

# Genocide Determination Bill [HL]

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[AS INTRODUCED]

[THIS VERSION CORRECTS ERRORS WITH LINE NUMBERING]

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[AS INTRODUCED]

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# B I L L

TO

Provide for the High Court in England, Wales and Northern Ireland and the Court of Session in Scotland to make preliminary determinations concerning the undertakings made by the United Kingdom as a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) under international law; for the referral of such determinations to relevant international courts or organisations; for response to reports on genocide; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **1 Preliminary determination of cases of genocide or serious risk of genocide**

- (1) A person or group of belonging to a national, ethnic, racial or religious group, or an organisation representing such a person or group, may make an application to the Court for a preliminary determination, subject to subsection (2), that evidence presented to the Court is sufficient to find that there is a serious risk of genocide or that genocide is being, or has been, committed by an agent, organ or official of a Contracting Party (or individuals as nationals (named or unnamed) of the named Contracting Party) against that national, ethnic, racial or religious group. 5
- (2) The application procedure at subsection (1) is only available following a response of the Secretary of State in accordance with section 4. 10
- (3) The Court, considering an application under the procedure in subsection (1), will have regard to international jurisprudence about the standard of proof required for the duties to prevent and to punish respectively under the Genocide Convention. 15

## **2 Operational provisions**

- (1) A Minister of the Crown must by regulations made by statutory instrument make provision for or in connection with an application and preliminary determination made pursuant to section 1.
- (2) Regulations under subsection (1) above may in particular— 20
  - (a) specify the form, content, and criteria for admissibility of applications;

- (b) make provision about the procedure to be followed in relation to applications;
- (c) make provision about the procedure and rules of evidence necessary for consideration of an application by the Court, allowing for contradictory representations (including by named Contracting Parties) to be made. 5
- (3) In making such regulations the Minister of the Crown must have regard to—
- (a) the experience gained in the operation of this Act;
- (b) the object and intended purpose behind the operation of this Act including— 10
- (i) all undertakings in, and international obligations arising from, the Genocide Convention;
- (ii) meaningful access to the Court by persons making applications specified in section 1 without hindrance from unreasonable provision made pursuant to subsection (2). 15
- (4) Regulations under subsection (1) may contain supplemental, incidental, consequential and transitional provision.
- (5) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- 3 Referrals to the International Criminal Court or International Court of Justice or international organisations 20**
- (1) Where the Court has made a preliminary determination, as provided for in section 1, the Secretary of State must refer, in an appropriate form and subject to jurisdictional requirements, the determination as a finding of a United Kingdom judicial body— 25
- (a) to the Contracting Party which is the subject of the determination or the Contracting Party whose nationals (named or unnamed) are the subjects of the determination, as applicable;
- (b) to all other Contracting Parties to the Genocide Convention noting their obligations *erga omnes* and *erga omnes partes*; 30
- (c) to the International Court of Justice in accordance with Article IX of the Genocide Convention;
- (d) to the United Nations Security Council, the United Kingdom not exercising its veto, with a view to tabling a resolution for the Security Council to refer the situation to the International Criminal Court pursuant to Article 13(b) of the Rome Statute of the International Criminal Court; 35
- (e) to the United Nations Security Council, the United Kingdom not exercising its veto, with a view to tabling a resolution for the Security Council to refer the situation to the International Criminal Court pursuant to Article 13(b) of the Rome Statute of the International Criminal Court; 40
- (f) to the United Nations Security Council, the United Kingdom not exercising its veto, with a view to the Security Council establishing relevant mechanisms to enforce the obligations for the prevention and 45

suppression of acts of genocide or any of the other acts enumerated in Article 3 of the Genocide Convention, pursuant to Chapter V, Article 29 of the United Nations Charter; or

- (g) to any other competent organ of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3 of the Genocide Convention. 5

- (2) The Secretary of State must either make whichever of the referrals in subsection (1) is available or must make a statement in either House of Parliament as to why no such referral is being made including whether and how the United Kingdom's obligations to prevent genocide are being adequately fulfilled. 10

#### **4 Secretary of State's response to genocide or serious risk of genocide and review of response**

- (1) The Secretary of State must respond in writing to a report produced by the responsible committee of the House of Commons or House of Lords which concludes that there exists credible evidence of a serious risk of genocide or that genocide is being, or has been, committed outside the United Kingdom. 15

- (2) A response of the Secretary of State, as provided for in subsection (1), constitutes, for the avoidance of doubt, a decision of the Secretary of State which is a reviewable act, and a non-response is also reviewable. 20

- (3) The Secretary of State will enable and facilitate judicial review of a response, as provided for in subsection (1), or the application procedure set out in section 1, including by—

- (a) explaining whether relevant obligations under international law, and in particular the law relating to genocide, have been properly applied, interpreted, and fulfilled by the United Kingdom; 25

- (b) publishing and making available to the Court, the Secretary of State's considerations in exercise of their powers, in light of international obligations, in making the response; 30

- (c) publishing and making available to the Court, all due diligence and risk assessments undertaken in making the response.

- (4) A response is liable to be questioned or set aside in any court with jurisdiction, including the Court acting in accordance with the application procedure set out in section 1, if the Court did not already have that jurisdiction. 35

- (5) For the avoidance of doubt—

- (a) the supervisory jurisdiction will extend to the response;

- (b) application or petition for judicial review may be made or brought in relation to the response;

- (c) in any application pursuant to the procedure set out at section 1, or application or petition for judicial review, the Court must have regard to the application, interpretation and fulfilment of— 40

- (i) obligations under the Genocide Convention;

- (ii) relevant provisions of the European Convention on Human Rights (as provided for by the Human Rights Act 1998); and
- (iii) relevant rules of customary international law relating to genocide, crimes against humanity under custom, war crimes and torture and other peremptory norms of international law.

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## 5 Interpretation

In this Act—

“Contracting Party” refers to States that have signed and ratified the Convention on the Prevention and Punishment of the Crime of Genocide;

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“decision” and “response” are used interchangeably and includes any purported decision or response;

“the Court” means—

- (a) the High Court, in England and Wales or Northern Ireland, or
- (b) the Court of Session, in Scotland;

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“the supervisory jurisdiction” means the supervisory jurisdiction of—

- (a) the High Court, in England and Wales or Northern Ireland, or
- (b) the Court of Session, in Scotland;

“the court of supervisory jurisdiction” is to be read accordingly;

“genocide” has the same meaning as in the Convention on the Prevention and Punishment of the Crime of Genocide (see Article 2 of the Convention);

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“serious risk of genocide” is to be interpreted with regard to international jurisprudence and the duty to prevent as arising from the Convention on the Prevention and Punishment of the Crime of Genocide (see Article 1 of the Convention);

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“torture” has the same meaning as in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Article 1 of the Convention).

## 6 Extent, commencement and short title

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- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Sections 1 to 5 come into force at the end of the period of six months beginning with the day on which this Act is passed.
- (3) This section comes into force on the day on which this Act is passed.
- (4) This Act may be cited as the Genocide Determination Act 2022.

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*Lord Alton of Liverpool*

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