



Nationality and Borders Bill 2021-22 Report Stage Briefing

Background

Families Together is a coalition of over 90 organisations who support the expansion of the UK's refugee family reunion rules, including a number who work directly with refugees in the UK to support their applications for family reunion.

The deaths of 27 people in the channel last week was a stark reminder of the desperate situation people fleeing to find safety find themselves in. No one chooses to cross the channel, the busiest shipping lane in the world unless they have no other option. They have fled their home countries fleeing war, violence, persecution, and have undertaken unimaginable journeys to find safety in the UK.

The proposals outlined in the Nationality and Borders bill do not increase safe routes. Instead, they will criminalise and punish those who come to the UK via irregular routes. The proposals will put men, women and children at further risk, at further harm. The proposals seek to restrict access to refugee family reunion, one of the only safe routes that currently exists.

Executive Summary and Key Amendments

1. This briefing focuses on the provisions about the asylum system set out in Part 2- Clause 11 and in Part 6- Clause 69, and the impact they would have on refugee family reunion.
2. Clause 11 of the bill categorises refugees into two distinct groups, Group 1 and Group 2. Group 1 refugees are those who arrive in the UK directly from a country or territory where their life or freedom was threatened, have presented themselves to the authorities without delay or where a refugee has entered or is present in the United Kingdom unlawfully, they can show good cause for their unlawful entry or presence. There is no further detail provided on what a 'good cause' would be. Group 2 refugees are those who do not fit into the above category. This includes those arriving via irregular routes such as by lorry or by boat or those arriving after travelling through what the Government considers to be "safe" third countries." Urgent clarity is needed on how the Government will seek to interpret each of those elements.
3. Clause 11, subsection 5 gives powers to treat Group 2 refugees differently, including on the amount of leave they are granted, and whether they are able to be reunited with their family members under the UK's refugee family reunion rules.
4. The differential treatment outlined in Clause 11 punishes refugees based on the way that

they arrived in the UK. UNHCR has stated that the creation of Group 2 refugees is discriminatory and is incompatible with the 1951 Refugee Convention.¹ Moreover, no evidence has ever been produced that this will deter these irregular journeys, as the Government claims. **Members should support amendment 8 which removes the provisions on differential treatment. Members should also support amendment 114 which seeks to ensure group 2 refugees have the same rights as group 1 refugees, including access to refugee family reunion.**

5. Clause 11, subsections 5 and 6 give Government powers to limit or end access to refugee family reunion for Group 2 refugees. This could affect many thousands of refugees each year, and severely curtail one of the only safe and legal routes for refugees to arrive in the UK. It would also harm the integration chances of those who have been recognised as refugees in the UK.

6. Refugee Family Reunion is currently the most accessed safe route which allows family members to come safely to the UK to reunite with their sponsor. In the last five years, over 29,000 people have arrived in the UK through existing family reunion routes, 90% of whom were women and children. Restrictions to family reunion rights laid out in the Nationality and Borders bill, will leave families who have been separated by war, violence and persecution facing dangerous journeys in order to be together again. **Members should support new clauses 35, 42 and 48 which expand the definition of who qualifies for family reunion, expanding safe routes for family members to join their families in the UK.**

7. Clause 69 empowers the Secretary of State to refuse family reunion visas of nationals where their country of origin is not cooperating with removals. This measure could further undermine this safe and legal route and punishes persecuted people for the actions of their governments. Members should support an amendment that ensures all groups of refugees have full and equal family reunion rights, under the refugee family reunion route.

Part 2: ASYLUM

Clause 11 - Differential treatment of refugees

Clause 11 of the bill categorises refugees into two groups, Group 1 and Group 2. Group 1 refugees are those who arrive in the UK directly from a country or territory where their life or freedom was threatened, have presented themselves to the authorities without delay or where a refugee has entered or is present in the United Kingdom unlawfully, they can show good cause for their unlawful entry or presence. There is no further detail provided on what a 'good cause' would be.

Group 2 refugees are those who do not fit into the above category. This includes those arriving

¹ See <https://www.unhcr.org/uk/publications/legal/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk.html>, p. 2.

via irregular routes such as by lorry or by boat or those arriving after travelling through what the Government considers to be “safe” third countries.” The Bill gives the Secretary of State or an immigration officer the power to treat Group 1 and Group 2 refugees differently with regards to family reunion rights. It does not provide full details on what this will look like in practice.

However it does state that this may include whether leave to enter or remain is given to members of the refugees family, the length of any period of limited leave to enter or remain, the requirements to be met in order to be given indefinite leave to remain and whether a no recourse to public funds condition is attached to the leave.

The explanatory notes for the bill state:

‘The purpose of this is to discourage asylum seekers from travelling to the UK other than via safe and legal routes. It aims to influence the choices that migrants may make when leaving their countries of origin – encouraging individuals to seek asylum in the first safe country they reach after fleeing persecution, avoiding dangerous journeys across Europe.’

However, the Government has provided no evidence base to show that the stated aim will result from the policy. Indeed, our experience is that refugees seek asylum in the UK for a range of reasons, such as proficiency in English, family links, or a common heritage based on past colonial histories. The refugees we support do not cite the level of leave granted, or other elements of the asylum system, to be decisive factors, or even details they are aware of.

What we know definitely will result from these measures is a refugee population who are less secure because they have a shorter amount of leave, and less able to integrate, because they have reduced access to refugee family reunion. It will punish those who have been recognised, through the legal system, as in need of international protection – girls fleeing the Taliban in Afghanistan, or Christian converts fleeing theocracy in Iran, or Uighurs fleeing genocide in China.

