
GARDEN COURT
CHAMBERS

The Nationality and Borders Bill: charting a difficult course

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27 January 2022

Nationality Provisions in Part 1 of the Nationality and Borders Bill

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27 January 2022

British overseas territories citizenship

The British overseas territories:

- Anguilla
- Bermuda; British Antarctic Territory
- British Indian Ocean Territory
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St Helena, Ascension and Tristan da Cunha
- South Georgia and the South Sandwich Islands
- The Sovereign Base Areas of Akrotiri and Dhekelia (Cyprus)
- Turks and Caicos Islands
- British Virgin Islands

[NB: the Crown Dependencies (Channel Islands, Isle of Man) are not overseas territories]

British overseas territories citizenship

Clause 1: Historical inability of mothers to transmit citizenship

- This clause creates a registration route for the adult children of British overseas territories citizen (BOTC) mothers to acquire British overseas territories citizenship
- New s 17A of the British Nationality Act 1981 ('the 1981 Act') does for British overseas territories citizenship, what s 4C does for British citizenship: reduce the prejudice caused by sex discrimination in pre-1983 British nationality law

British overseas territories citizenship

Clause 2: Historical inability of unmarried fathers to transmit citizenship

- This clause creates a registration route for the adult children of unmarried BOTC fathers to acquire British overseas territories citizenship

- New ss 17B-G of the 1981 Act do for British overseas territories citizenship, what ss 4E-I do for British citizenship: help end the prejudice caused by discrimination against those born to unmarried fathers in pre-1 July 2006 British nationality law

British overseas territories citizenship

Clause 3: Sections 1 and 2: related British citizenship

- This clause creates a registration route as a British citizen under the 1981 Act for people who have registered as BOTCs under the new routes introduced by Clauses 1 and 2
- In 2002 all those with BOTC status additionally became British citizens by virtue of section 3 of the British Overseas Territories Act 2002 ('the 2002 Act')
- Those who were unable to become BOTCs, due to the fact that women could not pass on citizenship, or because their parents were not married, were also unable to become British citizens under the 2002 Act

Clause 4: Period for registration of person born outside the British overseas territories

- This clause amends Section 17(2) of the 1981 Act to remove the requirement that an application for the registration of a child as a BOTC must be made *within 12 months* of the birth
- Section 17(2) provides a registration route for a child whose parent is a BOTC *by descent* and had been in a territory for a continuous period of 3 years at some point before the child's birth
- At present, an application under this route must be made *within 12 months* of the child's birth
- The parallel provision for British citizens (s 3(2)) was amended in 2009, replacing the requirement for the application to be made within 12 months of the child's birth with a requirement for the application to be made *while the child is a minor*
- This provision amends the BOTC registration route in the same way

Clause 5: Disapplication of historical requirements: Consular registration

- This clause amends ss 4C and 4I of the 1981 Act, so that the requirement for a person's *birth to have been registered within 12 months at a British consulate* is to be ignored when assessing whether they would have become a Citizen of the UK and Colonies ('CUKC') under the British Nationality Act 1948 ('the 1948 Act'), had *women and unmarried fathers* been able to pass on citizenship at the time of their birth
- Under the 1948 Act, citizenship could normally only be passed on for *one generation* to children born outside of the UK and Colonies. However, paragraph 5(1)(b) of the 1948 Act permitted it to be passed on to further generations if the child was born *in a foreign country* and *their birth* was registered within a year at a British consulate. The child of a British mother or unmarried British father could not be registered because they were unable to pass on citizenship at that time
- The clause amends the 1981 Act, so that applications under section 4C (British mothers) and section 4I (unmarried fathers) will not be refused solely because the requirement to register the birth within a year has not been met. This reflects the decision in the case of the *Advocate General for Scotland v Romein* [2018] UKSC 6

