

For the urgent attention of:

The Right Honourable Priti Patel MP, Secretary of State for the Home Department  
Kevin Foster MP, Minister for Safe and Legal Migration  
Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities

4 March 2022

Dear Madam or Sir,

### **UKRAINE: Urgent policy and procedures for assisting those fleeing Ukraine**

We write urgently regarding the critical need for clear and feasible access to safety for those fleeing the Russian invasion of Ukraine and seeking sanctuary in the UK.

#### **ILPA and its involvement**

The Immigration Law Practitioners' Association (ILPA) is a professional association and registered charity, the majority of whose members are barristers, solicitors, advocates and OISC regulated advisers practising in all aspects of immigration, asylum and nationality law. Since the invasion of Ukraine, members have been responding to urgent calls for advice and assistance from terrified people fleeing Ukraine, including Ukrainian citizens, dual Ukrainian-Russian nationals, and nationals of other countries resident in Ukraine, and from Ukrainians in the UK anxious about their own status and the safety of family and friends abroad.

ILPA urges the Government to take immediate steps to improve access to safety in the UK for refugees from Ukraine, whom the Prime Minister has acknowledged are civilian victims of war crimes.<sup>1</sup> Whilst there have been welcome changes to UK immigration policy in response to the crisis, these have been reactive – amended almost daily<sup>2</sup> – and do not go far enough. Gaps created by the piecemeal nature of measures, and the impracticality of many of the requirements for persons escaping a war zone, are causing confusion, uncertainty, further distress, and impediments to access to safety in the UK for an already vulnerable group of people.

<sup>1</sup> HC Deb 2 March 2022, vol 709, col 1037.

<sup>2</sup> Home Office and The Rt Hon Priti Patel MP, 'Home Secretary announces visa concessions for Ukrainians' (24 February 2022)

<<https://www.gov.uk/government/news/home-secretary-announces-visa-concessions-for-ukrainians>> accessed 4 March 2022;

UK Visas and Immigration, 'Ukrainian nationals on family routes: concession to the Immigration Rules' (Published 25 February 2022)

<<https://www.gov.uk/government/publications/ukrainian-nationals-on-family-routes-concession-to-the-immigration-rules>> accessed 4 March 2022;

Prime Minister's Office, 10 Downing Street and The Rt Hon Boris Johnson MP, 'PM announces further humanitarian aid to Ukraine' (27 February 2022)

<<https://www.gov.uk/government/news/pm-announces-further-humanitarian-aid-to-ukraine>> accessed 4 March 2022;

Home Office and The Rt Hon Priti Patel MP, 'Home Secretary statement on humanitarian support for Ukrainians' (1 March 2022)

<<https://www.gov.uk/government/speeches/home-secretary-statement-on-humanitarian-support-for-ukrainians>> accessed 4 March 2022.

We make constructive recommendations for consideration by Ministers and seek a written response setting out how the Government plans to address these.

## 1. Lift visa requirements to enable residents of Ukraine to travel to the UK

This is ILPA's key recommendation. It is the single most effective step that the government can and should take to ensure the efficient evacuation and resettlement of refugees fleeing the invasion of Ukraine.

This approach enables the UK to meet its moral and legal obligations under the Refugee Convention, an international legal framework for protection predicated on refugees being able to reach the relevant place of safety and receive assistance there without discrimination. Many people will choose to remain in countries neighbouring Ukraine, but some may be particularly vulnerable there (see below), whilst others may have family or other connections that make the UK their most obvious place of safety. The proposal has strong public support: at the time of writing over 119,000 people in the UK have petitioned Parliament to waive visa requirements for Ukrainian refugees to help them access safety here.<sup>3</sup> We understand that the Government will respond to this petition, and we urge you to respond in the affirmative.

Residents of Ukraine face enormous barriers to applying for visas from outside the UK, not least because the Visa Application Centre in Kyiv is closed, and accessing visa facilities in Lviv in Western Ukraine or in neighbouring countries requires them to leave places of immediate safety to travel to an unfamiliar location with no certainty of an application being accepted. Dangers of shelling and other violence are compounded by the known risks of trafficking, exploitation and destitution in situations of upheaval. The practical difficulties involved in making an application (see below) operate to make it an impossible means of accessing safety for many. Reports of Home Office telephone helpline staff being inadequately briefed to offer effective assistance<sup>4</sup> further reflect the unnecessary confusion and complexity of reliance on individual visa applications.

