

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 1, page 1, line 8

after “office” insert “as detailed in clause 3(3)”

Effect

This is a paving amendment.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 3, page 2, line 24

add at the beginning “(1) The functions of the Commander are to

- (a) Uphold the security of the United Kingdom border,
- (b) Enforce the laws enacted by Parliament concerning the security of the United Kingdom border, and
- (c) Establish and maintain a “Border Security Board” to assist the Commander in the exercise of these functions.”

Effect

This amendment sets out the principal functions of the Border Security Commander.

Reason

The Bill does not detail the functions of the Border Security Commander. We take the view that the functions should be set out clearly in the bill. The functions we have identified as principle functions are

- a. Uphold the security of the United Kingdom border
- b. Enforce the laws enacted by Parliament concerning the security of the United Kingdom border
- c. Establish and maintain a “Border Security Board” to assist the Commander in the exercise of these functions

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 6, page 4, line 23

leave out “a board” and insert “the Border Security Board (referred to in this Act as the “Board”).

Effect

This amendment sets out the name of the Board in clause 6 to enhance the clarity of the bill.

Reason

Clause 6 (2) states “(2) That board—(a) is to operate under such name as is specified from time to time by the Commander, but (b) is referred to in this Chapter as “the Board”. Why is there any need to delay identifying the Board and naming it in such a way that makes it clear what the Board’s function is. Accordingly we have framed an amendment that provides that clarification.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL
AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 6, page 5, line 12

leave out subsection (2)

Effect

This is a consequential amendment.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 8, page 5, line 29

leave out “thinks” and insert “knows”

Effect

This amendment provides clarity about the state of knowledge of the Secretary of State when considering designation of a civil servant as the Interim Border Security Commander.

Reason

Clause 8(1)(a) applies if the Secretary of State *thinks* that “the designation of a person as the Commander has terminated, or is going to terminate, and there will be a gap before a new designation is made”. What the Secretary of State “thinks” about the designation of a person as the Commander is not a matter of importance. The Secretary of State must know what the status of the designation as Commander is. This amendment ensures that clause 8 is grounded on knowledge rather than speculation.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 8, page 5, line 35

after “a” insert “suitably qualified”

Effect

This amendment ensures that the Interim Border Security Commander will be a suitably qualified person for this role.

Reason

Clause 8 (2) provides that “The Secretary of State may designate a civil servant as the Interim Border Security Commander to exercise the functions of the Commander. This person should be suitably qualified for this position as clarified by this amendment.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 9, page 6, line 14

add at end “(3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before issuing or revising directions or guidance under this section.”

Effect

This amendment requires the Secretary of State to consult such persons as considered appropriate before issuing or revising directions or guidance under clause 9.

Reason

Clause 9 requires the Commander to comply with directions and have regard to guidance given by the Secretary of State about the exercise of the Commander's functions.

We consider that it is important that the Secretary of State should act in a transparent manner and consult with appropriate persons before issuing or revising directions or guidance under clause 9. This amendment achieves that objective.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 14, page 8, line 29

add at end “(7) Any crime committed under this section shall not be regarded as a “particularly serious crime” for the purposes of Article 33(2) of the Refugee Convention”

Effect

This amendment prevents asylum-seekers from being excluded from refugee protection by virtue of the act of seeking asylum itself.

Reason

Article 33(2) of the Refugee Convention stipulates that refugee protection can be refused to any person who “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of [their host] country”.

Section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended by the Nationality and Borders Act 2022) stipulates that anyone convicted of a sentence of “at least 12 months” by a UK court is presumed to have been convicted of a “particularly serious crime” in terms of the said Article 33(2).

Clauses 14(6) and 16(10) stipulate that any person convicted under those provisions can face sentences of imprisonment for up to 14 or 5 years respectively. As such, any persons so convicted, are likely to be excluded from refugee protection by virtue of the aforementioned provisions of the 2002 Act and The Refugee Convention. Such an exclusion from refugee protection would arise solely as a result of acts individuals have committed unavoidably in order to claim asylum in the UK.

Placing victims of persecution in such invidious situations risks undermining the rule of law, the integrity of the UK immigration system, and the international reputation of the UK. It is also likely to result in the individuals excluded from refugee protection on these grounds being exposed to breaches of their fundamental human rights.