Clause 6: Citizenship where mother married to someone other than natural father

- This clause amends the the 1981 Act to provide an entitlement to British citizenship for individuals who were previously unable to acquire it because their *mother was married to someone other than their biological British citizen father at the time of their birth*
- This addresses the decision in the case of *K (a child) v Secretary of State for the Home Department* [2018] EWHC 1834 (Admin), which found that, in these circumstances, the definition of father in the 1981 Act was incompatible with Article 8 (read with Article 14) ECHR

Clause 6: Citizenship where mother married to someone other than natural father

- Section 50(9A) of the 1981 Act defines 'father' for the purposes of determining the nationality of the child
- 'Father' is either: the *husband (or male civil partner)* of the child's mother at the time of the child's birth, or the *person treated as the father in IVF cases*. *If neither* of those situations apply, the father is someone who *can provide proof of paternity*. Where the child's mother is married to someone other than the child's natural father, her husband is the child's father for nationality purposes, even if not biologically related to the child
- The above definition of 'father' came into force on 1 July 2006. Before then, 'father' was only defined as the *husband of the child's mother*. In that situation, where the child's biological parents were unmarried, the *child could not take on the father's British citizenship*

Clause 6: Citizenship where mother married to someone other than natural father

- Remedial registration routes were subsequently inserted into the 1981 Act to allow the children of unmarried fathers born prior to 1 July 2006 to register as British citizens. These provisions are set out at sections 4E–4J of the 1981 Act
- This clause is intended to create an entitlement to British citizenship for children born on or after 1 July 2006 who did not become British *because their mother was married to someone other than their natural father*. By removing *the 1 July 2006 cut-off date* for registration under sections 4F – 4I, they will be able to apply
- Section 4D of the 1981 Act provides a registration route for *children who were born outside of the UK and qualifying British overseas territories to members of the British armed forces*, serving outside the UK and qualifying territories. Currently, a child does not qualify under this provision where their mother was married to someone other than their biological father at the time of the child's birth. This will also be remedied by this clause.

British citizenship and British overseas territories citizenship

Clause 7: Citizenship: registration in special cases

This clause creates new registration provisions which allow the Secretary of

State to grant British citizenship and/or British overseas territories citizenship to adult applicants if, *in the Secretary of State's opinion*, the person would have been or would have become a British citizen and/or BOTC had it not been for:

- *historical unfairness* in the law;
- an act or omission of a public authority;
- or other *exceptional circumstances* relating to the person's case.

Clause 7: Citizenship: registration in special cases

'Historical legislative unfairness' includes circumstances where a person would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies, or a British citizen, if an Act of Parliament or subordinate legislation had, for the purposes of determining a person's nationality status:

- treated males and females equally,
- treated children of unmarried couples in the same way as children of married couples, or
- treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father.

Clause 7: Citizenship: registration in special cases

- The Secretary of State already has a power to register minors as British citizens by discretion under subsection 3(1) of the 1981 Act
- Currently, no such power exists to grant citizenship by discretion to adults
- Clause 7 is not so wide as s 3(1) of the 1981 Act

British citizenship and British overseas territories citizenship

Clause 8: Requirements for naturalisation, etc.

- This clause enables the Secretary of State to waive a requirement for naturalisation as a British citizen under section 6 of the 1981 Act, naturalisation as a BOTC under section 18, and registration as a British citizen under section 4, namely *to have been present in the UK (or British overseas territory) at the start of the applicable residential qualifying period*
- Section 6 of the 1981 Act gives the Secretary of State the power to grant a certificate of naturalisation to an adult. The requirements for naturalisation are set out at Schedule 1 to the 1981 Act. There is a requirement to complete a period of either 3 or 5 years' residence in the UK (or a British overseas territory) before an application can be made (this is the residential qualifying period) *and* the individual *must have been present in the UK (or British overseas territory) at the beginning of the residential qualifying period*.

Clause 8: Requirements for naturalisation, etc.

