Nationality and borders ACT 2022

June 2022

The UK government has been developing reforms to the UK asylum system and strengthen border controls. In April 2022, it published the Nationality and Borders Act. This briefing aims to explain and examine the Act in detail.

In summary

- The UK government is seeking to reform the asylum system and tackle illegal entry into the UK as well as speed up removals of those who don’t have a legal right to remain in the UK. The government passed the Nationality and Borders Act 2022 in April 2022 bringing these reforms into legislation.
- Reforms outlined in the Act will come into force in the coming months of 2022 after changes were made to the Immigration Rules and the publication of secondary legislation. Some reforms came into practice from as early as June 2022.

- The Act legislates a number of radical changes to the UK asylum system such as differential treatment based on how someone comes to the UK, the introduction of asylum reception centres and offshore asylum processing sites.
- The Act also increases sentences for smugglers and for illegal-entry, fast-tracks appeals and removals, as well as providing reforms to the age assessment process for unaccompanied asylum seeking children and the threshold for establishing who is a potential victim of modern slavery. Other notable provisions include changes to the registration and revocation of British citizenship.
- Key concerns over the Act include the failure to address the decision-making backlog on asylum claims, that providing differential treatment to refugees based on how they come here undermines international obligations, reception centres and temporary status will not facilitate integration, and that fewer survivors of modern slavery will be able to access protection from the government.

Overview of policy background

1. In early 2021 the UK government published a lengthy policy statement outlining its New Plan for Immigration and consulted on the proposals. You can read more in Migration Yorkshire's briefing paper on the New Plan for Immigration and the government response to its consultation.

2. In July 2021 the government published the Nationality and Borders Bill with an accompanying policy statement. The Bill sought to implement the proposals from the New Plan for Immigration seeking to pass them through the necessary parliamentary process to become primary legislation.

3. The Bill completed its passage through parliament, receiving Royal Assent on 27 April 2022. A statement of changes to the Immigration Rules was made in May 2022 and subsequently secondary regulations published with some of the provisions coming into force from 28 June 2022. Others will come into practice in the coming months of 2022.

Overview of the Nationality and Borders Act

4. The Nationality and Borders Act puts some of the proposals under the New Plan for Immigration into new legislation. The Act aims to implement three key priorities for the government - to improve fairness and efficacy of the asylum system, deter illegal entry and to enable removals of people who do not have the right to remain in the UK through reforms to the asylum process, processes for age assessing unaccompanied asylum-seeking children, removals, modern slavery and British nationality. These provisions are expected to come into practice in the coming months with the publication of changes to the immigration rules and new secondary legislation, with some of the new policies already underway. Below is a summary of some of the key

provisions divided according to the relevant Parts of the Act.

Part 1 – Nationality

5. The opening section of the Act contains clauses on British nationality. Many of the reforms aim to facilitate the registration of British citizenship for some groups, with the intention of removing discrimination. Of significance is Clause 9 which allows the government to remove a person's British citizenship without notifying them certain circumstances such as where the person is uncontactable. Under previous rules, the government could already remove citizenship in cases where it is 'conducive to public good' and the person was believed to be eligible for citizenship in another country. The major change here is the removal of the requirement to notify the person of the decision.

6. There are also changes impacting stateless children and their ability to register as British citizens. For a child to qualify for leave as a stateless minor they must now satisfy the Home Secretary that they are unable to obtain any other nationality. In practice, this will mean providing evidence of the efforts to obtain another nationality. The government's rationale is that by tightening these requirements, they will prevent abuse of the system by parents who wilfully deprive their children of citizenship elsewhere in a bid to qualify for leave as a stateless person the UK.

Part 2 – Asylum

7. Part 2 of the Act enables the creation of a system of differential treatment for refugees based on how they came to the UK, labelling them ‘Group 1’ refugees (those who arrive directly from a country where their life or freedom was under threat, and present themselves to the UK authorities immediately) and ‘Group 2’ refugees (those who do not fulfil these two requirements). A temporary protection status will now be awarded to those Group 2 refugees who do qualify for protection but have arrived without permission, have passed through another ‘safe country’ before coming to the UK or have a connection to another safe country where they could claim asylum e.g. family members living there. Note that one in six asylum seekers in 2019 had already made an asylum claim in another European country, according to the original Bill’s explanatory notes. This will provide status for only 30 months at a time, no access to public funds or family reunion rights. This is in contrast to Group 1 refugees who arrive ‘legally’ who should qualify for five years’ leave to remain as a refugee and with a defined route to settlement. All types of refugee will be permitted to work and access healthcare and education in the same way.

