

Nationality and Borders Bill 2021

POLICY BRIEF

Ensuring LGBT+ protection is not lost

The Nationality and Borders Bill 2021 ('the Bill') makes sweeping changes to the UK asylum system. This brief highlights the particular and significant impact these suggested changes may have by endangering LGBT+ people who are fleeing persecution in other countries and seeking sanctuary ("asylum" or "refugee protection") in the UK, specifically in relation to the following areas of the bill:

1. Temporary protection status
2. Accommodation and offshore processing centres
3. Standard of proof
4. "Late" claims
5. "Late" evidence and expedited appeals

To protect LGBT+ people from persecution **we recommend** MPs call on the Government to:

- 1. Provide refugee protection to all people at risk of harm in their countries of origin.**
- 2. House people seeking asylum in the community in the UK and remove clauses from the Bill allowing for extraterritorial processing or consideration of claims.**
- 3. Remove Clause 29 from the Bill that raises the standard of proof to the "balance of probabilities".**
- 4. Remove Clauses 10, 11 & 34 from the Bill which would unreasonably and potentially disproportionately penalise LGBT+ people for a "late" asylum claim.**
- 5. Remove Clauses 16-21 & 23 from the Bill that create unworkable time pressures.**

Many people who have been welcomed into this country's LGBT+ community would not be here under this potential law, and would not have had the chance to rebuild their lives free from homophobia, biphobia and/or transphobia.

According to the UN High Commission for Refugees, the proposals would 'undermine the 1951 Convention and international protection system, not just in the UK, but globally'. UNHCR also states that 'if States, like the UK, that receive a comparatively small fraction of the world's asylum-seekers and refugees appear poised to renege on their commitments, the system is weakened globally and the role and influence of the UK would be severely impacted'¹.

Enacting this Bill as it stands would also undermine the UK Government's commitment to being a global leader in advancing the rights and dignity of LGBT+ people by convening of a global LGBT+ summit in 2022 and co-chairing the international Equal Rights Coalition of 42 states.

¹ Para 4, p 1. UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom, May 2021. <https://www.unhcr.org/uk/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk>

1. Temporary protection status

The Bill makes provision for differential treatment of people based on how they get to the UK and the point at which they apply for asylum (Clauses 10 and 11). Those who travel via a third country or do not claim asylum immediately would be designated as “Group 2” refugees. If their asylum claims are successful, they would probably only be granted temporary protection (instead of the current 5-year refugee leave to remain with the possibility of settling in the UK after that) and have their cases regularly reviewed to see if it would be possible to remove them from the country.

The homophobia, biphobia and transphobia that fuel the persecution of LGBT+ people causing them to seek asylum are decades-long realities of discrimination and oppression. It is extremely unlikely that most LGBT+ refugees would be safe to be returned after only a few years in the UK.

Receiving only temporary protection, with limited access to family reunion and other rights, would leave people under immense stress and anxiety, negatively impacting their mental health and ability to integrate.

Further, temporary protection status would force LGBT+ refugees to continually hide their sexual orientation and/or gender identity, because to live openly as themselves in the UK would now be a constant risk of increasing persecution if they were removed to their country of origin.

Temporary protection status will curtail the ability of LGBT+ refugees to rebuild their lives when the fact of persecution of LGBT+ people the world over will continue.

Recommendation: Call on the UK government to provide refugee protection to all people at risk of harm if returned to their countries of origin.

“Have you ever seen a bird in a cage?”

“Mo” fled the Syrian region after a relative found out he was gay and tried to kill him.

He got to mainland Europe by boat and then made his way to the UK.

“My boyfriend and I were in different boats. Some of the boats sank. I haven’t heard from him since...I was here in 2011 as a student and I could have stayed here then. But at that time, I didn’t have problems. I know this country because I was here then for 6 months and I speak English.”

2. Accommodation and offshore processing centres

The Bill introduces provisions for accommodation centres, including centres outside the UK, while people's applications for asylum are assessed or before that, while deciding whether their asylum claims are "admissible" in the UK². The Home Office has already started operating similar sites through its use of disused army barracks, such as Napier barracks in Kent.

