

BORDER SECURITY, ASYLUM & IMMIGRATION BILL
HOUSE OF LORDS SECOND READING, MAY 2025

New Clause – Amendment to section 117C of the Nationality, Immigration and Asylum Act 2002

After Clause 41, insert the following new Clause—

“Amendment to section 117C of the Nationality, Immigration and Asylum Act 2002

For section 117C(5) of the Nationality, Immigration and Asylum Act 2002 substitute—

“(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and—

(a) the effect of C’s deportation on the partner would be unduly harsh; or

(b)

(i) it would not be reasonable to expect the child to leave the UK; and

(ii) it would not be reasonable to expect the child to remain in the UK without C.”

Explanatory statement

This clause amends section 117C(5) of the Nationality, Immigration and Asylum Act 2002, so that an Article 8 ECHR human rights claim by a foreign criminal sentenced to less than 4 years’ imprisonment can succeed if they have a genuine and subsisting parental relationship with a qualifying child (that is, a British child or a child who has resided in the UK for more than 7 years), it would not be reasonable to expect the child to leave the UK, and it would not be reasonable to expect the child to remain in the UK without the parent.

BRIEFING:

Purpose

The proposed new clause amends Exception 2 in section 117C of the Nationality, Immigration and Asylum Act (NIAA) 2002, changing the threshold for certain Article 8 European Convention on Human Rights (ECHR) claims regarding the right to private and family life by certain foreign national offenders¹.

This change applies to “medium offenders” – that is, a foreign national offender who was sentenced to at least 12 months but fewer than 4 years’ imprisonment, or who was sentenced to fewer than 12 months imprisonment but who is a persistent offender or whose offending caused serious harm.

Under the current law, a medium offender who has a genuine and subsisting relationship with a “qualifying child” (a child who is British or has resided in the UK for at least 7 years) can meet Exception 2 if they can show that the effect of their deportation on the child would be **unduly harsh**. This new clause amends the threshold to enable them to succeed if they can show that it would be

¹ Note that the amendment does not change the test that applies to serious offenders who received sentences of imprisonment of more than 4 years, which remains “very compelling circumstances, over and above those described in Exceptions 1 and 2”. The “very compelling circumstances” test also applies to medium offenders who cannot meet Exceptions 1 and 2. This test has been interpreted by the courts as requiring a holistic assessment of proportionality, weighing the public interest in deportation against the offender’s private and family life. That will continue to be the case after this amendment.

unreasonable to expect the child to leave the UK and that it would be unreasonable to expect the child to remain in the UK without C.

The language of “unreasonable” aligns the test with the existing test under section 117B(6) for non-offenders who have a genuine and subsisting relationship with a qualifying child. However, under this amendment, medium offenders will still need to meet a more demanding threshold than non-offenders. Non-offenders under section 117B(6) only need to show that it would be unreasonable to expect the child to leave the UK, whereas medium offenders will additionally need to show that it would also be unreasonable to expect the child to remain in the UK without them.

The impact of family separation on children

The introduction of automatic deportation for so called ‘foreign criminals’ convicted and sentenced to 12 months or more under the UK Borders Act 2007, followed by further provisions in 2012² and 2014³, has led to a system which makes it mandatory to order separation of a child from their parent. There is no official data recording the number of children affected by parental deportation, but it is likely to be several thousand.

To challenge deportation on the basis of family life (relating to children) an individual must prove that they have a ‘genuine and subsisting parental relationship’ with a ‘qualifying child’ who would experience the deportation as ‘unduly harsh’. The Home Office has previously interpreted ‘unduly harsh’ as ‘excessively cruel’,⁴ permitting a level of cruelty towards children. Current policy refers to case law, quoting: ‘Harsh in this context, denotes something severe, or bleak, and is the antithesis of pleasant or comfortable. Furthermore, the addition of unduly raises an already elevated standard still higher’.⁵

Any forcible separation of a child from their parent has a long-lasting damaging impact.⁶ In *HA (Iraq)*, Lord Justice Peter Jackson warns of the ‘lifelong emotional harm of terminating the relationship between a child and a close parent’, adding ‘it will not do to minimise the emotional impact on the child of the severing of ties by reference to the doubtful prospect of maintaining relationships over many years by indirect means only’.⁷

Despite the long-term harm caused to children by deportation, the ‘unduly harsh’ test is often restricted to only taking account of the immediate impact of separation. For example, Home Office deportation decision letters use language such as: ‘there is “no threat to the child’s physical wellbeing”’⁸, revealing the lack of consideration for emotional or long-term harm.

CASE STUDY: Jarmila*, a mother of two British boys whose partner was deported, explains the emotional toll this has taken on her sons

My partner’s exit from our lives has had a very negative impact on myself and my two boys. This impact is still here to this day, as my sons are missing their father being in their life, physically, on a

² Statement of changes to the Immigration Rules (HC 194), 13 June 2012.

³ Immigration Act 2014, section 19.

⁴ See, for example, Home Office policy ‘Criminality: Article 8 cases’ Version 6.0, Published 22 February 2017 at page 13: “When considering the public interest statements, words must be given their ordinary meanings. The Oxford English Dictionary defines ‘unduly’ as ‘excessively’ and ‘harsh’ as ‘severe, cruel’.”

⁵ See [Home Office policy ‘Criminality: Article 8 cases’ Version 9.0, Published 9 May 2024](#), at page 14; *HA (Iraq) & Ors v Secretary of State for the Home Department* [2022] UKSC 22.

