

Nationality and Borders Act 2022

Essential information for support organisations in Northern Ireland

At a glance

The Nationality and Borders Act 2022 (“the NBA”) became law on 28 April 2022. The NBA makes significant changes to the UK asylum and trafficking systems.

Many of the NBA provisions became law over summer 2022. Some provisions have not been implemented yet.

The NBA is vast in scope. This paper outlines some essential information that support organisations in Northern Ireland should know about the legislation.

This guide focusses on:

1. Differential treatment of refugees
2. Requirement of full disclosure
3. New criminal offences
4. Status granted to victims/survivors of human trafficking

This brief guide is intended to help support organisations understand how the NBA will affect their members / clients / service users. It is not exhaustive but instead focusses on the most significant changes.

Remember that **only OISC registered advisers or solicitors** are authorised to provide immigration advice.

1. Differential treatment of refugees

Prior to the NBA, it was widely understood that refugee status was granted for 5 years and provided a pathway to settlement (Indefinite Leave to Remain after 5 years and British citizenship after a further 1 year).

The NBA fundamentally changes the type of status granted to asylum seekers. Refugees can now receive different types of status and can be treated differently depending on:

- a) Their route to the UK and
- b) The date of their asylum claim.

This ‘differential treatment’ has been widely criticised for creating a two-tier system where some refugees will have more rights than others, purely based on how they entered the UK. Asylum seekers who lodge claims on or after 28 June 2022 are divided into two categories

Group 1 refugees	Persons who have come directly from the country of persecution and have presented themselves without delay to authorities. ¹
Group 2 refugees	All other refugees. (i.e. refugees who arrive via a third country or by “irregular” means such as crossing the English Channel in small boats or travelling clandestinely.) ²

Because there are virtually no safe and legal routes for asylum seekers to enter the UK, the majority of people who claim asylum in NI will fall in Group 2.

The NBA creates powers to treat Group 2 refugees differently as to:³

- Type and duration of status
- Pathway to settlement
- Recourse to public funds
- Family reunion eligibility

The following chart provides an overview of how Group 1 and Group 2 refugees *may* be treated differently.

Remember that the NBA creates *powers* to create refugees differently. Due to the delays in asylum processing times, we do not know yet whether these powers will be used routinely.

	Group 1	Group 2
Type of status	'Regular' refugee status	New type of status: 'temporary refugee permission'
Period of permission to stay	No change: leave is granted for <u>5 years</u> . ⁴	Leave is granted for <u>30 months</u> , unless exceptional circumstances apply. ⁵
Indefinite Leave to Remain (ILR)	No change: can apply for ILR after at least <u>5 years</u> in UK with refugee status ⁶	No defined route to settlement. Option to apply for ILR under the long residence route after spending <u>10 years</u> in the UK. ⁷
Family reunion	No change: can apply for family reunion: ⁸ <ul style="list-style-type: none"> • Spouse / partner • Dependent children under 18 years • Some scope for exceptional circumstances 	Broadly, there is no entitlement to family reunion unless a refusal would breach international human rights obligations ⁹
Access to Public funds	Yes	A No Recourse to Public Funds (NRPF) condition <i>may</i> apply ¹⁰ i.e. no social security entitlement

What you need to need to know

- The rights and entitlements for Group 1 and Group 2 refugees differ significantly. Avoid providing information about rights and entitlements unless you are certain whether a person falls into Group 1 or Group 2. This is particularly important with regards to entitlements such as Family Reunion: you do not want to give people false hope.
- You can no longer assume that a refugee is eligible to apply for social security: check whether the NRPF condition applies. If this condition does apply, the only income available is likely to be through employment or charitable support (with potential implications for your organisation).
- Shorter periods of leave to remain (30 months) risk refugees becoming overstayers unless they apply for further leave to remain. Encourage your clients / members / service users to liaise with their solicitor and apply in good time.

2. Requirement of full disclosure

The NBA creates new requirements whereby asylum seekers or potential victims / survivors of human trafficking must provide evidence in support of their claim before a given date.

New terminology is introduced: an “evidence notice”¹¹ applies to a protection (i.e. asylum) or human rights claim whereas a “slavery or trafficking information notice”¹² applies in trafficking cases.

This is not a new concept: asylum seekers have always been expected to provide information at the earliest opportunity. However, the NBA cements this concept and makes it clear that asylum seekers and victims of trafficking can effectively be penalised for not immediately providing information. Deadlines are now critical and not meeting them can have serious consequences.

In summary:

- These evidence notices can be issued to anyone who has made an asylum or human rights claim or may be a potential victim of trafficking;
- On receipt of an evidence notice, the applicant must provide **all and any** relevant evidence in support of their claim. The evidence notice will state the deadline for providing the evidence.¹³
- A person will have to show “good reason” for submitting evidence after the deadline.¹⁴
- Any late evidence will damage the applicant’s credibility¹⁵ and will be given minimal weight.¹⁶ Basically this means that the Home Office will be less likely to believe the person’s evidence if it is submitted late.

Requiring immediate and full disclosure is really problematic. We know that asylum seekers and victims of trafficking may face barriers to disclosure including barriers related to trauma, culture, mental health, disability, trust, relationship with interpreter and language proficiency.

Support organisations play a critical role in relationship-building with vulnerable asylum seekers and survivors/victims of slavery or trafficking. Support organisations may also provide an important role in providing supporting evidence. For example, a support organisation might attest that the asylum applicant attends a particular place of worship or attends a LGBTQIA support group.

