



Lord Rosser
House of Lords
London
SW1A 0PW

MoJ ref: SUB94961

25 February 2022

Dear Lord Rosser,

**NATIONALITY AND BORDERS BILL: LORDS COMMITTEE STAGE 8 FEBRUARY 2022 -
SERIOUS HARM**

I am grateful to you for the detailed debate on the Nationality and Borders Bill on 8 February 2022 which covered amongst other topics, adherence to international conventions and obligations. As I committed to on the floor of the House, I am writing to explain the reason ‘serious harm’ is not included in Clause 33 ‘Article 1(A)(2): protection from persecution’ of the Nationality and Borders Bill.

Clause 33 defines the Government’s interpretation of who can provide protection from persecution, and when an asylum seeker is to be taken to avail themselves of that protection, for the purposes of Article 1(A)(2) of the Refugee Convention (Definition of the term “Refugee”). In accordance with this clause and the Refugee Convention, a decision-maker must consider whether the asylum seeker’s country of origin or country of former habitual residence can provide the claimant with protection from persecution so that they would not have a well-founded fear of persecution in that country. Clause 33 further sets out that protection from persecution can be provided by the state or a party or organisation controlling the State, or a substantial part of the territory of the State.

You highlighted during Committee that the current definition of ‘protection from persecution’ in Regulation 4 of The Refugee or Persons in Need of International Protection (Qualification) Regulations 2006 “the 2006 Regulations” states that in deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by the same list of bodies as listed in Clause 33. It is important to note that Regulation 4 refers to consideration of whether a person is a refugee *or* a person eligible for humanitarian protection, a subsidiary protection route required by the 2004 EU Qualification Directive, and implemented by the Immigration Rules and the 2006 Regulations. In contrast, Clauses 29-38 of the Bill relate solely to the Government’s interpretation of the Refugee Convention, which is why “serious harm” is not referred to in this clause.

As I have said before, the Government is committed to upholding its international obligations and that is why we have a humanitarian protection route which caters for an asylum seeker who does not qualify for refugee status, under paragraph 334 of the Immigration Rules, but still requires protection. This might be the case, for example where their protection need is not the result of a ‘Convention reason’.

As I announced during the Committee debate, we are taking the opportunity to reform the humanitarian protection route by aligning it with our current international obligations, namely under Articles 2 and 3 of the European Convention on Human Rights (ECHR). Articles 2 and 3 relate to the right to life and freedom from torture and inhuman or degrading treatment. These changes will be made in the Immigration Rules, and as part of these changes, we will clarify that an eligible claimant will be granted humanitarian protection where there would be a real risk on return of the individual being subject to a breach of Article 2 or 3 breach. Ill-treatment under Article 3 must qualitatively attain a minimum standard of severity, but would no doubt include "serious harm". Consequently, protection in the UK will be provided to eligible claimants where protection from persecution or from an Article 2 or 3 breach cannot be provided in the country of return.

I hope this provides clarification and I look forward to continuing to work with you to deliver this important legislation and further discussing these critical issues as the Bill moves through Parliament. A copy of this letter will be placed in the libraries of both Houses.

Yours sincerely,

A handwritten signature in blue ink that reads "David Wolfson". The signature is written in a cursive style with a small flourish at the end.

**LORD (DAVID) WOLFSON
OF TREDEGAR, QC**