LIBERTY

LIBERTY'S BRIEFING ON THE NATIONALITY AND BORDERS BILL FOR SECOND READING IN THE HOUSE OF COMMONS

JULY 2021

ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

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INTRODUCTION

1. The Nationality and Borders Bill (NAB Bill) has been touted as the Government's answer to the issues of asylum and immigration in post-Brexit Britain. It follows from the consultation on the New Plan for Immigration, which was criticised by more than 200 organisations for being a 'sham' and in respect of which the Government has still not yet published an official response.[1] While the Bill contains some positive proposals in respect of remedying defects in nationality and citizenship law, Liberty is deeply concerned by provisions within the NAB Bill that will fundamentally undermine the asylum system, further erode migrants' ability to challenge state decisions and entrench exclusionary policies at great human cost.[2]

2. Prior to commenting on the substantive proposals within the Bill, it is important to situate it within the broader political context. At the same time as the Government launched the New Plan for Immigration consultation that preceded the NAB Bill, the Ministry of Justice published its consultation on proposed reforms to judicial review, following the publication of the report of the Independent Review of Administrative Law (IRAL)[3][4] and shortly after the deadline for the Call for Evidence of the Independent Human Rights Act Review (IHRAR).[5] During this period, the Government also introduced a slew of other legislation, such as the Police, Crime, Sentencing and Courts Bill and the Elections Bill, which have each been criticised for closing down avenues of accountability by restricting protest and paving the way for voter suppression respectively. [6][7]

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[1] Taylor., D, *'Sham': 200 groups criticise UK government consultation on refugee policy,* The Guardian, 30 April 2021, available at: https://www.theguardian.com/world/2021/apr/30/sham-200-groups-criticise-uk-government-consultation-on-refugee-policy. See Liberty's response to the New Plan for Immigration here: Liberty, *Liberty: Government's immigration plan undermines justice,* 6 May 2021, available at: https://www.libertyhumanrights.org.uk/issue/liberty-governments-immigration-plan-undermines-justice/

[2] Other organisations have briefed on the NAB Bill, including: Bail for Immigration Detainees, *BID's response to the Nationality and Borders Bill*, 7 July 2021, https://www.biduk.org/articles/850-bid-s-response-to-the-nationality-and-borders-bill; Refugee Council, *Nationality and Borders Bill – Second Reading – Refugee Council*, 14 July 2021, available at: https://www.refugeecouncil.org.uk/information/resources/nationality-and-borders-bill-second-reading-refugee-council-briefing/; JCWI, *Nationality and Borders Bill - second reading briefing*, July 2021, available at: https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=18303938-1e76-4226-afe9-5b7602568f6c

[3] Paragraph 1.43, *The Independent Review of Administrative Law*, March 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970797/IRAL-report.pdf

[4] Liberty, *Liberty's written evidence to the Ministry of Justice (Judicial review reform)*, April 2021, available at: https://www.libertyhumanrights.org.uk/wp-content/uploads/2021/04/Libertys-JR-reform-submissions-FINAL.pdf

[5] Liberty, *Liberty's written evidence to the Independent Human Rights Act Review Call for Evidence*, March 2021, available at: https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/12/Libertys-response-to-the-IHRAR-call-for-evidence-March-2021.pdf

[6] Liberty, *Liberty's briefing on the Police, Crime, Sentencing and Courts Bill for Report Stage in the House of Commons*, July 2021, available at: https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/04/Libertys-briefing-on-the-Police-Crime-Sentencing-and-Courts-Bill-Report-Stage-HoC-July-2021.pdf

[7] Liberty, *Liberty responds to Electoral Integrity Bill announcement,* 17 February 2021, available at: https://www.libertyhumanrights.org.uk/issue/liberty-responds-to-electoral-integrity-bill-announcement/

3. Similar to the MoJ consultation on proposed reforms to judicial review, the New Plan for Immigration consultation which preceded the NAB Bill did not give people enough time to respond, failed to provide a clear evidence base for many of its proposals, omitted to include opportunities for experts by experience of the asylum and immigration system to provide their thoughts, and lacked transparency from start to finish (for example, we are aware that at various roundtables held by the Home Office and Ministry of Justice on specific proposals in the New Plan consultation, additional details were revealed that were not subject to consultation with the general public).[8] Yet despite being on its own terms, the Government has failed to publish the results of the consultation, nor its official response to the results.[9] We believe that this Bill is part of a broader set of proposals that will limit how the Government is held accountable.

4. **Liberty urges Parliamentarians to object to the aspects of this Bill that will fundamentally alter Britain's asylum policy and undermine migrants' access to justice.**

5. Our briefing focuses on provisions of the NAB Bill that affect people's access to justice, their ability to challenge State decisions and expand immigration detention. However we echo the concerns raised by other organisations regarding the NAB Bill's narrowed statutory definitions in relation to the Refugee Convention (including the creation of a split-standard of proof in asylum cases and the potential addition of a requirement for subjective fear,[10] the attempt to exclude refugees who have stopped in another country from immunity from penalties under Article 31(1) of the Refugee Convention,[11] and the reduction of the threshold for 'particularly serious crime' leading to exclusion from international protection); [12] the Bill's creation of a two-tiered refugee protection regime;[13] the measures that will make it more difficult for survivors of trafficking to secure the necessary protections (for example the reduction of the recovery and reflection period from 45 days to 30 days[14] and the disqualification of identified potential victims of human trafficking from protection if a competent authority is satisfied that they are a "threat to

