

Nationality and Borders Bill

Consideration of Amendments

March 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 MPs to uphold Lords Amendments to the Nationality and Borders Bill that make critical changes to the legislation. These include:**
- **Removal of measures to enable offshoring** – Peers voted to remove measures allowing the offshoring of people seeking asylum in the UK whilst their claims are being processed by 208 to 155 votes. 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
- **Safeguards over the use of scientific methods for age assessments** – Throughout the passage of the Bill, the BMA has raised 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](#) the use of such methods in a non-clinical 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. We strongly call on MPs to uphold [Lords’ Amendments](#) to the Bill that would tackle some of the concerns we and others have raised. This includes ensuring that the Secretary of State must receive written approval from the relevant medical, dental and scientific professional bodies that the method is ethical and accurate for assessing a person’s age.
- **Removal of measures that would create a two-tier system for asylum seekers** – Peers debated and voted in favour of removing Clause 11 from the Bill that would create a two-tier system for asylum seekers based on their mode of travel to the UK. The BMA welcomes the removal of this Clause which would have created unnecessary barriers for enabling refugees, including health care professionals, to contribute to British society and risks leaving individuals vulnerable to exploitation and trafficking.¹
- **Removal of provisions to deprive citizenship without notice** – We urge MPs to retain the Lords’ Amendment to the Bill to remove Clause 9 which would give Government the power to deprive UK nationals of citizenship without notice. The BMA is clear that citizenship is a right not a privilege and we agree with Lords’ concerns that the clause is a breach of a fundamental principle of the rule of law.

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

Offshore processing & detention of refugees and people seeking asylum

The BMA strongly supports the Lords' Amendment to the Bill to remove measures from the Bill that would have granted the Home Secretary the power to forcibly transfer people seeking asylum to a third country, before their refugee status has been decided. These powers would allow the UK Government to create a system of offshore processing and detention for people seeking asylum, including unaccompanied children, modelled closely on the Australian system that operated from 2013.

There are serious health implications to the use of offshoring, and the BMA is opposed to its use on both medical and ethical grounds. The BMA is concerned that the Government has so far failed to specify which countries would be considered a "safe country" under proposed changes, which raises significant concern as to whether the host country will have the necessary infrastructure, resources and legislation in place to sufficiently meet asylum seekers' medical needs. We are further troubled at the recommendation in the recent Policy Exchange report² that Ascension Island could be used as a site for offshore processing and detention.

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 people effected. This is evident in problems created by Australia's offshoring of asylum seekers to 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".³

Extensive evidence shows that prolonged, indefinite detention causes serious damage to people's mental health. UNHCR research found cumulative rates of depression, anxiety and PTSD among refugees forcibly transferred to PNG and Nauru to be the highest recorded in the medical literature to date at over 80% in both locations.⁴ From 2017 to 2018, MSF provided medical services to people detained on Nauru as part of Australia's offshoring programme. Among the 208 refugees and asylum seekers MSF treated in Nauru, 60% had suicidal thoughts and 30% attempted suicide. Almost two-thirds were diagnosed with moderate or severe depression and 25% with anxiety disorder.⁵

Mental and psychiatric healthcare for people detained on Nauru was severely limited, meaning refugees and asylum seekers identified as being at high risk to themselves or others, or presenting with severe symptoms of mental illness, were unable to access the level of treatment they needed. Between 2013 and 2020, at least 12 people detained offshore by the Australian Government died by suicide.⁶

Offshoring risks leaving people who are already vulnerable, fleeing dangerous situations and who have often already experienced trauma, subject to situations where they are re-traumatised and unable to receive the medical attention they need. As peers [highlighted](#) during Report Stage of the Bill, under the Government's proposed changes, people fleeing conflict in Ukraine could be subject to offshoring whilst they await decisions on their claims.

On medical and ethical grounds, the BMA calls on MPs to support the Lords Amendment to the Bill to remove Clause 28 and to strongly oppose any attempt by Government to reintroduce proposals for offshoring to the Bill.

