Joint submission by Quakers in Britain and the Quaker Asylum and Refugee Network

About us

1. Quakers in Britain is a national church supporting thousands of Quakers across England, Scotland and Wales. It is also a charity, working for positive change in areas such as climate justice, peace and disarmament, and migration. Quakers in Britain supports a network of over a hundred Quaker meetings that have made a commitment to become 'sanctuary meetings'. They are engaged in practical work to build a culture of welcome towards newcomers to Britain, challenge racism in all its forms, and campaign to change the laws on destitution, detention and deportation.

2. Quakers set up QARN in 2006 so that they could work together on advocacy for radical change to the asylum system. QARN is now a national network of Quakers supporting and amplifying the voices of people seeking asylum, refugees and others in need of international protection.

3. Quakers are one of the historical 'Peace Churches' and committed to working for equality, truth and justice. A basic part of our testimony to equality is answering that of God in every one. This calls on us to speak truth in all circumstances and uphold our common humanity. The Quaker statement on migration sets out our commitment to working for a world where dignity and rights are upheld regardless of migration status and not on the basis of citizenship or perceived deservedness. Our faith calls us to work alone and with others for migration justice. Our submission is informed by this standpoint.

The origins of this Bill

4. Quakers in Britain and QARN responded to the consultation on the New Plan for Immigration (NPI) – you can read our response here. We recognise that the NPI follows on radical reforms announced in the government's response to the Windrush Lessons Learned Review in September 2020. It appeared to advocate for a fundamental repositioning and liberalisation of immigration policy in order to allow human discretion, rather than dogmatic adherence to impersonal rules. Initially the NPI and ensuing Bill appear to belong in the same framework. In this context, we welcome the statements that "Our society is enriched by legal immigration. We are the better for it." and, "Access to the UK's asylum system should be based on need."

A two-tier asylum system

5. Unfortunately, the implementation of the NPI in the Nationality and Borders Bill appears to re-establish a comprehensively narrow "rules based" system. That system establishes a fundamental inequality between those who have been able to access the rules-based mechanisms for legal immigration to the UK and those who have not. Clause 10 of the Bill states the intention to apply differential treatment of refugees according to whether they came directly to

Britain or did not. This appears to be the polar opposite of "access based on need" announced in the introductory statement.

6. The inequality of treatment which is embodied in the Bill would endure throughout the time which a person spent in this country. A person who enters the UK by irregular means may at best be granted only unspecified temporary protection with restricted rights. They will be treated as an in-country or late claimant and liable to refusal on this account (Cf Section 8 of the 2004 Act). Furthermore, the explanatory notes to the Bill state in section 19 that there will be additional restrictions applied to a person who has been granted protection if they did not come directly to the UK. In summary, for all spontaneously-arriving asylum-seekers, there will simply be no route to settlement in the UK. It appears that settlement is to be offered exclusively via a resettlement process following selection in the persecuting country. This would restrict to a single route any possibility of establishing a new life and family life in the UK.

Criminalisation

7. In addition to this inequality of treatment, Clause 37 of the Bill also contains provisions for imprisoning those who arrive in this country by irregular means without good reason. The prison sentences can be up to 12 months merely for irregular entry to the UK. More severe sentences apply if someone has previously been subject to a deportation order. There is a clearly-stated intention to enrol asylum seekers in the process of dismantling the smuggler groups they may be forced to rely on in order to gain entry to the UK. This is under pain of being treated as accessories to the crime upon arrival. This criminalisation of asylum seekers appears to reflect a siege mentality where the alleged "besiegers" are seen as liable to punishment if caught. At the same time the government appears to be enjoining our French neighbours to infringe the Law of the Sea in order to repel the "invading" asylum-seeker dinghies. Such a position is simply unworthy of a civilised country. Vulnerable people fleeing persecution should not be subject to further harm when seeking safety.

8. More immediately, the proposed law conflicts with the UN Refugee Convention, which Britain signed up to in 1951. Article 31, which effectively interprets refugees to be "protected persons", says that the contracting states shall not apply penalties to persons who “enter or are present in their territory without authorization”. We foresee legal challenges to this attempt to derogate in practice from elements of the Refugee Convention. The UN High Commissioner for Refugees has stated: “A person who meets the criteria for refugee status remains a refugee, regardless of the particular route they travel in search of protection or opportunities to rebuild their life, and regardless of the various stages involved in that journey.” Both Section 31 of the Immigration and Asylum Act 1999 and also Section 45 of the Modern Slavery Act 2015 provide a complex framework of legitimate defence against criminal charges of unlawful entry. Any attempt to impose a presumption of guilt as appears to be the intention of the Bill is likely to create a procedural bottleneck as the Crown Prosecution Service and the Home Office become involved in prolonged legal wrangles over the scope of Article 31. This will result in a lack of clarity and transparency, as well as inequality.