8. Part 2 expands existing powers to use accommodation reception centres as asylum accommodation through creating the power to use specific types of accommodation for people at different stages of a protection claim. Reception centres are now being presented as an accommodation type for people deemed ‘inadmissible’ to the UK asylum system. The original Bill’s explanatory notes make it clear that this accommodation will be

‘basic’ and ‘simple’. The Act also allows the previous usual maximum time for someone to be accommodated in a reception centre (six months) to be increased indefinitely. The government have recently announced that plans to stand up the first reception centre are already underway with a former RAF site in Linton-On-Ouse, North Yorkshire currently under development to become an asylum reception centre.

9. In addition to the use of reception centres, the Act also legislates the use of offshore processing for asylum claims. This involves relocating asylum claimants to a third country who will take responsibility for processing their asylum claim. The government has already revealed that it has agreed its first Migration and Economic Development Partnership with Rwanda, who will be responsible for processing some asylum claims. The Home Office inadmissibility policy has also been updated to reflect the new partnership arrangement, outlining the process in which some asylum seekers might face removal to Rwanda.

10. Part 2 also contains reforms raising the threshold in relation to the standard of proof required to accept there is a risk of persecution and grant an asylum claim.

11. The Act also abolishes appeal rights in certain cases and creates a one-stop system ensuring that new evidence has to be presented at the start of the process. This is designed to address the issues of repeated claims and legal challenges of which the government has been highly critical. There is also a new accelerated appeals process for detained asylum seekers

despite that a similar system, the Detained Fast Track route, was previously suspended after being ruled unlawful in 2016.

Part 3 – Immigration control

12. Part 3 of the Act introduces reforms around immigration control, notably making it a criminal offence for asylum seekers to arrive in the UK illegally. Anyone who arrives in the UK through irregular means or without permission to enter will be impacted by the proposal, regardless of whether they go on to claim asylum. According to the original Bill's explanatory notes, around 62% of asylum applicants entered the UK illegally for the year ending September 2019, so this will affect a large proportion of claimants. The Act also increases the maximum possible sentence for illegal entry from six months to four years' imprisonment.

Part 4 – Age assessments

13. The Act includes some significant reforms to the process for age assessments for unaccompanied children seeking leave to remain in the UK – primarily impacting unaccompanied asylum-seeking children. It allows for the government to develop regulations regarding the test immigration officers use to determine whether someone may be a child. This involves reducing the age threshold so that immigration officers must treat someone as a potential minor where they look under 18 years old rather than under 25, as was previously.

14. Other significant reforms for age-assessments include the development of a National Age Assessment Board to oversee age assessments and a right of appeal against age assessment decision (previously assessments could only be challenged via judicial review). The Act also enables the implementation of scientific methods for age assessing. These methods are yet to be determined but the government recently announced the establishment of a Scientific Advisory Committee to do this.

Part 5 – Modern slavery

15. Reforms for victims of trafficking and modern slavery include raising the threshold for reasonable grounds decisions which are required for a potential victim to qualify for access to support under the National Referral Mechanism. The Act also creates powers to deny access to support for those who have a criminal conviction and legislates the reduction in the recovery period for victims of trafficking from 45 days to 30 days, limiting the period of support for potential victims. Finally, the idea of a one-stop system will also apply to modern slavery with the Act introducing limited timeframes for potential victims to disclose evidence of their experiences for the purpose of immigration control.

Analysis and commentary

16. The government has received criticism for failing to implement any measures to deal with the current asylum backlog. A recent report from the Refugee Council highlighted

that in 2020 over 33,000 people had been waiting from more than 12 months for an initial decision from the Home Office and that this figure is nearly 10 times higher than in 2010. Whilst the Home Secretary has acknowledged there are huge delays in processing asylum claims, the government claims this is linked to ‘unnecessary appeals’. However, critics say delays from further legal challenges are unrelated to delays from the Home Office in making an initial decision. Legal commentators also suggest such measures to limit evidence submission and appeal rights do not reflect the nature of asylum-seeking, put pressure on immigration tribunals and highlight the fact that such a high proportion of decisions are overturned at appeal. The longer individuals remain in the asylum process, the longer they remain on asylum support, with limited or no right to work. This is unlikely to facilitate integration.

17. Critics have raised concerns that providing differential treatment to refugees based on how they enter the country undermines the 1951 UN Refugee Convention to which the UK is a signatory, and that the UK may be breaching international obligations. The UN Convention makes clear that states must not penalise people for how they enter the country. This is because the experiences of displacement and asylum mean that for many, it is not always possible to seek legal permission to enter another country when fleeing conflict.

