

Debate in Scottish Parliament on Supporting the People of Afghanistan – 2 September 2021

Key messages

- The UK Government must institute and frontload a cross-government comprehensive Afghan refugee safety plan, comprising relocation, resettlement and asylum routes to safety. This must include partnership with devolved and local government and charities and communities. It must be person-centred, properly funded and with integration for Afghans.
- The UK Government must institute an expedited process to fast-track existing Afghan asylum applications in the UK, in order to swiftly grant Refugee leave, and trigger family reunion rights, which should be extended beyond spouses and children under 18. There should be no immigration returns to Afghanistan, nor asylum support cessations or evictions of Afghans.
- The UK Government must scrap its Nationality and Borders Bill in terms of its asylum and criminalisation provisions, in particular. This Bill severs, after 70 years, the UK's relationship with the Refugee Convention, instituting a refugee punishment regime in its place. This will close off the asylum route to safety for refugees, including to Afghans fleeing the Taliban.

Background

1. Afghanistan is in a humanitarian, displacement and refugee crisis. The human rights situation is grave, as is security as the terrorist attack at Kabul Airport reconfirmed. After withdrawal of international troops, any socio-economic stability and human rights have rapidly deteriorated. The Taliban has taken control of an increasing number of districts, provincial capitals and now Kabul. The desperation of so many people across the country, and the chaos evident at Kabul Airport in particular, convey the searing reality of refugee flight. People have to make survival decisions, often life or death ones. Irregular routes are often the only way out of immediate danger. Unauthorised arrival is frequently the only way into countries of refuge, especially those with few or no safe routes in. The Refugee Convention treats such unofficial routes into countries of asylum, often via irregular means, with equanimity to official channels.

2. The UK Government has been in Afghanistan for at least 20 years. As the Prime Minister said, it owes a debt of gratitude to many Afghans. However, gratitude is not commensurate with the severity of threat facing people in Afghanistan now: death, terrorism, systemic human rights violation, especially sexual violence and gender discrimination. Widespread, severe poverty aggravated by this crisis. People in Afghanistan today - especially women, girls and religious minorities systemically targeted in the past by the Taliban as well as those who worked or have connections with the US-led coalition military forces – they all desperately need safety and quickly.

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First phase of protection: emergency evacuation – “Operation Pitting”

3. Evacuations out of Kabul Airport became a priority for the UK government, since 13 August. By its conclusion on 29 August, Operation Pitting had successfully evacuated approximately 14,543 people including around 4,000 British citizens, and 8,000 Afghans via the Afghan Relocations and Assistance Policy (ARAP), and emergency evacuation of Afghans who are at particular risk and who are to be classed under the Afghan Citizens’ Resettlement Scheme. This Operation has saved many lives with inspiring courage by Afghans and the US and UK armed forces, 13 of whom tragically died in the terrorist attack at Kabul Airport. They were part of the at least 175 people who lost their lives in the attack, mainly Afghans civilians and three British nationals. Our thoughts and sympathies are with each one of them, and their families and friends.

4. Now this first phase of protection, the evacuation, has ended, it is imperative that the UK Government with neighbouring countries, UN agencies and humanitarian NGOs, starts its second phase. This must comprise life-saving humanitarian aid to Afghan refugees and the internally displaced. It should also mean the UK Government puts its full weight, as it has promised, to reach and protect all Afghans eligible for its relocation or, in the future, resettlement programmes, who have been left behind or are the most vulnerable. In addition, the UK Government must ensure its asylum procedure remains open to all persons, including Afghans fleeing the Taliban and groups like Islamic State in Khorasan Province (ISIS-K). That requires the Home Office to grant refugee protection to Afghans seeking asylum in the UK and who arrive, often necessarily, through irregular or unofficial routes. That in turn means scrapping the asylum and criminalisation provisions in the Nationality & Borders Bill (the N&B Bill). Otherwise, the asylum route to safety closes down, including to Afghans.

Second phase of protection? UK Government promises to Afghans must be honoured

5. The Defence Secretary, Ben Wallace MP, expressed “deep regret” at not being able to get all British citizens or Afghans eligible under ARAP out of Kabul. The UK Government estimates those left behind may be up-to 1,250 persons. This estimate is contested and there may be many more left behind. Mr Wallace added: “We will continue to honour our debt to all those who have not yet been able to leave Afghanistan. We will do all that we can to ensure they reach safety.” Prime Minister, Boris Johnson MP, also promised: “As we come down to the final hours of the operation [Pitting], there will also be people who haven't got through, people who might qualify (for resettlement). What I say to them is that we will shift heaven and earth to help them, we will do whatever we can.” These promises must be honoured. The stakes are so high for those in or fleeing Afghanistan. We hope the Prime Minister and UK Government including the Home Secretary, do not let them down.

