

Royal College of Nursing (RCN) Parliamentary Briefing for The Nationality and Borders Bill: Consideration of Lords Amendments, March 2022

The Royal College of Nursing (RCN) is the largest professional body and trade union for nursing staff in the world. The RCN represents 465,000 members who are registered nurses, midwives, students, and nursing support workers.

Background

The Nationality and Borders Bill was introduced to Parliament in July 2021 and marks a significant change to immigration law across the UK. The RCN has significant concerns around proposals in the Bill (as brought from the Commons) which would introduce a two-tier system for refugees, these proposals were removed during House of Lords Report Stage. Proposals would allow for differential treatment based on method of arrival to the UK. This includes aspects such as granting leave to remain, the requirements an individual applying for asylum status must meet in order to be granted leave to remain, access to public funds, and also to have access to family reunification.

It is the RCN's view that if included within the Bill, such proposals would significantly narrow access to the asylum system for those arriving through irregular routes. Irregular migration is defined as migration which takes place outside the laws, regulations, or international agreements governing the entry into a State¹. However, the presence of irregular migration does not relieve States of their obligations to uphold the rights of refugees. United Nations Refugee Agency (UNHCR) has raised that the proposal for differential treatment contravenes international law (1951 Refugee Convention) by denying refugees access to the rights enshrined in the Convention and the right to family reunification².

Across the UK there are currently 131,640 registered international nurses³. Every day international nurses make enormous contributions within the health and social care sector across the UK and are a vital part of the workforce. International nurses arrive to the UK through several immigration routes, including sometimes as refugees.

Restricting access to secondary care

The RCN is concerned by proposals which would grant powers to the Secretary of State and immigration officials to refuse leave to remain for refugees entering the UK through irregular routes (Clause 11 as brought from the Commons) and welcomes Lords amendments to remove this clause.

The inclusion of these proposals will likely increase the number of people subject to the NHS charging system. In England, refugees without leave to remain or an ongoing asylum case are liable to pay for health care in secondary care settings. In Wales, Scotland and Northern Ireland, those who have had an asylum application denied are exempt from charges. These rules may have an impact on current nursing staff and other health and care colleagues practising, as in England, they are expected to identify and refer a person who is liable for NHS charges to an overseas visitor team⁴. Research indicates that recent reforms to the NHS charging system in England have negatively

¹ [Key Migration Terms, Migration Glossary | IOM, UN Migration](#)

² [UNHCR \(2021\) Observations on the Nationality and Borders Bill](#)

³ [The Nursing and Midwifery Council \(2021\) Register Mid-year update: 1 April to 30 September 2021](#)

⁴ [Institute for Public Policy Research \(2021\) Towards true universal care](#)

affected the roles of healthcare staff and may alter the way that staff can deliver treatment and interact with their patients⁵.

These proposals would create a two-tier system for refugees based on how they arrive in the UK. In allowing for the differential treatment of refugees based on their method of arrival to the UK, including granting leave to remain, it is likely that a greater number of people seeking asylum will be liable to pay for secondary care in England. It is considered that this creates further barriers for refugees to access healthcare services.

The RCN supports Lords amendment 6, to remove the clause that allows for the differential treatment of refugees. The RCN supports the removal of this clause (Clause 11 as brought from the Commons) so that there is no basis for the differential treatment of refugees based on mode of arrival. As stated earlier, the RCN considers the inclusion of this clause as an additional barrier for many refugees to access healthcare services.

The RCN supports Lords amendment 5, to uphold the UK's obligations under the Refugee Convention. This amendment clarifies that nothing in the Bill authorises policies or decisions that do not comply with the UK's obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. The RCN supports the inclusion of this clause on the basis that the UNHCR has identified that proposals to allow for differential treatment of refugees, breaches the principles of the Refugee Convention⁶.

Age assessments

The RCN is concerned by proposals within the Bill that grant broad powers to the Home Secretary to create regulations about how age assessments are carried out, these include regulations specifying methods that may be used to determine age.

Appropriate and accurate methods for assessing age of children are disputed^{7,8,9}. It is therefore significant that this legislation gives the Home Secretary the authority to determine a process for determining age. Some have lobbied against Home Office plans to use dental x-rays to determine age, highlighting the position that this method is considered inaccurate, and that it is inappropriate to subject people to radiation without health benefits¹⁰.

Considering the powers granted to the Home Secretary to determine methods for age assessments, it is the RCN's view that there is a risk that health and care professionals such as registered nurses may be asked to use methods which are scientifically disputed and could harm patients where they are exposed to radiation without medical benefit¹¹. The RCN is concerned that potential changes to age assessments could place registered nurses at odds with their professional requirements under The Nursing and Midwifery Council (NMC) Code to always act in the best interests of people, and to always practise in line with the best available evidence¹².

⁵ [Institute for Public Policy Research \(2021\) Towards true universal care](#)

⁶ [UNHCR - The 1951 Refugee Convention](#)

⁷ [British Medical Association \(2021\) Briefing Nationality and Borders Bill committee stage](#)

⁸ [Royal College of Paediatrics and Child Health \(2021\) Refugee and unaccompanied asylum seeking children and young people - guidance for paediatricians](#)

⁹ [British Association for Social Workers \(2021\) Age assessments proposal within Nationality and Borders Bill statement](#)

¹⁰ [British Dental Association \(2021\) Press release: Child asylum seekers: dental age check plan dropped, but key questions remain](#)

¹¹ [British Dental Association \(2021\) Written evidence submitted for the Nationality and Borders Bill](#)

¹² [The Nursing and Midwifery Council \(2015\) The Code](#)

The RCN supports Lords amendment 22, to place restrictions on age assessments. The introduction of this clause sets out that age assessments must only be undertaken where there is significant reason to doubt the age of a child. The new clause necessitates that when making regulations on age assessments, the SoS cannot specify scientific methods to determine age unless there is “written approval from the relevant, medical, dental and scientific professional body, that the method is both ethical and accurate beyond reasonable doubt”. Inclusion of this clause would provide the RCN with assurance that nurses cannot be asked to undertake age assessments where methods are disputed and potentially harmful.

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