[8] ILPA, *ILPA's response to the New Plan for Immigration,* 5 May 2021, available at: https://ilpa.org.uk/wp-content/uploads/2021/05/New-Plan-for-Immigration-ILPA-response.pdf
[9] As of 14 July 2021, the Government has not yet published its response to the consultation.
[10] Clause 29, Nationality and Borders Bill. See: Yeo, C., *The Nationality and Borders Bill 2021: first impressions*, Free Movement, 6 July 2021, https://www.freemovement.org.uk/the-nationality-and-borders-bill-2021-first-impressions/
[11] Clause 34, Nationality and Borders Bill. See: JCWI, *Nationality and Borders Bill - second reading briefing*, July 2021, available at: https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=18303938-1e76-4226-afe9-5b7602568f6c
[12] Clause 33, Nationality and Borders Bill.
[13] Clause 10 and Clause 11, Nationality and Borders Bill. See: Refugee Council, *Nationality and Borders Bill – Second Reading – Refugee Council*, 14 July 2021, available at: https://www.refugeecouncil.org.uk/information/resources/nationality-and-borders-bill-second-reading-refugee-council-briefing/; JCWI, *Nationality and Borders Bill - second reading briefing*, July 2021, available at: https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=18303938-1e76-4226-afe9-5b7602568f6c
[14] Clause 49, Nationality and Borders Bill. See: Ferrell-Schweppenstedde, S., *Is there life after the safe house for survivors of modern slavery?, Human Trafficking Foundation,* October 2016, available at: https://www.antislaverycommissioner.co.uk/media/1259/day-46.pdf

public order" or "has claimed to be a victim… in bad faith");[15] the provisions that will give rise to the expansion of use of "scientific methods" for age assessment;[16] the provisions that will increase sentences for illegal entry and close off a defence currently relied upon by those prosecuted for piloting small boats across the Channel;[17] and the provisions that will remove the ability of certain stateless children to obtain British nationality,[18] among others.[19]

6. In addition, we would like to draw attention to the Explanatory Notes to the NAB Bill, which state that the Bill "includes six placeholder clauses, which will be supplemented by further Government amendments ahead of Committee stage in the House of Commons."[20] These placeholder clauses pertain to the issues of authorisation to work in the territorial sea; the Early Removal Scheme (which enables foreign nationals serving custodial sentences to be removed prior to the end of their sentence and which the Government wants to amend so that it can deport people from earlier on in their sentence); age assessment; the processing of visa applications from nationals whose countries do not cooperate on removal agreements with the UK; the introduction of electronic travel authorisations; and amendments to the Special Immigration Appeals Commission. While some detail is given on what the Government hopes to achieve via these provisions in the explanatory notes, we are concerned that the failure to provide sufficient detail in statute precludes effective scrutiny of provisions that may have significant implications for people's human rights at second reading. This is part of an ongoing pattern whereby the Government has failed to provide relevant details to allow Parliamentarians to effectively debate laws,

[15] Clause 51, Nationality and Borders Bill. See: Every Child Protected Against Trafficking, *Statement on the Nationality and Borders Bill,* 6 July 2021, available at: https://www.ecpat.org.uk/news/statement-on-the-nationality-and-borders-bill
[16] Clause 58, Nationality and Borders Bill. See: Children's Law Centre, *New Immigration Plan Abandons Children's Rights and Protections*, 12 May 2021, available at: https://childrenslawcentre.org.uk/new-immigration-plan-abandons-childrens-rights-and-protections/
[17] Clause 37 and 38, Nationality and Borders Bill. See: Halliday, I., *Briefing: the Nationality and Borders Bill, Part 3 (criminalising asylum seekers),* 14 July 2021, available at: https://www.freemovement.org.uk/nationality-and-borders-bill-part-3-criminalising-asylum-seekers/?utm_source=rss&utm_medium=rss&utm_campaign=nationality-and-borders-bill-part-3-criminalising-asylum-seekers and JCWI, *Nationality and Borders Bill - second reading briefing*, July 2021, available at: https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=18303938-1e76-4226-afe9-5b7602568f6c.
[18] Clause 9, Nationality and Borders Bill. See: Harris, E., *Briefing: the Nationality and Borders Bill, Part 1 (citizenship reforms)*, 12 July 2021, available at: https://www.freemovement.org.uk/nationality-and-borders-bill-analysis-part-1-nationality-citizenship-reforms/#Issue_alleged_abuse_of_statelessness_route_to_citizenship
[19] Yeo, C., *The Nationality and Borders Bill 2021: first impressions*, Free Movement, 6 July 2021, https://www.freemovement.org.uk/the-nationality-and-borders-bill-2021-first-impressions/; JCWI, *Nationality and Borders Bill - second reading briefing*, July 2021, available at: https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=18303938-1e76-4226-afe9-5b7602568f6c; UNHCR, *UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom,* May 2021, available at: https://www.unhcr.org/uk/publications/legal/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk.html
[20] Nationality and Borders Bill, Explanatory Notes, §7, https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf

demonstrated starkly by the extensive use of Statutory Instruments throughout the coronavirus pandemic.[21]

UNDERMINING ACCESS TO JUSTICE

Wasted costs orders

7. Clause 62 inserts a new clause 25A into the Tribunals, Courts, and Enforcement Act 2007 (TCEA), which gives the First-Tier and Upper-Tier Tribunals the power to order a party to pay a charge in respect of costs incurred due to a party's unreasonable actions (called 'wasted costs orders' or WCOs). The parties on which a WCO may be made include "any person exercising a right of audience or right to conduct the proceedings on behalf of a party to proceedings", "any employee of such a person", or the Secretary of State where they have not instructed a person to conduct the proceedings on their behalf (new clause 25A (3)), which means that Home Office Presenting Officers (HOPOs) may now also be liable for wasted costs orders.[22][23]

8. Clause 63 (1) (a) creates a duty on the Tribunal Procedure Committee (TPC) – an independent, non-departmental public body sponsored by the MoJ – to establish rules establishing a 'rebuttable presumption'[24] that certain kinds of conduct will be considered 'improper, unreasonable or negligent' for the purposes of new clause 25A(1) and s.29(4) TCEA. Clause 63 (2) requires the TPC to make provision to the effect that the Tribunal must consider whether to impose a WCO if it is satisfied that the aforementioned conduct has taken place, though clause 63 (3) affirms that the ultimate decision as to whether to impose a WCO remains at the absolute discretion of the court. As with other proposals in the NAB Bill, this appears simply to be a restatement of existing aspects of the law.[25]

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[21] As of 12 July 2021, the Government has laid 467 coronavirus-related Statutory Instruments (Sis) before the UK Parliament. See: Hansard Society, *Coronavirus Statutory Instruments Dashboard*, 12 July 2021, available at: https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#total-coronavirus-sis

[22] Colin Yeo, Tribunal decides wasted costs orders cannot be made against Home Office representatives, Free Movement, 19 July 2021, available at: https://www.freemovement.org.uk/tribunal-decides-wasted-costs-orders-cannot-be-made-against-home-office-representatives/