⁶ [Bail for Immigration Detainees \(BID\), The Impact of Forced Family Separation on a Child](#), November 2020.

⁷ *HA (Iraq) v Secretary of State for the Home Department* (Rev 1) [2020] EWCA Civ 1176, per Jackson LJ at §159.

⁸ BID, [Excessively cruel: Detention, deportation & separated families](#), 2021.

daily basis. My five-year-old son has become very isolated and unsociable. He asks about his father every day and I have now run out of answers. My 14-year-old boy, Jonah, has become emotionally distracted and isolated. He used to make friends easily and was a very sociable young boy and this has since changed.

I really worry for my children and the emotional impact this has had on them. I myself cannot do what their father used to do when he was here. Both my sons love their father so much that they don't understand why all this has happened. I am trying my best to be both [mum and dad] but they still need their dad in their lives as they are growing up.⁹

The proposed amendment places the child and their needs at the centre of the decision-making. It changes the threshold so that the person facing deportation will need to show that it would not be reasonable to expect the child to leave the UK and it would not be reasonable for the child to remain in the UK without them. This will allow the court or tribunal to carry out a more holistic assessment of the child's circumstances and assess the overall physical, psychological, and developmental impact of deportation of a parent on the child.

The public interest in family unity

Under UK law, the deportation of 'foreign criminals' is considered to be in the public interest. However, forcing children – many of whom are British – to grow up separated from one of their parents cannot be in line with the national public interest. Despite family unity being framed as a private matter, to be balanced *against* the public interest, this is a false dichotomy. As Lady Hale wrote in a judgment in a 2012 Supreme Court case: 'although the child has a right to her family life and to all that goes with it, there is also a strong public interest in ensuring that children are properly brought up'.¹⁰ A recent House of Lords Committee report substantively found that separation from parents 'can adversely impact children's language learning, school attainment and longer-term educational and labour market performance'¹¹ demonstrating that forcible separation has complex impacts on an individual and societal level.

Recognition of the public importance of family life can also be seen in the cross-government Family Test, designed to promote the tenet that 'healthy and strong family relationships are also recognised as an important component of individual, community and national wellbeing'¹² in all domestic policy.

CASE STUDY: Emily*, a mother of four British children, explains the impact of their father's deportation on their upbringing and the family's socio-economic status

My husband and I have four kids together and have been married for more than twenty years. In February 2020, he was deported to Jamaica. When we were fighting the deportation by the Home Office, our solicitors made a big effort to advise that we had children who would be negatively impacted by my husband's deportation. But when we got to court it seemed like the Home Office Barrister and the Judge couldn't have been less interested in my kids and their wellbeing. It was like they didn't exist.

⁹ Testimony taken from Families for Justice, *Separated Families: Unjust Deportations and the Families Left Behind*, 2022

¹⁰ *HH v Deputy Prosecutor of the Italian Republic, Genoa*; *PH v Deputy Prosecutor of the Italian Republic, Genoa*; and *F-K (FC) v. Polish Judicial Authority* [2012] UKSC 25, per Lady Hale at §33.

¹¹ House of Lords Justice and Home Affairs Committee, [All Families Matter: An Inquiry Into Family Migration](#), 1st Report of Session 2022-23 (HL Paper 144).

¹² DWP, [The Family Test](#), updated 26 May 2021, §1.

It amazes me that my British children have had their dad permanently ripped away from them, through no fault of their own... Since the deportation, money is really tight. I used to work full time on a decent salary. Now I am classed as a single parent with four dependants to look after, with no help with childcare. I have looked for work but it's very difficult to find jobs that fit my needs. I have to pick the little ones up from school, be available when they're sick and be around on the evenings and weekends to look after them. This makes it pretty much impossible to accept any jobs that come my way. I have to rely on food banks sometimes and the food vouchers that are given by the school.¹³

Children's rights to be cared for by their parents

Under the UN Convention on the Rights of the Child, children have a right to be cared for by their parents unless this would be contrary to their welfare. They have a right to have direct contact, in person, with members of their family, unless this would be contrary to their welfare.

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 5, UN Convention on the Rights of the Child

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 7, UN Convention on the Rights of the Child

'More British than foreign'

Many of the parents facing automatic deportation came to the UK as a child or perhaps were born here, were educated in British schools, are part of British communities, and have no connection to the place to which the Home Office proposes to deport them. Former Prisons and Probation Ombudsman Stephen Shaw's 2018 report into vulnerable adults in immigration detention found that a significant proportion of former foreign national offenders fell into this category. He wrote 'I find the policy of removing individuals brought up here from infancy to be deeply troubling', as it 'break[s] up families in this country, and put[s] [individuals] at risk in countries of which they have little or no awareness'.¹⁴ This led to his recommendation that the Home Office should no longer routinely seek to remove those who were born in the UK or have been brought up here from an early age.

Our proposed amendment is far more modest. It simply seeks to place children at the centre of decision-making, by ensuring holistic consideration of the impact of deportation on children, who have lived here for seven years or who are British. All it requires is consideration of whether it would be unreasonable for the child to remain here without their parent and to leave their home here behind and relocate with their parent. Its aim is to ensure children are not punished and do not suffer harsh consequences, for reasons beyond their control.

¹³ Testimony taken from Families for Justice, *Separated Families: Unjust Deportations and the Families Left Behind*, 2022

¹⁴ Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office](#), 2018, \$4.95 and \$4.99.