Nationality and Borders Bill
House of Lords, Committee Stage
February 2022

Part 3: Immigration Control: Clauses 39-47
(immigration offences, maritime enforcement, notice of removal, immigration bail, survivors of domestic abuse)

Introduction

1. This briefing on Part 3 (Immigration Control) of the Nationality and Borders Bill addresses selected amendments which appear on the Marshalled List as at 27 January 2022. As indicated, these amendments are addressed according to, and in the order of, the grouping of amendments as they were on day 1 of Committee.

120, 121, 122, 123, 124 (immigration offences – "arrival" in UK)

2. This group of amendments (set out below) each relate to Clause 39. With the exception of amendment **124** (set out separately), they concern immigration offences and relate directly to either new offences in the Bill concerning "arrival in" the UK or to revisions the Bill would make to existing offences so as to extend offences from 'entering' to 'arriving'. Amendment **124** concerns the statutory defence made available to a refugee against prosecution for entering a country to exercise her, his or their right to seek asylum. That is to secure compliance with Article 31 of the Refugee Convention. Migrant Voice and Amnesty broadly support each of these amendments.

LORD DUBS BARONESS LUDFORD **120** Clause 39, Page 40, leave out lines 5 to 9 *Member's explanatory statement*

This would give effect to the recommendation of the Joint Committee on Human Rights to prevent "arrival" in the United Kingdom without a valid entry clearance, rather than "entry" into the United Kingdom without a valid entry clearance, becoming an offence.

BARONESS MCINTOSH OF PICKERING

121

Clause 39, Page 40, line 7, leave out "arrives in" and insert "enters"

BARONESS MCINTOSH OF PICKERING
BARONESS HAMWEE

122

Clause 39, Page 40, line 14, leave out "arrives in" and insert "enters"

LORD DUBS
BARONESS LUDFORD

123

Clause 39, Page 41, line 16, leave out subsection (4)

3. Amendment **120** would remove a new offence from the Bill. That new offence is set out in Clause 39. It would be inserted into the Immigration Act 1971 as section 24(D1) of that Act. It would create an offence of arriving in the UK without a visa where the person concerned requires, under the immigration rules, a visa to come to the UK.

4. This new offence is a stark repudiation of this country's obligations and commitment to the Refugee Convention. The new offence is designed to criminalise the great majority of the people who seek and receive asylum in the UK. This is because:

    a. Immigration rules require anyone from almost all the countries, from which people seeking asylum come, to have a visa in order to come to the UK.[1]

    b. Those same rules provide no visa for anyone to come to this country for the purpose of seeking asylum.

    c. If a person applies for a visa for a purpose that is permitted under the rules but either reveals or it is considered that their purpose is to seek asylum, the rules provide for that visa to be refused; and, if that visa has been granted, for it to be cancelled.[2]

    d. It is longstanding policy – which will be written into statute law by this Bill (Clause 13) – that any claim for asylum must be made from within the UK.[3]

[1] Travel for reasons other than visiting requires a visa; and visitors must obtain a visa if from any country on the list in the immigration rules here: https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-visa-national-list

[2] The combined effect of paragraphs 30C, 9.13.1, 9.14.1 and 9.20.2 are comprehensive in this regard.

[3] The existing and longstanding policy is here: https://www.gov.uk/government/publications/applications-from-abroad-policy

5. Accordingly, a person, who is fleeing persecution and wishes to exercise their right to asylum in the UK, cannot do so save by doing the very thing that this new offence would criminalise. We, therefore, strongly support amendment **120** in the names of Lord Dubs and Baroness Ludford.