Furthermore, excluding individuals from refugee protection before they have even had the opportunity to claim asylum as would be the effect of Clause 14(6) (and clause 16 (10)) is akin to treating asylum claims from those individuals as “inadmissible”. Treating certain asylum claims as inadmissible was a practice introduced by the previous government in the legislation which Part 2 of the current Bill now seeks to repeal. As such, in the absence of this proposed amendment, clause 14(6) would have an impact that is inconsistent with and would undermine the provisions of Part 2 of the Bill.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 16, page 10, line 31

add at end “ (12) Any crime committed under this section shall not be regarded as a “particularly serious crime” for the purposes of Article 33(2) of the Refugee Convention”

Effect

This amendment prevents asylum-seekers from being excluded from refugee protection by virtue of the act of seeking asylum itself and is consequential on the amendment to clause 14 above.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 21, page 15, line 16

after “it” insert “and in any event no later than the 14th day after which it was seized”.

Effect

This amendment would ensure that articles confiscated from asylum-seekers following their arrival to the UK must be returned to them within 14 days.

Reason

Clause 21 empowers the Secretary of State to confiscate “relevant articles” from asylum-seekers and to retain them indefinitely thereafter. Such articles (as defined in Clause 19(4)) would include mobile telephones, ID documents, and innumerable other personal items. The value of such items to asylum-seekers (for personal, legal, and other reasons) cannot be overestimated. In all of the circumstances, the power to confiscate such articles and retain them either indefinitely or for other lengthy periods risks being found contrary to ECHR Article 8 and also ECHR Article 1 of Protocol 1 in many cases. Inserting the wording recommended by this amendment is likely to reduce the incidence of such breaches occurring.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

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Clause 38(1), page 31 line 3

leave out “58” and insert “59”

Effect

This amendment would result in section 59 of the Illegal Migration Act 2023 being repealed (in addition to the other Sections repealed by Clause 38, which is welcome).

Reason

Sections 59(2)(a)(i), 59(2)(c)(iii), and Section 59(2)(e)(ii) of the Illegal Migration Act 2023 all have the effect of rendering inadmissible human rights claims made in the UK by people of certain nationalities. The basis for this appears to be that persons of such nationalities come from countries that are regarded as “safe countries”. The fact that such a country is (arguably) safe *might* be relevant to whether someone from that country should be allowed remain in the UK under The Refugee Convention or even, in most circumstances, under ECHR Articles 2 and 3. However it is of little or no relevance to the question of whether the removal of such a person from the UK would be contrary to various other provisions of the ECHR – a particular example being ECHR Article 8 (right to respect for family and private life). After ECHR Articles 2 and 3, ECHR Article 8 forms the basis for the majority of human rights claims made in the UK.

Preventing someone from making a “human rights claim” on the basis of their family or private life ties in the UK (ie. under ECHR Article 8) purely on the basis of their nationality risks being found contrary to the anti-discrimination provision at ECHR Article 14.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 41, page 32, line 23

leave out clause 41

Reasons

Clause 41 extends the powers of the Secretary of State to detain individuals whilst considering making a deportation order against them and also pending the making of such a deportation order. It contains no deadline by which such decisions must be made. In practice, the timescale under which such decisions are currently made tends to be extremely lengthy (often several years). As such, Clause 41 in its current form could have the effect of authorising the detention of the individuals affected for several years. Such individuals would in most cases be lawfully present in the UK. In all cases they would, by definition, not have received any deportation order – let alone had the opportunity to challenge the lawfulness of any such deportation through the statutory appeal process. The lengthy of detention of such individuals risks being contrary to ECHR Article 5 and also common law provisions against unlawful / arbitrary detention.

BORDER SECURITY ASYLUM AND IMMIGRATION BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 53, page 55, line 14

add at end “(3) The Secretary of State may only make regulations under subsection (1) which amend, repeal or revoke an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament following consultation with the Scottish Ministers.”

Effect

This amendment requires the Secretary of State to consult Scottish Ministers when making regulations under Clause 53 (1) which amend, repeal or revoke an enactment in or under an Act of the Scottish Parliament.

Reason

The Secretary of State may by regulations make provision that is consequential on this Act. (2) Regulations under subsection (1) may, in particular, amend, repeal or revoke any enactment passed or made before, or in the same Session as, this Act. (3) In subsection (2) “enactment” includes ... “(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament” and similar legislation passed by the Senedd Cymru and the Northern Ireland Assembly.

This exercise of Henry VIII powers is unconstrained and could have significant consequences for the application of the law in Scotland. Therefore, it is important that the Secretary of State consults with Scottish Ministers (as well as the other devolved administrations) before making such regulations.