² Policy Exchange (Feb 2022) [Stopping the small boats: a plan B](#)

³ The Guardian (October 2021) ['Australia to end offshoring in Papua New Guinea'](#)

⁴ <https://www.refworld.org/docid/591597934.html>

⁵ <https://www.msf.org/indefinite-despair-report-and-executive-summary-nauru>

⁶ <https://www.bbc.com/news/world-australia-48375120>

Differential treatment of refugees

The BMA supports Lords' Amendments to the Bill to remove measures that would create a two-tier system for asylum seekers based on their mode of arrival to the UK. Under the proposals, those who arrive by a means other than via a resettlement programme would have risked having their claim dismissed or being given temporary asylum status with significant restrictions on family life and financial support. 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.⁷

The proposals would risk leaving individuals vulnerable to exploitation and trafficking⁸, and would result in the UK failing to support individuals fleeing desperate situations. As [highlighted](#) by peers at Report Stage, if the Government proposals became law, nobody fleeing the war in Ukraine would be entitled to full refugee convention rights in the UK as they would not have come directly from a country or territory where their life or freedom was threatened. 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.⁹

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

There are also serious health implications to the proposed two-tier system, which would result in refugees who arrive in the UK by an irregular route being subject to No Recourse to Public Funds (NRPF) conditions. Evidence shows that individuals under NRPF conditions are prevented from receiving adequate income and housing,¹⁰ 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.¹¹ 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.¹² 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.¹³

The addition of a temporary protection status for some refugees would 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

⁷ UNHCR (October 2021) [UNHCR legal observations on the Nationality and Borders Bill](#)

⁸ The Guardian (May 2021) ['We thank your government for our full pockets' – Calais smugglers speak](#)

⁹ Politics Home (July 2021) ['Under the Nationality and Borders Bill I could not become an NHS doctor'](#)

¹⁰ 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).

¹¹ 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](#)

¹² British Red Cross (2017) [Can't stay. Can't go. Refused asylum seekers who cannot be returned](#)

¹³ All Party Parliamentary Group on Refugees (2017) [Refugees welcome? The experience of new refugees in the UK](#)

degree of vulnerability and whether they have dependent children under 18.¹⁴ 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.¹⁵ 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.¹⁶

The BMA urges MPs to ensure the Lords' Amendment to remove Clause 11 from the Bill is upheld and to support the development of a single, fair, humane and effective refugee system, in keeping with our obligations under international humanitarian and human rights law.

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.¹⁷ The use of such methods in a non-clinical 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.

We welcome that peers acted on these concerns at Report Stage, voting in favour of amendments that would tackle help address them. This includes amendments to ensure that the Secretary of State must receive written approval from the relevant medical, dental and scientific professional bodies that the method is ethical and accurate for assessing a person's age.

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.

We therefore urge MPs to uphold Lords' Amendments to the Bill that would introduce address our ethical concerns and introduce critical safeguards over the use of scientific methods including ionising radiation.

Notice of decision to deprive a person of citizenship

The BMA supports the Lords decision to remove Clause 9 from the Bill, which would retrospectively deprive somebody of their citizenship without notice. This clause would have applied to those with a tie to another country, meaning it would unavoidably 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.

Despite proposed Government amendments to the Bill that would introduce safeguards over when the power peers voted in favour of removing the Clause from the Bill by 209 to 173 votes due to concern that the power threatened British values of the rule of law and risked affecting ethnic minority communities. The BMA is clear that citizenship is a right not a privilege and we agree with Lords' concerns that the clause is a breach of a fundamental principle of the rule of law. Individuals must be given notice of a decision before their rights are adversely affected and given the opportunity to appeal any decision over their citizenship.

¹⁴ Asylum support appeals project (2016) [Section 4 support](#)

¹⁵ The Equality and Human Rights Commission (2018) [The lived experiences of access to healthcare for people seeking and refused asylum](#)

¹⁶ BMA (2019) [Refugee and asylum seeker patient health toolkit](#)

¹⁷ MPs raising our concerns at the Bill's Committee Stage can be read here (2 Nov 2021): <https://bit.ly/3FHw6Jh>

We do not believe the Government's proposed amendments at Lords Report Stage would have gone far enough to address these fundamental concerns and call on MPs to uphold the Lords' amendment to the Bill to remove the Clause.

February 2021

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