[23] Presidential guidance note no. 2 of 2018: Further guidance on wasted costs and unreasonable costs and on the correct approach to applications for costs made in proceedings before the First-tier Tribunal (IAC), available at: https://www.judiciary.uk/wp-content/uploads/2018/07/costs-guidance-2018.pdf

[24] Nationality and Borders Bill, Explanatory Notes, §649, https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf

[25] WCOs against an appellant's representatives for improper, unreasonable, or negligent acts or omissions are already available under s.29(4) of the TCEA. Rule 9 of The Tribunal Procedure (First-tier Tribunal (Immigration and Asylum Chamber)) (Immigration and Asylum Chamber) Rules 2014 and Rule 10(3)(c)-(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 allow the Tribunal to order costs against a person who has unreasonably brought, defended or conducted proceedings (The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, available at: https://www.legislation.gov.uk/uksi/2014/2604/made and Rule 10(3)(c)-(d)); and the Tribunal Procedure (Upper Tribunal) Rules 2008, available at: https://www.legislation.gov.uk/uksi/2008/2698/article/10). A detailed

During consultation stage of the New Plan for Immigration, the Government failed to provide any evidence for why these existing provisions in respect of wasted costs orders were insufficient.

9. At first glance, the act of restating what exists in law in respect of WCOs with specific reference to the First-Tier and Upper Tribunals may simply be understood as an attempt on the part of the Government to show that it is cracking down on what it calls "[h]igh levels of poor practice around compliance with tribunal directions, which disrupts or prevents the proper preparation of an appeal… lead[ing] to cases being adjourned at a late stage".[26]

10. However, the proposal within clause 63 to require the TPC to make rules establishing a rebuttable presumption regarding certain forms of conduct that, in the absence of evidence to the contrary, will create a duty on the relevant Tribunal to consider imposing a WCO, is worrying in two ways. To understand the first, it is important to consider the role of the TPC. The TPC exercises the power to make Tribunal Procedure Rules (TPRs) under s.22(2) of TCEA. This power is to be exercised with a view to securing the overriding objective under s.22(4), which includes that "justice is done" (s.4(a) TCEA) and that the tribunal system is "accessible and fair" (s.4(b) TCEA). The procedure for making TPRs is set out in Part 3 of Schedule 5 TCEA, with the Explanatory Notes to this section affirming that the Tribunal Procedure Committee is independent.[27] A preliminary question therefore arises regarding the independence of the TPC in respect of this provision.

11. Second, and more importantly, the requirement on the TPC to prescribe certain kinds of conduct as 'improper, unreasonable or negligent' and the creation of a burden on the claimant and/or their representative to disprove this presumption is potentially highly punitive. Even though the NAB Bill rightly affirms that it is at the court's discretion whether to impose a WCO or not, the very establishment of the aforementioned rebuttable presumption would be highly punitive both for claimants and their legal representatives, because it would reinforce adverse cost risks that might deter people from proceeding

Presidential Guidance Note has also been issued to assist judges in deciding applications for wasted costs and unreasonable costs in proceedings before the First-tier Tribunal (Presidential guidance note no. 2 of 2018: Further guidance on wasted costs and unreasonable costs and on the correct approach to applications for costs made in proceedings before the First-tier Tribunal (IAC), available at: https://www.judiciary.uk/wp-content/uploads/2018/07/costs-guidance-2018.pdf). Finally, WCOs are available in the Administrative Court under s.51(6) of the Senior Courts Act 1981 and CPR 46.8.

[26] Nationality and Borders Bill, Explanatory Notes, §642, https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf

[27] Tribunals, Courts and Enforcement Act 2007, Explanatory Notes, §149, https://www.legislation.gov.uk/ukpga/2007/15/notes/division/3/3/28

with their claims. It is worth noting that there already exist many structural factors that hinder claimants from engaging in asylum and immigration-related litigation. For example, Rule 9.12.1 of the Immigration Rules provides that the failure to pay litigation costs awarded to the Home Office can be grounds for refusing someone's application for entry clearance, permission to enter, or permission to stay.[28]

12. In respect of claimants, the reinforcement of an adverse cost risk for failing to act in certain ways (such as according to court directions) would be highly punitive, given that there are many reasons why someone is unable to do so. Experiences of trauma, lack of understanding of the UK legal system, and language barriers are all factors that may contribute to someone's inability to follow directions. These difficulties will be exacerbated for litigants in person, who have little to no access to legal advice. In *Cancino*, the Court of Appeal explained why it did not feel that a prescriptive approach to wasted costs orders in immigration contexts was appropriate: "[T]he conduct of litigants in person cannot normally be evaluated by reference to the standards of qualified lawyers. Thus the same standard of reasonableness cannot generally be applied."[29]

13. In respect of legal representatives, establishing a presumption in favour of making a wasted cost order may deter law firms and lawyers from taking on cases. In *Cancino,* the Court of Appeal established that, in making a WCO, the court has a duty to balance two considerations: "The first, in summary, is that lawyers should not be deterred from pursuing their client's interests by fear of incurring a personal liability to their client's adversary. The second is that litigants should not be financially prejudiced by the unjustifiable conduct of litigation by their adversary or their adversary's lawyers."[30] In that case, the Court of Appeal drew the crucial distinction between cases where a legal representative has knowingly promoted and encouraged the pursuit of a hopeless appeal, and cases where a client has insisted that a claim is litigated in spite of advice from their legal representative. It found that cases that fall into the former category are "likely to be rare". Indeed, the Secretary of State already has a duty to certify appeals which are "clearly unfounded" under s.94 NIAA. In spite of this, the Home Office's proposal may negatively impact representatives from engaging in immigration and asylum-related litigation because of the potential costs risk.

14. Ultimately, rights are illusory if those seeking to enforce them through the courts are unable to find suitable legal representation due to a decreasing number of lawyers being

[28] Rule 9.12.1, Immigration Rules part 9: grounds for refusal, available at: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal
[29] Cancino [2015] UKFTT 59.
[30] Cancino [2015] UKFTT 59.

willing to undertake unsustainably funded work, or if the costs risk that a claimant (or their legal representative) faces is so significant as to discourage them from even making a claim. The practical effect of the WCO proposal will be to reduce the ability of claimants to bring challenges to Home Office decisions, via the backdoor of threatened costs.