There is ample evidence from several contexts including Australia that,

'Offshoring of asylum processing often results in the forced transfer of refugees to other countries with inadequate State asylum systems, treatment standards and resources. It can lead to situations in which asylum seekers are indefinitely held in isolated places where they are 'out of sight and out of mind', exposing them to serious harm. It can also de-humanise asylum-seekers.' UNHCR has voiced its profound concerns about such practices, which have "caused extensive, unavoidable suffering for far too long", left people "languishing in unacceptable circumstances" and denied "common decency."³

Large accommodation centres pose particular risks for LGBT+ people seeking asylum. We are concerned that housing people in such centres outside the UK would result in systemic verbal, violent and sexual abuse of LGBT+ people who are in need of protection, high rates of self-harm and suicide.

Recommendation: Call on the UK government to house people seeking asylum in the community in the UK and remove clauses from the Bill allowing for people's claims to be considered or processed in other countries.

Offshore processing centres will increase homophobic, biphobic and transphobic abuse

LGBT+ people already experience systemic abuse and harassment in the UK's current accommodation and detention system, both by staff and others whom they are housed or detained alongside. Problems tend to continue even when people are moved to a new property.

Examples include: unwanted sexual advances, threats, invasions of privacy, verbal abuse, being prevented from sleeping, pranks and sexual assault.

² New rules on inadmissibility came into force in January this year. We are concerned about this change to the Immigration Rules but the details of this existing change are beyond the scope of this briefing.

³ Para 16, p 3. UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom, May 2021. <https://www.unhcr.org/uk/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk>

3. Standard of proof

At present, to be granted asylum, applicants have to demonstrate that there is a “reasonable degree of likelihood” of persecution if they were returned to their country of origin. This low standard of proof reflects the seriousness of being wrongly refused asylum and potential risk to a person’s life. Clause 29 of the Bill proposes to increase the standard of proof for assessing whether someone has a particular characteristic that gives rise to the fear of persecution to the higher level of “balance of probabilities”.

LGBT+ people will find it even harder prove than it already is that they are indeed LGBT+. It is inherently difficult for anyone to prove their sexual orientation or gender identity. It would be unrealistic to expect an LGBT+ person who has fled persecution to prove to the “balance of probabilities” that they are LGBT+.

In many cases, the only “evidence” someone has to prove their sexual orientation or gender identity is their own testimony. They have to talk about the most personal or intimate aspects of their lives in front of a complete stranger, who then decides if they believe them or not. Opening up in such a way is extremely difficult if you have never spoken about your sexual orientation or gender identity; on top of that you may have been bullied, harassed and abused for years, or been rejected by your family.

As UNHCR explain⁴:

“Discrimination, hatred and violence in all its forms can impact detrimentally on the applicant’s capacity to present a claim. Some may be deeply affected by feelings of shame, internalized homophobia and trauma, and their capacity to present their case may be greatly diminished as a consequence”.

Recommendation: Call on the UK government to remove Clause 29 from the Bill that raises the standard of proof to the “balance of probabilities”.

The difficulty of proving you are LGBT+

Even under the current low standard of proof, LGBT+ people regularly struggle to have their sexual orientation or gender identity believed.

Rainbow Migration’s research on refused asylum claims found that,
“The Home Office routinely addressed the documentary evidence as an afterthought, and dismissed it without engaging with it in substance or simply labelled it as self-serving.”

One person’s evidence including 90 photographs of himself with his partner and a witness statement from him was ignored.

In another case, letters from a sexual partner, a support worker for gay men and a gay friend met on a dating site testifying to the person’s sexual orientation were all dismissed. This individual had also given detailed answers in his interview.

https://www.rainbowmigration.org.uk/sites/default/files/2021-03/Still-Falling-Short-Jul-18_0.pdf

⁴ Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, UN High Commissioner for Refugees, 23 October 2012

4. “Late” claims

Many people do not know that you can receive refugee protection on the grounds of sexual orientation or gender identity. Therefore, many LGBT+ people will flee an immediate danger and not realise on arrival in another country that they can apply for asylum, believing that asylum / refugee protection is solely for people fleeing war or political persecution.