6. The remaining offences in this group – save for amendment **124** (see below) – concern the use of the term "arrives in" rather than "enters". We support these various amendments because it is generally wrong and incompatible with respect for the Refugee Convention to seek to penalise someone who has merely arrived (before which time the person cannot make any asylum claim), rather than entered. However, the objections to extending offences from ones of entering to ones of arriving remain insufficient to address the rights of people seeking asylum – or the circumstances of people compelled, including by fleeing from harms that do not engage that Convention or from being trafficked to the UK, to enter. None of these people, in most cases, have any real option but to enter first and seek protection afterwards. There are at least three possible reasons for this:

    a. The person's arrival at a port of entry is under control (such as where the person is accompanied by an abuser whom they fear; or where the hold an abuser has over them is so strong that they are too afraid to declare their circumstances on entry).

    b. The person has a strong fear – potentially inculcated by a smuggler; and certainly enlarged by measures and policies in and supported by the Bill – that declaring their need for protection on arrival at a port of entry will be result in protection being summarily refused or some other harm to them such as their immediate return to a place they do not feel safe or their detention for this or some other purpose.

    c. The person does not arrive at a port of entry – increasingly this has become the case for most people seeking asylum because the routes by which a person would arrive at a port of entry have become obstructed and policed to the point where it not possible to do so.[4]

7. These concerns emphasise the importance of amendment **124** but also the importance of opposition to Clause 36 and its purpose in wrongly defining and confining the meaning of Article 31 of the Refugee Convention.[5]

LORD DUBS
BARONESS LUDFORD

124

Clause 39, Page 41, line 25, at end insert—

[4] The increased proportion of people seeking asylum in the UK by crossing the Channel in small boats attests to this, though this has been a reality for most people seeking asylum in the UK for long before the recent rise in boat crossings.

[5] There is more briefing concerning the context for all this in our earlier joint briefing to amendments to Clause 11, which can be found here: https://www.amnesty.org.uk/resources/joint-amnesty-uk-and-migrant-voice-briefing-nationality-and-borders-bill-part-2-asylum

"(7A) In section 31(3) of the Immigration and Asylum Act 1999 (defences based on Article 31(1) of the Refugee Convention), after paragraph (aa) insert—

"(ab) section 24 of the Immigration Act 1971 (illegal entry and similar offences)"."

Member's explanatory statement
This would give effect to the recommendation of the Joint Committee on Human Rights to extend the statutory defence based on Article 31 of the Refugee Convention to offences of illegal entry under section 24 of the Immigration Act 1971.

8. The purpose of amendment **124** is to ensure that refugees retain in UK law the protection against prosecution and penalty, which is provided by Article 31 of the Refugee Convention, for offences that will be introduced and revised by Clause 39. We support this amendment.

9. It is a striking feature of this Bill that so much of its enforcement content is directed to criminalising and penalising refugees. That is a purpose that is wholly incompatible with the Refugee Convention. That general incompatibility of purpose is made specific in the provisions, among others, to which these amendments relate.

125 (immigration offences – assisting person seeking asylum to enter)

10. Migrant Voice and Amnesty support amendment **125** (below) in the names of Lord Rosser, Lord Dubs, Baroness McIntosh of Pickering and Baroness Jones of Moulsecoomb. This would remove from the Bill the provision that would bring within the scope of the offence of helping a person seeking asylum to enter the UK, people who provide that help for "no gain".

LORD ROSSER
LORD DUBS
BARONESS MCINTOSH OF PICKERING
BARONESS JONES OF MOULSECOOMB

125

Clause 40, Page 41, line 40, leave out subsection (3)

Member's explanatory statement
This would give effect to the recommendation of the Joint Committee on Human Rights to maintain the current position that the offence of helping an asylum seeker to enter the United Kingdom can only be committed if it is carried out "for gain".

