

Nationality and Borders Bill

House of Lords, Report Stage

February 2022

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Key points

- **The BMA calls on peers to support Amendment 28 tabled by Lord Kerr, and co-signed by Lord Paddick, Lord Rosser and Lord Etherton to oppose Clause 11 of the Bill**, which would create a two-tier system for asylum seekers based on their mode of travel to the UK. The policy creates unnecessary barriers for enabling refugees, including health care professionals, to contribute to British society and risks leaving individuals vulnerable to exploitation and trafficking.¹
- **The BMA has significant concern over proposals relating to accommodation centres in Clause 12 of the Bill**. The proposals would expand the use of accommodation schemes, such as the use of military facilities and hostel-style accommodation, that have been proven to have a detrimental impact on mental and physical health.² We urge peers to support amendments that would scrap the expansion of institutional accommodation schemes, and ensure asylum seekers are housed in humane conditions with accessible healthcare.
- **The BMA calls on peers to support Amendment 35 tabled by Lord Kirkhope, Lord Rosser, Lord Paddick and the Lord Bishop of Durham to oppose Clause 28 of the Bill** that would allow the offshoring of people seeking asylum in the UK while their claims are being considered. International examples of offshoring have been found to contribute towards health problems, limit access to medical care and have been declared “unlawful” by the International Criminal Court’s Prosecutor. We set out our concerns over both offshoring and the expansion of institutional accommodation centres in a [joint letter](#) to the Home Secretary highlighting the significant negative health implications of such measures.
- **The BMA also calls on peers to support Amendment 20, in the names of Lord D’Souza, Lord Rosser and Lord Paddick’s amendment to oppose Clause 9 of the Bill**, which would enable the Secretary of State to deprive UK nationals of citizenship without notice. Citizenship is a right not a privilege and we see the clause as a breach of a fundamental principle of the rule of law. As a minimum, individuals must be given notice of a decision before their rights are adversely affected.
- **The BMA has serious concerns about the Bill’s potential for ionising radiation to be used for assessing the age of asylum seekers**. As [highlighted by Baroness Lister](#), crucially, the use of ionising radiation in this context involves direct harms without any medical benefit to the individual – as such, the BMA has been clear it would be unethical, and we do not believe it would be appropriate to expect doctors to participate in such a practice. Our concerns about the provisions on ‘scientific methods’ in Clause 51 have been [raised](#)

¹ The Guardian (May 2021) [‘We thank your government for our full pockets’ – Calais smugglers speak](#)

² The Red Cross (2021) [Far from a home: Why asylum support accommodation needs reform](#)

[with the Government](#) throughout the Bill's debates, and we urge Peers to press these further at report stage.

Clause 9 - Notice of decision to deprive a person of citizenship

The BMA opposes the inclusion of a clause to retrospectively deprive somebody of their citizenship with particular concern that this could be achieved without notice. This clause would apply to those with a tie to another country and disproportionately impact those of migrant heritage. We know the Windrush scandal placed a huge strain on the health and wellbeing of those affected and their families and we would not wish to see it repeated. Whilst the Government has given assurances that the policy would only be used to protect the UK from harm and does not expand the reasons for removing a person's citizenship, knowledge that citizenship could even be revoked without any warning will inevitably lead to stress and anxiety amongst a community that is already vulnerable.

Citizenship is a right not a privilege and we see the clause as a breach of a fundamental principle of the rule of law. As a minimum, individuals must be given notice of a decision before their rights are adversely affected.

Despite considerable concern over the proposals raised by both MPs and peers during previous debates on the Bill, proposals to deprive people of citizenship without notice have not been amended. Amendment 20, tabled by Lord D'Souza, Lord Rosser and Lord Paddick's amendment to oppose Clause 9 of the Bill.