18. Technically, the Act makes it very difficult for anyone to come the UK as an asylum seeker and it arguably criminalises the act of seeking asylum. On the other hand, critics say the

government has arguably not revealed enough alternatives for people to come to the UK and obtain protection despite claiming it is committed to enhancing ‘safe and legal routes’. Most visa routes to come and live in the UK are not an ideal option for someone fleeing danger as they are expensive and can take several months to process. The government pledged to support up to 100 refugees to apply through the points-based system, but this is small scale. Meanwhile, refugee resettlement places are of limited availability, can take many months and years and there is no guarantee of receiving an offer (although the government has committed to trialling an emergency fast-tacked resettlement pilot). Without a significant increase in its resettlement offer, many still feel that punitive measures will not deter asylum seekers from seeking to come to the UK where there is no alternative. It is worth noting that since the Bill was drafted, government enabled the arrival of thousands of refugees through the Ukraine Scheme, creating a new ‘safe and legal route’.

19. The introduction of reception centres has been criticised due to failures at similar sites like military barracks and hotels. The Home Office has used these to accommodate asylum seekers during the pandemic and has faced numerous legal challenges as well as a damning report from the Independent Chief Inspector of Borders and Immigration over sub-standard living conditions in military barracks sites. There are also fears that reception centres could operate much like immigration detention centres. Meanwhile, the response from local residents regarding the proposed reception centre site in North Yorkshire

has been far from positive, raising doubts about how welcome such sites will be with receiving communities.

20. Further, the creation of a differential system means those accommodated in reception centres are not living in the community and therefore not undergoing a process of integration. Those later granted temporary protection status will not be well prepared to obtain employment or access services by the time they live in a community setting. There remain unanswered questions about whether this group will have access to education, English language learning, and schools as well as specialist support around health, mental health and wellbeing. Those with temporary status face a no recourse to public funds condition, increasing the risk of destitution and placing further strain on local authority housing and destitution services.

21. Public reaction regarding the new Migration and Economic and Development Partnership with Rwanda has been mixed and there has been opposition from some powerful institutions like the Church of England. The Home Secretary's lead civil servant penned an open letter expressing doubt due to the lack of evidence to suggest it will deter migrants from crossing the channel. Recent surveys with migrants in northern France suggest that the policy is unlikely to deter migrants from coming to the UK. It remains unknown what the standard of care will be in offshoring locations.

22. Despite the Rwanda partnership, there are doubts that the government will be able to facilitate many third country

removals. Removals to ‘safe countries’ under the Home Office’s inadmissibility policy will be challenging without bilateral agreements with EU states. Since the UK left the EU, it also left the Dublin Regulation which facilitated returns to EU member states. Rwanda alone is unlikely to be able to take responsibility for the bulk of claims deemed inadmissible.

23. Legal commentators have pointed out that introducing higher standards of proof required to grant asylum may not equate with higher quality decision making and could lead to a higher proportion of negative decisions on claims. In addition, the lack of clear phrasing of these clauses in the Act means this new standard is likely to lead to some confusion and more litigation in future in order to clarify what is required.

24. Reducing the threshold for treating potential children as minors from under 25 to under 18 could result in many children who look older being treated as adults without a full age assessment. This will create an increase in safeguarding incidents whereby vulnerable children will be left either unsupported or in accommodation settings with adults. There is also concern that the introduction of a National Age Assessment Board will undermine powers and independence held by the local authority. Moreover, the appropriateness of using scientific methods has also been questioned due to ethical issues as well as their accuracy. However, the introduction of a right of appeal against age assessment decisions is seen as a positive inclusion by many organisations working with young people seeking asylum.

25. Anti-trafficking organisations criticised the Bill for failing to protect survivors of trafficking and modern slavery. The Anti-Slavery Commissioner has accused the government of confusing trafficking with immigration. Further detail on the new reasonable grounds threshold will come in secondary legislation, but the assumption is that fewer people will qualify for protection and support as potential victims. There are also concerns about how measures to criminalise those that arrive illegally will negatively impact survivors of trafficking and that they do not take into consideration the experience of trafficking and exploitation, which often involves arriving ‘illegally’.

26. Finally, some of the reforms to the registration of British nationality have been controversial. While many welcome the changes removing discrimination and enabling certain groups to qualify for citizenship more easily, others have been heavily criticised. By removing the requirement to notify someone that their citizenship is being removed, the government is limiting the opportunity to challenge such a decision. Some critics have voiced concerns over this proposal, describing it as racist and disproportionately impacting minority communities. Some also question the legalities of the changes impacting stateless children in the context of international law, with UNHCR raising fears it could actually create statelessness.

Key information Nationality and Borders Act 2022. UK Legislation. 10 May 2022

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This briefing was updated by Stefan Robert in June 2022.

Source URL:
https://www.migrationyorkshire.org.uk/policy/policy-briefings/nationality-and-borders-act-2022