11. Much has been said by Ministers about their desire to punish, disrupt and ultimately stop ruthless, criminal gangs who make substantial profits by exploiting people seeking asylum and other desperate people.[6] It is, however, a striking feature of the Bill that there is virtually nothing in it that directly targets these people.[7] The sole exception is to be found in Clause 40(2), which would

[6] See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Cols 706, 710 & 713 *per* Home Secretary
[7] As we explained in our joint briefing for Lords' Second Reading, see here: https://www.amnesty.org.uk/resources/amnesty-uk-migrant-voice-lords-second-reading-joint-briefing-nationality-and-borders-bill

substitute a maximum life sentence for the current maximum of 14 years that may be imposed upon a person in connection with their smuggling people into the UK. We doubt that this will offer much if any deterrent to smuggling gangs, who have not been deterred by the existing 14 years sentence.

12. We are, however, alarmed that the new maximum sentence is also to be applied to people who are to be newly criminalised by Clause 40(3). That is people who help a person seeking asylum **for no gain**. Clause 40(3) applies to nobody else. The people whom this provision criminalises are necessarily neither ruthless abusers nor members of criminal gangs. Helping a person seeking asylum is manifestly not exploiting that person where it is done for no gain. Criminal gangs do not provide 'help' for no gain. This provision, which amendment 125 would remove, is plainly about nothing more than seeking to prevent someone coming to the assistance of a person who is seeking to enter the UK to claim asylum. Moreover, its most common likely application would be to criminalise rescuing a person seeking asylum at sea and in doing so bringing them ashore or enabling them to come ashore.

13. In response to widespread incredulity at the prospect that life-saving such as that by the RNLI should be criminalised,[8] the Government belatedly amended the Bill at Commons' Report by introducing what is now Clause 40(4).[9] But this addition is extremely limited and woefully inadequate to protect even life-saving humanitarian action against prosecution and punishment under the newly amended offence. This is because that which the Government has introduced is limited as follows:

    a. It exempts lifesaving at sea that is undertaking under the coordination of a national coastguard.[10] That would protect the RNLI against prosecution.

    b. It provides a relatively complex defence for lifesaving at sea that is not done under such coordination.[11] That would include responding to a boat or person in distress at sea without waiting for national coastguard instruction. Waiting, of course, could cost lives. However, the defence requires the defendant to prove that their actions only began after the person assisted was first in distress or danger. If the defendant cannot prove that she, he or they did not start too early or cannot prove that each and every single person that she, he or they assisted was in distress and danger at the time of first providing assistance to such a person, the defence is not made out. So, the offence encourages waiting when waiting may cost lives. It encourages discriminating between people provided assistance – e.g. taking aboard one person and not another – when it may be entirely impractical or inhumane to seek to do so when rescuing one or more people at sea. More fundamentally, the

[8] This was most strongly reflected during Committee consideration in the other place, see e.g. *Hansard* HC, Public Bill Committee (Eleventh Sitting), 28 October 2021 : Cols 430, 432, 435-6 *per* Bambos Charalambous, Stuart C McDonald and Neil Coyle respectively, and the response of the Minster at Col 433

[9] *Hansard* HC, Report, 7 December 2021 : Col 293 *per* Tom Pursglove

[10] See new section 25BA(1) of the Immigration Act 1971 to be inserted by Clause 40.

[11] See new section 25BA(2)-(4) of the Immigration Act 1971 to be inserted by Clause 40.

offence discourages providing any assistance. This is because someone faced with a need to act would be confronted with two serious inhibitions. Firstly, the risk that they will face prosecution – itself seriously harmful whether or not the person can make out a defence. Secondly, the risk of conviction and imprisonment – even with a defence, it cannot be guaranteed in advance that the person will succeed in satisfying the court of it.

c. Moreover, a person on the boat in distress, who takes charge of the boat – or is singled out as being in charge – is excluded from the defence.[12]

d. There is a further complex defence for a master of ship who assists a stowaway.[13] Again, the master is at risk both of prosecution and, unless able to prove the defence, of conviction and imprisonment.

