

LORDS AMENDMENTS TO THE
NATIONALITY AND BORDERS BILL

[The page and line references are to HL Bill 82, the bill as first printed for the Lords]

After Clause 4

1 Insert the following new Clause—

“Provision for Chagos Islanders to acquire British nationality

- (1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.
- (2) After section 17H (as inserted by section 7), insert—

“17I Acquisition by registration: descendants of those born in British Indian Ocean Territory

- (1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if they are a direct descendant of a person (“P”) who was a citizen of the United Kingdom and Colonies by virtue of P’s birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date.
- (2) An application under this section must be made before the date specified in subsection (3).
- (3) The specified date means—
 - (a) in the case of a person aged 18 years or over on the date of coming into force of this section, five years after the date of coming into force of this section, or
 - (b) in the case of a person under the age of 18 years on the date of coming into force of this section or born within 4 years of that date, before they reach the age of 23 years.
- (4) A person who is being registered as a British overseas territories citizen under this section is also entitled to be registered as a British citizen.

- (5) No charge or fee may be imposed for registration under this section.””

Clause 8

2 Page 11, line 19, at end insert—

“(1A) Schedule 1 also amends the British Nationality Act 1981 to allow the Secretary of State to treat a person who has indefinite leave to enter or remain as meeting certain residence requirements in relation to an application for citizenship under those sections.”

3 Page 11, line 22, at end insert—

“(b) in section 41(4), for “that section” substitute “section 41 of the British Nationality Act 1981 (regulations)”.”

Clause 9

4 Leave out Clause 9

Before Clause 11

5 Insert the following new Clause—

“Compliance with the Refugee Convention

Nothing in this Part authorises policies or decisions which do not comply with the United Kingdom’s obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees.”

Clause 11

6 Leave out Clause 11

After Clause 12

7 Insert the following new Clause—

“Changes to the Immigration Act 1971

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(2) (general provisions for regulation and control) insert—

“(2A) Regulations under subsection (2) must provide that persons, and adult dependants of persons who are applying for asylum in the United Kingdom are granted permission by the Secretary of State to take up employment if—

(a) a decision at first instance has not been taken on the applicant’s asylum application within six months of the date on which the application was made, or

(b) a person makes an application or a further application which raises asylum grounds, and a decision on that new application, or a decision on whether to treat such further asylum grounds as a new application, has not been taken within six months of the date on which the further application was made.

(2B) For the purposes of subsection (2A), regulations must ensure that permission granted allowing people applying for asylum in the UK, and their adult dependants to take up employment, are on terms no less favourable than the terms granted to a person with recognised refugee status.

(2C) This permission is to be valid until the claim is determined and all appeal rights have been exhausted and individuals granted permission to work will be issued with physical proof of the right to work.””

After Clause 15

8 Insert the following new Clause –

“Safe third State: commencement

- (1) The Secretary of State may exercise the power in section 83(1) so as to bring section 15 into force only if the condition in subsection (2) is met.
- (2) The condition in this subsection is that the United Kingdom has agreed formal returns agreements with one or more third States.
- (3) A “formal returns agreement” means an agreement which provides for the safe return of a person making an asylum claim (a “claimant”) to a State which is party to the agreement, where the claimant has a connection to that State.”

Clause 28

9 Page 33, line 20, leave out paragraph (a)

After Clause 37

10 Insert the following new Clause –

“Immigration Rules: entry to seek asylum and join family

- (1) The rules laid down by the Secretary of State in accordance with section 1(4) and section 3(2) of the Immigration Act 1971 for regulating the entry into and stay in the United Kingdom of persons not having the right of abode must include provision for admitting persons coming for the purpose of seeking asylum.
- (2) These rules must make provision, for the purpose of seeking asylum, for persons in Europe who have a family member in the United Kingdom who is ordinarily and lawfully resident in the United Kingdom.
- (3) For the purposes of this section, a “family member” means –
 - (a) when the person in Europe is an unaccompanied minor –
 - (i) a parent, including adoptive parent;
 - (ii) aunt or uncle;
 - (iii) grandparent; or
 - (iv) sibling, including adoptive siblings;
 - (b) spouse, civil partner, unmarried partner of the person in Europe; and

- (c) such other persons as the Secretary of State may determine, having regard to—
 - (i) the importance of maintaining family unity;
 - (ii) any dependency between the family members;
 - (iii) the best interests of a child; and
 - (iv) any compelling circumstances.”

