will therefore only be used in very limited circumstances.

The Committee suggests that, in respect of appeals against a decision, "it would be fairer and clearer to include provision that the time limits only start running from the date of knowledge of the deprivation of citizenship order". The Home Office will always try to serve any deprivation notice at the point of decision; this notice includes information about the person's statutory appeal rights. Where it is not possible to give notice and the

person later makes contact with the Home Office, as stated above, they will be issued with a copy of the decision notice and an explanation of appeal rights so they can then seek to exercise their statutory right of appeal against the decision.

The time limits for appeals differ, depending on where the person is and who is responsible for processing the appeal. Appeals to the Immigration and Asylum Tribunal where the person is appealing from within the UK must be received within 14 days after notice is sent to the person, while a person outside the UK when the deprivation decision was made has 28 days from when they receive the notice. Appeals to the Special Immigration Appeals Commission (SIAC) where the person is in the UK when served with notice must be made within 10 days of the person being served with the notice, or 28 days if the person is outside the UK when served with notice.

The tribunal and SIAC have the discretion to allow out of time appeals to be admitted by extending the time limits in these rules. In particular, the rules provide that SIAC can extend time limits if satisfied that by reason of special circumstances it would be unjust not to do so. It is current policy in such cases for the Home Office not to challenge an out of time appeal in a case where the delay is due to notice having been served to file and we would continue that policy going forward in any cases where notice is not given. People affected by Clause 9 will therefore still be able to exercise their statutory right of appeal against the deprivation decision.

I also note the Committee's recommendation that Clause 9 should not have retrospective effect but the point is that we are seeking to reaffirm our robust and effective system. It is important that in cases where we have already made a decision to deprive, the subsequent deprivation order remains valid and effective to protect the UK from high harm individuals and to preserve the integrity of the immigration system. It does not affect the ability of individuals to exercise their statutory right of appeal against the deprivation decision (if they have not already done so).

Finally, I am satisfied that the retrospective effect of Clause 9 does not contravene our duties under the ECHR. I would also observe that the first duty of any Government is to keep the British people safe, and that is exactly what this clause will help us to do. It is for this reason that I cannot accept the recommendations that the Committee have made regarding these measures.

I trust that this reply is helpful, and again, I would like to thank the Committee for its reports.

With best wishes,

Yours ever,

Tom Pursglove MP

Minister for Justice and Tackling Illegal Migration