14. The drafting of Clause 40(4) reveals again the motivations more generally behind the Bill. These motivations are not about saving life. They are not about protecting people seeking asylum, whether the people are or are not (which at the relevant times cannot be determined) refugees. The motivations are not about tackling smuggling gangs. They are clearly about threatening, even seriously endangering people seeking asylum, in the hope of deterring them and avoiding this country's asylum responsibilities. That miserable motivation extends – as has already been seen – to singling out individual people on a boat to be vilified and prosecuted as in charge of a boat with lengthy imprisonment.[14] The injustice of this is enlarged by the operation of section 72 of the Nationality, Immigration and Asylum Act 2002 – itself to be enlarged by Clause 37 of this Bill – to then exclude a refugee convicted in this way from being permitted to establish their refugee status and entitlement to asylum in the UK under the Refugee Convention.[15]

126, 127, 128, 130, 131, 132, 134, 135, 136 (protecting life at sea)

15. Amendments **126 to 128** (below) are intended to protect life at sea by stipulating circumstances, in which the actions at sea of a master of a ship or any person (in the case of amendment **128**) in connection with distress or danger at sea do not constitute any offence. Migrant Voice and Amnesty support these amendments. It is plainly improper to construct offences that would encompass the actions addressed by these amendments even with a statutory defence to any prosecution.

BARONESS JOLLY **126** Clause 40, Page 42, line 2, at end insert—

[12] See new section 25BA(3)(b) of the Immigration Act 1971 to be inserted by Clause 40.
[13] See new section 25BB of the Immigration Act 1971 to be inserted by Clause 40.
[14] e.g. *R v Bani & Ors* [2021] EWCA Crim 1958
[15] On the impact of Clause 37, see the brief explanation in paragraph 34(d) of our joint briefing for Lords' Committee on relevant amendments to Part 2, here: https://www.amnesty.org.uk/resources/amnesty-uk-migrant-voice-lords-committee-joint-briefing-remainder-part-2-asylum

"(A1) The master of a ship does not commit a facilitation offence if the act of facilitation was an act done in response to—

(a) receiving a distress signal at sea as listed in Annex IV of the International Regulations for the Prevention of Collisions at Sea (COLREGS);

(b) a requisition by the vessel in distress or another vessel or search and rescue organisation;

(c) the consequences of a collision at sea."

Member's explanatory statement

The purpose of this amendment is to ensure that the master of a vessel is not charged with a facilitation offence if he or she responds to a distress signal as required by the SOLAS Convention, long standing customary international law and the Merchant Shipping (Distress Messages) Regulations 1998.

127

Clause 40, Page 42, line 3, after "person" insert "other than the master of a ship"

Member's explanatory statement

This amendment is consequential to Baroness Jolly's amendment to clause 40, page 42, line 2.

BARONESS MCINTOSH OF PICKERING

128

Clause 40, Page 42, line 7, at end insert—

"or if the person performing the act of facilitation reasonably believed that if Her Majesty's Coastguard or the overseas authority had been aware that the assisted individual had been in danger or distress at sea they would have co-ordinated the act."

Member's explanatory statement

This amendment ensures that a person facilitating the rescue of a person in danger or distress who does not have express orders from HM Coastguard can do so with impunity

16. Amendments **130 to 136** (below) also relate to protecting life at sea. However, unlike the previous amendments, these are not concerned with protecting people from prosecution for engaging in life-saving action. Rather, these amendments are concerned with ensuring that maritime enforcement action is itself compliant with international standards, including to avoid endangering life at sea. We broadly support these amendments.

LORD DUBS
BARONESS LUDFORD

130

Schedule 6, Page 101, line 21, at end insert—

"(4) Authority for the purposes of subsection (3) may be given in relation to a foreign ship only if the Convention permits the exercise of Part A1 powers in relation to the ship."

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to follow the drafting in the equivalent paragraphs of sections 28M, 28N and 28O of the Immigration Act 1971, and ensure that enforcement action complies with international maritime law, similar to other enforcement action under Schedule 4A to the Immigration Act.