Security concerns have been cited as the primary reason for not waiving visa requirements, but security and border checks can properly be carried out at the UK border or at another safe place on arrival. Biometric enrolment can occur at the border as it happens for non-visa nationals arriving as visitors. Border checks can identify persons of legitimate concern without forcing ordinary civilians to take risks under gunfire to lodge visa applications. Neither Ireland nor any other European Union country currently imposes visa requirements on those fleeing Ukraine based on 'security concerns'.

**ILPA strongly recommends that the Home Secretary lift visa requirements to enable persons fleeing Ukraine to travel to the UK, including:**

- a. Ukrainian passport holders;
- b. Ukrainian nationals with other sufficient evidence of citizenship; and
- c. Other nationals with evidence of residence status in Ukraine.

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<sup>3</sup> UK Government and Parliament Petitions, 'Waive visa requirement for Ukrainian refugees' <<https://petition.parliament.uk/petitions/609530>> accessed 4 March 2022.

<sup>4</sup> May Bulman, 'Home Office helpline for Ukraine refugees manned by advisers who 'know nothing' about new scheme' *The Independent* (2 March 2022) <<https://www.independent.co.uk/news/uk/home-news/ukraine-helpline-home-office-refugees-visas-uk-b2026695.html>> accessed 4 March 2022.

## 2. Limit practical barriers to applying for a visa overseas by waiving the requirement to provide biometric data at a visa application centre

If visa requirements are not lifted then, at the very least, steps should be taken to limit the practical barriers to making a visa application from overseas. In particular, the requirement to attend a visa facility in person to provide biometric data (fingerprints and/or a photograph of their face) before a visa application can be considered should be waived, given the dangerous journeys and risk calculations people otherwise must make.

The Home Secretary has a discretion to waive the requirement to register biometric data for entry clearance and biometric immigration document applications.<sup>5</sup> As the dangers escalate in Ukraine, the exercise of this power would make the visa process more accessible to those seeking to be reunited with families and access safety.

Security concerns have again been cited in support of the maintenance of this requirement, but alternative approaches, deployed effectively in other immigration processes, could be adopted in these exceptional circumstances. For example, the Home Secretary could:

- Permit individuals who have enrolled their biometrics in a previous UK visa application to reuse this data without having to enrol biometrics again enabling the application process to be fully completed digitally. This was used for processing applications during the Covid-19 pandemic.
- Enable applicants to use the UK Immigration: ID Check app to self-enrol biometric information from their biometric passports (where available). This process has been used for EU nationals applying for permission to enter the UK as a Skilled Worker or ICT migrant as part of the digitalisation of the UK immigration process. It has also been used for the Hong Kong British National (Overseas) route. Our understanding is that the current Ukrainian passport contains a biometric chip, which should enable it to be compatible with the Generic Identity Verification (GIDV) app.
- Conduct biometric checks on arrival in the UK, particularly for those people who do not hold biometric identity documents. This was used by the UK to assist some of those evacuated from Afghanistan last year and used more widely by countries in the European Union.

ILPA recommends that the Home Secretary waive the requirement to provide biometric data at a visa application centre.

## 3. Simplify visa application procedures to reduce further barriers

The practicalities of applying for a visa are complex and pose significant difficulties for persons seeking a route to safety. ILPA recommends the following steps, at a minimum, to limit the many obstacles faced by applicants fleeing Ukraine:

- a. Provide information and guidance on applying for the Family Migration Visa and Ukrainian Family Scheme in Ukrainian. No Ukrainian translation has been provided of the published guidance on these schemes on the UK Visas and Immigration gov.uk website making this key

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<sup>5</sup> Immigration (Biometric Registration) Regulations 2008 (SI 2008/3048), Regulation 5(1); *R (on the application of SGW) v Secretary of State for the Home Department (Biometrics, family reunion policy)* [2022] UKUT 15 (IAC), [57].

information inaccessible to Ukrainians who do not have sufficient English to understand it. Similarly, people who are eligible to apply under the schemes are required to telephone a designated call centre to provide information about their application, however this is operated in English only and there is an urgent need for 24/7 staffing of the relevant helplines by Ukrainian speakers to assist those without English language ability or third-party English language support.

