



House of Lords briefing on the Nationality and Borders Bill

We urge Peers to table a new clause **amending the Afghan Relocations and Assistance Policy (ARAP)**.

AFGHAN RELOCATIONS AND ASSISTANCE POLICY

Amendment

To move the following Clause—

“Afghan Relocations and Assistance Policy

(1) Within 30 days of this Act receiving Royal Assent, the Secretary of State must amend part 7 of the Immigration Rules on the Afghan Relocations and Assistance Policy (“ARAP”) in accordance with subsections (2)-(7) of this section.

(2) The Secretary of State must amend paragraph 276BB3 to specify that a person falls within this paragraph if:

(i) at any time on or after 1 October 2001, the person:

(a) was directly employed in Afghanistan by a UK government department; or

(b) provided goods or services in Afghanistan under contract to a UK government department (whether as, or on behalf of, a party to the contract); and

(ii) because of that employment or provision of goods or services, the person’s life or safety is at real risk.

(3) The Secretary of State must delete paragraph 276BB4.

(4) The Secretary of State must amend paragraph 276BB5 to specify that a person falls within this paragraph if the person meets conditions 1 and 2 and one or both of conditions 3 and 4. For the purposes of this paragraph:

(i) condition 1 is that at any time on or after 1 October 2001, the person worked in Afghanistan alongside, in partnership with or closely supporting and assisting a UK government department or for a British-based organisation or institution founded by, funded by or otherwise connected to the UK government;

(ii) condition 2 is that the person, in the course of that work, made a substantive and positive contribution towards the achievement of:

(a) the UK government’s military objectives with respect to Afghanistan;

(b) the UK government’s national security objectives with respect to Afghanistan (and for these purposes, the UK government’s national security objectives include counter-terrorism, stabilisation, counter-narcotics and anti-corruption objectives); or

(c) the UK government’s human security objectives with respect to Afghanistan (and for these purposes, the UK government’s human security objectives include interventions to reduce violence, ensure basic security and promote human rights and the rule of law);

(iii) condition 3 is that because of that work the person is or was at high risk of death or serious injury;

(iv) condition 4 is that the person holds information the disclosure of which would give rise to or aggravate a specific threat to the UK government or its interests.

(5) The Secretary of State must amend paragraph 276BB2 to reflect subsections (2)-(4) of this section.

(6) The Secretary of State must insert into the Immigration Rules a route for additional family members of locally employed staff to apply in exceptional circumstances for relocation, and ensure this is no less favourable than that contained in the Home Office's Additional guidance on the eligibility of additional family members under the Afghan locally employed staff relocation schemes, published 04 June 2021.

(7) The Secretary of State must specify in the Immigration Rules that any decision to exclude a person who would otherwise be eligible for the ARAP scheme must be made in accordance with the exclusion criteria set out in Article 1F of the 1951 Refugee Convention, and provide independent and transparent due process guarantees in relation to any exclusion decision, including disclosure of relevant information and evidence and rights of appeal.

Member's explanatory statement

This new Clause would expand eligibility for ARAP by amending the Immigration Rules. It would insert into the Rules a relocation route for additional family members, which can be no less favourable than the current Home Office guidance, and limit the basis on which persons, who would otherwise be eligible for relocation under ARAP, can be excluded from the scheme.

Briefing

This amendment remedies three critical problems with the ARAP scheme and the associated Immigration Rules ([Immigration Rules part 7: other categories](#)):

1) Broadens and clarifies the eligibility criteria

Many Afghans who worked for and with the UK Government remain excluded from the ARAP scheme, including those who made a vital contribution to the UK's security objectives in Afghanistan and who, due to that contribution, live in fear for their own and their family's safety.

The UK Government has introduced two schemes for the relocation and resettlement of Afghan nationals and certain family members: (1) the ARAP scheme¹ for Afghans who worked with the UK Government in Afghanistan and (2) the Afghanistan Citizens Resettlement Scheme (ACRS),² which will resettle up to 20,000 vulnerable and at-risk Afghans in the UK over the coming years.

The ARAP scheme was a significant improvement on the previous policies that determined the UK's support to its former interpreters and other staff. However, since its inception, Human Rights Watch and others have criticised the scheme for being too restrictive.³ Nonetheless, in December 2021, the Government **further narrowed eligibility**, including heightening risk thresholds to

¹ Ministry of Defence, Afghan Relocations and Assistance Policy: further information on eligibility criteria, offer details and how to apply (updated 17 February 2022) <www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance> accessed 22 February 2022.

² Home Office, 'Afghan citizens resettlement scheme' (published 18 August 2021) <www.gov.uk/guidance/afghan-citizens-resettlement-scheme> accessed 22 February 2022.