Responsibility-sharing must be fulfilled by the UK, given scale of crises in and around Afghanistan

6. UNHCR estimates that, presently, there are 3.5m people internally displaced in Afghanistan, with 550,000 since the start of 2021 alone. 80% of those displaced are women and children. At the end of 2020, there were 2.6m Afghan refugees globally: 85% or 2.21m of which are in the neighbouring countries, Iran and Pakistan. These numbers are likely to increase rapidly. On 27 August, UNHCR published its Regional Refugee Preparedness and Response Plan. Its worst-case scenario was of 500,000 Afghan refugees arriving in neighbouring countries by the end of 2021. On the same day, there were reports of “unprecedented” refugee flows from Afghanistan to Pakistan. At one border crossing, Spin Boldak / Chaman, 20,000 refugees are crossing every day, a threefold increase from the normal 6,000 that go through this border crossing, and that is generally for work and trade purposes.

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7. At the end of 2020, UNHCR also estimated the UK had 9,000 Afghan refugees. In June 2021, there were 3,213 asylum applications pending decision or further review in the UK, from Afghan nationals¹. The UK Government's first Afghan relocation scheme, eligible to certain locally employed staff (with immediate family) who worked with the UK and its armed forces in Afghanistan, had from 2010 to 12 August 2021 – the day before Operation Pitting started - relocated only 3,100 persons. It is noteworthy that 8,000 were relocated and evacuated by the UK military in 2 weeks, whereas the Home Office managed only a third of that in a whole decade. In total, there are around 23,100 Afghans either granted or seeking refugee protection in the UK, or relocated here. That means the UK have only 0.89% of the world's 2.6m Afghan refugees. In that context, the UK Government must be far more ambitious in its targets for the Afghan citizens' resettlement scheme, as 5,000 in the first year and, 15,000, perhaps, in the "long-term" is not commensurate with the scale of this crisis nor with the resources and responsibilities of the UK.

Clear and present danger to all refugees, including Afghans, of the Nationality and Borders Bill

8. The humanitarian, displacement and refugee crisis in Afghanistan also carries a wider message of the implications and, frankly, the cruelty and wrong-headedness of the UK Government ploughing on with the N&B Bill. That draft legislation, if passed at Westminster: (a) severs the UK from the Refugee Convention itself; (b) renders the right to asylum of those who necessarily arrive irregularly, inadmissible² leaving those affected in limbo, existing with a constant fear of being removed and no consideration by the Home Secretary of their substantive protection needs; and c) the N&B Bill institutes a refugee punishment regime that effectively separates out people from mainstream society including placement in an accommodation centre or camp and also criminalisation.

9. That means that all those arriving via unofficial routes, including Afghan women fleeing the Taliban, will find themselves liable to arrest and criminal prosecution and imprisonment, including via the Scottish criminal justice system. The Bill systemically denies safety to refugees, including Afghans fleeing the Taliban if entering irregularly, with the UK then penalising them for that mode of travel. The N&B Bill will deny thousands upon thousands of people seeking safety, from refugee status and the chance to build a new and peaceful life. That includes therefore people from countries regarded in the UK asylum system now, as meriting high levels of refugee recognition³ decisions. The list of such countries includes Libya, Yemen, Syria, Eritrea and Afghanistan; albeit the asylum grant rate in the latter was a dreadfully low of 26% in 2020, despite this being when the Taliban were consolidating and advancing. If the N&B Bill passes, then refugee protection through the UK asylum system ends, to be replaced quite egregiously, by segregation and criminalisation.

10. So, therefore, Afghan citizens are now left in a dreadful humanitarian predicament: at home, in neighbouring countries as well as if they were to seek asylum in the UK. The N&B Bill, in effectively closing off the life-saving route of refugee protection that has been open since a Conservative UK Government ratified it in 1954, means that literally tens of thousands of people seeking safety will, instead, be criminalised and punished, with no regard to their fear of oppressive regimes, like the Taliban and others across the world, who are threatening, persecuting or torturing and trying to kill them or their families or colleagues.