131

Schedule 6, Page 103, line 48, leave out from "ship" to end of line 4 on page 104 and insert—

"(a) includes every description of vessel (including a hovercraft) used in navigation, but
(b) does not include any vessel that is not seaworthy or where there could otherwise be a risk to the safety of life and well-being of those onboard."

Member's explanatory statement
This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that enforcement action such as pushbacks could not be taken against unseaworthy vessels such as dinghies.

LORD ROSSER
LORD DUBS
BARONESS CHAKRABARTI

132

Schedule 6, 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."

Member's explanatory statement
This would give effect to the recommendation of the Joint Committee on Human Rights to ensure the maritime enforcement powers cannot be used in a manner that would endanger lives at sea.

LORD DUBS
BARONESS LUDFORD

133

Schedule 6, Page 108, line 23, at end insert—

"(2) Force must not be used in a manner or in circumstances that could endanger life at sea."

Member's explanatory statement
This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that force in maritime enforcement powers cannot be used in a manner that would endanger lives at sea.

LORD PADDICK
BARONESS CHAKRABARTI

134

Schedule 6, Page 108, leave out lines 27 to 32

Member's explanatory statement
This amendment would remove the provision granting immigration and enforcement officers immunity from civil or criminal liability for anything done in the performance of their functions.

LORD DUBS
BARONESS LUDFORD

135

Schedule 6, Page 108, leave out lines 28 to 32 and insert—

"J1 The Home Office, rather than an individual officer, is liable in civil proceedings for anything done in the purported performance of functions under this Part of this Schedule."

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to ensure that the Home Office is liable, rather than immigration officers and enforcement officers being personally liable, for civil wrongs that may occur whilst undertaking pushbacks or other maritime enforcement operations.

136

Schedule 6, Page 108, line 28, leave out "criminal or"

Member's explanatory statement
This would give effect to the recommendation of the Joint Committee on Human Rights to remove the immunity from criminal proceedings for "relevant officers" for criminal offences committed whilst undertaking pushbacks or other maritime enforcement operations.

17. We are alarmed at the inclusion in this Bill of provision to exempt officers of the State engaged in maritime enforcement from civil and criminal liabilities.[16]

18. We are similarly alarmed by the removal from the Bill during its Committee stage of general obligations to ensure such maritime enforcement complies with international obligations arising under the UN Convention on the Law of the Sea (UNCLOS);[17] and to prohibit seeking to compel a boat to a territory, the authorities of which is unwilling to receive the boat.[18] The latter risks stand-offs at sea that put the lives and well-being of people aboard at risk. The former is a dreadful signal of intent and is not consistent with the way in which related and existing maritime powers are currently framed in statute.[19] [20]

Cl 47 S/P, 187, 188, 189, 190 (immigration detention and immigration bail)

19. We support opposition by Lord Dubs and Baroness Ludford to inclusion of Clause 47 in the Bill. Clause 47 directs an immigration judge, in considering an application for bail by a person detained under immigration powers, to have specific regard to the factors it lists. We do not believe it is necessary to spell out in statute the various factors that an independent judge should consider. However, if it is considered necessary to do so, it is highly prejudicial to seek only to set out factors against a grant of bail rather than identifying those factors that may be said to be of especial, albeit not exclusive, importance – including those in favour of bail.

LORD DUBS
BARONESS LUDFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 47 stand part of the Bill.

[16] See paragraph J1 of Part A1 of Schedule 4A to the Immigration Act 1971, which is to be inserted by Schedule 6 of the Bill.
[17] See Bill as first introduced, p71 – what was then to be new section 28LA(4) of the Immigration Act 1971.
[18] See Bill as first introduced, p75 – what was then to be new paragraph B1(7) of Part A1 to be inserted into Schedule 4A to the Immigration Act 1971
[19] cf. sections 28M(4), 28N(4), 28O(4) and 28Q of the Immigration Act 1971
[20] Amnesty's submission to the current inquiry by Lords' International Relations and Defence Committee also addresses these various concerns: https://committees.parliament.uk/writtenevidence/40834/pdf/

20. Amnesty supports amendments **187 to 190** (below) tabled by Baroness Chakrabarti and Baroness Jones of Moulsecoomb. Migrant Voice welcomes the opportunity they provide to address the use of immigration detention powers. We do not set these amendments out in view of their length. Their purpose is to introduce a time limit on the use of immigration detention powers (**187-188**), require bail hearings (**189**) and to prevent holding people under immigration detention powers in privately-run establishments (**190**).