EMBEDDING A CULTURE OF DISBELIEF

Provision of evidence in support of a protection or human rights claim

15. In the New Plan for Immigration consultation, the Home Office stated its intention to introduce a 'one-stop process' requiring claimants to raise all protection-related issues up front in order to "tackle the practice of making multiple and sequential (often last minute and unmeritorious) claims and appeals which frequently frustrate removal from the UK."[31] In ostensible pursuit of this objective, the NAB Bill takes the act of providing evidence for one's international protection or human rights claim and weaponises it against people in ways that may give rise to violations of their human rights. It does so by introducing provisions that require decisionmakers to consider the late provision of evidence as potentially impacting on applicants' credibility and how much weight should be given to particular evidence.

16. Clause 16 (1) of the NAB Bill gives the Secretary of State or an immigration officer the power to serve an 'evidence notice' on a person who has made a protection claim or a human rights claim, requiring the recipient to provide any evidence in support of their claim before a specified date. If the recipient does not do so, they will be required to provide a statement setting out their reasons for providing the evidence late (clause 16 (4)). Clause 17 inserts new clauses into s.8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (AITCA), which currently requires decisionmakers to take into account as damaging an applicant's credibility any behaviour that the decisionmaker thinks "is designed or likely to conceal information", "is designed or likely to mislead", or "is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant" (s.8 (2) AITCA). The NAB Bill's new clauses require a decisionmaker to take into account "any relevant behaviour by the claimant that the deciding authority thinks is not in good faith" (new clause 3A) and/or "the late provision by the claimant in relation to the asylum claim or human rights claim in question" unless "there are good reasons why the evidence was provided late" (new clause 6A), as additional factors that may damage the claimant's credibility. At no point is the term

[31] Pg. 4, Home Office, *New Plan for Immigration Policy Statement*, March 2021, available at:

"good reason" defined in the Bill or in the Explanatory Notes. The Explanatory Notes provide that clause 16 is aimed at "dissuad[ing] claimants from producing late evidence without good reason" and "reiterat[ing] that those engaging with the immigration authorities should act in good faith".[32]

17. Clause 18 establishes a new 'priority removal notice' (PRN) that can be served to anyone who is liable for removal or deportation. According to the Explanatory Notes, the factors which may lead to a person being issued with a PRN will be set out in guidance, and will include "where a person has previously made a human rights or protection claim".[33] The stated aim of this provision is to "reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals, or legal action."[34] Clause 18 (3) provides that those who are served a PRN will be required to provide a statement setting out their reasons for wishing to enter or remain in the UK, any grounds on which they should be permitted to do so, and any grounds on which they should not be removed or required to leave the UK – in addition to any evidence in support of any reasons, grounds, or information – by a specified cut-off date. This includes information that may be relevant for identifying one's status as a victim of modern slavery or human trafficking (clause 18 (3)(a)(ii)). Similar to the provision on 'evidence notices' in clause 16, the recipient of a PRN must provide reasons for not providing the necessary information before the PRN cut-off date (clause 18 (6)). Clause 20 (3) mirrors the provisions in clause 17 above, and provides that "in determining whether to believe a statement made by or on behalf of the PRN recipient, the Secretary of State or [the decisionmaker] must take into account, as damaging the PRN recipient's credibility, of the late provision of [the relevant evidence] unless there are good reasons why it was provided late." Under clause 22, recipients of PRNs will be eligible for legal aid services of up to (but no more than) seven hours.[35]

18. Part 4 of the NAB Bill deals with issues of modern slavery. Clause 46 introduces the power of the Secretary of State to serve a 'slavery or trafficking information notice' on people who have made a protection or a human rights claim, which will require them to provide the Secretary of State with any relevant information that may be relevant for the purposes of making a reasonable grounds decision. Clause 47 mirrors the above clauses in respect of late provision of evidence, so that "in determining whether to believe a statement made by or on behalf of the person, the competent authority must take

[32] Nationality and Borders Bill, Explanatory Notes, §211, https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf
[33] Nationality and Borders Bill, Explanatory Notes, §219
[34] Nationality and Borders Bill, Explanatory Notes, §220
[35] This time limit may also be amended whether generally or in specified cases under new s.9 (3),

account, as damaging the person's credibility, of the late provision of the relevant status information, unless there are good reasons why the information was provided late."

19. Apart from potentially impacting on a claimant's credibility, the late provision of evidence in respect of evidence notices (under clauses 16 and 17) and PRNs (under clauses 18 and 20) may also prejudice the weighting that a decisionmaker gives to that evidence. Clause 23 of the NAB Bill provides that "[u]nless there are good reasons why the evidence was provided late, the deciding authority must, in considering it, have regard to the principle that minimal weight should be given to the evidence." It is unclear what "minimal weight" or indeed what it would mean for a decisionmaker to "have regard to" this principle would actually mean in practice.[36]

20. These provisions regarding the provision of evidence are profoundly troubling. The potential consequences of the above clauses may be to compound the discrimination faced by people with protected characteristics contrary to the PSED; breach people's right to an effective remedy (protected under Article 13 ECHR) in relation to any international protection and/or human rights claim they make; and/or give rise to the risk of non-refoulement in breach of the UK's international and domestic law obligations.