11. In the remainder of this briefing, we confine our recommendations to the refugee protection measures, principally relocation and resettlement, and asylum policy that it is in the responsibility and gift of the UK Government to take urgent action in. We do so, as the focus should be on what the UK Government can practically do, now, to help. We also make recommendations on steps the Scottish Ministers and public authorities and charities and communities may take to help Afghans and refugees generally to be safe and rebuild their lives here.

¹ Pivot table – Afghanistan, [ASY_D03](#)

² 4,561 individuals have been issued with an (Inadmissibility) "Notice of Intent" from 1 January to 30 June 2021 ([here](#))

³ Pivot table - [ASY_D04](#)

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We need a comprehensive refugee policy, inclusive of but not limited to Afghan refugee safety

12. The UK Government must safeguard protection for refugees, including Afghans fleeing the Taliban. It must do so with a *comprehensive refugee protection policy*, given the scale of the global displacement and refugee crisis that necessarily has some focus at the moment on Afghanistan but also is not at all limited to there. Any refugee protection policy must be wider than one country. It must encompass those who need protection, whether they arrived irregularly or not, from troubled regions and nations across the globe. A comprehensive refugee protection policy needs to have at least three parts: relocation, resettlement and asylum. Family reunion, albeit with its limitations in its UK Government form, is still a crucial right, particularly for women and children, to use for those resettled or given refugee status via the UK asylum system.

Relocation

Afghan Relocation Assistance Policy (ARAP)

13. The UK Government can do a lot to help Afghan refugees. The test is do they have the political will to do so. We urge them to take responsibility and act swiftly to protect refugees, Afghan and others. The intense and rapid acceleration in the Afghan relocation scheme - ARAP - was a direct result of the military-led Operation Pitting. It was not due to the Home Office anticipating and giving the priority needed to Afghans at risk or suffering reprisals from the resurgent Taliban. This Operation has brought a high volume of Afghans from risk to safety, in a matter of 2 weeks. The challenge now is to ensure that there is a person-centred package of integration support, based on suitable accommodation, provided to new arrivals who will be traumatised, but keen to start to build and contribute in their new life in the UK. There are now at least 8,000 new Afghan arrivals in the UK. The Scottish Government has already expressed its desire to help. The UK Government must accept this offer, hold the promised 4 nations summit on Afghan relocation and resettlement as a matter of urgency, and provide sufficient funding - we think at least 2 years of full central government support - to devolved governments and local authorities to organise, provide and commission local authorities and partners to deliver integration support with new Afghan arrivals. Whilst short term (up to 1month) hotel use for quarantine and basic welcome and orientation purposes may be understandable given the volume of new Afghans relocated, as a general rule people should be moved swiftly into longer term residential accommodation. That is crucial for their mental wellbeing and recovery.

Resettlement

Afghan Citizens' Resettlement Scheme

14. The announcement of the new Afghan citizens' resettlement scheme is welcome. It should be a life-saving route to safety. It can prevent the suffering of vulnerable Afghan refugees in temporary camps or in destitution in neighbouring countries. Afghans need this scheme to be adequate to the scale of need. 5,000 in the first year and a promise to resettle 15,000 in the "long-term" is not good enough. For those now in flight from the Taliban, and entering Pakistan to the East, Iran to the West or the central Asian states to the North, those Afghan refugees need help now. Otherwise it may be too late. In line with UNHCR methodology concluding that 10,000 per year is a reasonable target in a UK resettlement scheme, this "bespoke" Afghan programme should aim for around 50,000 Afghan refugees in 5 years, with an effort to front-load arrivals, similar to the Operation Pitting-booster for ARAP relocations, much needed after a decade of Home Office neglect. It would also be sensible for the UK government to integrate planning, coordination with devolved and local governments and charities, and funding for ARAP – together with its global and "bespoke" Afghan resettlement programmes. That will minimise duplication, confusion and prevent wasting resources that are precious and needed most by new Afghan arrivals and the communities

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where they are to live and, hopefully, rebuild their lives in and contribute to. The same principles of person-centred integration support and suitable long-term residential accommodation apply here, as they do with ARAP.

UK global resettlement scheme

15. The UK must also activate its latent *global resettlement scheme* that focuses on the protection needs of some of the most vulnerable refugees in the world. This scheme should be a standing and fully operational part of UK refugee protection policy. It is a failure that the Home Office has left dormant this [UK Resettlement Scheme](#), after the Syrian programme closed in 2020. Such a programme must include but not be confined to Afghans fleeing from the Taliban regime. It must have an annual target, to prevent commitments made today from withering away tomorrow, when events have moved on. This target must reflect the resources in a prosperous country like the UK. [UNHCR estimate at least 10,000 a year is an appropriate resettlement target](#) for such countries. If the Home Office had a functioning global resettlement system, there would have been less need for separate and rushed “bespoke” programmes. Afghan refugees, in coordination with UNHCR, IOM and the UK government could have been more swiftly resettled than is otherwise the case now.

