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Higher Education and Research Bill: House of Lords Report Stage, February 2017

PROPOSED AMENDMENT

After Clause 82

Insert the following new Clause—

“Access to support for students recognised as needing protection

- (1) Within six months from the day on which this Act comes into force, the Secretary of State must, by regulations, make provision for financial support for higher education courses offered to students with certain immigration statuses.
- (2) The regulations specified in subsection (1) must include, but shall not be restricted to, provision for—
 - (a) persons granted humanitarian protection and their family members; and
 - (b) persons who have been brought to the UK under the Syrian Vulnerable Persons Relocation Scheme, or any equivalent scheme, and their family members to be eligible for
 - (i) home fees for a higher education course if they have been ordinarily resident in the United Kingdom and Islands since being granted leave, and
 - (ii) student loans for a higher education course, if—
 - (a) they have been ordinarily resident in the United Kingdom and Islands since being granted leave, and
 - (b) are ordinarily resident in the United Kingdom and Islands on the first day of the first academic term of that course.
- (3) In this section—

“home fees” means fees for a higher education course charged to persons considered as “qualifying persons” under regulations made under the Higher Education Act 2004;

“student loans” means loans made to students in connection with their undertaking of a higher education course under the Teaching and Higher Education Act 1998.”

Purpose

The proposed New Clause requires the Secretary of State to table regulations that give persons granted humanitarian protection and their family members and those resettled in the UK under the

Syrian Vulnerable Persons Relocation Scheme or other similar resettlement schemes the same access to student finance as those who are recognised as refugees after making an asylum application in the UK. These are minimum requirements; the Secretary of State may make more generous provision and may make provision for other groups.

Briefing

Currently, people who are recognised as refugees after making an asylum claim in the UK are classified as home students for the purpose of higher education courses and are able to access student loans for such courses from the time they are recognised as refugees, provided they are 'ordinarily resident' in the UK. Leave as a refugee is granted to individuals who are identified as having a well-founded fear of persecution in their country of normal residence on account of their race, religion, nationality, membership of a social group, or political opinion and who are unable to access protection in their country, in accordance with the 1951 Refugee Convention.

Humanitarian protection is granted to individuals under paragraph 339C of the UK's Immigration Rules where it is found that there are substantial grounds for believing that they would face a real risk of suffering serious harm in their country of residence and would be unable to access protection in that country. Serious harm is defined under the rules on humanitarian protection as including the risk of the death penalty, unlawful killing, torture, inhumane or degrading treatment or a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Unlike the provisions of the 1951 Refugee Convention, the serious harm faced does not need to be for a specific reason. Humanitarian protection may therefore be granted to individuals who fear persecution or serious harm in their country of origin but where this risk is not due to their race, religion or other grounds set out in the Refugee Convention.

First, the Home Office considers whether or not a person is a refugee. If it concludes that they are not, it goes on to consider whether they need humanitarian protection. The numbers of persons granted humanitarian protection after applying for asylum in the UK are comparatively low. For example, in the year to September 2016, 205 applicants were granted humanitarian protection (0.6%)¹, including 49 unaccompanied children², compared with 8956 grants of refugee status (28%) in a total of 32,031 initial decisions made³.

Humanitarian protection is also currently the form of leave initially granted to Syrian refugees resettled in the UK through the Government's Syrian Vulnerable Person's Resettlement Programme. This is a programme established by the Government to create a safe route under which limited numbers of Syrian refugees may be brought from the region around Syria to be resettled in the UK. People requiring urgent medical treatment, survivors of violence and torture, and women and children at risk are prioritised under the scheme which also facilitates the resettlement of people identified as 'vulnerable' by United Nations High Commissioner on Refugees (UNHCR) field offices working in the region. Syrian refugees resettled in the UK under this programme are currently the largest group of people awarded humanitarian protection. Many of them are, in our view, eligible for recognition as refugees. The government had resettled 4162 Syrian refugees in the UK by September 2016⁴.