- b. Exercise flexibility regarding the provision of identity and nationality documents and other supporting documentation recognising that in an emergency people may have not been able to escape with their documents or be able to retrieve them, nor are institutions open in Ukraine to provide replacements. Allowance should be made for applicants to rely on alternative documents such as an expired passport, birth certificate, or other identity document, where they do not have a current valid passport or travel document. ILPA welcomes the waiver of the requirement to provide TB certificates but considers that concessions should also extend to criminal record certificates required by Ukrainians to apply under certain occupation codes of the Skilled Worker route. The need for document legalisation or certified translations for submission with the visa application should also be eliminated to reduce the need for legal assistance.
- c. Ensure each aspect of the visa process is free of charge, including attendance at any biometric appointment and uploading documents at the Visa Application Centre. ILPA welcomes the concessions made by the Home Secretary to waive visa application fees under the Family Migration Route and Ukrainian Family Scheme as well as to make in-country switching applications free of charge for Ukrainians in the UK. We seek confirmation, however, that biometric appointments for Ukrainians outside their country will be made free of charge, without the additional charges normally levied by visa application centres that administer these processes. We are extremely concerned that the guidance identifies that there will remain a fee for applicants who are unable to scan and upload their documents to the system themselves and need to do this at the visa application centre. It is unrealistic and unfair to expect applicants fleeing their homes under bombardment to have access to electronic resources to scan and upload their documents electronically or to be able to pay for this at a visa application centre.
- d. Prioritise the return of passports to those who had previously lodged an application at the (now closed) Visa Application Centre in Kyiv, providing clarity on how applicants will be contacted, how passports will be delivered, how quickly this will be done, and how their outstanding applications will be processed. Measures put in place to respond flexibly during visa application centre closures in the pandemic could be adapted for the current circumstances.
- e. Waive the requirement for applicants to remain in the same country as the Visa Application Centre while their application is processed. People will not normally be resident in the countries where they can make a visa application and may well need to travel onwards to access support from family or friends and ensure their safety. They should not be prevented from doing so and visa application centres must respond flexibly to facilitate the issue of their visas, such as by returning their passport or travel documents. Entry clearance could be issued in the form of digital status rather than in a vignette.

#### 4. Urgently increase capacity for processing applications

ILPA asks the Home Secretary to provide her assessment of the anticipated demand from applicants applying for visas under the Family Migration route and Ukrainian Family Scheme and to significantly increase Home Office case-working capacity at this stage. Although increased capacity has been announced for processing visas at centres in Poland, Moldova, Romania and Hungary, with the option of increasing this further if necessary, ILPA remains concerned that capacity will not be sufficient to meet demand from applicants or to ensure timely decisions are made, leaving people vulnerable in neighbouring countries while trying to access appointments or awaiting the outcome of applications.

There are precedents within the Home Office for moving caseworkers from different departments to make timely decisions, for example to meet demand for the EU Settlement Scheme or the BN(O) immigration route for British Nationals (Overseas) in Hong Kong. These steps must be taken with urgency.

The Home Office should also prioritise consideration of EU Settlement Scheme Family Permit applications from Ukrainian nationals, and other persons fleeing Ukraine, as many continue to await decisions on their applications to join family members in the UK given the extended processing times under the scheme.

ILPA recommends that the Home Secretary:

- a. Urgently and significantly increase case-working capacity; and
- b. Prioritise EU Settlement Scheme Family Permit applications from Ukrainian nationals, and other persons fleeing Ukraine, over other applications within this scheme.

#### 5. Expand eligibility under the Ukrainian Family Scheme and Family Migration route

ILPA welcomes the introduction of the Ukrainian Family Scheme and the significant recent expansion of this scheme that now enables British nationals, those settled in the UK, those with pre-settled status who living in the UK before 1 January 2021, and those with refugee status or humanitarian protection in the UK, to bring their immediate family members, their extended family members (parents, grandparents, adult children, grandchildren, partner's grandchildren, and siblings) to the UK in addition to their immediate family members of their extended family.