Asylum

Expedite Afghan asylum claims, swiftly grant Refugee leave, and retain the right to asylum in the UK

16. The UK Government has the power to institute an expedited process to swiftly provide all Afghan asylum seekers in or arriving in the UK, with Refugee leave. Circumstances have clearly changed and adversely so, with the Taliban taking widespread control of Afghanistan. Therefore, any expedited process should also encompass those who have been refused asylum, including those on asylum support or who are in detention. Based on the latest available official figures⁴, we estimate such a comprehensive expedited process could provide 3,453 Afghan nationals with Refugee leave. That status would in turn enable Afghan new refugees to exercise family reunion rights and bring over, if applicable, their partner or children, safe from the Taliban. This expedited process may also be open to Afghans who are undocumented who had, historically, been refused protection. The expedited process should be underpinned by bans on enforced returns and, for those in asylum accommodation, evictions. All this must be supported by the urgently needed [Afghanistan: country policy and information notes](#). Recent [media reports](#) indicate that the Home Office are pausing asylum decisions and appeals in Afghan cases. This is gravely concerning as the situation in Afghanistan is clearly unsafe, especially for human rights, and that is unlikely to improve for a considerable time, if at all. People need quick, positive refugee status decisions; not a pause, which prolongs uncertainty.

17. The N&B Bill is a clear and imminent danger to Afghans and, indeed, all refugees. There is visible, determined and united [opposition](#) from Scotland, and many parts of the UK to this. The UK Government’s policy framework for the N&B Bill is its [New Plan for Immigration](#). That was published for consultation on 24 March, ending on 6 May, precisely concurrent with the pre-election “purdah” period for the Scottish Parliament and other devolved and local government elections in the UK. This [shut out](#) a swathe of UK governance from influencing policies and draft legislation that fundamentally change, regressively, the UK’s relationship with refugee protection and asylum responsibilities in particular. The Bill exerts significant and negative impacts on devolved competences and policy. This is notably in refugee integration, anti-destitution, criminal justice and courts, human trafficking, age assessment and access to local authority safeguarding provisions. Scottish Refugee Council have coordinated a coalition against the N&B Bill, since April. This included supporting legal challenges against the public consultation on the New Plan, [responding](#) to the New Plan, as well as [briefing](#) MPs at the N&B Bill’s Second Reading. With [JustRight Scotland](#) we

⁴ [Pivot tables - Afghanistan - ASY D03 and ASY D09](#) and [Pivot table - Afghanistan - DET D02](#)

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are instructing expert legal Opinion on the legality and policy implications of the N&B Bill in Scotland. There may be a need for Scottish Government to consider policy to mitigate the worst effects of this N&B Bill. And, to legislate in areas affected by the Bill that may well be in devolved competences anyway, such as responsibility to identify and decide on human trafficking status, for the purpose of providing support and assistance. We urge this Parliament to adopt proactive and detailed scrutiny of the Scottish Government's legislative consent memorandum process vis-a-vis the N&B Bill.

18. Finally, as noted there is an underlying connection between the plights of many fleeing Afghanistan and the N&B Bill. That draft legislation is in its regressive anti-refugee protection clauses, would effectively close off the UK's asylum procedure, to the vast majority of refugees who seek safety in the UK. That will include Afghans, who often, like many refugees from other nations, have necessarily to arrive in the UK via irregular channels. This is not least as the UK has few safe and legal routes open for refugees. Also, as noted, the Refugee Convention regards irregular routes with equanimity to official entry to a territory. That is for the real-world reason that refugee flight is often in an emergency when people are desperate to be safe. The chaos at Kabul Airport has viscerally reminded the world, of that fact. It has reinforced why the Refugee Convention has endured, precisely as it reflects an acute understanding of why people have to leave danger *and* then seek to build new and safer lives. The N&B Bill, in severing the UK from the Refugee Convention, then institutes in its place a *refugee punishment regime* on irregular arrivals seeking safety, including criminalising them, in effect for being refugees. If the Bill passes, refugees including Afghans fleeing the Taliban will be punished too, but this time by the UK Government. Together, we must stop this.

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