Younger LGBT+ people may also not even know that they are LGBT+ until significant time has passed while they have lived in the UK because (a) many LGBT+ people do not realise they are LGBT+ until they are young adults or older, and (b) living in a country that is tolerant and welcoming of LGBT+ identities can allow people to assess their sexual orientation or gender identity in a safe environment.

Like other people from around the world, LGBT+ people from countries that are unsafe also come to the UK as students, tourists or to work, but can later become too afraid to return home and may therefore overstay their visas.

LGBT+ people often apply for asylum only some weeks, months or years after entering the UK. Clauses 10, 11 and 34 of the Bill open the possibility for these individuals to be penalised⁵. Stipulating that individuals must “present themselves without delay” could have a disproportionate and unfair impact on LGBT+ people.

Recommendation: Call on the UK government to remove Clauses 10, 11 & 34 from the Bill.

**“I didn’t know my attackers, ... I felt like it was going to be my turn now
...for my life to be in danger if I keep staying there.”**

“Samir” was attacked in Kosovo because of his sexual orientation. When he was offered work experience outside of Kosovo not long after his attack, he took it. “I had fully realised by that time I was a gay man and that my life is not going to be easy living in Kosovo,” Samir says.

However, Samir didn’t know he could claim asylum as a gay man. He overstayed his visa in the UK rather than go back to Kosovo and was arrested by immigration officials on a bus in London.

“It was very scary...I remember them cuffing me, I felt very vulnerable. I felt like a criminal but without having done a crime”.

⁵ For example, housing them in offshore processing centres while their claims are heard, or granting only temporary protection instead of 5-years refugee protection.

5. “Late” evidence and expedited appeals

Clauses 16, 17 and 23 of the Bill create a mechanism which forces people to produce relevant evidence by a fixed date. If this deadline is missed, the evidence could be given “minimal weight”, which will impact a decision-maker’s assessment of an applicant’s LGBT+ status and/or whether they have a well-founded fear of persecution.

This would be acutely detrimental to LGBT+ people because of the difficulties in gathering and providing evidence that helps confirm their sexual orientation or gender identity. Many LGBT+ people may have spent a long time trying to hide their sexual orientation or gender identity from other people not only in their countries of origin but also in the UK. Further, it can be an enormous challenge, if not impossible, to obtain supporting evidence from former partners, friends or family members in the country of origin who can be too afraid to write a witness statement. For trans people specifically, many are unable to access healthcare in their countries of origin and unable to receive timely support within the UK and again, struggle to offer supporting evidence as a result.

If LGBT+ people get evidence such as letters from people who can testify to their sexual orientation or gender identity, proof of membership of LGBT+ organisations or photos at Pride, it may not be until they are more comfortable and confident in being open about their sexual orientation or gender identity, and therefore easily after any deadlines for evidence are imposed by the Home Office.

Furthermore, Clauses 18-21 of the Bill also introduce a deadline for claiming asylum *and* providing evidence for people who have been served with a “priority removal notice”. **Priority removal notices with deadlines for claiming asylum and providing evidence would be damaging to LGBT+ people. They are likely to struggle to meet them because of the nature of their asylum claims.**

In addition, there will be an expedited appeals process if the deadline in the priority removal notice is missed. **LGBT+ asylum claims are unsuitable for accelerated processes because collecting evidence in support of them is commonly challenging and time-consuming.**

Recommendation: Call on the UK government to remove Clauses 16-21 & 23 from the Bill.

In 2019, the high court ordered the Home Office to bring back a Ugandan woman to the UK, ruling that she was treated unfairly in her appeal

“PN” came to the UK aged 17 and remained in the country after her visa expired. She applied for asylum, saying she feared she would be killed if she returned to Uganda – but her claim was rejected because the Home Office said there was insufficient proof to show that she was a lesbian. Given just two weeks to appeal, she was eventually removed after being unable to produce the extra evidence needed in time. PN had evidence that she had had lesbian relationships in Uganda, but she struggled to obtain this in the timescale set out by the Home Office. The High Court ruled more time would have made a difference to her case.

<https://www.theguardian.com/commentisfree/2019/jul/09/lgbt-asylum-seekers-detention>



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