- Section 4 of the 1981 Act, a provision for registration of British nationals as British citizens, has residence requirements which mirror those for naturalisation. Similar provisions exist for naturalisation as a BOTC, at section 18 of the 1981 Act
- The rationale behind these requirements is that an individual must be able to demonstrate a *sustained connection with the UK* (or British overseas territory), although absences up to a specified number of days are permitted by the legislation
- The Secretary of State has the power to waive the requirement relating to the maximum number of days absence and to treat this requirement as fulfilled in the special circumstances of a particular case (see paras 2 and 6 of Schedule 1 to the 1981 Act for British citizenship and BOTC, respectively, and in s 4(4) for registration)

British citizenship and British overseas territories citizenship

Clause 8: Requirements for naturalisation, etc.

- Presently, there is no power to waive the requirement to have been present in the UK *at the start of the qualifying period* (except in relation to applications for naturalisation as British citizens from current or former members of the armed forces)
- The clause amends the 1981 Act to allow the Secretary of State to waive the requirement that the individual must have been present in the UK or relevant overseas territory at the start of the qualifying period *in the special circumstances of a particular case*

Deprivation of citizenship

Clause 9 - Deprivation of Citizenship

- The clause amends section 40 of the the 1981 Act to allow a decision to deprive a person of citizenship to be made in the absence of written notice being given to the person and to make sure that the associated deprivation order is valid
- The clause ensures that any deprivation order made before the clause comes into force remains valid where the person was not notified of the decision to deprive in accordance with section 40(5) of the 1981 Act
- The clause has been introduced following the High Court judgment in *D4 v Secretary of State for the Home Department* [2021] EWHC 2179 in relation to reg 10(4) of the British Nationality (General) Regulations 2003; see now [2022] EWCA Civ 33, upholding that judgment
- Reg 10(4) provides that notice of a deprivation decision is deemed to have been given in certain circumstances when it is placed on a person's Home Office file

Deprivation of citizenship

Clause 9 - Deprivation of Citizenship

- The judgment found regulation 10(4) to be *ultra vires* s 41(1) of the 1981 Act and therefore void and of no effect. As a consequence, the Court declared the deprivation order made in that case to be null and void
- The aim of this clause is to provide a means of depriving a person of their citizenship where it is considered not possible to give, or there are reasons for not giving, prior notice of the deprivation decision, as specified in the clause
- This is considered necessary to ensure that deprivation powers can be used where a person is no longer contactable by the Home Office

Deprivation of citizenship

Clause 9 - Deprivation of Citizenship: Criticism

- The Secretary of State seeks to dispense with the requirement to give to the person concerned written notice of a decision to deprive them of British citizenship. The dispensation would apply in a large number of cases where the Secretary of State for the Home Department was satisfied it was not in the public interest
- The proposed grounds for dispensing with notice are very wide (including in the interests of national security, the relationship between the United Kingdom and another country, or otherwise in the public interest); open to subjectivity on the basis of what 'appears' to the Secretary of State to be the case; and they lack any safeguards
- It severely undermines procedural fairness for those who stand to lose British citizenship
- It offends the common law, international legal standards, and human rights incorporated into domestic law

Deprivation of citizenship

Clause 9 - Deprivation of Citizenship: Criticism

- Possession of British citizenship is in the nature of a constitutional right not to be subject to arbitrary deprivation, see *Ahmed and Others (deprivation of citizenship)* [2017] UKUT 00118 (IAC), at para 26
- Notice of a decision is a fundamental feature for it to have legal effect, per Lord Steyn in *R (Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36, at para 26
- Article 12(4) of the ICCPR provides that, 'No one shall be arbitrarily deprived of the right to enter his own country

Clause 9 - Deprivation of Citizenship: Criticism

- The United Nations' Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR. In its General Comment (No 27): Article 12 (Freedom of Movement) it noted:

> *21…. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country'*

Clause 9 - Deprivation of Citizenship: Criticism

- The United Kingdom is also bound by the United Nations' 1961 Convention on the Reduction of Statelessness
- The United Nations High Commissioner for Refugees ('UNHCR') has a mandate to address statelessness. In its *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness* ,the UNHCR considers the position of those who stand to be deprived of citizenship and be left stateless *as well as considering the procedural requirements for any deprivation of nationality (even where not left stateless) to avoid the charge that it is arbitrary and thereby unlawful*