In consideration of the critical humanitarian situation in Ukraine, caused by the most devastating conflict in Europe in a generation, and in order to deliver on the UK Government's commitments to supporting Ukraine and its people at this difficult time, we urge the Home Secretary to make the Ukraine Family Scheme as inclusive as possible for families of Ukrainian nationals. There remain significant numbers of Ukrainians and their family members who remain unable to benefit from this scheme. ILPA recommends that the Home Secretary:

- a. Enable Ukrainian nationals with limited leave to remain in the UK (without pre-settled, humanitarian protection or refugee status) to sponsor immediate and extended family members under the Ukrainian Family scheme. There is a large cohort of Ukrainian nationals with limited leave to remain in the UK, such as those with Skilled Worker status, Child and other Students, or limited leave to remain as a partner, to mention just some categories. As they do

not have settled status, they are not included within the remit of the scheme but will be equally anxious to be reunited with family members fleeing the invasion.

- b. Allow individuals to sponsor a broader range of extended family members under the Ukrainian Family Scheme, including in-laws and other relatives. UK-based family members are unable to sponsor wider family members unless there are ‘exceptional circumstances’. We would argue that these are ‘exceptional circumstances’<sup>6</sup> and the welfare of these further extended family members will be of acute concern to them. In accordance with the recognised principle of refugee family unity, the UK will be the most appropriate resettlement destination for people with family connections in the UK and this should be facilitated by the scheme.
- c. Recognise unmarried partners with less than two years cohabitation and those who have not lived together under the Ukrainian Family Scheme. Such flexibility will be particularly important for LGBTIQ+ individuals for whom there is no recognition of same sex marriage in Ukraine and who will be particularly reliant on recognition of their relationship to remain together in exile. Many other couples may have become eligible to apply under the family immigration rules were it not for the invasion, and the invasion itself may have also disrupted other unmarried couples’ ongoing cohabitation or their ability to evidence the same.
- d. Automatically extend leave for Ukrainian nationals in the UK unable to return there before the expiry of their visas. It is not clear how individuals in most of the immigration categories to which the temporary concessions apply can extend their leave if they are unable to meet the requirements for a usual extension application. By way of example, if a Ukrainian Student is unable to pay the tuition fees for a new university course as a result of the situation in their home country, or a Skilled or Seasonal Worker is unable to continue in their sponsored employment, it is unclear how these categories of people would be able to lawfully remain in the UK beyond the date of the expiry of their leave. To remedy this issue, we would urge the Home Secretary to consider granting automatic extensions to Ukrainian nationals unable to return to Ukraine. We urge the Government to also consider how to safeguard persons on routes, such as Seasonal Worker, from exploitation.
- e. Ensure the Ukraine Family Scheme permits applications from Ukrainian nationals in the UK on visitor visas who are unable to return to Ukraine. A significant number of Ukrainian nationals were visiting their family in the UK prior to the invasion and have been unable to return to Ukraine since. Temporary concessions allow such visitors to switch into a points-based or a family route ‘provided they meet the requirements for leave based on exceptional circumstances’. The ‘Apply for a Ukraine Family Scheme visa’ webpage indicates, at the time of writing, that it will be possible for persons to apply to the scheme from inside the UK and that guidance will be ‘available soon’.<sup>7</sup> ILPA urges that these are extended to permit visitors in such circumstances to apply under the Ukraine Family Scheme from within the UK, to maintain consistency in the Home Secretary’s procedures for family applications by those affected by the crisis in Ukraine.

<sup>6</sup> UK Visas and Immigration and Home Office, ‘Apply for a Ukraine Family Scheme visa’ (published 4 March 2022) <<https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>> accessed 4 March 2022.

<sup>7</sup> *ibid.*

- f. Provide certainty to Ukrainians granted leave to enter under the Ukraine Family Scheme. The Home Secretary should publish guidance providing certainty as to whether applicants successfully granted leave to enter under the scheme will be able to renew their leave at the end of the 3 years, the period of time they may renew that leave, and the period of time before they can qualify for settlement. It is also necessary for clarification to be provided as to whether they will be permitted to switch into different categories of leave within the UK.