Other resettlement schemes are more limited. Under the Gateway Protection Programme, the UK has an agreement with UNHCR to resettle 750 people per year as a contribution to its global resettlement programme. Those resettled under this scheme have been identified by UNHCR as refugees but cannot stay in the country where they have been recognised because of pressing humanitarian or security reasons. They are granted Indefinite Leave to Enter the UK following a

¹ UK Visas and Immigration, Immigration Statistics Quarterly Release: July – September 2016 at: <https://www.gov.uk/government/statistics/immigration-statistics-july-to-september-2016-data-tables>, table as_02_q

² Ibid, table as_09_q

³ Ibid, table as_02_q

⁴ Ibid, table as_20_q

decision made by the Home Office to allow entry. A very small number of Iraqi nationals have been granted Indefinite Leave to Enter the UK after their service with the British and American armed forces in Iraq was found to have placed them at risk of reprisals.

In the UK, the rights of those granted humanitarian protection are in most respects the same as to those recognised as refugees. In both cases, leave to remain is granted for an initial period of five years with the possibility of applying for Indefinite Leave to Remain at the end of this period if the risk to the individual in their country of origin remains. Those granted refugee status or humanitarian protection have equivalent rights to be reunited with their family members in the UK. They are able to access public funds and work in the UK.

However, with regards to access to higher education, individuals who are granted humanitarian protection are treated differently from those recognised as refugees. Whilst those recognised as refugees qualify for student loans once they have been recognised as refugees, people who have been granted humanitarian protection need to have been resident in the UK for a period of three years at the start of the academic year when their course begins to qualify for student loans. This delays their ability to start university or other higher education courses and may lead to them not entering higher education altogether.

Case Study:

Amro is a Syrian refugee who has been resettled in the UK through the Vulnerable Persons Resettlement Scheme. After leaving Syria, he had been living in Lebanon. In Lebanon, his Syrian high school diploma didn't allow him to go to university straight away, so he had to study for 45 days to gain the Lebanese equivalent – Amro covered the entire curriculum in that time. Amro was then able to gain a place at a Lebanese university to study media and journalism.

During the second year of this degree, Amro was resettled to the UK. When he arrived, he was keen to carry on with his studies at a university in the UK. However, because his immigration status is humanitarian protection rather than refugee status, he has to wait for three frustrating years before being able to qualify for financial support.

Amro told the Refugee Council that “I am waiting for a scholarship. It's my only hope. To wait and apply for a loan after three years is not an option. I don't want to wait until I'm 27 years old. I really want to start studying this year...If I were in Lebanon, I would've graduated before those three years.”

The proposed amendment would address this anomaly. It recognises that those granted humanitarian protection or resettled in the UK have been granted protection as a result of the risk of serious harm they would face if returned to their country of origin and, like those recognised as refugees in the asylum process, have no choice but to rebuild their lives in exile.

A version of the New Clause was tabled by Lord Dubs and debated during the House of Commons Public Bill Committee's deliberations on the Bill. This amendment is narrower than the version tabled at Committee stage, which encompassed persons given discretionary leave to remain.

The Minister for Universities, Science, Research and Innovation, Jo Johnson MP, gave the '*distinction in international law*' between humanitarian protection and refugee status as the reason for not providing earlier access to higher education to those granted humanitarian protection.⁵ Refugees are recognised in the UK in accordance with the 1951 UN Refugee Convention whereas humanitarian protection is granted under the UK's obligations in domestic and European law. However, the Minister did not offer an explanation either as to why this distinction should mean that those in receipt of humanitarian protection should face delays in being able to access student finance, given that they are in other respects treated in the same way as refugees. Nor did the

⁵ Higher Education and Research Bill, House of Commons Public Bill Committee, 14th sitting, 18 October 2016, Hansard Col 571, at: <https://goo.gl/5lBdK5>.

Minister address why those Syrians being resettled to the UK who meet the requirements of the 1951 Refugee Convention are not being recognised as refugees. On this point, in the twelve months to September 2016, of the 1,983 decisions made on asylum applications from Syrian nationals, 85% resulted in recognition as a refugee, with only three grants of humanitarian protection⁶.