Clause 9 - Deprivation of Citizenship: Criticism

UNHCR *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness:*

> '99. State decisions involving the acquisition, retention or renunciation of nationality should be issued in writing and open to effective administrative and judicial review. *The individual whose nationality is withdrawn should also be provided with written reasons for the withdrawal in a language they understand.'*

Clause 9 - Deprivation of Citizenship: Criticism

- In addition to the affront that Clause 9 poses to the common law, and international legal standards, it is highly likely to breach the United Kingdom's human rights commitments under the European Convention of Human Rights ('ECHR'), which have been incorporated into domestic law by the Human Rights Act 1998
- In their joint opinion on Clause 9 , Raza Husain QC, Eleanor Mitchell and Jason Pobjoy state 'the use of the powers conferred by clause 9 is highly likely to give rise to deprivation decisions that are incompatible with Article 6 and 8 ECHR, and potentially Article 14 ECHR' (p. 4, para 10)

Statelessness

Clause 10: Citizenship: stateless minors

- This clause amends Schedule 2 to the 1981 Act to introduce a new requirement for the registration of a stateless child (aged 5 to 17) as a British citizen or a BOTC and maintains the existing requirements in relation to those aged 18 to 22
- Provisions for reducing statelessness within the nationality framework are set out at section 36 and Schedule 2 of the 1981 Act
- Paragraph 3 of Schedule 2 to the 1981 Act provide for a stateless child born in the UK or an overseas territory to be registered as a British citizen or BOTC. The conditions which apply to this provision include, amongst others, a residential requirement and a requirement that the individual has always been stateless.

Clause 10: Citizenship: stateless minors

- According to the Secretary of State, there have been cases where parents have chosen not to register their child's birth, which would have acquired their own nationality for their child, so that the child can register as a British citizen under the statelessness provisions.
- The clause aims to prevent this 'vice'. This is to be achieved by adding a requirement that the Secretary of State be satisfied that the child cannot reasonably acquire another nationality.

Clause 10: Citizenship: stateless minors: Criticism

- The change will leave certain children stateless and in doing so runs contrary to the UK's obligations under the 1961 UN Convention on the Reduction of Statelessness
- It adds a provision for those aged 5-17 that the Secretary of State is satisfied that the child applicant is unable to acquire another nationality. It provides that a person is able to acquire a nationality where (i) that nationality is the same as one of the parents; (ii) the person has been entitled to acquire that status since birth; and (iii) *in all the circumstances, it is reasonable to expect them (or someone acting on their behalf) to take steps to acquire that nationality*

Clause 10: Citizenship: stateless minors: Criticism

- The problem with the provision is that it allows the Secretary of State to keep a child born in the UK without a nationality stateless from the age of 5 onwards, when in fact, the 1961 Convention—which the 1981 Act purports to implement—simply requires that the applicant is stateless and not that they cannot reasonably acquire another nationality
- The only circumstances where conferral of British citizenship could be withheld under the 1961 Convention is where the nationality of a parent was available to the child *immediately, without any legal or administrative hurdles, and could not be refused by the state concerned*, see for example paragraphs 24 to 26 of the UNHCR '*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*'.

Nationality and Borders Bill
Part 2 Asylum

Ubah Dirie, Garden Court Chambers

27 January 2022

Quick Overview of Part 2

Part 2 Asylum	Clause
Treatment of refugees; support for asylum-seekers	Clauses 11-12
Place of claim	Clause 13
Inadmissibility	Clauses 14-16
Supporting evidence	Clauses 17-18
Priority Removal Notices	Clauses 19-24
Late evidence	Clause 25
Appeals	Clauses 26-27
Removal to safe third country	Clause 28
Interpretation of Refugee Convention	Clauses 29-37
Interpretation of Part 2	Clause 38

Heightened Standard of Proof – *Clause 31*

31 Article 1(A)(2): well-founded fear

(1) In deciding for the purposes of Article 1(A)(2) of the Refugee Convention whether an asylum seeker's fear of persecution is well-founded, the following approach is to be taken.