³ Human Rights Watch, 'Letter to UK Prime Minister Boris Johnson Regarding the Human Rights Crisis in Afghanistan' (20 August 2021) <www.hrw.org/news/2021/08/20/letter-uk-prime-minister-boris-johnson-regarding-human-rights-crisis-afghanistan>; Sulha Alliance, 'Written evidence submitted by the Sulha Alliance' <<https://committees.parliament.uk/writtenevidence/40188/pdf>> accessed 22 February 2022; Human Rights Watch, 'Submission to the UK Foreign Affairs Committee Inquiry into Afghanistan' (November 2021) <www.hrw.org/news/2021/12/07/submission-uk-foreign-affairs-committee-inquiry-afghanistan> accessed 22 February 2022.

levels that are unduly restrictive.⁴ Furthermore, the Government has now indicated that some of those evacuated during and since the UK's withdrawal in August 2021 (approximately 6,500 Afghans), as well as those who were called up for evacuation but did not make it on the evacuation flights, will be counted under the ACRS scheme, **thereby significantly reducing the number of places** available within the ACRS and making it imperative that the ARAP is not unduly restrictive and adequately captures those who worked for and with the UK Government in Afghanistan, including those who furthered the UK's security interests.⁵ In terms of numbers, the UK Government has agreed to settle significantly fewer Afghans than some other countries, including Canada which has committed to resettling 40,000 Afghans.⁶

(a) Afghans directly employed by and contractors who provided goods and services to the UK Government in Afghanistan

This amendment would ensure that all Afghans who worked for the UK government, whether as direct employees, contractors providing linguistic services, or other contractors who provided goods and services to a UK Government department in Afghanistan, whose life or safety is at real risk because of that work are eligible for relocation under category 1 of the ARAP scheme.

It would reduce the risk threshold for direct employees in paragraph 276BB3 from "high and imminent risk" to "real risk" and expand it to include not only risk to life, but also to safety. The current threshold is high and evidentially difficult to meet, requiring persons to show not only the likelihood of risk but also that there is an immediate and impending threat. At present, the ARAP scheme features a range of thresholds for Afghans, including "high and imminent risk", "safety is at risk", "elevated risk of targeted attacks" and "high risk of death or serious injury". The Government should borrow from the "real risk" test currently employed by the UK Government in the asylum context and Article 3 European Convention on Human Rights when assessing risk, which is a well-established and well-understood test that can provide interpretative guidance. For example, the Home Office's "Asylum Policy Instruction" provides that the level of proof required is that of a "reasonable degree of likelihood", used interchangeably with "a real risk", and acknowledges that this standard is appropriate "because of what is potentially at stake – the individual's life or liberty - and because asylum seekers are unlikely to be able to compile and carry dossiers of evidence...".⁷

Contractors who provided linguistic services to the armed forces as well as contractors who provided goods or other services to the UK in Afghanistan would also be included within paragraph 276BB3, reducing the risk threshold for the latter, and removing the other onerous requirements that they would be required to meet under what is currently paragraph 276BB4.

(b) Those who supported the UK Government's Security Objectives in Afghanistan

The amendment would also ensure that Afghans who worked in Afghanistan alongside, in partnership with, or closely supporting and assisting a UK Government department and who made a substantive and positive contribution towards the achievement of the UK's security

⁴ Statement of Changes in Immigration Rules HC 913 (14 December 2021)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040410/E02701506_HC_913_Immigration_Rules__PRINT_.pdf> accessed 22 February 2022.

⁵ Home Office, 'First family resettled under Afghan Citizens Resettlement Scheme' (6 January 2022)

<www.gov.uk/government/news/first-family-resettled-under-afghan-citizens-resettlement-scheme> accessed 22 February 2022; <<https://hansard.parliament.uk/commons/2022-01-20/debates/DC164A08-FC2A-498F-A4E8-D1E83D339944/BritishCouncilStaffAfghanistan>> accessed 22 February 2022.

⁶ Government of Canada, 'Supporting Afghan nationals: About the special programs'

<<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/special-measures.html>> accessed 22 February 2022.

⁷ Home Office, Asylum Policy Instruction: Assessing credibility and refugee status (version 9.0, published 6 January 2015)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf> accessed 22 February 2022.

objectives, including stabilisation and human security objectives, and who because of that work are or were at high risk of death or serious injury, are also eligible for the scheme. It does this by explicitly including “stabilisation” as part of the government’s national security objectives and including Condition 2(c), which provides for human security objectives as an additional category.