Viscount Younger of Lecke, responding to the amendment tabled at Committee stage in the House of Lords, said:

*I am pleased to say that those who come to this country and obtain international protection are already able to access student support. Our regulations have for some time included provision for those granted refugee status or humanitarian protection and their family members. As the right reverend Prelate the Bishop of Durham said, people who enter the UK under the Syrian vulnerable persons resettlement scheme are granted humanitarian protection. Like UK nationals, they are therefore eligible to obtain student support and home fee status after only three years' residence in the UK. Persons on the programme are not precluded from applying for refugee status if they consider they meet the criteria.*⁷

The suggestion would appear to be that persons on the programme should apply for recognition as a refugee if they wish to obtain home student status and to be eligible for student loans. But Viscount Younger also said:

*As Home Office officials said at the Public Accounts Committee on 7 November 2016, the department is aware of the issue and keeps it under active review.*⁸

That exchange was as follows:

Q34 Chair...*what about university fees for those teenagers who are approaching it? Because of their status, they don't automatically qualify to be paid through university. Is that something you are aware of, Mr Morrison? Are you doing something about it?*

Paul Morrison: *Yes, we are aware of it. The situation you refer to relates to the status of the people coming in—*

Chair: *Humanitarian protection rather than refugee status.*

Paul Morrison: *Yes, humanitarian protection as opposed to refugee status. There were solid reasons for why humanitarian protection as opposed to refugee status was the grant. We are now aware that there are the issues that you have described, so we are working very closely with the Department for Education and others to look at that and to consider the issues. That is one of those things that we keep under active review.*⁹

If there are 'solid reasons' for granting humanitarian protection rather than recognising Syrian refugees as such then presumably those 'solid reasons' militate against resettled Syrians applying for recognition as refugees just so that they can continue their education? We consider that resettled Syrians who meet the criteria set out in the 1951 Convention should be recognised as refugees.

⁶ UK Visas and Immigration, Immigration Statistics Quarterly Release: July – September 2016 at: <https://www.gov.uk/government/statistics/immigration-statistics-july-to-september-2016-data-tables>, table as_01_q

⁷ Higher Education and Research Bill, House of Lords Committee, 25 January 2017, Hansard Col 778, at: <https://goo.gl/RmGja2>

⁸ *Ibid*

⁹ Public Accounts Committee, Oral evidence: The Syrian Resettlement Programme, HC 768 at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/syrian-resettlement-programme/oral/42797.html>

Viscount Younger also indicated that he had had discussions with the Home Office and that there is joined up thinking between the Home Office and the Department of Education. If there are reasons to resist the amendment we should therefore expect those reasons to be detailed and to reflect this work. No such reasons were given at Committee stage, as the passage above illustrates. Viscount Younger's other comments, about persons temporarily in the UK, went to the part of the amendment that is not pursued here.

In contrast to the position in England, regulations on student finance in Scotland¹⁰ make provision for access to student loans, without a qualifying residence period, both to refugees and to those who applied for refugee status but were granted another form of leave to enter or remain (which would include both humanitarian protection and discretionary leave to remain) and their family members. The regulations make similar provision for those resettled under the Syrian Vulnerable Persons Relocation Scheme and the Locally Engaged Staff Assistance Scheme (Direct Entry) for Iraqi nationals.

The lack of access to student finance in England is a considerable barrier – and in many cases an insurmountable barrier – to people being able to attend university. For a Syrian arriving this winter, they would not be eligible for a student loan in England until the start of the academic year in autumn 2020. This prevents people from rebuilding their lives after trauma, violence and exile and limits their integration in the UK. The proposed amendment would rectify the situation for people who have come to the UK, either on their own or with their family, fleeing war, persecution or other forms of serious harm and whose need for protection in the UK has been formally recognised.



This is a joint briefing from the Refugee Council, Student Action for Refugees, Coram Children's Legal Centre, the UK Council for International Student Affairs (UKCISA), the National Union of Students (NUS) and the Immigration Law Practitioners' Association (ILPA).

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¹⁰ The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, SI 2006/333; the regulations in Wales and Northern Ireland are similar to those in England.