

# The Asylum System in The *Nationality and Borders Bill*

July 2021

## Executive Summary

The Nationality and Borders Bill (The Bill) had its first reading on 7<sup>th</sup> July 2021. The second reading is provisionally scheduled for 19<sup>th</sup> and 20<sup>th</sup> July. The Bill is a key instrument in a wider overhaul of the asylum system proposed in the government's New Plan for Immigration. This legislation shows no respect for human dignity, justice, or the protection of human life. Key features of The Nationality and Borders Bill relevant to asylum include:

- **Differential treatment for different groups of refugees**, primarily depending on how they got to the UK. This approach ignores the reality of forced migration and abandons the very principle of international protection. It would impact many vulnerable refugees.
- **Out of town asylum accommodation centres**: The Bill focuses significantly on asylum accommodation centres, signalling an intention of expanding their use.<sup>i</sup> One such centre is currently in use at the disused Napier barracks, which is prison-like and isolated, and a poor context for engaging with asylum claims. The use of asylum centres is cruel and militates against integration.
- **Hostile and suspicious asylum determination**: The Bill raises the standard of proof for determining if someone has a "well-founded fear of persecution", and includes measures to make it harder to bring evidence late. This is against the backdrop of a well-established culture of disbelief, and a large number of refusals overturned on appeal.
- **Offshore processing of asylum claims**: provision for asylum seekers to be removed from the UK while their claims are being processed, opening the door to offshore processing.

**This legislation is deeply cruel, impractical, and destructive to the common good. We ask you to:**

- **Vote against the Nationality and Borders Bill at the second reading**
- **Speak out against proposed changes to the asylum system at the second reading**

## Differential treatment of refugees

### Group 1 and Group 2 refugees

The Bill makes provision for differential treatment of people recognised as refugees on the basis of how they got to the United Kingdom and the point at which they presented themselves to authorities.<sup>ii</sup> Those who travelled via a third country, do not have documents, or did not claim asylum immediately would routinely be designated "Group 2" refugees. The Bill highlights length of limited leave, access to indefinite leave, family reunion, and access to public funds as likely areas for discriminating against "Group 2" refugees. **This would deny many refugees the chance to settle here, keep families apart, and consign refugees to poverty.**

### Inadmissibility process

The Bill also puts into law new immigration rules under which those arriving via another country or irregularly face additional barriers to getting their claims heard.<sup>iii</sup> Under the new approach, the Home Office deems their claims 'inadmissible' and seeks to remove them to another country. **This process can also apply to those who could have been expected to make a claim in a safe third country, rather than the UK**, which has the potential to be applied very broadly. Transfer of asylum claimants out of the UK is unworkable, because it requires the agreement of third countries, and this is not forthcoming. This

process has been in place since January 2021. We understand that so far not one person has been removed under it. **The main impact of the inadmissibility process is to prolong the asylum process.**

The Bill also contains measures to criminalise asylum seekers for arriving in the UK without documents.<sup>iv</sup>

\*

- **By penalising refugees for how they are able to get to the UK, this legislation builds walls against people in need of protection and slams the door shut on many seeking a safe haven.** Most refugees have no choice of how they travel.
- The Refugee Convention does not state that refugees must claim asylum in the first safe country they come to, and it permits refugees to cross borders irregularly in order to claim asylum. Most refugees are hosted in developing countries, and the UK receives fewer asylum applications than most other European countries.<sup>v</sup> **Global provision for refugees could not function if all refugees claimed asylum in the first safe country they came to.**
- This will deny protection to vulnerable groups. Analysis from the Refugee Council, based on the government proposals in the New Plan for Immigration published in March, demonstrated that 2 in every 3 women and children that the UK currently recognises as refugees would be turned away under these new rules.<sup>vi</sup> **Discriminating against refugees obliged to arrive spontaneously will not prevent desperate people from making dangerous journeys.**

## Hostile and suspicious asylum determination

### An unrealistic burden of proof

The Bill would raise the standard of proof used in asylum determination. It would specifically mean applying a higher standard of proof when deciding whether someone has a “well-founded fear of persecution”.<sup>vii</sup> **This would mean applying an unrealistic burden of proof to something inherently difficult to evidence, and thus result in denial of protection to many who need it.** It obliges decision-makers to start from a place of suspicion. In so doing, it formalises existing problems within the asylum system, and places decision-makers in a poor position to understand asylum claimants’ experience and history.

Currently, all relevant facts within an asylum claim must, in theory, be proved to a ‘reasonable degree of likelihood’. The current standard, though often not adhered to, is reflective of 1) the inherent difficulty of proving one’s need for asylum and 2) the horrendous consequences of erroneously refusing someone – human lives are at stake. Under the Bill, “well-founded fear of persecution” would need to be proved on the “balance of probabilities”.