(2) **The decision-maker must first determine, on the balance of probabilities—**

(a) whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), **and**

(b) whether the asylum seeker does in fact fear such persecution in their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence) as a result of that characteristic. (See also section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (asylum claims etc: behaviour damaging to claimant's credibility).)

(3) Subsection (4) applies if the decision-maker finds that—

(a) the asylum seeker has a characteristic mentioned in subsection (2)(a) (or has such a characteristic attributed to them), and

(b) the asylum seeker fears persecution as mentioned in subsection (2)(b).

(4) The decision-maker must determine whether there is a **reasonable likelihood** that, if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)—

(a) they would be persecuted as a result of the characteristic mentioned in subsection (2)(a), and

(b) they would not be protected as mentioned in section 33.

(5) The determination under subsection (4) must also include a consideration of the matter mentioned in section 34 (internal relocation)

Clause 31 – main issues

- Since *Karanakaran* it has been settled law that there is a single standard of proof in asylum claims. A person seeking asylum would only need to show a '*real risk*' or '*reasonable likelihood*' of persecution on return

- Reversal of the decision of the Court of Appeal in *Karanakaran v SSHD* [2000] 3 All ER 449, as endorsed by the House of Lords in *Sivakumar v SSHD* [2003] UKHL 14

- Introduction of a dual standard of proof, in which past facts must be proved on the balance of probabilities, while the 'real risk' or 'reasonable likelihood' standard continues to apply to predictions of future risk.

Particular Social Group – *Clause 32*

32 Article 1(A)(2): reasons for persecution

(1) For the purposes of Article 1(A)(2) of the Refugee Convention—

(a) the concept of race may include consideration of matters such as a person's colour, descent or membership of a particular ethnic group;

(b) the concept of religion may include consideration of matters such as—

(i) the holding of theistic, non-theistic or atheistic beliefs,

(ii) the participation in formal worship in private or public, either alone or in community with others, or the abstention from such worship,

(iii) other religious acts or expressions of view, or

(iv) forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality is not confined to citizenship (or lack of citizenship) but may include consideration of matters such as membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) the concept of political opinion includes the holding of an opinion, thought or belief on a matter related to a potential actor of persecution and to its policies or methods, whether or not the person holding that opinion, thought or belief has acted upon it.

(2) A group forms a particular social group for the purposes of Article 1(A)(2) of the Refugee Convention **only if it meets <u>both</u>** of the following conditions.

(3) The first condition is that members of the group share—

(a) an innate characteristic,

(b) a common background that cannot be changed, or

(c) a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.

(4) The second condition is that the group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.

(5) A particular social group may include a group based on a common characteristic of sexual orientation, but for these purposes sexual orientation does not include acts that are criminal in any part of the United Kingdom.

Clause 32 – Main issues

- In order to establish a claim for refugee status, a person must show that they have a well-founded fear of persecution on account of one of the 5 convention reasons: *race, religion, nationality, political opinion and membership of a particular social group*.

- Since 2004 much of UK asylum law has been based on the Qualification Directive which codified at an international level a consistent approach to the Refugee Convention.

- The Directive provided two touchstone criteria for what constitutes a PSG – for many years there was a debate about whether these requirements were cumulative so that they both had to be met or alternative so it would be sufficient if only one was met.

- Position clearly settled by the Upper Tribunal in ***DH (Particular Social Group: Mental Health) Afghanistan*** **[2020] UKUT 223 (IAC) – requirements are alternative and <u>not</u> cumulative.**

