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24 January 2022

Legislative Consent Memorandum for the Nationality and Borders Bill

BMA Cymru Wales response

Dear Russell, Jayne

Many thanks for the letter inviting BMA Cymru Wales to comment on the Legislative Consent Memorandum for the Nationality and Borders Bill.

Due to the rather tight timescale for response in order to meet the Senedd Business Committee deadline, we are unable to give full detailed consideration to the questions posed.

However, as an Association we have been active in lobbying MPs and Peers to convey our views on the Bill as it progresses through Westminster. Our views on the bill are summarised in Annex A, which is a recent briefing paper provided to members of the House of Lords¹.

Hopefully, this information will be sufficient to inform the work of the Health and Social Care and Children, Young People and Education Committees in considering this Bill.

BMA Cymru Wales

¹ Briefing also available online at: <https://www.bma.org.uk/media/4935/bma-briefing-nationality-and-borders-bill-second-reading-house-of-lords-22-dec-21.pdf>

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Nationality and Borders Bill

House of Lords, Second Reading

5 January 2021

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 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 oppose proposals for offshoring in the Bill**. We supported Conservative MP David Davis' amendment at Report Stage that would have done this. 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 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**. Our concerns were raised by MPs in relation to the provisions on 'scientific methods' in Clause 51 [previously 'New Clause 32']. We urge peers to restate the BMA's concerns and probe the intention behind this clause further, in particular the extent to which Clause 51's safeguards would address the BMA's ethical concerns given that, as we understand it, the Bill facilitates the use of scientific methods that need not be set out in regulations (and, therefore, would be out of scope for such safeguards).

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](#)

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'.

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.³

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.⁴

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

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,⁵ 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.⁶ 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.⁷ 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.⁸

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

³ The Guardian (May 2021) [‘We thank your government for our full pockets’ – Calais smugglers speak](#)

⁴ Politics Home (July 2021) [‘Under the Nationality and Borders Bill I could not become an NHS doctor’](#)

⁵ 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).

⁶ 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](#)

⁷ British Red Cross (2017) [Can't stay. Can't go. Refused asylum seekers who cannot be returned](#)

⁸ All Party Parliamentary Group on Refugees (2017) [Refugees welcome? The experience of new refugees in the UK](#)

Annex A

degree of vulnerability and whether they have dependent children under 18.⁹ 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.¹⁰ 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.¹¹

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.¹²

The BMA urges peers to oppose Clause 11 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.

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 facilities¹³ 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.¹⁴

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.¹⁵ 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,¹⁶ 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

⁹ Asylum support appeals project (2016) [Section 4 support](#)

¹⁰ The Equality and Human Rights Commission (2018) [The lived experiences of access to healthcare for people seeking and refused asylum](#)

¹¹ BMA (2019) [Refugee and asylum seeker patient health toolkit](#)

¹² BMA (2018) [Delayed, deterred, and distressed: The impact of NHS overseas charging regulations on patients and the doctors who care for them](#)

¹³ 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.

¹⁴ The Red Cross (2021) [Far from a home: Why asylum support accommodation needs reform](#)

¹⁵ 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/>

¹⁶ Maternity Action and Refugee Council (2013) [When maternity Doesn't matter: dispersing pregnant women seeking asylum](#); Aspinall, P. (2014) [Hidden Needs, Identifying Key Vulnerable Groups in Data Collections: Vulnerable Migrants, Gypsies and Travellers, Homeless People, and Sex Workers](#)

Annex A

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.¹⁷ 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 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”.¹⁸

The BMA strongly calls on peers to oppose the implementation of offshoring as set out within the Bill.

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. The knowledge 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 at Report Stage by both sides of the House, proposals to deprive people of citizenship without notice have not been amended. The BMA urges peers to rectify this and support amendments that would remove Clause 9 from the Bill.

Clause 51 – use of ionising radiation for age assessment

The BMA has serious concerns about the use of ionising radiation for the age assessment of asylum seekers, which MPs highlighted to the Government at the Bill’s Committee Stage¹⁹. Regrettably, our concerns were not

¹⁷ Royal Courts of Justice (June 2021) [Nappier Barracks judgement](#)

¹⁸ The Guardian (October 2021) ‘[Australia to end offshoring in Papua New Guinea](#)’

¹⁹ MPs raising our concerns at the Bill’s Committee Stage can be read here (2 Nov 2021): <https://bit.ly/3FHw6Jh>

Annex A

allayed during these debates on the Bill. Our understanding is that the Government confirmed that it intends²⁰ to keep ionising radiation open as an option for verifying the age of asylum seekers - whether through:

- methods to be specified in regulations under ‘imaging technology’ in new clause 51; or
- a “pre-existing legal position that scientific methods not specified by the Secretary of State under subsection (1) of NC32 [now Clause 51] may continue to be used”,²¹ preserved by Clause 51(9) of this Bill.

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.

Safeguards

The Government has stated that the safeguards outlined in Clause 51 are to assuage “ethical concerns about the use of certain scientific methods”²², such as our concerns about using ionising radiation to assess an asylum seeker’s age. Yet, the Government has also made clear²³ that there will be some scientific methods for age assessment that fall outside of Clause 51’s safeguards as the Bill seeks to preserve a “pre-existing legal position” for decision-makers to use methods of age assessment that are not specified in regulations under this Bill.

Consequently, we do not see how the safeguards in Clause 51 address ethical concerns from the BMA and others if, for example, the requirement on the Secretary of State to seek scientific advice (Clause 51(3)) does not consistently apply to any, and all, uses of scientific methods for assessing the age of an asylum seeker.

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; it appears that safeguards are only considered under this lens.

December 2021

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

For further information on the BMA’s view on other aspects of the Bill, please contact:

²⁰ The Government’s response to concerns from the BMA and others can be read here (2 Nov 2021): <https://bit.ly/3rOnd9t>

²¹ 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>

²² At Committee Stage, Craig Whittaker MP, Government Whip, said: “We are aware there are ethical concerns around the use of certain scientific methods for age assessment, which is why new clause 32 [now clause 51] includes a number of changes to the Bill to ensure proper safeguards are in place for those who are asked to undergo a scientific age assessment” (2 Nov 2021), available at: <https://bit.ly/2ZcX2AR>

²³ Letter from the Government to the Public Bill Committee, further to concerns raised about New Clause 32 - now known as Clause 51 (4 Nov 2021) - can be read here: <https://bit.ly/3DH7akx>

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