What you need to need to know

- If your service user receives an evidence or information notice, encourage them to notify their solicitor immediately
- If your service user tells you something that *might* be relevant, check that the solicitor is aware of this information and/or encourage this communication. Ask your client, 'Have you told your solicitor that?' Possible scenarios:
 - Service user shows you torture scars
 - Service user tells you she is worried about her health following rape
 - Service user tells you s/he was forced to work *en route* to the UK (remember that not everyone who has experienced exploitation self-identify as victims of trafficking)
 - Service user is frightened because family members back home have been threatened
- Of course, one of the challenges is knowing what information is 'relevant': if in doubt, please encourage the service user to speak to their solicitor.
- If your service user and/or solicitor asks your organisation to provide you with a letter of support or evidence, ensure you respond within the timeframe. Do not delay.

3. New criminal offences

The NBA creates more criminal offences relating to the asylum journey. It is now nearly impossible to claim asylum in the UK without committing a criminal offence.

There are new offences relating to illegal entry including “knowingly arriving without permission”.¹⁷ Given that the large majority of asylum seekers arrive without permission, it is possible that many asylum seekers will face the criminal justice system. In practice, the Law Centre considers it unlikely that thousands of asylum seekers will be prosecuted.

The NBA also removes provisions that used to protect charitable organisations from prosecution if they assisted asylum seekers to enter the UK. The facilitation offence of “helping an asylum seeker to enter the United Kingdom”¹⁸ now applies to all persons and organisations and can even attract a life sentence! (Note that there is a narrow exemption that protects organisations involved in sea rescues from prosecution).

The scope of the ‘facilitation offences’ are wide and potentially could apply to support organisations that are just doing their best to support their service users.

What you need to know:

- Be careful that you do not provide any assistance that could be construed as facilitating unlawful migration. For example:
 - Organising a fundraiser / crowd sourcing for your service user’s daughter who is at risk in a different country (you think it is likely that she may use the money to pay an agent to bring her to the UK)
 - Providing information about visit visas to someone who would like to come to UK (you think it likely that they intend to claim asylum).
- If your service user is arrested for immigration-related offences, s/he will be offered a duty solicitor at the police station. Make sure the solicitor has expertise in immigration and is aware that the individual has claimed asylum.

4. Status granted to victims and survivors of human trafficking

The NBA has made significant changes to the UK human trafficking law and processes. Due to the fact that support for victims of trafficking is largely a devolved matter, some of the changes will not have full effect in Northern Ireland.¹⁹ Nonetheless, overall, the Law Centre considers that these changes will make it more difficult for people to be recognised as victims of trafficking and to obtain the support they need.

A key concern for Law Centre is that some people will not be granted leave to remain *despite* being recognised as a victim of trafficking. This is because the NBA establishes circumstances in which the Home Office will not grant leave to survivors/victims who receive a positive conclusive grounds decision.²⁰ Specifically, leave will not be granted in situations where the Home Office considers that another country could meet the person's need for assistance.²¹

Again, this concept – whereby recognised victims are not automatically granted leave – is not actually new. However, due to the implementation of the NBA, this occurrence could become much more common.

What you need to know:

- A positive trafficking decision does not mean that the person will receive leave to remain. It is therefore essential that other immigration options – such as a protection claim – are fully explored. Immigration advice is key.

Conclusion

The NBA makes significant changes to the assessment of international protection claims in the UK. The full effect of this legislation will not be felt for years.

Refugee law changes frequently: please keep an eye out for further information from the Migration Justice Project on further changes and updates. In the meantime, thank you for all your work in supporting asylum seekers and refugees.

- ¹ [Nationality and Borders Act 2022](#), c 36, s 12(2)
- ² [Nationality and Borders Act 2022](#), c 36, s (1)(b)
- ³ [Nationality and Borders Act 2022](#), c 36, s 12(5)
- ⁴ [Immigration Rules part 11: asylum](#), para 339QA(i)
- ⁵ [Immigration Rules part 11: asylum](#), para 339QA(ii)
- ⁶ [Immigration Rules Appendix Settlement Protection](#), STP3.1 (a)
- ⁷ [Immigration Rules part 7: other categories](#), para 276B.
- ⁸ [Immigration Rules part 11: asylum](#), para 352A-352F
- ⁹ [Nationality and Borders Act 2022](#), c 36, s 12(5)(d), 352AB 352DA
- ¹⁰ [Nationality and Borders Act 2022](#), c 36, s 12(5)(c)
- ¹¹ [Nationality and Borders Act 2022](#), c 36, s 18(1)
- ¹² [Nationality and Borders Act 2022](#), c 36, s 58(1)
- ¹³ [Nationality and Borders Act 2022](#), c 36, s 18(2)
- ¹⁴ [Nationality and Borders Act 2022](#), c 36, s 18(4)
- ¹⁵ [Nationality and Borders Act 2022](#), c 36, s 19
- ¹⁶ [Nationality and Borders Act 2022](#), c 36, s 26
- ¹⁷ [Nationality and Borders Act 2022](#), c36, s 40
- ¹⁸ [Nationality and Borders Act 2022](#), c36, s 41
- ¹⁹ For example, the NBA the reduces the recovery period for survivors/victims of slavery or trafficking from 45 days to 30 days whereas the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provides for a recovery period of 45 days. [Nationality and Borders Act 2022](#), c 36, s 61 and [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#), c 2, s 18(4)
- ²⁰ [Nationality and Borders Act 2022](#), c 36, s 65(4)
- ²¹ [Nationality and Borders Act 2022](#), c 36, s 65(4) See also [Immigration Rules Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery](#), para VTS 3.3.

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