11 Insert the following new Clause—

“Refugee resettlement schemes

- (1) The Secretary of State must arrange for the resettlement in the United Kingdom of at least 10,000 refugees each year.
- (2) The target under this section includes the numbers of people resettled under—
 - (a) dedicated schemes for the evacuation of people from a geographical locality, such as a specific third State,
 - (b) a general UK resettlement scheme,
 - (c) the mandate resettlement scheme or equivalent replacements, and
 - (d) other routes as appropriate.
- (3) The Secretary of State must be guided by the capacity of local authorities and community sponsorship groups in delivering the target under subsection (1).”

12 Insert the following new Clause—

“Conditions for grant of asylum: cases of genocide

- (1) A person seeking asylum in the United Kingdom who belongs to a national, ethnical, racial or religious group which meets the criteria, in the place from which that person originates, set out in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948, must be presumed to meet the conditions for asylum in the United Kingdom following an application to the Court from a non-governmental organisation (registered as a charity in the United Kingdom) representing such a person or group of persons belonging to a national, ethnical, racial or religious group.
- (2) The adjudication of whether the group to which the person seeking asylum belongs meets the description specified in subsection (1) must be determined by a judge of the High Court of England and Wales after consideration of the available facts.
- (3) Applicants for asylum in the United Kingdom from groups designated under this section may submit their applications and have them assessed at British missions overseas.
- (4) The Secretary of State may by regulations place a cap on the number of people granted asylum under subsection (1) in any given calendar year.”

Clause 39

13 Page 40, leave out lines 5 to 9

14 Page 40, line 46, leave out “, (E1)”

15 Page 41, line 4, leave out paragraph (e)

- 16 Page 41, line 19, leave out “, (E1)”
- 17 Page 41, line 21, leave out “, (E1)”
- 18 Page 41, line 29, leave out “, (E1)”
- 19 Page 41, line 32, leave out “, (E1)”

Clause 40

- 20 Page 41, line 40, leave out subsection (3)

Clause 42

- 21 Page 46, line 28, leave out “and “United Kingdom waters” have” and insert “has”

After Clause 56

- 22 Insert the following new Clause –

“Age assessments: restrictions

- (1) Age assessments under section 49 or 50 must only be undertaken if there is significant reason to doubt the age of the age-disputed person.
- (2) A person conducting age assessments under section 49 or 50 must be a local authority social worker.
- (3) Age assessments must be undertaken in accordance with the Association of Directors of Children’s Services Age Assessment Guidance or equivalent guidance in Scotland, Wales and Northern Ireland.
- (4) When an age assessment is conducted, a process must be used that allows for an impartial multi-agency approach, drawing on a range of expertise, including from –
 - (a) health professionals,
 - (b) psychologists,
 - (c) teachers,
 - (d) foster parents,
 - (e) youth workers,
 - (f) advocates,
 - (g) guardians, and
 - (h) social workers.
- (5) When making regulations under section 51, the Secretary of State must not specify scientific methods unless the Secretary of State receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate beyond reasonable doubt for assessing a person’s age.
- (6) Any organisation developed to oversee age assessments must be independent of the Home Office.
- (7) The standard of proof for an age assessment is reasonable degree of likelihood.”

Clause 57

23 Page 62, line 5, leave out from “date” to end of line 6

Clause 58

24 Leave out Clause 58

Clause 62

25 Leave out Clause 62 and insert the following new Clause –

“Identified potential victims etc: disqualification from protection

- (1) This section applies to the construction and application of Article 13 of the Trafficking Convention.
- (2) A competent authority may determine that it is not bound to observe the minimum recovery period under section 60 of this Act in respect of a person in relation to whom a positive reasonable grounds decision has been made if the authority is satisfied that it is prevented from doing so –
 - (a) as a result of an immediate, genuine, present and serious threat to public order, or
 - (b) because the person is claiming to be a victim of modern slavery improperly.
- (3) Any determination made under subsection (2) must only be made –
 - (a) in exceptional circumstances,
 - (b) where necessary and proportionate to the threat posed, and
 - (c) following an assessment of all the circumstances of the case.
- (4) A determination made under subsection (2) must not be made where it would breach –
 - (a) a person’s rights under the European Convention on Human Rights,
 - (b) the United Kingdom’s obligations under the Trafficking Convention, or
 - (c) the United Kingdom’s obligations under the Refugee Convention.
- (5) For the purposes of a determination under subsection (2)(b) victim status is being claimed improperly if the person knowingly and dishonestly makes a false statement without good reason, and intends by making the false statement to make a gain for themselves.
- (6) A good reason for making a false statement includes, but is not limited to, circumstance where –
 - (a) the false statement is attributable to the person being or having been a victim of modern slavery, or
 - (b) any means of trafficking were used to compel the person into making a false statement.
- (7) This section does not apply where the person is under 18 years at the time of the referral.
- (8) Nothing in this section affects the application of section 60(2).”