Clause 11 – Differential treatment of refugees

The BMA has significant concern over Clause 11 of the Nationality and Borders Bill which would create a two-tier system for asylum seekers based on their mode of arrival to the UK. Those who arrive by a means other than via a resettlement programme risk having their claim dismissed or being given temporary asylum status with significant restrictions on family life and financial support. Under the proposals, the Home Office will attempt to remove them to another safe country and they could face criminal charges and a four-year prison sentence for 'entering illegally'. The UNHCR has stressed that creating two different classes of recognised refugees is inconsistent with the Refugee Convention and has no basis in international law.³

Whilst we do not know what proportion of refugee health and care professionals arrive to the UK via irregular means, the Bill creates unnecessary barriers for enabling refugees to contribute to British society and risks leaving individuals vulnerable to exploitation and trafficking.⁴

Many of the refugees who thrive in our communities today, such as Dr Waheed Arian, now an NHS doctor who fled forced conscription to the Taliban as a child and made an irregular journey, would be potentially expelled under the provisions in the Bill, instead of offered the protection and opportunity this country has historically provided.⁵

The BMA supports the development of a single, fair, humane and effective refugee system, in keeping with our obligations under international humanitarian and human rights law, including rights to necessary and appropriate health care irrespective of an individual's route into the UK.

Health implications of temporary status

³ UNHCR (October 2021) [UNHCR legal observations on the Nationality and Borders Bill](#)

⁴ The Guardian (May 2021) ['We thank your government for our full pockets' – Calais smugglers speak](#)

⁵ Politics Home (July 2021) ['Under the Nationality and Borders Bill I could not become an NHS doctor'](#)

Under the Bill, refugees who arrive in the UK by an irregular route would only be eligible to receive a new form or temporary protection, which would be valid for 30 months. People holding this status would have limited rights to settlement in the UK and to reunification with family who remain overseas. Those with temporary protection status would also be under No Recourse to Public Funds (NRPF) conditions. Evidence shows that individuals under NRPF conditions are prevented from receiving adequate income and housing,⁶ which can force families into destitution, further exacerbating health inequalities in the UK.

Extended periods of uncertainty faced by asylum seekers in the UK and the NRPF condition already contribute to poor health.⁷ Increasing the uncertainty under which people who have fled violence and trauma live will only increase their psychological distress, with the potential to create or compound underlying physical conditions linked to chronic stress, anxiety and depression.⁸ Clinicians who care for refugees and asylum seekers also sight concern about family members left behind as a substantial source of poor mental health, and reducing the already limited rights of refugees in this regard would be detrimental.⁹

The addition of a temporary protection status for some refugees will also exacerbate existing complexity over entitlement to NHS care in the UK and risks deepening exclusion from healthcare for vulnerable groups.

Although refugees and asylum seekers are entitled to free care on the NHS, the system is complex and asylum seekers can move in and out of entitlement depending on the status of their claim or appeal, their degree of vulnerability and whether they have dependent children under 18.¹⁰ As a consequence, many experience blockages when registering with a GP or face being incorrectly denied/charged for secondary care due to confusion over their entitlement.¹¹ A survey of BMA members found that 55% of doctors who work with refugees and asylum seekers were frequently or sometimes uncertain about their entitlement to care.¹²

Some refused asylum seekers with NRPF may be eligible to receive treatment for certain conditions free of charge, or receive local authority support where there is a medical need. Doctors play a key role in identifying these cases and advocating on behalf of particularly vulnerable individuals. However, the excessive complexity of the current system of NHS entitlements and charging deters appropriate use of the healthcare system, wastes the valuable time of medical professionals and has a detrimental impact on individual and public health.¹³

The BMA urges peers to support Amendment 28 in the names of Lord Kerr, Lord Paddick, Lord Rosser and Lord Etherton to oppose Clause 11 of the Bill, and instead support the development of a single, fair, humane and effective refugee system, in keeping with our obligations under international humanitarian and human rights law.

Clause 12 - Accommodation for asylum seekers etc.