Moreover, it will do so despite international refugee law stating that a refugee does not have an obligation to make an asylum claim in the first safe country they reach. If that obligation is not part of the international legal framework, it is deeply unfair and cruel to punish refugees for then realising their right to claim asylum.

Studies show that family reunion boosts integration outcomes and allows those who have come to the UK seeking safety to rebuild their lives here, together. Research has highlighted that mental health struggles including anxiety, depression, guilt and social isolation are reported amongst those who are separated from their families.² Being reunited with family members leads to positive integration outcomes and provides a support system, which is vital when integrating into a new community.

We strongly oppose the introduction of this differential treatment and are deeply concerned that if this clause succeeds, the number of family reunion visas issued will decrease substantially,

² https://famielsttogether.uk/wp-content/uploads/2020/02/Without_my_family_report.pdf

and a vital safe route to the UK would be weakened. More people have been able to safely come to the UK via family reunion than resettlement routes. Over the last 5 years, 29,834 FR applications were granted, compared to 23,665 resettlement applications granted.³ 90% of family reunion visas are granted to women and children. The government proposals would prevent thousands of vulnerable women and children from entering the UK, removing a safe and legal route from some of the most vulnerable persons.

Family members are often left living in precarious and dangerous situations whilst they wait to be reunited with their sponsor. For the vast majority of those people, there is no viable alternative for them to be reunited with family members. Limiting this route therefore risks incentivising more dangerous journeys – made by people seeking to live with their family members – rather than reducing them.

Evidence from Australia highlights that barriers to family reunion for those with Temporary Protection Visas (TPV) led to an increase of women and children making dangerous journeys. The report by the Kaldor centre states that:

‘There is little evidence that introducing temporary protection measures have a deterrent effect. Indeed, after TPVs were introduced by the Howard Government, there was an increase in the number of women and children who arrived in Australia by boat. According to personal accounts, this was because the TPV regime precluded family reunion. The ineffectiveness of TPVs is the very reason that they were abolished by the Rudd Government.’⁴

In the Government's Equality Impact Assessment of the policies delivered through the Nationality and Borders bill it is stated that the evidence to support that an increase in securitisation measures will deter people from making irregular journeys is limited. Instead, an increase in securitisation measures could result in individuals making even riskier journeys.⁵

Although the Government's plans commit to increasing safe and legal routes, this proposal risks restricting access for many families, when the Government should instead build upon and widen the existing rules. Rather than restricting family reunion rights for some refugees, the government should be seeking to increase full and equal access to family reunion for all refugees, regardless of how they entered the UK.

Part 6: MISCELLANEOUS

Clause 69 - Processing of visa applications from nationals of certain countries

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/98777/7/asylum-summary-mar-2021-tables.ods

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https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Research%20Brief_TPVSHEV_Aug2018.pdf

⁵ https://publications.parliament.uk/pa/bills/cbill/58-02/0141/Nationality_and_Borders_Bill_-_EIA.pdf

Clause 69 of the bill would permit the Secretary of State to suspend, cancel or refuse family reunion visas by persons of a specific nationality on the basis that their country of origin was not in their view cooperative in receiving removals.

This measure punishes people who have sought protection for the actions of their Government, from whom in many cases they would be fleeing. Not only is this unfair and morally unacceptable, it is not a sanction that would actually be effective in compelling a Government to comply with removals.

This is a further measure in the bill that would undermine refugee family reunion, a known safe and legal route, when the Government's stated policy intention is actually to increase these Routes.

The Importance of Refugee Family Reunion

For many decades, the UK has allowed people who have been recognised as refugees in the UK to bring their closest family members to live with them. This is in recognition of the importance of family life, and how these links can aid and support integration for refugees. Being reunited with family members can be a life changing moment, bringing together loved ones who have been torn apart by war and violence. This pathway is currently the most accessed safe route which allows family members to come safely to the UK. It is important to note that as family members of refugees, they are often escaping similar situations themselves, or are in danger simply by being a relative of a refugee.

They may be living in conflict zones, in hiding, in unstable areas and/or displaced. In the last five years, over 29,000 people have arrived in the UK through existing family reunion routes, 90% of whom were women and children. However, with a narrow definition of family members many people are unable to access this safe route and are forced to find alternative, often dangerous, ways to be with their loved ones.

When the New Plan for Immigration was introduced, the Home Secretary stated "We should ask ourselves, where are the vulnerable women and children that this system should exist to protect?" Yet, these restrictions to family reunion rights will predominantly impact women and children, who currently account for 90% of those who receive family reunion visas. Therefore, these vulnerable groups whom the Home Secretary vowed to protect will be left in an even more vulnerable, precarious and risky situation.

This is why organisations, who work to support refugees in the UK, are calling for changes to the UK's restrictive refugee family reunion rules so that more refugee families can be reunited safely in the UK.

Calls to Action

We call on MPs to support new clause 35⁶. This new clause will expand the family reunion rules so that more people are eligible to be reunited with their family members in the UK.

We call on MPs to support new clause 42. This new clause will expand the definition of who qualifies for family reunion, expanding safe routes for family members to join their families in the UK.

We call on MPs to support new clause 48. This new clause will allow unaccompanied minors in the UK to reunite with their close family members.

We call on MPs to support amendment 8 which removes the provisions on differential treatment contained within clause 11.

We call on MPs to support amendment 114. This amendment ensures that if clause 11 is implemented, group 2 refugees will have the same family reunion rights as group 1 refugees.

⁶ https://publications.parliament.uk/pa/bills/cbill/58-02/0187/amend/natbord_rm_rep_1203v2.pdf