21. These clauses may potentially compound discrimination faced by people with protected characteristics. It is well-established that people with different traumatic experiences may find it more difficult to disclose their experiences of persecution on demand, especially if they lack effective access to legal advice – indeed, the Government's meagre offer of legal aid to PRN recipients is insufficient amidst the broader gutting of the legal aid immigration sector since the legal aid cuts in 2013.[37] This may be compounded for people with protected characteristics. For example, women who have experienced sexual and/or gender-based violence may find it particularly difficult to disclose information about their experiences. The Home Office itself acknowledges the particular difficulties that LGBTQI+ asylum seekers may have in substantiating their claim or providing full disclosure, including experiences of discrimination, hatred, violence, and stigma.[38] Frontline anti-trafficking organisations have previously highlighted how "[l]ack of self-identification is compounded because victims [of trafficking] are often unaware there

[36] Liberty is grateful to Freedom from Torture and Raza Husain QC, Jason Pobjoy, and Eleanor Mitchell for sharing their comprehensive legal analysis of the proposals in the New Plan for Immigration, which has greatly informed this briefing.
[37] Bail for Immigration Detainees, *BID's response to the Nationality and Borders Bill,* 7 July 2021, available at: https://www.biduk.org/articles/850-bid-s-response-to-the-nationality-and-borders-bill
[38] Pg. 14, Home Office, *Asylum Policy instruction: Sexual orientation in asylum claims*, 3 August 2016, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf

is a system to protect people who have experienced exploitation."[39] The Government's own guidance notes on the National Referral Mechanism provide that "victims may not be aware that they are being trafficked or exploited, and may have consented to elements of their exploitation, or accepted their situation."[40] The fact that an individual could potentially be punished for failing to give in evidence on time, in that such late disclosure might affect their credibility and/or the weighting given to their evidence, which in turn will adversely affect the chances of their protection or human rights claim from succeeding, is highly concerning when we consider the ways it might compound discrimination experienced by certain groups and make it harder for them to make the best possible case for themselves.[41]

22. The above clauses may also breach individuals' right to an effective remedy (protected under Article 13 ECHR) insofar as it prevents rigorous examination of a person's claim that returning them to their country of origin would breach their human rights. Article 13 ECHR requires "the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief".[42] The ECtHR has previously held that a complaint by an applicant alleging that his return to another country would expose him to treatment prohibited by Articles 2, 3 and 8 of the Convention requires "independent and rigorous scrutiny".[43] It is unclear how the above clauses in the NAB Bill, which may effectively punish people for adducing evidence regarding their claims after an arbitrary date by allowing such late disclosure to have an impact on a decisionmaker's assessment of their credibility and weighting of that evidence, could be compatible with the State's obligation to properly rigorously assess individuals' cases on their merits. These clauses run the risk of hindering effective scrutiny of international protection and human rights claims contrary to the procedural requirements imposed by Article 13 ECHR read in conjunction with other human rights obligations.

23. The ultimate consequence of people not being able to properly present evidence relating to their claim, or being deemed to lack credibility as a result of failing to present such evidence on time, is that their claims may be rejected and they may be subject to removal.

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[39] *Joint submission to the group of experts on action against trafficking in human beings,* Anti-Slavery International, 28 February 2020, available at: https://www.antislavery.org/wp-content/uploads/2020/03/GRETA_submission_Final-Feb20.pdf

[40] Home Office, National referral mechanism guidance: adult (England and Wales), 30 April 2021, available at: https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales

[41] Scott, M., *The evil lurking in clause 23 of the Nationality and Borders Bill,* 10 July 2021, available at: https://barristerblogger.com/2021/07/10/the-evil-lurking-in-clause-23-of-the-nationality-and-borders-bill/

[42] *M.S.S. v Belgium* (Application No.30696/09, 21 January 2011)

[43] *Jabari v. Turkey* (Application No. 40035/98, 11 July 2000)

Given that some of these claims may relate to torture or ill-treatment (prohibited under Article 3 of the ECHR), this gives rise to the risk of violating the UK's domestic and international obligations against *non-refoulement*. Indeed, the European Court of Human Rights (ECtHR) has previously noted that "given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3."[44] Under the provisions in the NAB Bill, it is unclear that such scrutiny could take place, giving rise to the possibility that people could be returned to places where they could face torture or inhumane treatment.

24. It is important to note that there is already a 'one-stop' approach in place as a result of the Nationality, Immigration and Asylum Act 2002 (NIAA). Since 2002, asylum seekers have been required to submit all arguments and evidence for appealing an asylum refusal at an early stage, and can be asked to justify any delay or late submissions. Adverse credibility is already always considered in the adjudication of any asylum claim.[45] Therefore, these provisions are fundamentally unnecessary, in addition to potentially posing deleterious impacts on people's claims.

25. In addition, notwithstanding the significant burden that it is proposing to put on claimants and their legal representatives in respect of producing evidence, it is important to flag the Home Office's own poor track record of engaging in its own due diligence when it comes to investigating people's claims. In July 2021, the High Court ruled that the Home Secretary must return an asylum seeker from France to the UK after Liberty Investigates[46] – an editorially-independent investigative journalism unit – revealed that he had been subject to a shortened asylum screening interview where Home Office officials failed to ask him questions about his status as a potential victim of human trafficking.[47]

[44] *Jabari v. Turkey* (Application No. 40035/98, 11 July 2000)
[45] Pg. 14, Home Office, *Asylum Policy Instruction: Assessing credibility and refugee status,* 6 January 2015, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf
[46] Walawalkar, A., Purkiss, J., Rose, E., and Townsend, M., *Inside Esparto 11: The charter flight ejecting asylum seekers from the UK,* Liberty Investigates, 29 May 2021, available at: https://libertyinvestigates.org.uk/articles/inside-esparto-11-the-charter-flight-ejecting-asylum-seekers-from-the-uk/
[47] Taylor, D., *Judge tells Priti Patel to bring asylum seeker back to UK*, 6 July 2021, available at: https://www.theguardian.com/uk-news/2021/jul/06/asylum-seeker-removed-by-priti-patel-must-be-brought-back-to-uk

Good faith requirement

26. Clause 64 (2) creates a duty on the Secretary of State or an immigration officer to take into account whether a person making an immigration claim has acted in good faith "in connection with the matter that is being decided", "in their dealings, at any time, with a person exercising immigration and nationality functions", and in connection with "a claim made at any time, or civil proceedings brought at any time, under any provision of immigration legislation" or judicial review proceedings (clause 64 (3)).