The UK Government’s overarching objectives in Afghanistan were underpinned and informed by its work on stabilisation and human security.⁸ In advancement of its broad security objectives in conflict-affected contexts, the UK Government undertakes stabilisation interventions, as it did in Afghanistan, to support “local and regional partners in conflict-affected countries to reduce violence, ensuring basic human security, and facilitating peaceful political deal-making, which all provide a foundation for building long-term stability”.⁹ This encompasses the promotion of human rights, the rule of law and adoption of a gender-sensitive approach and is closely intertwined with the UK’s military and national security objectives.¹⁰

[Fatima Ahmadi](#), a former Afghan police officer and survivor of domestic violence and forced marriage, remains stranded in Islamabad with her two young sons. Her life and safety are at real risk, with all former police officers being potentially at risk, which is compounded by female police officers being deemed to have severely violated Taliban views of acceptable gender norms and her personally speaking out, based on her own experience, about the abusive conditions within the Afghanistan National Police for female officers. Ms Ahmadi was one of the pioneering female police officers and soldiers who took on the task of joining and bringing gender integration to the Afghan security forces. Afghanistan is one of the focus countries for the UK’s National Action Plan on Women Peace and Security (WPS)¹¹ and the Government has described “Security and Justice” as one of its three WPS strategic objectives in Afghanistan and has sought “to promote women’s influence and leadership in the security sector”.¹² Despite her contribution to the UK’s security objectives in Afghanistan, the UK has failed to include such persons within ARAP’s scope.

British-based organisations or institutions founded by, funded by or otherwise connected to the UK Government would also be included within the ARAP scheme, and would address the gap identified by Lord Kerr of Kinlochard within the scheme at present and the amendment tabled in Committee stage, as the British Council and BBC World Service are not UK Government departments.¹³ This would align the UK with other countries that operate similarly broad schemes, such as the United States.¹⁴

The amendments set out above will ensure that the ARAP scheme properly encompasses those who worked for or with the UK Government in Afghanistan including in furtherance of its security objectives, and whose life and safety are now at real risk because of that work. The

⁸ Stabilisation Unit, ‘The UK Government’s approach to Stabilisation: A guide for policy makers and practitioners’ (published 19 December 2018) page 31, para 1 <<https://www.gov.uk/government/publications/the-uk-governments-approach-to-stabilisation-a-guide-for-policy-makers-and-practitioners>> accessed 22 February 2022.

⁹ Ibid.

¹⁰ Ibid.

¹¹ HM Government, UK National Action Plan on Women, Peace & Security 2018 - 2022 (January 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022064/FCO1215-NAP-Women-Peace-Security-ONLINE_V2.pdf> accessed 22 February 2022.

¹² HM Government, UK National Action Plan on Women, Peace & Security 2018 - 2022: Annual Report to Parliament 2020, page 9-10 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978646/UK_National_Action_Plan_on_Women__Peace_and_Security_2018_to_2022_annual_report_to_Parliament_December_2020.pdf> accessed 22 February 2022.

¹³ HL Deb 10 February 2022, Vol 818, Col 1954.

¹⁴ US Department of State, ‘U.S. Refugee Admissions Program Priority 2 Designation for Afghan Nationals’ (Fact sheet, 2 August 2021) <www.state.gov/u-s-refugee-admissions-program-priority-2-designation-for-afghan-nationals/> accessed 23 February 2022.

consequences of not doing so are grave. Either such persons remain at real risk to their life and safety in Afghanistan or they may feel they have no choice but to attempt unsafe means of travel. It was recently reported that an [Afghan soldier who had reportedly served alongside British forces in Afghanistan](#) was among those rescued crossing the English Channel. Moreover, the UK has a moral responsibility to provide protection to those who, when the United Kingdom was in need, worked for or with the United Kingdom including in furtherance of its security objectives, and whose life or safety is now at risk due to that work.

2) Narrows the exclusion criteria and provides procedural safeguards for such exclusion decisions

Currently, the criteria set out in Part 9 of the Immigration Rules for those who can be excluded under ARAP on security grounds are vague and far-reaching; all such decisions are taken behind closed doors by Home Office officials, with the applicant unaware of the evidence against them and no right of appeal. The review process only takes place through a ‘contact us form’.¹⁵ In a [letter](#) of 3 August 2021, the Home Secretary and Defence Secretary explained that Locally Engaged Staff who were dismissed from employment by the UK in Afghanistan are excluded from relocation if their dismissal was (1) based on serious security concerns at the time, (2) for activities that would be criminal offences in the UK, or (3) activities or offences which either had or could have had ‘serious consequences’. There is no definition of what constitutes ‘serious consequences’ nor how it is determined whether such consequences ‘could have’ occurred.

