

Border Security, Asylum & Immigration Bill

House of Commons - Report Stage



Exemption to prevent the criminalisation of parents and guardians entering the UK by small boat

Summary

This briefing provides information in support of a potential amendment to prevent the criminalisation of parents and prevent the separation of families, who enter the UK through irregular means or via small boat.

An amendment would:

- Protect parents or legal guardians who travel to the UK irregularly or cross the Channel on a small boat with their children or legal wards from being criminalised
- Prevent the disproportionate criminalisation of those compelled to act out of necessity to protect their children or families.

We request you to table this amendment at Report Stage, and for MPs to add their names to it to speaking in support of families who will be subject to criminalisation and separation, fleeing conflict, war and attempting to seek sanctuary in the UK.

Amendment to exempt parents entering the UK with children or legal wards from criminalisation and family separation.

The Border Security, Asylum and Immigration Bill introduces a new offence of 'endangering life at sea'. This new offence would mean that those who endanger or risk another life at sea during the dangerous journeys could face a maximum sentence of up to six years in prison. The current wording of the Bill means that it be applied to parents who are travelling with their own children on small boats to seek sanctuary in the UK. This would worryingly, result in the criminalisation of parents and the separation of families. Similar offences were introduced in previous legislation, such as the Nationality and Borders Act 2022, Section 25, which also introduced offences related to 'assisting unlawful immigration', including cases where parents or guardians assist in their own children's entry into the UK for the purposes of claiming asylum.

The government's own equality impact assessment states that 'there may be an indirect impact on children if their parents are prosecuted', and that each case will be assessed individually by the Crown Prosecution Service.

Both these provisions criminalise parents fleeing dangerous circumstances and acting out of desperation to protect their children. They risk the unnecessary and harmful separation of families when they already fleeing traumatic situations and seeking sanctuary in the UK. Children separated from their families in this manner children in care, with local authorities assuming their corporate parenting responsibility. This separation also makes it harder to keep children safe and is ultimately more expensive to the public purse. Criminalisation also undermines the principle of family unity, which is a cornerstone of both domestic and international law.

This amendment seeks to introduce safeguards into the legislation to ensure better protection of families, prevent needless and traumatic family separation, and stop the unjust criminalisation of parents. It acknowledges that parents have a fundamental duty to protect their children, especially in the context of displacement and seeking asylum.

The exemption ensures that individuals acting in the best interests of their children's safety are not unjustly penalised, and it respects the family unity principles emphasised in both domestic and international law.

Barnardo's proposes the following exemption amendment for parents or legal guardians in both the Border Security, Asylum and Immigration Bill and the Nationality and Borders Act whose actions are driven by the need to protect their children and to establish and safe life by seeking sanctuary in the UK.

“Exemption from Endangerment Offence for Parents Travelling with their Children or Legal Guardians

(1) In section 18 of the Border Security, Asylum and Immigration Bill, which amends section 24 of the Immigration Act 1971, the following new subsection is inserted after subsection (8):

“(9) Subsection (E1A) does not apply to a person who is a parent or legal guardian of a child who is also on the journey mentioned in subsection (E1A) (b)”.

(2) In section 25 of the Nationality and Borders Act 2022, after subsection (1), the following subsection is inserted:

“(2) Subsection (1) does not apply to a person who is a parent or legal guardian of a child who is also on the journey mentioned in subsection (1).”

Explanatory Notes

- Subsection (1) amends the new offence of endangering life at sea, created by section 18 of this Bill, to provide an exemption for parents or legal guardians travelling with their own children or legal guardians during a sea crossing.
- Subsection (2) amends section 25 of the Nationality and Borders Act 2022, which creates an offence for arriving in the UK without permission. It inserts a subsection that provides an exemption from this offence for parents or legal guardians of a child or legal guardian who is also on the journey.

This amendment recognises the need to protect children and ensures that parents acting out of necessity to cross to claim asylum in the UK with their children are not criminalised for endangering their lives at sea.

Action you can take

We are asking MPs to consider adding their support to these amendments and hoping as many as possible will speak in support of this issue when the Bill returns to the Commons at Report stage.

For more information and to discuss this issue further please contact Nabil Ali – Senior Policy Advisor, Barnardo's at public.affairs@barnardos.org.uk

We would be happy to provide an oral briefing if this would be helpful.



About Barnardo's

At Barnardo's, our purpose is clear - changing childhoods and changing lives, so that children, young people, and families are safe, happy, healthy, and hopeful.

Last year, we provided essential support to 356,200 children, young people, parents and carers through 760 services and partnerships across the UK. For over 150 years, we've been here for the children and young people who need us most – bringing love, care and hope into their lives and giving them a place where they feel they belong. www.barnardos.org.uk