Clause 64

26 Leave out Clause 64 and insert –

“Conclusive grounds: support and leave to remain for victims of slavery or human trafficking

After section 50A of the Modern Slavery Act 2015 insert –

“50B Confirmed victims etc: assistance, support and leave to remain

- (1) This section applies if a positive conclusive grounds decision is made in respect of a person.
- (2) This subsection applies if the person has received support under section 50A and in that case –
 - (a) the Secretary of State must continue to secure tailored assistance and support for that person at the end of the recovery period if they are in need of that assistance and support in accordance with subsection (2)(b);
 - (b) a person who receives a positive conclusive grounds decision must be considered in need of assistance and support under subsection (2)(a) for at least 12 months beginning on the day the recovery period ends;
 - (c) a reference in this subsection to assistance and support has the same meaning as in section 50A(6).
- (3) If the person is not a British citizen –
 - (a) the Secretary of State must give the person leave to remain in the United Kingdom if subsection (2) or (4) or (5) applies;
 - (b) leave to remain provided under this subsection must be provided from the day on which the positive conclusive grounds decision is communicated to a person for either –
 - (i) the amount of time support and assistance will be provided under either subsection (2) or one of the measures listed in subsection (4), or
 - (ii) at least 12 months if the person meets one or more of the criteria in subsection (5).
- (4) This subsection applies if the person receives support and assistance under one of the following –
 - (a) section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015,
 - (b) section 9(3)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015, or
 - (c) regulation 3(4)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 (S.S.I 2018/90).
- (5) This subsection applies if the person meets one or more of the following criteria –
 - (a) leave is necessary due to the person’s circumstances, including but not restricted to –
 - (i) the needs of that person for safety and protection from harm including protection from re-trafficking,

- (ii) the needs of that person for medical and psychological treatment;
 - (b) the person is co-operating with a public authority in connection with an investigation or criminal proceedings;
 - (c) the person is seeking compensation.
- (6) Where the person is receiving assistance from a support worker the recommendations of the support worker must be considered in assessing that person's circumstances under subsection (5)(a).
- (7) The Secretary of State must provide for persons granted leave to remain in accordance with this section to have recourse to public funds for the duration of the period of leave.
- (8) The Secretary of State must allow a grant of leave to remain under subsection (3) to be extended subject to the requirements of subsection (10).
- (9) In determining whether to extend a grant of leave to remain under subsection (8), and the period of time for which such extended leave should be provided, the person's individual circumstances must be considered, and whether that person –
 - (a) is receiving on-going support and assistance under the measures set out in either subsection (2) or subsection (4), or
 - (b) meets one or more of the criteria in subsection (5).
- (10) If the Secretary of State is satisfied that the person is a threat to public order –
 - (a) the Secretary of State is not required to give the person leave under this section, and
 - (b) if such leave has already been given to the person, it may be revoked.
- (11) The best interests of the child must be a primary consideration when making decisions under this section in respect of a child.
- (12) In this section “positive conclusive grounds decision” means a decision made by a competent authority that a person is a victim of slavery or human trafficking.
- (13) This section is to be treated for the purposes of section 3 of the Immigration Act 1971 as if it were provision made by that Act.”

After Clause 64

27 Insert the following new Clause –

“Slavery and human trafficking: victims aged under 18 years

- (1) Where a competent authority is making a decision in relation to a person who is aged under 18 years, the best interests of the child must be a primary consideration.
- (2) The Secretary of State may not serve a slavery or trafficking information notice on a person in respect of an incident or incidents which occurred when the person was aged under 18 years.

- (3) Section 61 of this Act does not apply in cases where either the first reasonable grounds decision or a further reasonable grounds decision made in relation to a person relates to an incident or incidents which occurred when the person was aged under 18 years.
- (4) Section 62 of this Act does not apply in cases where a positive reasonable grounds decision has been made in respect of a person which relates to an incident or incidents which occurred when the person was aged under 18 years.
- (5) The Secretary of State must grant a person leave to remain in the United Kingdom where a positive conclusive grounds decision is made in respect of a person who –
 - (a) is under 18 years, or
 - (b) was under 18 years at the time of the incident or incidents to which the positive reasonable grounds decision relates.
- (6) Guidance issued under section 49(1)(c) of the Modern Slavery Act 2015 on determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking must provide that, where the determination relates to an incident or incidents which occurred when the person was aged under 18 years, the determination must be made on the standard of “suspect but not prove”.