This amendment would replace the current exclusion criteria¹⁶ and instead borrow from relevant international standards, specifically the criteria for exclusion from refugee status set out in Article 1F of the 1951 Refugee Convention and relevant UK law that implements this provision so that the only persons, who would otherwise be eligible, who are explicitly excluded from benefiting from ARAP are those who have committed a crime against peace, a war crime, a crime against humanity, or another serious non-political crime, or acts contrary to the purposes and principles of the United Nations. This takes account of the serious consequences of excluding Afghans who worked for and with the UK Government, whose life or safety is now at risk because of this work, from ARAP and provides for independent and transparent due process guarantees for exclusion, including disclosure of relevant information and evidence and rights of appeal.

3) Inserts into the Immigration Rules a route for the relocation of additional family members

Finally, the amendment would insert into the Immigration Rules a route for additional family members of locally employed staff to apply for relocation on terms no less favourable than those contained in the Government’s current guidance on relocating additional family members (meaning anyone beyond a spouse, partner, and children under the age of 18 at the time of application).¹⁷ This amendment ensures that persons now at risk because of their relative’s relationship with the UK can access a safe route to the UK. The Canadian Government, for example, recently launched a special family reunification program, creating a pathway to permanent residence for extended family members of former Afghan interpreters who previously immigrated to Canada under 2009 and 2012 programs.¹⁸

¹⁵ Ministry of Defence, Afghan Relocations and Assistance Policy: further information on eligibility criteria, offer details and how to apply (updated 17 February 2022) <www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance> accessed 22 February 2022.

¹⁶ Contained in Part 9 of the Immigration Rules.

¹⁷ Home Office, Additional guidance on the eligibility of additional family members under the Afghan locally employed staff relocation schemes (version 1.0, published 4 June 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991391/arap-additional-dependants-guidance-v1.0ext.pdf> accessed 22 February 2022.

¹⁸ Government of Canada, ‘Permanent residence for extended family of former Afghan interpreters: How to apply’ <www.canada.ca/en/immigration-refugees-citizenship/news/notices/extended-family-afghan-interpreters.html> accessed 22 February 2022; Government of Canada, ‘Permanent residence for extended family of former Afghan interpreters: How to

We are aware of a number of cases of additional family members of relocated Afghans who worked with the UK Government in Afghanistan who say they face a real risk of harm and are desperately in need of a safe pathway out of Afghanistan to the UK. According to the Sulha Alliance, one former interpreter for the British Army is, for instance, seeking to bring his under-age siblings and parents over to the UK as there are verifiable concerns about their safety and security because of the work he did. His family has a history of being targeted by the Taliban, including threat letters and one of his younger siblings (a minor) has reported being tortured, threatened, and beaten by the Taliban for 10 days, which has forced several family members, including children, to flee. The family lives in fear of being targeted again by the Taliban and does not feel safe to return to the family home given that people know of the main applicant's work with the military and the history of targeting. A younger sibling mostly stays inside due to fear, and the applicant's sisters are no longer able to attend any educational facilities.

The UK's alternative scheme, ACRS, is limited and is no substitute for a sufficiently broad and clear ARAP

Our amendment ensures that any person who worked alongside, in partnership with or closely supporting and assisting the UK Government or for a British-based organisation or institution founded by, funded by or otherwise connected to the UK Government, including those who made a vital contribution to the UK's human security objectives in Afghanistan, falls within the ARAP scheme if they meet the relevant conditions. Although the ACRS now includes a specific referral pathway for resettling those at risk who supported the UK and international community effort in Afghanistan, notably British Council staff, GardaWorld contractors and Chevening alumni, there are two clear reasons why the ACRS cannot be a replacement for a sufficiently broad ARAP scheme.

Firstly, the UK Government has three categories of persons who will be assisted under the ACRS scheme and those who fall within the above-mentioned category (the third category for those at risk who supported the UK and international community effort in Afghanistan, notably British Council staff, GardaWorld contractors and Chevening alumni) will not be considered for resettlement until Spring 2023, leaving them living in fear and at real risk to their life and safety in the interim because of their work for or with the UK Government in Afghanistan.

Secondly, as noted above, the number of places under the ACRS is much lower than anticipated, with the Home Office now declaring that the first to be resettled and counted towards the 20,000 places under the scheme are those who have already been evacuated to the UK, while more places will be taken by those already authorised for evacuation but who were not previously able to board flights to the UK.¹⁹

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apply' <www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/permanent-residence-extended-family/apply.html> accessed 22 February 2022.

¹⁹ UK Visas and Immigration and Home Office, 'Afghan citizens resettlement scheme' (updated 6 January 2022) <<https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>> accessed 22 February 2022.

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