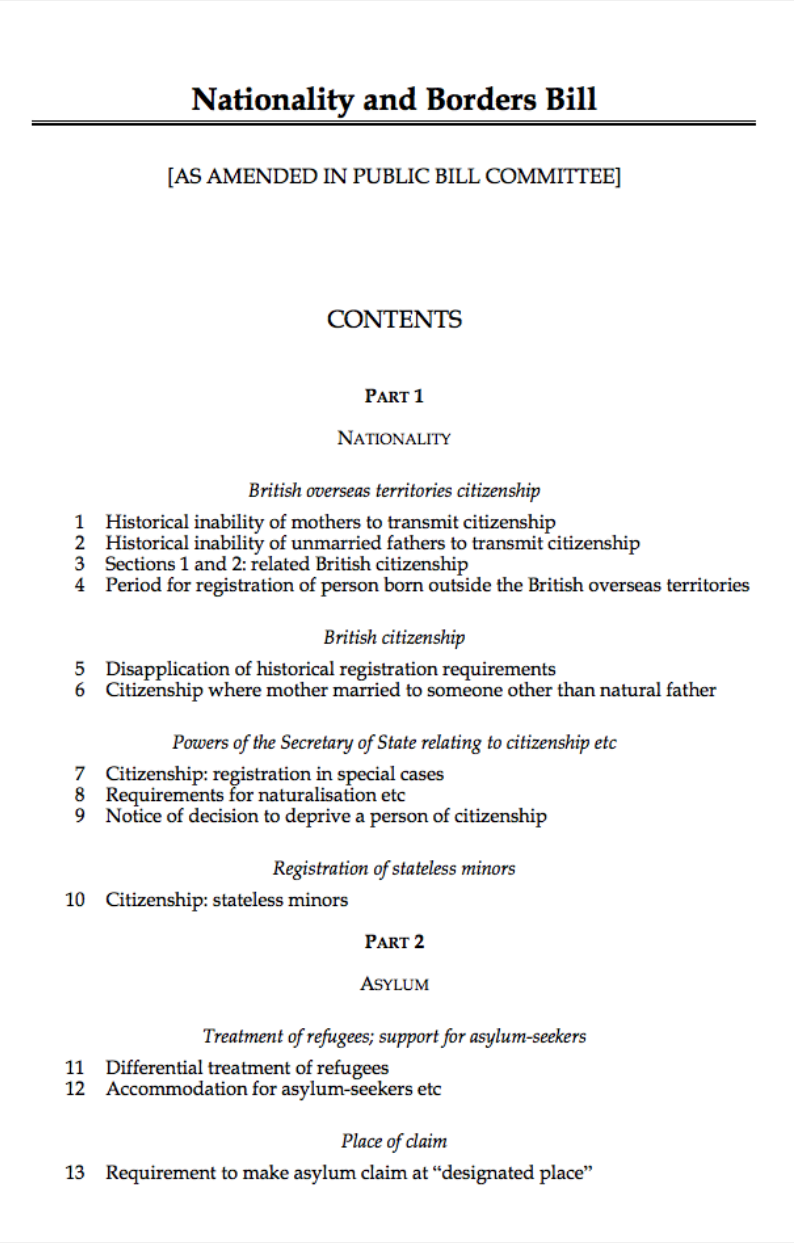
The impact of the Nationality and Borders Bill on trafficking victims

Emma Fitzsimons, Garden Court Chambers

27 January 2022

The Nationality and Borders Bill

- Follows the New Plan for Immigration.
- Currently at Committee Stage in the House of Lords
- Track progress: https://bills.parliament.uk/bills/3023



Nationality and Borders Bill

[AS AMENDED IN PUBLIC BILL COMMITTEE]

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UNCHR's view

"This Bill would undermine, not promote, the Government's stated goal of improving protection for those at risk of persecution. It seems to be aimed at deterring refugees, but there's no evidence that would be the result."

UNCHR's Representative to the UK, Rossella Pagliuchi-Lor, September 2021

https://hansard.parliament.uk/commons/2021-09-23/debates/122e6daf-470b-49c5-a05e-4daba0170c73/NationalityAndBordersBill(FourthSitting)

Trafficking provisions in the Bill

- Part 5 of the Bill; presently Clauses 57-68,
- Regressive and contrary to the stated aim of de-incentivising organised criminal networks facilitating trafficking.
- Will undermine the protection of PVOTs and VOTs.
- Will make it harder to identify and protect trafficking victims.
- Discriminatory impacts on various protected characteristics.
- Contrary to obligations under Art 4 ECHR and ECAT.