27. As detailed above, claimants are already subject to rigorous assessments of credibility in the adjudication of their international protection and/or human rights claims. In addition, legal representatives are subject to strict regulation by professional bodies. The case of *R (Hamid) v Secretary of State for the Home Department*—which dealt with applications by people who face removal or deportation—affirmed the High Court's right to scrutinise the conduct of lawyers in immigration cases, including through referring them to the Solicitors' Regulation Authority for failing to follow procedural requirements.[48][49] In *Awuku (No 2) v Secretary of State for the Home Department*, the High Court stated that "it has always been the professional obligation of solicitors and counsel, when renewing applications or making applications on an *ex parte* basis, to satisfy themselves that the claim being advanced is one that they can properly make."[50]

28. The existing requirement on all parties to an immigration claim to act in good faith gives rise to the question of what this provision is actually trying to achieve. This is particularly important given that the term 'good faith' is not defined anywhere in the NAB Bill. The explanatory notes provide a partial answer: this clause aims to "[address] the possibility that unfounded claims, false, misleading or incomplete representations, and other disruptive acts can be made tactically to frustrate the efficient functioning of the system of immigration control, in particular to delay a person's removal or deportation."[51]

29. Taking the above into consideration, this provision appears mainly to be a symbolic restatement of the law. Indeed, the provision does not prescribe that the decisionmaker must make a particular determination, only that they must take into account whether the person whose claim is at issue has acted in good faith (clause 64 (2)). Additionally, taken in broader context, the lack of specificity as to what constitutes acting in "good faith"–

[48] CJ McKinney, *"Hamid" disciplinary hearings in the High Court,* Free Movement, 23 April 2019, available at: https://www.freemovement.org.uk/hamid-hearings/
[49] Hamid, R (on the application of) v Secretary of State for the Home Department [2012] EWHC 3070.
[50] Awuku (No 2) & Ors v Secretary of State for the Home Department [2012] EWHC 3690.
[51] Nationality and Borders Bill Explanatory Notes, §659, available at: https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf

including the well-documented nature of the "culture of disbelief" that exists in respect of Home Office decision-making,[52] and the wealth of guidance from international organisations[53] as well as domestic courts[54] regarding the need to take a more flexible approach to assessing credibility – is concerning given the potential ramifications this may have on people making immigration and asylum claims.

EXPEDITING INJUSTICE

Priority removal notices: expedited appeals

30. Clause 21 inserts a new clause 82A into the NIAA in relation to the new proposed PRN system, establishing an 'expedited appeals' process for such claims. Where a person has been served a PRN, and has made a protection or a human rights claim on or after the PRN cut-off date but while the PRN is still in force, and has an in-country right of appeal, new clause 82A (2) states that the Secretary of State must certify the person's right of appeal unless satisfied that there were good reasons for the person making the claim after the cut-off date. If certified under this section, the person's appeal will be transferred immediately to the Upper Tribunal rather than going to the First-Tier Tribunal. New clause 82A (4) requires the Tribunal Procedure Committee (TPC) to make Tribunal Procedure Rules (TPRs) securing that expedited appeals "are determined more quickly than an appeal under section 82 (1) would, in the normal course of events, be determined by the First-tier Tribunal. New clause 82A (5) provides that the TPC must make rules securing that the Upper Tribunal may, "if it is satisfied that it is in the interests of justice" order that the expedited appeal is no longer to be treated as such.

31. It is important to reiterate that immigration and asylum decisions will always involve a complex balancing of issues which may have serious impacts on the fundamental rights of individuals—including the right to private and family life, the right to liberty, and the absolute right against torture, inhuman and degrading treatment. The fact that these

[52] Freedom from Torture, *Lessons not learned: The failure of asylum decision-making in the UK,* September 2019, available at: https://www.freedomfromtorture.org/sites/default/files/2019-09/FFT_LessonsNotLearned_Report_A4_FINAL_LOWRES_1.pdf; Amnesty International and Still Human Still Here, *A question of credibility: Why so many initial asylum decisions are overturned on appeal in the UK*, April 2013, available at: https://www.amnesty.org.uk/files/a_question_of_credibility_final_0.pdf; Jessica Anderson, Jeannine Hollaus, Annelisa Lindsay, Colin Williamson, *The culture of disbelief: An ethnographic approach to understanding an under-theorised concept in the UK asylum system*, July 2014, available at: https://www.rsc.ox.ac.uk/files/files-1/wp102-culture-of-disbelief-2014.pdf ; Lucy Mayblin, *Imagining asylum, governing asylum seekers: complexity reduction and policy making in the UK home Office,* Migration Studies, 2019, available at: https://eprints.whiterose.ac.uk/152506/1/Migration%20Studies%202017%20published%20version.pdf

[53] UNHCR and European Refugee Fund of the European Commission, *Beyond proof: Credibility assessment in EU asylum systems,* May 2013, available at: https://www.unhcr.org/51a8a08a9.pdf

[54] KB & AH (credibility-structured approach: Pakistan) [2017] UKUT 491

decisions have a special importance was recognised directly by both the Court of Appeal in *Sivasubramaniam* [55] and the Supreme Court in *Cart*.[56]

32. The ability to appeal a decision in respect of one's immigration and/or asylum decision is a crucial way to ensure that individuals are able to challenge State decision-making that may have a direct impact on their fundamental human rights. We echo the concerns of other organisations that the removal of the role of the First-Tier Tribunal will result in further pressures on the Tribunal system on the whole to accelerate decision-making. This is likely to have an adverse effect on the quality of decision-making in respect of cases dealing with people's fundamental rights.[57]

33. This is particularly concerning given that there is a well-documented history of poor quality decision-making on the part of the Home Office.[58] For example, in respect of asylum decisions, it was acknowledged within the New Plan for Immigration that only 57% of First-tier Tribunal asylum appeals were dismissed between 2016 and 2018. This figure dropped to 52% in 2019/2020.[59] This translates to a high volume of cases that have been allowed to process to further stages of appeal, including cases where people's fundamental rights would be violated if they were returned to their country of origin. Liberty is concerned that attempts to expedite appeals put speed above justice, which will potentially put people at risk of having their human rights violated if they are subject to removal or deportation as a result of a truncated procedure.