## 6. Accelerate the introduction of the Humanitarian Sponsorship route and provide guidance

ILPA welcomes the announcement of a new humanitarian sponsorship pathway to ‘open up a route to the UK for Ukrainians who may not have family ties with the UK but who are able to match with individuals, charities, businesses and community groups’.<sup>8</sup> However, we note that this can only complement and not substitute the UK’s obligations under the Refugee Convention to welcome refugees fleeing persecution.

It remains unclear how and when this route will be implemented. The situation in Ukraine is fast-developing and there is an urgent need to open safe and legal routes to the UK. The UK must act with haste. For the route to be viable, there must be a streamlined approval process to reduce delays in the verification of sponsors and their being matched to Ukrainians in need of immediate help. Funds should also be made available to groups and communities in the UK to assist them with the costs of sponsoring families in the UK and supporting integration. There is precedent for this: the £43 million dedicated support package for the Hong Kong BN(O) route.<sup>9</sup>

ILPA recommends that the Home Secretary and/or the Secretary of State for Levelling Up, Housing and Communities urgently publish guidance addressing:

- a. How the pathway will operate and when it will open;
- b. Whether and how the scheme will differ from the existing community sponsorship pathway;<sup>10</sup>
- c. The organisations that the Home Office will partner with to match sponsors and applicants;
- d. How people may become sponsors, including whether existing community sponsors or licensed Worker sponsor holders will be eligible to sponsor individuals more quickly;
- e. Whether individuals who successfully secure leave under this category will be able to switch in-country into different categories;
- f. Whether individuals will be granted refugee status or humanitarian protection; and
- g. The considerations being given to safeguarding against modern slavery and labour exploitation.

<sup>8</sup> Home Office and The Rt Hon Priti Patel MP, ‘Home Secretary statement on humanitarian support for Ukrainians’ (1 March 2022)

<<https://www.gov.uk/government/speeches/home-secretary-statement-on-humanitarian-support-for-ukrainians>> accessed 4 March 2022.

<sup>9</sup> Ministry of Housing, Communities & Local Government, The Rt Hon Dominic Raab MP, The Rt Hon Priti Patel MP, and The Rt Hon Robert Jenrick MP, ‘National welcome for Hong Kong arrivals’ (8 April 2021) <<https://www.gov.uk/government/news/national-welcome-for-hong-kong-arrivals>> accessed 4 March 2022.

<sup>10</sup> HM Government, ‘Apply for community sponsorship’ (last updated 31 December 2021) <<https://www.gov.uk/government/publications/apply-for-full-community-sponsorship>> accessed 4 March 2022.

## 7. Grant temporary protection to Ukrainian citizens and residents, and establish a resettlement program

UNHCR has estimated that up to four million people could flee Ukraine as a result of the Russian invasion.<sup>11</sup> This represents large numbers of displaced persons in Europe who will be refugees within the meaning of the 1951 Refugee Convention or eligible for other forms of humanitarian protection because they are at risk of serious harm as a result of the ongoing conflict.

The Home Office has not proposed any substantial measures to cope with the scale of this challenge or the inevitable pressures and delays in determining asylum applications on an individual basis. By contrast, the EU is proposing to trigger legislation granting temporary protection of up to 3 years to those fleeing the invasion of Ukraine, including Ukrainian citizens, long-term legal residents in Ukraine, shorter-term legal residents who cannot safely return to their countries of origin, and the family members of each of these groups.<sup>12</sup> Moreover, Ukrainian citizens are permitted to cross EU borders without visas, and border posts are being encouraged to relax procedures for other persons fleeing Ukraine.

Ukraine's neighbours cannot be expected to shoulder the responsibility of accommodating refugees alone, and the UK must act in solidarity with them. Therefore, in addition to its family reunion schemes, the Home Secretary should also commit to resettling people who need international protection, with a target of at least 10,000 people a year. The House of Lords agreed with this proposal consenting to amendment 49 to insert a new clause containing this requirement in the Nationality and Borders Bill.<sup>13</sup> We urge the Government to accept this amendment when the Bill returns to the House of Commons.