⁶ Doctors of the World, 'A Rapid Needs Assessment of Excluded People in England During the 2020 COVID-19 Pandemic', (2020); The Joint Council for the Welfare of Immigrants, 'Migrants with No Recourse to Public Funds' Experiences During the COVID-19 Pandemic' (2021).

⁷ Haroon, S. (2008) 'The Health Care Needs of Asylum Seekers', Faculty of Public Health, Briefing Statement; Scottish Refugee Council (2013) [In Search of Normality, Refugee Integration in Scotland](#)

⁸ British Red Cross (2017) [Can't stay. Can't go. Refused asylum seekers who cannot be returned](#)

⁹ All Party Parliamentary Group on Refugees (2017) [Refugees welcome? The experience of new refugees in the UK](#)

¹⁰ Asylum support appeals project (2016) [Section 4 support](#)

¹¹ The Equality and Human Rights Commission (2018) [The lived experiences of access to healthcare for people seeking and refused asylum](#)

¹² BMA (2019) [Refugee and asylum seeker patient health toolkit](#)

¹³ BMA (2018) [Delayed, deterred, and distressed: The impact of NHS overseas charging regulations on patients and the doctors who care for them](#)

In December, the BMA joined other healthcare organisations in writing a [joint letter](#) to the Home Secretary raising concern over the health implications of the Bill, particularly in relation to offshoring and expanding institutional accommodation centres.

Clause 12 would give Government powers to expand asylum accommodation schemes, such as the use of military facilities¹⁴ and hostels, that have a detrimental impact on physical and mental health. A British Red Cross investigation found that unsuitable and poor facilities were having a severe impact on the wellbeing of asylum seekers, including children.¹⁵

People housed in asylum accommodation are generally not registered with a GP, and therefore face significant challenges in accessing appropriate healthcare, particularly for more complex mental and physical health conditions.¹⁶ People who are not registered with a GP and do not have an NHS number are also unable to access Covid-19 vaccines through regular channels, making them largely dependent on outreach and walk-in clinics, which poses a challenge for timely follow-up and identification of those who need additional doses as a result of clinical vulnerability.

Where people living in asylum accommodation are able to register with a local GP practice, this can place a significant burden on local health services as practices may need to register and provide care for a large number of patients, often with complex health issues,¹⁷ in a short period of time. Given this, and in the context of NHS services facing enormous pressure due to the ongoing pandemic and unprecedented backlog of care, the scale of planned new reception centres intended to house thousands of people is deeply concerning.

The BMA has previously [written](#) to the Home Secretary and Health Secretary calling for an end to the use of institutional accommodation to house asylum seekers. In June 2021, a High Court judgment in a case brought by six asylum seekers who had been housed in the Napier Barracks in Kent found inadequate health and safety conditions, a failure to screen victims of trafficking and other vulnerabilities, and false imprisonment of residents.¹⁸ Evidence presented to the court showed the Home Office continued to house people at the barracks against advice from Public Health England. A Covid outbreak was found by the court to be “inevitable” and did in fact occur in January 2021, with nearly 200 people testing positive

The BMA urges peers to support amendments to the Bill that would scrap the use of MoD facilities for housing asylum seekers, and that would ensure asylum seekers are housed in humane conditions with accessible healthcare.

[Clause 28 and Schedule 3 – Removal of asylum seeker to safe country](#)

The BMA is strongly opposed to Government proposals to send people seeking asylum in the UK abroad while their claims are being considered.

The use of offshoring has previously led to asylum seekers being accommodated in countries where they are unable to access medical care they may need and has had a detrimental impact on the mental health of asylum seekers effected. This is evident in problems created by Australia’s offshoring of asylum seekers to

¹⁴ The use of Napier barracks in Kent to accommodate over 400 asylum seekers as been described as a ‘prototype’ for the mass reception accommodation set out in the Bill - [Home Office letter re: Extension of Home Office’s tenure of the Napier Barracks](#), 27 August 2021.