Before Clause 69

28

Insert the following new Clause –

“Visa penalty provision: general

- (1) The immigration rules may make such visa penalty provision as the Secretary of State considers appropriate in relation to a country specified under section (*Visa penalties for countries posing risk to international peace and security etc*) or 69.
- (2) “Visa penalty provision” is provision that does one or more of the following in relation to applications for entry clearance made by persons as nationals or citizens of a specified country –
 - (a) requires that entry clearance must not be granted pursuant to such an application before the end of a specified period;
 - (b) suspends the power to grant entry clearance pursuant to such an application;
 - (c) requires such an application to be treated as invalid for the purposes of the immigration rules;
 - (d) requires the applicant to pay £190 in connection with the making of such an application, in addition to any fee or other amount payable pursuant to any other enactment.
- (3) The Secretary of State may by regulations substitute a different amount for the amount for the time being mentioned in subsection (2)(d).
- (4) Before making visa penalty provision in relation to a specified country, the Secretary of State must give the government of that country reasonable notice of the proposal to do so.
- (5) The immigration rules must secure that visa penalty provision does not apply in relation to an application made before the day on which the provision comes into force.

- (6) Visa penalty provision may –
 - (a) make different provision for different purposes;
 - (b) provide for exceptions or exemptions, whether by conferring a discretion or otherwise;
 - (c) include incidental, supplementary, transitional, transitory or saving provision.
- (7) Regulations under subsection (3) –
 - (a) are subject to affirmative resolution procedure if they increase the amount for the time being specified in subsection (2)(d);
 - (b) are subject to negative resolution procedure if they decrease that amount.
- (8) Sums received by virtue of subsection (2)(d) must be paid into the Consolidated Fund.
- (9) In this section –
 - “country” includes any territory outside the United Kingdom;
 - “entry clearance” has the same meaning as in the Immigration Act 1971 (see section 33(1) of that Act);
 - “immigration rules” means rules under section 3(2) of the Immigration Act 1971;
 - “specified” means specified in the immigration rules.”

29

Insert the following new Clause –

“Visa penalties for countries posing risk to international peace and security etc

- (1) A country may be specified under this section if, in the opinion of the Secretary of State, the government of the country has taken action that –
 - (a) gives, or is likely to give, rise to a threat to international peace and security,
 - (b) results, or is likely to result, in armed conflict, or
 - (c) gives, or is likely to give, rise to a breach of international humanitarian law.
- (2) In deciding whether to specify a country for the purposes of this section, the Secretary of State must take the following into account –
 - (a) the extent of the action taken;
 - (b) the likelihood of further action falling within subsection (1) being taken;
 - (c) the reasons for the action being taken;
 - (d) such other matters as the Secretary of State considers appropriate.
- (3) In this section –
 - “action” includes a failure to act;
 - “country” and “specified” have the same meanings as in section (*Visa penalty provision: general*).”

Clause 69

30

Page 71, line 38, leave out subsection (1)

31

Page 71, line 40, leave out “for the purposes of” and insert “under”

32

Page 72, line 23, leave out subsections (5) to (11)

- 33 Page 73, line 11, leave out “includes any territory outside the United Kingdom” and insert “and “specified” have the same meanings as in section (Visa penalty provision: general)”
- 34 Page 73, leave out lines 12 and 13
- 35 Page 73, leave out lines 16 to 18

After Clause 69

- 36 Insert the following new Clause –
- “Visa penalties under section (*Visa penalties for countries posing risk to international peace and security etc*): review and revocation**
- (1) This section applies where any visa penalty provision made pursuant to section (*Visa penalties for countries posing risk to international peace and security etc*) is in force in relation to a country.
 - (2) The Secretary of State must, before the end of each relevant period –
 - (a) review the extent to which the country’s government is continuing to act in a way that, in the opinion of Secretary of State, has or is likely to have any of the consequences mentioned in section (*Visa penalties for countries posing risk to international peace and security etc*)(1), and
 - (b) in light of that review, determine whether it is appropriate to amend the visa penalty provision.
 - (3) If, at any time, the Secretary of State forms the opinion that, despite the fact that the country’s government has taken or is taking action as mentioned in section (*Visa penalties for countries posing risk to international peace and security etc*)(1), the visa penalty provision is not necessary or expedient in connection with –
 - (a) the promotion of international peace and security,
 - (b) the resolution or prevention of armed conflict, or
 - (c) the promotion of compliance with international humanitarian law,
 the Secretary of State must as soon as practicable revoke the visa penalty provision.
 - (4) Each of the following is a relevant period –
 - (a) the period of 2 months beginning with the day on which the visa penalty provision came into force;
 - (b) each subsequent period of 2 months.
 - (5) In this section, “visa penalty provision” has the same meaning as in section (*Visa penalty provision: general*).”