### Penalties for delayed disclosure

Additionally, many measures within the Bill seek to make it harder to bring evidence after making an initial application.<sup>viii</sup> In reality, there are many good reasons for delayed disclosure: for instance, it is very difficult to disclose traumatic events, and can take time to do so; the asylum process is hard to navigate, and people often don’t understand what is relevant at first. **Penalising delayed disclosure thus obstructs justice.**

### [Context: a long-standing cultural of disbelief and frequent erroneous refusals

The New Plan for Immigration states that the current asylum system is “open to gaming”.<sup>ix</sup> In reality, a long-standing culture of disbelief and refusal in asylum determination is well-evidenced.<sup>x</sup> There is much evidence that Home Office caseworkers often apply an excessive standard of proof to asylum claims, and either simply prejudge claimants’ credibility – starting from the position that people are lying – or

conclude that they are lying without sufficient consideration.<sup>xi</sup> This obstructs decision-makers' ability to fully understand claimants' experience and leads to numerous erroneous refusals. New measures further embed and formalise suspicion within the asylum system. **Approximately 40% of refusals are overturned on appeal to the courts, indicating a serious systemic flaw in initial decision-making. Rather than seeking to improve decision-making, the Nationality and Borders Bill takes the most problematic aspects of current practice and makes them policy. This represents a profound distortion of asylum reform.]**

## Out of town 'asylum centres'

JRS UK is supporting asylum claimants accommodated at the disused Napier barracks in Folkestone.

- The accommodation is dehumanising and unsafe, and the mental health of those accommodated there deteriorates rapidly as weeks pass.
- Asylum interviews happen in a haphazard manner, often with few resources or time to prepare available. This is a very poor context from which to navigate an asylum claim.
- The High Court recently ruled that the accommodation at Napier did not meet the minimum legal standards for asylum accommodation. The judge also accepted that Napier was "like a detention centre or prison camp".<sup>xii</sup>

A man formerly accommodated there described his experience: *"I was suffering in the camp, there was security, there were police constantly coming and going, there was no freedom. The way we were treated, it denied us all freedom. I came to the UK full of hope that I would have a chance to be safe and have a good life, and then I found myself in this camp, with no freedom, it was just like a prison. In all the four months while I was in the camp, I must have left barely ten times. It is in a remote place and you have to walk quite far to end up somewhere equally remote. The camp is like being in a psychiatric hospital, or like being in prison, there are people rapidly becoming more and more mentally unwell around you, one has just tried to kill himself, another is in pain, another is very stressed and cannot cope. It just seemed safer to stay in my room and to avoid seeing all of this as I could not cope with it all the time. I did not feel like a person when I was there. I felt I had lost who I was, like my personality had gone."*

The use of detention-like, ghettoised settings as asylum accommodation represents a further erosion of humanity and equitable treatment within our asylum system.

## Offshore processing

The Bill would allow for asylum seekers to be removed from the UK while their claims are being processed, opening the door to offshore processing of asylum claims.<sup>xiii</sup> This would be highly impractical and costly, and has given rise to serious human rights abuses in other contexts where it has occurred.<sup>xiv</sup> It undermines our commitment to processing claims fairly and offering sanctuary to refugees.

## About JRS UK

The Jesuit Refugee Service (JRS) is an international Catholic organisation, at work in 50 countries around the world with a mission to accompany, serve and advocate on behalf of refugees and other forcibly displaced persons. JRS in the UK has a special ministry to those who find themselves destitute as a consequence of government policies and those detained for the administration of immigration procedures. JRS UK runs a day centre, activities, hosting scheme (*At Home*), and legal advice project for destitute asylum seekers, most of whom are pursuing fresh claims, and destitute newly recognised refugees; and detention outreach services to Heathrow IRC. We currently run an outreach service to Napier barracks.

- 
- <sup>i</sup> Nationality and Borders Bill, Section 11.
- <sup>ii</sup> Nationality and Borders Bill, Section 10.
- <sup>iii</sup> Introduced under Rule 345A to D.
- <sup>iv</sup> See Nationality and Borders Bill Section 34 and Section 37.
- <sup>v</sup> In 2019 there were approximately, 128,940 asylum applications in [France](#) compared with 35,566 in the UK.
- <sup>vi</sup> Analysis of [Home Office data](#) by the Refugee Council found that on average, 15,410 people were granted refugee status each year from 2015-2020. Based on the claim in the New Immigration Plan that 'For the year ending September 2019, more than 60% of those claims were from people who are thought to have entered the UK illegally' it is projected that 9,246 of these would no longer be accepted as refugees under the new rules. At the same time, approximately 50% of initial grants of protection over the same period were for women.
- <sup>vii</sup> Nationality and Borders Bill, Section 29.
- <sup>viii</sup> Nationality and Border Bill, Section 16. This builds on existing legislation and policy.
- <sup>ix</sup> [The New Plan for Immigration](#): policy statement, p.3.
- <sup>x</sup> Freedom from Torture, [Lessons not Learned: the failures of asylum decision-making in the UK](#) (2019).
- <sup>xi</sup> See for example, Freedom from Torture, [Beyond Belief: how the Home Office fails survivors of torture at the asylum interview](#) (2020).
- <sup>xii</sup> *R (NB & Ors) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin)
- <sup>xiii</sup> Nationality and Borders Bill, Schedule 3.
- <sup>xiv</sup> For example, in 2018, the UNHCR was obliged to urge the Australian government to evacuate its offshore facility at Nauru due to spiralling health concerns: <https://www.unhcr.org/uk/news/briefing/2018/10/5bc059d24/unhcr-urges-australia-evacuate-off-shore-facilities-health-situation-deteriorates.html>.