Without substantial resettlement programs, recourse to irregular migration routes will inevitably increase, and refugees will lose their lives.

### ILPA recommends that the Home Secretary:

- a. Announces a scheme for affording temporary protection status to Ukrainian nationals and other residents seeking sanctuary in the UK; and
- b. Urgently establishes a resettlement programme with a target to resettle at least 10,000 people each year.

## 8. Ensure protection for minority groups fleeing Ukraine

ILPA urges the Home Secretary to put in place measures to protect minority groups at risk of being disproportionately affected by the violence in Ukraine and facing increased difficulties whilst displaced, including:

<sup>11</sup> Michelle Langrand, 'UNHCR: Escalation of war in Ukraine could drive 4 million refugees' *Geneva Solutions* (1 March 2022)

<<https://genevasolutions.news/peace-humanitarian/unhcr-escalation-of-war-in-ukraine-could-drive-4-million-refugees>> accessed 4 March 2022.

<sup>12</sup> European Commission, 'Ukraine: Commission proposes temporary protection for people fleeing war in Ukraine and guidelines for border checks' (2 March 2022)

<[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1469](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1469)> accessed 4 March 2022.

<sup>13</sup> UK Parliament Votes in Parliament, 'Nationality and Borders Bill Division 4: held on 2 March 2022' <<https://votes.parliament.uk/Votes/Lords/Division/2701>> accessed 4 March 2022.



- a. Unaccompanied children, who are particularly vulnerable to harm, including trafficking, exploitation and abuse, and face additional barriers to accessing protection on account of their young age.
- b. LGBTQI+ individuals, who may not be able to meet or evidence the relationship requirements under the Ukraine Family Scheme unless these are applied more flexibly by the Home Office (see above). In addition, LGBTQI+ individuals fleeing Ukraine may continue to be at particular risk in neighbouring countries such as Hungary, Poland and Romania where there is significant opposition to such relationships.
- c. People holding refugee status or subsidiary status in Ukraine, who are not Ukrainian nationals but who are resident in Ukraine and who do not currently come within any of the publicised schemes for protection. They may have little or no formal identification documentation in their possession. Some are recent arrivals, having fled the conflict in Afghanistan mere months ago. The absence of any particular offer for this group and the increasingly well documented instances of racist treatment at the Ukrainian border suggest that this group are facing challenges over and above those faced by others when trying to leave Ukraine.<sup>14</sup>

ILPA recommends that the Home Secretary work with international partners, such as UNHCR, to ensure that this vulnerable cohort of individuals are offered protection and safely resettled as priority groups.

## 9. Abandon anti-refugee provisions in the Nationality and Borders Bill

The unfolding crisis in Ukraine demonstrates the fundamental flaws in the reasoning of the Nationality and Borders Bill. We recommend that the Government remove objectionable provisions from the Bill that will reduce the ability of refugees to be recognised as such in the UK.

When the Bill returns to the Commons with important amendments from the Lords, the Home Office must abandon its ill-conceived provisions and create safe and legal routes for those fleeing Ukraine and elsewhere. The current situation highlights the unworkable nature of several provisions in particular.

### a. Two-tier immigration system and inadmissibly asylum claims (Clauses 11 and 15)

The differential treatment of refugees on the basis of their means of arrival provided for by the Bill, and the initial treatment of such claims as inadmissible, would likely preclude many if not all Ukrainian refugees from obtaining secure status in the UK. As other European countries have made much more generous asylum provision, it is theoretically possible for Ukrainian asylum seekers to remain in those countries. However, if countries in mainland Europe took the same approach as the UK, it would mean that Poland and other countries bordering Ukraine would be expected to house the millions of individuals fleeing their homes rather than sharing this moral responsibility equitably.

<sup>14</sup> Nadine White, 'UN admits refugees have faced racism at Ukraine borders' *The Independent* (1 March 2022) <<https://www.independent.co.uk/world/ukraine-racism-refugees-russia-war-un-b2025771.html>> accessed 4 March 2022.

It is clear that all Ukrainian refugees need prompt, generous, and secure assistance. The Bill would exclude many of them and those like them from protection. In so doing, the UK would rip up its commitments under the Refugee Convention, which expressly prohibits this type of discrimination between refugees on the basis of their means of arrival.