Priti Patel's asylum overhaul could leave trafficking victims without protection, UK slavery tsar warns

Anti-slavery commissioner raises alarm that plans will make identifying modern slavery cases harder

May Bulman Social Affairs Correspondent • Wednesday 08 September 2021 19:25

• Comments

Victim identification - Clause 59

- Amends section 49 of the Modern Slavery Act 2015
- Will change the test for Reasonable Grounds decision from '*may be*' a victim to '*is*' a victim
- Will place the test for Conclusive Grounds decision – *balance of probabilities* – on a statutory footing
- Justification? – see Explanatory Notes to Bill:

  'This will bring the Modern Slavery Act in line with the test set out in ECAT. This will also bring England and Wales in closer alignment with the Scottish and Northern Irish definitions, both of which provide support when there are reasonable grounds to believe an individual "is" rather than "may be" a victim.'
- But – see the New Plan for Immigration – concerns that trafficking decisions are being 'abused'
- Concern is RG standard will be elevated.

Late disclosure/late evidence – Clauses 57 and 58

- Theme in the Bill generally – penalising 'late claims.'
- Similar provision is made in Refugee Convention/Human Rights clauses in Part 2 of the Bill.
- Clause 57 will give the SSHD the power to serve a 'slavery or trafficking notice' on a person who has made a protection or human rights claim. Will require the Applicant to provide the SSHD with any relevant status information by a specified date.
- Clause 58 will introduce a punitive response for late compliance with a slavery or trafficking notice – the Applicant's credibility *will* be damaged unless there are good reasons why the information is late.

Late disclosure/late evidence – Clauses 57 and 58

Problems:

- Obligation to identify is not on the individual; positive obligation under Art 4 ECHR on the State.

- Recognised barriers to disclosure and self-identification e.g. gender/sex/cultural/mental health/disability/linguistic and social vulnerability.

- Phenomenon of late disclosure: see Statutory Guidance at Annex D and *MN and IXU v SSHD* [2020] EWCA Civ 1746.

- Late identification – see *VCL v UK* (App No 77587/12) and in *TVN v SSHD* [2021] EWHC 3019 (Admin)

- Access to justice - qualified/specialist legal advice, expert evidence, trust/rapport.

Disqualification from protection – Clauses 62-63

- Clause 62 empower the SSHD to not make a Conclusive Grounds decision, or remove someone from the UK during the NRM process, where the SSHD is satisfised the person is a threat to public order, or has claimed to be a VOT in bad faith.

- Clause 63 permits the SSHD to cease support and assistance to a person with a positive RG where Clause 62 applies.

- Public order is defined at Clause 62(3) – drafted in very broad terms:
  - Terrorist offences; Schedule 4 MSA offences; subject to a TPIM; subject to a Counter-Terrorism and Security Act 2015; ”foreign criminal” under the UK Borders Act 2007; deprivation of nationality; excluded under Article 1F of the Refugee Convention; otherwise poses a risk to national security on UK.

Disqualification from protection – Clauses 62-63

Problems:

- Article 4 ECHR positive obligation to identify a VOT is an absolute, not qualified right. No permissible derogation under Article 4 ECHR.
- Duty of identification is absolute; *consequence* of identification are different e.g. Article 13 ECAT and public order exception.
- Forced criminality and deportation cases in particular are complex – whole cohort vulnerable to being caught by these provisions e.g. cannabis cultivation, county lines.
- Article 26 ECAT – principle of non-punishment.

Takeaway thoughts?

- Campaigning/lobbying as Bill goes through the House of Lords.
- Changing preparation and strategy for individual casework.
- Strategic litigation.
- Continue to monitor among the sector.
- Further reading:
  - GC Chambers Opinion to Women for Refugee Women - https://www.refugeewomen.co.uk/legal-opinion-borders-bill-discriminates-against-women/

Stay tuned – upcoming conference

- Garden Court Public & Immigration Law Teams will be holding a joint conference in March 2022 on the Bill, as it passes into law.


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