Accelerated detained appeals

34. Clause 24 marks the return of a 'detained fast track' system, previous iterations of which were successfully challenged and declared by the High Court to be "structurally unfair" in a landmark case by Detention Action. Clause 24 (3) inserts a new clause 106A into s.82 NIAA (which establishes the right of appeal to the Tribunal), establishing the concept of an 'accelerated detained appeal'. 'Accelerated detained appeals' are defined as challenges brought by a person who was detained under a relevant detention provision and who remains in detention, which are of a "prescribed description" and have been certified by the Secretary of State. Under new clause 106A (7), the Secretary of State

[55] Paragraph 52, R (Sivasubramaniam) v Wandsworth County Court [2003] 1 WLR 475.
[56] Paragraph 112, R (Cart) v Upper Tribunal [2011] UKSC 28.
[57] Bail for Immigration Detainees, *BID's response to the Nationality and Borders Bill*, 7 July 2021, https://www.biduk.org/articles/850-bid-s-response-to-the-nationality-and-borders-bill
[58] Amnesty International and Still Human Still Here, *A question of credibility: Why so many initial asylum decisions are overturned on appeal in the UK*, April 2013, available at: https://www.amnesty.org.uk/files/a_question_of_credibility_final_0.pdf
[59] Ministry of Justice, *Tribunal Statistics Quarterly Q4 2020, Table FIA 3*, available at: https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-october-to-december-2020

may prescribe a description of such appeals via regulations. In respect of certification, new clause 106A (2) provides that the Secretary of State may only certify a decision under this section if they consider that "any appeal brought under section 82 in relation to the decision would likely be disposed of expeditiously". New clause 106A (3) requires the Tribunal Procedure Committee (TPC) to establish Tribunal Procedure Rules (TPRs) that will secure time limits in relation to accelerated detained appeals: people detained under the 'accelerated appeals' procedure will have 5 days upon being given notice of the decision against which the appeal is being brough, and the First-tier Tribunal will have 25 days from the point of an appeal being lodged to decide an appeal. Importantly, new clause 106A (4) requires the TPC to secure via TPRs that the Upper Tribunal may, if it is satisfied that it is in the interests of justice to do so in the case of a particular accelerated detained appeal, order that the appeal is no longer to be treated as an accelerated detained appeal.

35. Liberty is disturbed by the Home Office's apparent disregard for the many challenges and criticisms of previous iterations of the 'detained fast track' scheme that have been lodged since before 2015. We recall Lord Nichol's findings in *Detention Action v First Tier Tribunal (IAC), Upper Tribunal (IAC) and the Lord Chancellor,* concerning the "structurally unfair" nature of the-then detained fast-track system which put the applicant at a "serious procedural disadvantage". In the same case, the court emphasised that "speed and efficiency must not trump justice and fairness."[60] We would also like to highlight the conclusion of the TPC in 2019 that fast-tracked immigration appeals should not be reintroduced.[61]

36. Although the new 'accelerated appeals system' creates a duty on the TPC to provide in the relevant TPRs that the Upper Tribunal may remove cases from the system if that would be in the "interests of justice", we fundamentally question whether it is possible in policy and practice to have a truly fair accelerated detention procedure for people in detention due to the difficulties of accessing legal support and assistance from within these institutions and the various impacts that being in detention can have on people's wellbeing. As has been highlighted by organisations providing support to people in detention such as Bail for Immigration Detainees (BID), it can be difficult to access legal representation from within detention centres. This difficulty is compounded when it

[60] Lord Chancellor v. Detention Action [2015] EWCA Civ 840.
[61] Tribunal Procedure Committee, *Response to the consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants (12 July to 04 October 2018): Reply from the Tribunal Procedure Committee*, March 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807891/dft-consultation-response.pdf

comes to people detained under immigration powers in prisons. In relation to the 'accelerated appeals' procedure, BID notes that "the ability of people affected by [the procedure] to find and receive legal advice within [the specified] timeframe will be limited or non-existent."[62]

37. We are disappointed to have to repeat our submission from the 2016 MoJ consultation and the 2018 TPC consultation: "Liberty believes that the present proposals would simply repackage, in some respects exacerbating, unjust and unlawful features of the old regime. In doing so they demonstrate a lack of respect for judgement of the Court of Appeal in the Detention Action case and invite a finding that any new fast track system is manifestly unfair and, therefore, unlawful."

EXPANDING THE DETENTION ESTATE

38. Various provisions within the NAB Bill have the potential to greatly expand the UK's use of immigration detention, by creating new reasons and justifications for detaining more people, and for longer. In this respect, the NAB Bill is highly regressive and rows back on the Government's past commitments to reduce the use of immigration detention.[63]

39. Immigration detention is a fundamentally draconian and inhuman system that devastates people's mental health, remains detrimental to the welfare of vulnerable people, separates families, is drastically out of line with time limits in our criminal law,[64] wastes around £76 million of public money per year, and infringes upon people's dignity, liberty and fair treatment.

'Non-cooperation' as a reason to deny immigration bail

40. Clause 45 inserts into paragraph 3(2) of Schedule 10 of the Immigration Act 2016 new factors to be taken into account when considering a grant of immigration bail and deciding which condition(s) to impose. The current factors that a decisionmaker must take into consideration pertain to the person's likelihood of failing to comply with a bail condition, past criminal convictions, and the likelihood that the person will commit an offence while on immigration bail (among others). The NAB Bill introduces the new factor of "fail[ing]

[62] Bail for Immigration Detainees, *BID's response to the Nationality and Borders Bill*, 7 July 2021, https://www.biduk.org/articles/850-bid-s-response-to-the-nationality-and-borders-bill
[63] Home Office and The Rt Hon Sajid Javid MP, *Home Secretary statement on immigration detention and Shaw report*, 24 July 2018, available at: https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shaw-report
[64] Counter terror legislation allows for people suspected of terror offences to be detained without charge for a maximum of 14 days, pre-charge bail – also known as police bail – is limited to 28 days, and you can only be held in custody for 96 hours pre-charge.

without reasonable excuse to cooperate with any process" in relation to a series of immigration processes, as one that should be considered in the decision to grant immigration bail.

41. The new factor of "fail[ing] to cooperate" is amorphous and potentially greatly expansive – it could cover all manner of conduct deemed by a decisionmaker to be "non-cooperative". The explanatory notes provide that "[a]cts of non-cooperation may include refusing to be interviewed in respect to an asylum claim or refusing to provide fingerprints for a travel document".[65] Not only is this factor extremely broad, the very framing of the concept of "non-cooperation" is highly concerning. It appears to impute on people who fail to comply with complex and confusing immigration processes a deliberate and potentially malicious intention to obstruct[66] – indeed, the explanatory notes state that "acts of non-cooperation, which result in a delay to the individual's removal, could create a perverse incentive whereby they make a grant of immigration bail more likely."[67] We are concerned that the combination of an expansive catch-all factor in combination with the further embedding of a culture of suspicion in respect of people on immigration bail will result in people being detained for longer, with severe consequences for their human rights.