We urge the Government to abandon the two-tier system of Group 1 and Group 2 refugees and accept the amendments of the House of Lords on 28 February 2022, to leave out Clause 11 of the Nationality and Borders Bill,<sup>15</sup> and on 2 March 2022 to leave out Clause 15 of the Bill.<sup>16</sup>

#### **b. Offshore processing of asylum claims (Clause 28)**

It would be a stark moral failure to warehouse Ukrainian refugees offshore if they reached the UK seeking asylum. To do so would make the UK an extreme outlier in the global community, who have acted collectively to offer support and sanctuary to the Ukrainian people. Offshore processing has been condemned internationally as a human rights violation in Australia. To emulate that system in the UK would be unworkable and inhumane.

We urge the Government to accept the amendment of the House of Lords to Clause 28, leaving out sub-paragraph (a).<sup>17</sup>

#### **c. Criminalising those who come to the UK without permission (Clause 39) and those who assist individuals to come to the UK not for gain (Clause 40)**

The Home Secretary has said that, ‘the whole country stands with the heroic people of Ukraine’.<sup>18</sup> This is incompatible with the criminalisation of any Ukrainian refugees who enter or remain in the UK without permission. It is no crime under international law to enter a country without permission in order to claim asylum, indeed this is envisaged by the Refugee Convention.

The Russian invasion of Ukraine has been sudden and has escalated rapidly. Ukrainians have not had time or means to obtain visas to go to third countries directly, and have simply had to flee their homes. This demonstrates the impossibility of requiring asylum seekers to obtain entry clearance before seeking sanctuary. The UK stands alone in maintaining visa requirements for those fleeing Ukraine.

There is no principled difference between the people of Ukraine and those from other countries seeking protection in the UK. This Bill will be harmful for all asylum seekers and refugees. As the invasion of Ukraine has demonstrated, unexpected violence can uproot communities without warning.

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<sup>15</sup> UK Parliament Votes in Parliament, ‘Nationality and Borders Bill Division 4: held on 28 February 2022’ <<https://votes.parliament.uk/Votes/Lords/Division/2693>> accessed 4 March 2022.

<sup>16</sup> UK Parliament Votes in Parliament, ‘Nationality and Borders Bill Division 1: held on 2 March 2022’ <<https://votes.parliament.uk/Votes/Lords/Division/2698>> accessed 4 March 2022.

<sup>17</sup> UK Parliament Votes in Parliament, ‘Nationality and Borders Bill Division 2: held on 2 March 2022’ <<https://votes.parliament.uk/Votes/Lords/Division/2699>> accessed 4 March 2022.

<sup>18</sup> (n 8).

We urge the Government to accept the amendments of the House of Lords to Clauses 39<sup>19</sup> and 40<sup>20</sup>.

ILPA recommends that the Government remove all provisions from the Nationality and Borders Bill, which would reduce the ability of those fleeing persecution to seek protection in the UK.

## **10. Ensure protection for Russian and Belarussian nationals at risk of persecution speaking out against the war**

ILPA is concerned as to the absence of any clear policy or consideration of civilians in Russia or Belarus who, having courageously demonstrated and spoken out against the Putin and Lukashenko regimes respectively, may face persecution and require international protection.

There are already reports of some 6,400 arbitrary arrests of peaceful anti-war demonstrators in Russia since Thursday last week.<sup>21</sup> Police have detained children for calling for peace.<sup>22</sup> Russia's records of arbitrary detention, unlawful and extra judicial killings and retaliation for defectors, including on British soil, is well known and widely reported.<sup>23</sup> Likewise, in Belarus hundreds are being arrested and many detained.<sup>24</sup> The UK Foreign Office recognised the likely fate of those opposing the actions of the Lukashenko regime in December 2021: 'We will not look away while members of the opposition, journalists and activists continue to be beaten, jailed and killed, or forced into exile.'<sup>25</sup>

The contribution of these individuals to ending the conflict is significant. The Prime Minister has himself addressed the Russian people directly in his televised statements. For those nationals who leave Russia or Belarus and arrive safely in the UK or who are here already, there is no current Country Policy and Information Note or known guidance for how the Home Secretary will approach their cases.