BARONESS CHAKRABARTI
BARONESS JONES OF MOULSECOOMB

187-190

After Clause 78, Insert the following new Clauses—

"**Time limit on immigration detention**…

"**Initial detention: criteria and duration**…

"**Bail hearings**…

"**Prohibition on private places of detention**…"

21. Migrant Voice is opposed to any use of detention for immigration purposes. We cannot, therefore, support the amendments tabled even though we recognise their important purpose in seeking to restrict and more strongly oversee the exercise of existing detention powers. Immigration detention does very serious harm to people as is briefly explained in the following paragraphs. We broadly support what is said there on behalf of Amnesty save that, unlike Amnesty, we do not regard immigration purposes as ever providing justification for the exercise of such powers.

22. Amnesty supports the introduction of a statutory time limit upon the use of immigration detention. That should apply to all detention under immigration powers. We consider that 28 days is itself a long period for detention under immigration powers. The absence of a time limit provides licence for inefficiency at the Home Office and neglect of the people incarcerated under its powers. Immigration powers are administrative powers for the purpose of giving effect to immigration rules and carrying out immigration functions. Removing someone's liberty, which often also involves separation of people from family and other support networks, has profoundly serious and isolating impact upon a person, including upon their psychological health. As such, these powers of detention ought to be tightly constrained. The excessive, arbitrary and routine use of immigration detention powers in the UK is a cause of serious harm contrary to human rights obligations.[21] That harm is made very much worse by two factors:

[21] See e.g. Amnesty's *A Matter of Routine: the use of immigration detention in the UK*, December 2017 here: https://www.amnesty.org.uk/resources/matter-routine-use-immigration-detention-uk-0

a. The first is that detention is in many cases for extremely long periods of several months or even years.[22] That is not only profoundly harmful to the individual affected.[23] It is psychologically damaging to other detainees who will be aware of the lengthy incarceration of someone with whom they are detained and can only be gravely demoralised by the realisation that this may be their fate too.

b. The second is that detention is indefinite.[24] The absence of any time-limit means that a person detained is subject to detention without any guarantee as to if and when it may end. That is itself profoundly harmful and compounds or is compounded by the first of these two factors.

23. In these circumstances, Amnesty considers that a time limit is necessary. Since the aim of immigration detention is not to punish any alleged offending but to regulate entry and enable the exercise of powers to remove,[25] 28 days is in our respectful view still too long a period. Nonetheless, we consider that such a time limit would be beneficial having regard to the way in which and lengths for which these powers are currently used.

24. Amnesty shares others' concerns about the need to guarantee oversight of the exercise of these powers by an independent judge; and to ensure that the State does not avoid or neglect its duty of care to people incarcerated under immigration powers by contracting out the management of the places in which people are so incarcerated.

140 (victims of domestic abuse: data-sharing for immigration purposes)

25. Migrant Voice and Amnesty support amendment **140** in the names of the Lord Bishop of London, Lord Rosser and Baroness Meacher. The amendment would require the Home Secretary to make arrangements to ensure that survivors of domestic abuse can seek assistance and protection without the fear that the bodies to whom they turn for that will report them to the immigration authorities.