42. We echo concerns from other organisations that the Government is attempting to evade scrutiny of unlawful detention through introducing this factor. Indeed, BID has highlighted that "this [clause] is the Home Office seeking change the law because it has consistently been losing bail hearings (BID's current success rate is 77%)".[68]

Inadmissibility

43. Part 2 of the NAB Bill primarily places existing powers of the Secretary of State to declare asylum claims inadmissible on a statutory footing. Clause 13 proposes to introduce a new clause 80A in Part 4 of the NIAA, that will require the Secretary of State to declare asylum claims made by EU nationals inadmissible, save for in exceptional circumstances (new clause 80A (4) and (5)). Clause 14 will enable the Government to treat asylum claims as "inadmissible" if the individual making the claim has a 'connection' to a safe third country,

[65] Nationality and Borders Bill Explanatory Notes, §518, available at: https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf
[66] See Lord Beatson LJ in Sayaina v Upper Tribunal [2016] EWCA Civ 85: "The frequency of changes made to the rules and policy guidance in the current points-based system of immigration control has led to much litigation. It has been observed that the system is Byzantine and in some respects inaccessible."
[67] Nationality and Borders Bill Explanatory Notes, §518, available at: https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf
[68] Bail for Immigration Detainees, *BID's response to the Nationality and Borders Bill*, 7 July 2021, https://www.biduk.org/articles/850-bid-s-response-to-the-nationality-and-borders-bill

again, save for in exceptional circumstances. A "connection" can include if the individual was previously in a safe third country and "it would have been reasonable' to expect them to make an asylum claim and they did not do so";[69] and if it would have been reasonable to expect them to have made a claim in a safe third country instead of the UK.[70]

44. In the first instance, these widened inadmissibility criteria are highly concerning in their disregard for domestic and international law, including the widely-accepted concept that refugee status determination does not depend on formal recognition but is rather declaratory (meaning that whether or not someone is a refugee benefitting from the rights under the Refugee Convention does not depend on whether they have attained formal refugee status, but whether they in fact meet the definition), the principle of non-penalisation under Article 31 of the Refugee Convention, and the generally recognised position in international law that a refugee is under no obligation to seek asylum at any particular point in their flight.[71] The ultimate effect of this misinterpretation of refugee law is to greatly narrow the ability of people to make asylum claims, with serious implications for their human rights.[72]

45. In respect of detention specifically we echo the concerns raised by a range of organisations that expanding inadmissibility criteria in such ways will greatly increase the use of detention for people whose claims are deemed inadmissible.[73] People whose claims are deemed inadmissible but who cannot be returned will further be left in limbo under clause 14 while the Home Office seeks returns agreements with other countries, which may also give rise to greater use of detention.[74]

46. In addition, we are highly disturbed by the potential for the NAB Bill to be used to usher in forms of offshore processing that, in other contexts, have been widely condemned.[75] In particular, we are concerned that clause 26 and Schedule 3, which allows asylum seekers to be removed to potentially any territory outside of the United Kingdom so long as they meet a set of criteria specified in new clause 2A, s.77 NIAA, might give rise to

[69] Clause 14, new clause 80C(4), Nationality and Borders Bill.
[70] Clause 14, new clause 80C (5), Nationality and Borders Bill.
[71] See: UNHCR's written evidence to the Home Affairs Committee's Inquiry into Channel crossings, September 2020 p 5
[72] Liberty is grateful to Freedom from Torture and Raza Husain QC, Jason Pobjoy, and Eleanor Mitchell for sharing their comprehensive legal analysis of the proposals in the New Plan for Immigration, which has greatly informed this briefing.
[73] Bail for Immigration Detainees, *BID's response to the Nationality and Borders Bill*, 7 July 2021, https://www.biduk.org/articles/850-bid-s-response-to-the-nationality-and-borders-bill
[74] Various European countries have already ruled out bilateral asylum deals with the UK. See: Bulman, M., *EU countries rule out bilateral asylum deals in blow to Priti Patel's immigration plans*, The Independent, 25 April 2021, available at: https://www.independent.co.uk/news/uk/home-news/asylum-eu-deportation-home-office-b1836598.html
[75] Doherty, B., *Australia's offshore detention is unlawful, says international criminal court prosecutor*, 15 February 2020, available at: https://www.theguardian.com/australia-news/2020/feb/15/australias-offshore-detention-is-unlawful-says-international-criminal-court-prosecutor

significant human rights violations.[76] As noted by the Refugee Council: "Offshore processing is an act of cruel and brutal hostility towards vulnerable people who through no fault of their own have had to flee war, oppression and terror."[77]

CONCLUSION

47. Liberty considers the New Plan for Immigration consultation and its resulting NAB Bill to be the products of a highly potent combination of longstanding racism and xenophobia against migrants with Government-manufactured antipathy against judicial review and human rights frameworks more broadly.

48. The NAB Bill paints a stark picture of the Government's antipathy towards migrants' rights, predicated on longer histories of exclusion and foreclosure. In broader context, Liberty is concerned that the Bill's concerted attack on people's ability to challenge state decisions that deal with some of their most fundamental rights is a canary in the coal mine for longer term erosions of everyone's ability to stand up to power. Liberty believes the sections of the Bill commented on above should be resisted and recommends that Parliament carefully scrutinise and improve this legislation so as not to reverse course on the UK's stated commitments to human rights and access to justice.

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[76] Davidson, H., *UK offshore detention proposal could create 'human rights disaster', Australian experts warn*, 1 October 2020, avhttps://www.theguardian.com/uk-news/2020/oct/01/uk-offshore-detention-proposal-could-create-human-rights-disaster-australian-experts-warn

[77] Davis, B., *Priti Patel plans to 'hold asylum seekers in offshore processing centres' – report*, 28 June 2021, available at: https://www.standard.co.uk/news/uk/priti-patel-offshore-denmark-refugees-asylum-rwanda-africa-b942912.html