Removal

9. The government has been clear that it wishes to remove asylum seekers who have been classified as “illegal” as quickly as possible. The Bill contains provisions for Priority Removal Notices (PRNs), which evoke memories of the old and discredited Fast Track for Detention system, which was struck down in 2016 because the rules under which it operated were manifestly unfair. Given the attitudes reflected in the NPI, it seems likely that the rules for operating Priority Removal Notices would be constructed for effectiveness in removal rather than for fairness. However, it is the case that the introduction of PRNs is likely to produce yet more work for refugee lawyers, as PRNs would bear a statutory right of appeal and would lead to further prolonged legal interventions and a large volume of new case law. The PRNs are no less counterproductive to smooth and effective administration than the Clause 37 incrimination discussed above. They do not contribute to equality or clarity and they undermine the UK’s international treaty obligations, which is at odds with the government’s stated support for a rules-based international system. At the same time, subjection of asylum seekers to endless rounds of litigation, while it may prove rewarding for professional advocates, can be deeply demoralising for the claimants caught up in it.

10. Nothing in the present international climate leads us to suppose that removal will be a quick or easy option, given that Britain has withdrawn from the Dublin Regulations and has yet to establish its new post-Brexit authority on the world stage. It is therefore likely that increasing numbers of rejected asylum-seekers and other overstayers will experience a prolonged limbo. This is a result of failures to reach readmission or offshore processing agreements with other countries, many of which have already accepted large numbers of refugees and displaced people.

Example of Afghanistan

11. The crisis in Afghanistan highlights the deep flaws in the NPI and in the Bill that implements it. We see a situation where international support within the country is gone, and huge numbers of Afghans feel they must flee and seek a place of safety to continue their life. The government’s response to this shows a willingness to help a selected few, manipulating the terms of entry via controls that it seeks to introduce in law. The approach is unclear and illogical. Asylum is both the smallest and also the most vulnerable component in the UK's internal net immigration. Furthermore, asylum claims here are a fraction of those being received by countries such as Germany, France, Italy and Spain, not to mention (pro rata) smaller countries such as Belgium. Indeed the numbers have been reducing despite the spike in Channel crossings. It seems unfair and immoral that any individual Afghans turning up without a visa and claiming asylum at our borders can be dismissed as part of an imaginary threat to be held at bay by a range of rules and procedures. Yet, such treatment appears to be the intention of this Bill towards all those fleeing persecution.

Conclusion

12. The comments above outline why we are deeply critical of the Nationality and Borders Bill on the grounds of inequality, lack of clarity and a deficiency of truth. Quakers have a long history of support for the displaced and vulnerable. This is linked to our witness to the equality of all people before God. This Bill contains a fundamental challenge to equal treatment of the displaced and vulnerable which goes against our faith, and we believe it should be resisted strongly.

13. In the Bill there is in fact a profoundly ambivalent approach to truth. Several statements in the NPI are at odds with what is contained in the Bill. If immigrants and asylum seekers can enrich this country, a rational government would surely be seeking to welcome, support and nurture those fleeing persecution and violence. We see little evidence of this. The statements of the NPI seem rather to be a sop to those whose religious or ethical principles would normally lead them to criticise a Bill full of the language of hard borders and enforcement. And yet the lessons of Windrush are still on the table awaiting a satisfactory conclusion under the ongoing statutory surveillance of the Equalities and Human Rights Commission. The coexistence of the Windrush Lessons Learned Review and the Borders Bill amounts to a contradictory policy.

14. We hope that the Joint Committee on Human Rights and its legal experts will thoroughly scrutinise this Bill and help in converting it into a rational and viable way forward for asylum and immigration in Britain. Our vision is for the hostile environment to be replaced by a compassionate, human rights-based approach to those who need a place of sanctuary. This needs to be sincerely held within a culture of belief and support, so that we as a society do not abandon those who come in need. We wish to work with the government, parliamentarians and others to build a more secure and equal world where people are not forced to migrate due to climate breakdown, war, injustice or inequality.