Clause 70

- 37 Page 73, line 20, leave out from “provision” to end of line 21 and insert “made pursuant to section 69 is in force in relation to a country.”
- 38 Page 73, line 35, leave out paragraph (a) and insert –
 “(a) “visa penalty provision” has the same meaning as in section (*Visa penalty provision: general*);”
- 39 Page 73, line 38, leave out “subsection (2)(a) of that section” and insert “section 69(2)(a)”

Clause 71

- 40 Page 74, line 16, at end insert—
“(c) the individual is travelling to Northern Ireland on a local journey from the Republic of Ireland.”

Clause 77

- 41 Page 80, line 35, after “Rules” insert “governing proceedings before the Tribunal (see subsection (4))”

Clause 83

- 42 Page 84, line 27, at end insert—
“(aa) sections (*Visa penalty provision: general*), (*Visa penalties for countries posing risk to international peace and security etc*) and (*Visa penalties under section (Visa penalties for countries posing risk to international peace and security etc): review and revocation*) (visa penalties in relation to countries posing a risk to international peace and security etc);”

Schedule 1

- 43 Page 86, line 6, leave out from beginning to “in” in line 7 and insert—
“(1) Section 4 (acquisition by registration: British overseas territories citizens etc) is amended as follows.
(2) ”
- 44 Page 86, line 16, at end insert—
“(3) After subsection (4) insert—
“(4A) Subsection (4B) applies where, on an application for registration as a British citizen made by a person to whom this section applies, the applicant has indefinite leave to enter or remain in the United Kingdom.
(4B) The Secretary of State may for the purposes of subsection (2) treat the applicant as fulfilling the requirement specified in subsection (2)(d), without enquiring into whether or not the applicant was in the United Kingdom in breach of the immigration laws in the period there mentioned.
(4C) The reference in subsection (4A) to having indefinite leave to enter or remain is to be construed in accordance with the Immigration Act 1971.””
- 45 Page 86, line 27, at end insert—
“(ba) after that sub-paragraph insert—
“(1A) Sub-paragraph (1B) applies where the applicant has indefinite leave to enter or remain in the United Kingdom.

(1B) The Secretary of State may for the purposes of paragraph 1 treat the applicant as fulfilling the requirement specified in paragraph 1(2)(d), without enquiring into whether or not the applicant was in the United Kingdom in breach of the immigration laws in the period there mentioned.

(1C) The reference in sub-paragraph (1A) to having indefinite leave to enter or remain is to be construed in accordance with the Immigration Act 1971.”;

46 Page 86, line 28, at end insert –

- “(2A) In paragraph 4, in paragraph (a) –
 (a) for “the reference” substitute “the references”;
 (b) for “a reference” substitute “references”.”

47 Page 86, line 30, at end insert –

“(za) the existing text becomes sub-paragraph (1);”

48 Page 86, line 31, after “(a)” insert “of that sub-paragraph”

49 Page 86, line 36, after “(a)” insert “of that sub-paragraph”

50 Page 86, line 38, at end insert –

“(c) after that sub-paragraph insert –

“(2) Sub-paragraph (3) applies where the applicant has indefinite leave to enter or remain in the relevant territory.

(3) The Secretary of State may for the purposes of paragraph 5 treat the applicant as fulfilling the requirement specified in paragraph 5(2)(d), without enquiring into whether or not the applicant was in the relevant territory in breach of the immigration laws in the period there mentioned.

(4) The reference in sub-paragraph (2) to having indefinite leave to enter or remain is to be construed as a reference to any status formally granted under the immigration laws in force in the relevant territory which is broadly equivalent to the status of having indefinite leave to enter or remain under the Immigration Act 1971.”

51 Page 86, line 38, at end insert –

- “(4) In paragraph 8, in paragraph (a) –
 (a) for “the reference” substitute “the references”;
 (b) for “a reference” substitute “references”.”

Schedule 3

52 Page 88, line 11, leave out paragraphs 1 and 2

53 Page 89, line 17, leave out paragraph 4

Schedule 6**54** Page 104, line 13, at end insert—

“(1A) The powers set out in this Part of this Schedule must not be used in a manner or in circumstances that could endanger life at sea.”

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