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BY EMAIL ONLY  
All Peers  
House of Lords  
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25 February 2022

**My Lords,**

**Nationality and Borders Bill: Maritime Tactics and Facilitation Offences**

I am grateful to all members of the House for the detailed debate on the Nationality and Borders Bill between 27<sup>th</sup> January and 10<sup>th</sup> February. During the debate on 3 February, I committed to writing to the House regarding the government's policy on Maritime tactics. Additionally, during the debate on 10<sup>th</sup> February I agreed to write to you on the defence that is being made available to seafarers as part of the changes to facilitation offences in clause 40.

**Maritime Powers**

All operational procedures used at sea are and will continue to be delivered in accordance with domestic and international law. It is important we have a maritime deterrent in the Channel and relevant officers are authorised to use safe and legal options for stopping small boats. And so, whilst these tactics will only be viable under certain circumstances, they form part of our wider operational approach, which will contribute to breaking the business model of migrant smugglers by sending a message that this route no longer guarantees entry to the UK.

These powers also allow relevant officers to make wider use of operational techniques, enabling vessels used by illegal migrants to be stopped from heading towards the UK shore. In addition to being escorted towards the UK territorial sea boundary, if intercepted in UK Seas, these new powers will enable a migrant vessel to be stopped in international waters as well and diverted away from UK seas with the intention of encouraging the vessels to return to the country their journey started in.

In both international and domestic law, the territorial sea is the waters up to 12 nautical miles from the baselines. The United Nations Convention on the Law of the Sea (UNCLOS) defines the (normal) baseline as the "low-water line along the coast

as marked on large scale charts officially recognised by the coastal State” (Article 5). For territorial waters, which does not have a definition in international law, we usually take the view that this means both the territorial sea and our internal waters (which includes water inside the baseline).

To clarify, Clause 13 (7) refers to the territorial sea of the United Kingdom, not the territorial waters of the United Kingdom.

### **Facilitation Offences**

On the matter of the defence that is being made available to seafarers as part of the changes to facilitation offences in clause 40.

The Home Office has worked closely with the Department for Transport to ensure that the United Kingdom’s international obligations were taken into account in drafting the proposed new section 25BA of the Immigration Act 1971, in order to put beyond doubt that organisations and individuals who rescue those in danger or distress may continue to do so and will not be convicted for facilitation offences.

Those organisation or individuals who provide assistance and who are acting on behalf of or co-ordinated by Her Majesty’s Coastguard (HMCG), are protected from prosecution for the offence of facilitation. Most vessels that come across another vessel or persons in danger or distress at sea will inform HMCG or their foreign equivalent or will be responding to a mayday relay from them. In 2021 HMCG co-ordinated 1100 incidents in the English Channel.

We do not accept that this exclusion should be extended further. We have given due consideration that seafarers may act independently of HMCG, and it may be the case that there is a good reason for this, such as there not being enough time to await HMCG, or not being able to make contact due to their phone running out of battery power. However, we want to reduce the risk of exploitation by organised crime gangs. We have accordingly provided a defence for persons who can show that they had to assist an individual in danger or distress at sea for the time between them first being in danger and being delivered to a place of safety on land.

Proposed sub-section 25B(A)(4) is clear that a person wishing to advance this defence faces only an evidential test and not a reverse burden of proof. The effect is that it will be assumed that in such circumstances, the seafarer is telling the truth and acting in good faith unless what they say can be disproved beyond all reasonable doubt. Unless investigators believe they are able to disprove the facts put forward with admissible evidence to the contrary, such as intelligence suggesting they are linked to people smuggling gangs, or the same person launching multiple “rescues” over several days with no good reason for being at that location, then they will not even refer the case to the Crown Prosecution Service (CPS) for it to consider charging the person with the offence.

The CPS’ Code for Crown Prosecutors is clear that prosecutors will not make a decision to bring criminal charges unless a case meets the evidential and public interest tests. With regard to the evidential test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. This is based on the prosecutor’s objective assessment of the evidence, including the

impact of any defence and any other information that the suspect has put forward or on which they might rely.

It is right that in investigating a serious offence, all available evidence should be considered, and all relevant behaviours taken into account. This is designed to stop people smugglers from exploiting potential loopholes to escape prosecution, e.g. by changing their operations to pick up migrants immediately after they leave the French coast and then ferrying them to the UK.

I hope this provides clarification on both of the points raised during the debate and I look forward to continuing to work with you all 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.

A handwritten signature in black ink, appearing to read 'Susan', written in a cursive style.

**Baroness Williams of Trafford  
Minister of State.**