¹⁵ The Red Cross (2021) [Far from a home: Why asylum support accommodation needs reform](#)

¹⁶ Written evidence submitted to Home Affairs Committee by Doctors of the World UK, the Helen Bamber Foundation, Forrest Medico-Legal Services and Freedom from Torture, available at <https://committees.parliament.uk/writtenevidence/22982/html/>

¹⁷ Maternity Action and Refugee Council (2013) [When maternity Doesn’t matter: dispersing pregnant women seeking asylum](#); Aspinal, P. (2014) [Hidden Needs, Identifying Key Vulnerable Groups in Data Collections: Vulnerable Migrants, Gypsies and Travellers, Homeless People, and Sex Workers](#)

¹⁸ Royal Courts of Justice (June 2021) [Nappier Barracks judgement](#)

countries like Manus Island in Papua New Guinea, which the UN has declared “violates the convention against torture” and the ICC prosecutor has described “unlawful”.¹⁹

The BMA strongly calls on peers to support Amendment 35 in the names of Lord Kirkhope, Lord Rosser, Lord Paddick and the Lord Bishop of Durham to oppose Clause 28 of the Bill.

Clause 51 – use of ionising radiation for age assessment

The BMA has expressed serious concerns about the use of ionising radiation for the age assessment of asylum seekers throughout the Bill’s scrutiny.²⁰ Regrettably, our concerns have not been allayed and our understanding is that the Government intends²¹ to keep ionising radiation available as an option for verifying the age of asylum seekers - whether through:

- 1) methods to be specified in future regulations under “imaging technology” in new clause 51, after the Secretary of State has sought “scientific advice”; or
- 2) a “pre-existing legal position”,²² as preserved by Clause 51(9) of this Bill, for decision-makers to use scientific methods of age assessment that are not specified in regulations under this Bill.

Regarding 1), we urge Peers to ask:

- How will individuals for the Home Office’s recently announced new science advisory committee for this purpose²³ be selected? Will they come from professional bodies? Will the committee include ethical experts? Will the committee be independent of government? What criteria will the committee use to examine whether a scientific method is an appropriate age assessment method? Will they consult relevant stakeholders? Will an update be provided to Parliament before the Secretary of State acts on the scientific advice?

Regarding 2), we urge Peers to ask:

- If a future use of ionising radiation for age assessment is justified via a “pre-existing legal route”, rather than specified in regulations under this Bill, what safeguards would apply – given those in Clause 51 would only apply to methods set out in regulations? Would there be any scrutiny of, or consultation on, methods that are not specified in regulations? What is meant by “if the decision maker considers it appropriate”?

The use of ionising radiation for age assessment involves direct harms without any medical benefit to the individual and, as such, we do not believe it would be appropriate to expect doctors to participate in such a practice.

The focus of Clause 51 seems to be about the creation of a new category of scientific methods for age assessment that cannot be reasonably rejected without “damaging the age-disputed person’s credibility”²⁴; safeguards are only considered under this lens.

We urge Peers to use raise the questions above and to support amendments that would address our ethical concerns.

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For further information on the BMA’s position on Clause 51, please contact:

¹⁹ The Guardian (October 2021) ‘[Australia to end offshoring in Papua New Guinea](#)’

²⁰ MPs raising our concerns at the Bill’s Committee Stage can be read here (2 Nov 2021): <https://bit.ly/3FHw6Jh>

²¹ The Government’s response to concerns from the BMA and others can be read here (2 Nov 2021): <https://bit.ly/3rOnd9t>

²² Letter from the Government to the Public Bill Committee, further to concerns raised about New Clause 32 - now known as Clause 51 - can be read here (4 Nov 2021): <https://bit.ly/3DH7akx>

²³ <https://www.gov.uk/government/news/home-office-to-introduce-scientific-methods-for-assessing-the-age-of-asylum-seekers>

²⁴ See subsection (7) of Clause 51, available at: <https://publications.parliament.uk/pa/bills/cbill/58-02/0187/210187v1.pdf>

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