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<sup>19</sup> UK Parliament Votes in Parliament, 'Nationality and Borders Bill Division 6: held on 2 March 2022' <<https://votes.parliament.uk/Votes/Lords/Division/2704>> accessed 4 March 2022.

<sup>20</sup> UK Parliament Votes in Parliament, 'Nationality and Borders Bill Division 7: held on 2 March 2022' <<https://votes.parliament.uk/Votes/Lords/Division/2706>> accessed 4 March 2022.

<sup>21</sup> United Nations Human Rights Office of the High Commissioner, 'Press briefing notes on Russia' (1 March 2022) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28178&LangID=E>> accessed 4 March 2022.

<sup>22</sup> Nadeem Badshah, 'Moscow police detain children for laying flowers at Ukrainian embassy' *The Guardian* (2 March 2022) <<https://www.theguardian.com/world/2022/mar/02/moscow-police-arrest-children-for-laying-flowers-at-ukrainian-embassy>> accessed 4 March 2022.

<sup>23</sup> US Department of State, '2020 Country Reports on Human Rights Practices: Russia' (30 March 2021) <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/russia/>> accessed 4 March 2022.

<sup>24</sup> United Nations Human Rights Office of the High Commissioner, 'Press briefing notes on Belarus' (1 March 2022) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28177&LangID=E>> accessed 4 March 2022.

<sup>25</sup> Foreign, Commonwealth & Development Office and The Rt Hon Elizabeth Truss MP, 'UK imposes further sanctions to hold Lukashenko regime to account for human rights violations in Belarus' (2 December 2021) <<https://www.gov.uk/government/news/uk-imposes-further-sanctions-to-hold-lukashenko-regime-to-account-for-human-rights-violations-in-belarus>> accessed 4 March 2022.

ILPA members are aware that some Russian and Belarussian nationals at risk have already fled to countries including Israel, Kazakhstan, Armenia, Serbia, Uzbekistan and the United Arab Emirates. They may wish to apply to come to the UK but will not fall within any of the visa policy concessions announced. Under current rules, entry clearance applications must be made from the country where the applicant is living at a post which has been designated to accept them or, if there is no such post, the appropriate designated post outside the country they are living. A concession permitting them to apply from any relevant post is necessary.

Finally, on 28 February 2022, the Home Secretary announced an intention to extend visa penalty provisions within the Nationality and Borders Bill to apply visa penalties to specified countries which have ‘taken significant steps that threaten international peace and security, have led or are likely to lead to armed conflicts or are in breach of international humanitarian law.’<sup>26</sup> This appears to be in order to deal with existing Russian visa applications<sup>27</sup> but the absence of proper consultation on this issue is alarming when it may operate to substantially deter or otherwise adversely impact applications from individuals defecting from Russia. ILPA has grave concerns that the effect of this for Russians will be to penalise and create barriers for innocent ordinary civilians seeking to leave.

ILPA recommends that the Home Secretary urgently:

- a. Issue guidance on Russian and Belarussian protection claims based on dissent, to provide reassurance to those who make the decision to flee that they will not be turned away;
- b. Clarify how Russian and Belarussian nationals may secure visas from abroad after fleeing the country in which they were living; and
- c. Halt the proposal to apply visa penalties for the time being and disclose full details of any impact assessments carried out in respect of this amendment prior to a meaningful consultation.

## **11. Engage proactively with UK’s Ukrainian community**

Finally, ILPA urges the government to work proactively with Ukrainian communities in the UK, who offer unparalleled knowledge and analysis, as well as a direct link to the information on the ground. The Ukrainian community is a vibrant and important part of British society, and it is essential to listen to their voices and engage with their expertise.

ILPA recommends that the Home Secretary and the Secretary of State for Levelling Up, Housing and Communities practically and proactively engage with Ukrainian communities in the UK.

## **Conclusion**

We urge the UK government to urgently consider the policy and procedural issues raised in this letter and provide confirmation of the actions taken in each of these areas.

Yours sincerely,

**Nicole Francis**  
**Chief Executive**

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<sup>26</sup> HC Deb 28 February 2022, vol 709, col 701.

<sup>27</sup> (n 8).