THE LORD BISHOP OF LONDON LORD ROSSER BARONESS MEACHER **140** After Clause 47, Insert the following new Clause—

[22] The longest period of detention of someone interviewed in the course of research and preparation of Amnesty's *A Matter of Routine* report was 2½ years – *ibid*, p5

[23] See e.g. p7 of the April 2021 Position Statement of the Royal College of Psychiatrists here: https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/position-statements/position-statement-ps02-21---detention-of-people-with-mental-disorders-in-immigration-removal-centres---2021.pdf?sfvrsn=58f7a29e_4

[24] Detention is generally without any limit of time. That was modified in respect of children by the Immigration Act 2014 – section 5 (in relation to unaccompanied children); and section 6 (in relation to children with families) – and in respect of pregnant women by section 60 of the Immigration Act 2016.

[25] Article 5(1)(f) of the European Convention on Human Rights generally describes the limited immigration purposes for which powers of detention may be exercised; and this broadly reflects the domestic statutory provision of these powers, e.g. in Schedules 2 & 3 to the Immigration Act 1971.

"**Victims of domestic abuse: data-sharing for immigration purposes**

(1) The Secretary of State must make arrangements to ensure that personal data of a victim of a domestic abuse in the United Kingdom that is processed for the purpose of that person requesting or receiving support or assistance related to domestic abuse is not used for any immigration control purpose.

(2) The Secretary of State must make arrangements to ensure that the personal data of a witness to domestic abuse in the United Kingdom that is processed for the purpose of that person giving information or evidence to assist the investigation or prosecution of that abuse, or to assist the victim of that abuse in any legal proceedings, is not used for any immigration control purpose.

(3) Paragraph 4 of Schedule 2 to the Data Protection Act 2018 does not apply to personal data to which subsection (1) or (2) applies.

(4) For the purposes of this section, the Secretary of State must issue guidance to—

(a) persons from whom support or assistance may be requested or received by a victim of domestic abuse in the United Kingdom;

(b) persons exercising any function of the Secretary of State in relation to immigration, asylum or nationality; and

(c) persons exercising any function conferred by or by virtue of the Immigration Acts on an immigration officer.

(5) For the purposes of this section—

"*immigration control purpose*" means any purpose of the functions to which subsection (4)(b) or (c) refers;

"*support or assistance*" includes the provision of accommodation, banking services, education, employment, financial or social assistance, healthcare and policing services and any function of a court or prosecuting authority;

"*victim*" includes any dependent of a person, at whom the domestic abuse is directed, where that dependent is affected by that abuse."

Member's explanatory statement

This new Clause would require the Secretary of State to make arrangements to ensure that the personal data of migrant survivors of domestic abuse that is given or used for the purpose of their seeking or receiving support and assistance is not used for immigration control purposes.

26. The Government has long made claims to its especial concern regarding violence against women and girls – both in the UK and internationally, including in connection with this Bill.[26] It is profoundly concerning, and undermining, that these claims are not made good in relation to how it treats survivors of domestic violence who are subject to immigration controls.[27] It is long and well-known that the control of survivors of domestic abuse by abusers is made all the greater where the survivor is subject to immigration controls and the abuser can use the threat of prosecution, detention or expulsion, including where this may separate the survivor from her children, by reason of her immigration status –

[26] This was, for example, something that the Home Secretary sought to emphasise at Second Reading of this Bill in the other place, see *Hansard* HC, 19 July 2021 : Col 710.

[27] See for example the debates at Lords' Report on amendments to the Domestic Abuse Bill 2019-21 moved by Baroness Meacher and the Lord Bishop of Gloucester respectively – *Hansard* HL, 15 March 2021 : Cols 36ff & Cols 50ff respectively.

either because her status is legally dependent on an abuser or her presence is more generally dependent upon him.

27. Amendment **140** would be a significant step towards ensuring that a survivor of domestic abuse could, at the very least, seek assistance or protection without the immediate risk that she will be reported to the Home Office. It would rightly reverse the current policy position that gives priority to immigration policy over all other social policy areas including concerning domestic abuse or criminal justice and health more broadly. The current position deters women from seeking help. It empowers abusers and aids their abuse.