



Joint Committee on Human Rights

Legislative Scrutiny: Border Security, Asylum and Immigration Bill

Fourth Report of Session 2024–25 HL Paper 143 / HC 789

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders. The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Summary

We welcome the Government's intention to deter and disrupt organised immigration crime and to prevent the loss of life at sea. We commend the Government for its efforts to comply with its positive obligation under Article 2 of the European Convention of Human Rights (ECHR) to take steps to safeguard the lives of those within its jurisdiction.

New immigration offences

The Bill introduces a number of new offences targeted at organised criminal gangs that are facilitating unlawful migration. We support this aim. However, we are concerned that the new offences in the Bill are drafted excessively broadly and pose a serious risk of criminalising refugees and other vulnerable groups. Consequently, they risk breaching various international legal obligations, which protect against the penalisation of refugees, smuggled persons, and victims of modern slavery. Accordingly, we propose amendments to the Bill to narrow the scope of the offences and strengthen the safeguards.

Powers to search, seize and retain electronic information

The Bill introduces new powers of search, seizure and retention of electronic information, which may relate to the facilitation of unlawful immigration. It is possible that everyone crossing the Channel may reasonably be suspected of possessing information relating to unlawful migration on their electronic devices. We are, therefore, concerned that these powers, in practice, may lead to a blanket policy to search, and possibly seize and retain, items such as mobile phones from refugees, victims of modern slavery and children. To guard against the risk of indiscriminate searches, we recommend that the Government clarifies, on the face of the Bill, how these powers will be used.

Provision of biometric data

The Bill gives powers to an authorised person to take biometric information, such as fingerprints and facial scans, from a person who the Government is considering assisting for the purpose of departing from a third country. Transfers of such biometric data to third countries and international organisations are deemed to be necessary for the public interest. We are

concerned that this automatic assumption does not adequately protect personal data. We recommend the restoration of the normal statutory safeguards to mitigate this risk.

Repeal and retention of other legislation

We agree with our predecessor Committee that provisions within the Safety of Rwanda (Asylum and Immigration) Act and the Illegal Migration Act were incompatible with the UK's international legal obligations. We are concerned by the Government's decision to retain various provisions of the Illegal Migration Act. We consider that, should the Government bring them into force, they would pose a risk of violating various Convention rights and obligations under other international conventions.

Retrospective provisions

There are two retrospective powers introduced by the Bill. The first is the retrospective validation of the unlawful detention of persons who were detained whilst the Secretary of State was considering issuing a deportation notice. Such individuals have a claim under Article 5 ECHR, which prohibits unlawful detention. Article 13 ECHR guarantees the right to an effective remedy. This provision would operate to deny a remedy for Article 5 breaches. We recommend its removal from the Bill.

The second is the retrospective validation of the charging of fees for assessing qualifications obtained outside the UK. There was no statutory basis for these charges. We ask the Government to provide further clarity as to its justification for this provision.

Conditions on leave and bail

The Bill introduces an extension of the existing conditions that may be applied to any grant of limited leave to enter or remain in the UK. The new conditions include electronic monitoring, geographical restrictions, and curfews, all of which interfere with Convention rights. Given the potential severity of the restrictions on persons with lawful immigration status, we recommend that these restrictions are expressly limited to cases involving serious threats to national security, public safety or serious crime. We also recommend judicial oversight.

Exclusion from protection of the Refugee Convention

The Refugee Convention allows for refugees to be excluded from non-refoulement protections where there are reasonable grounds for regarding them as a danger to the security of the UK or where, having been convicted of a particularly serious crime, they constitute a danger to the community

in the UK. The Bill introduces the classification of certain sexual offences as “particularly serious”. The threshold for exclusion from non-refoulement protections is already set in domestic law at a twelve months’ sentence of imprisonment and above. We support the Government’s intentions that dangerous sex offenders cannot benefit from the protections of the Refugee Convention.

Serious Crime Prevention Orders (SCPOs)

The Bill provides for the imposition of electronic monitoring as part of SCPO requirements and provides for the power to make interim orders while a final order is pending. Given the severe infringement on the right to privacy posed by the imposition of electronic monitoring, the test should be one of “necessity and proportionality”, not whether it is “appropriate”. We also recommend that the prosecuting authorities and the courts must be careful to only seek and impose these interim orders where risks are imminent, such that an interim order is required.

1 Overview of the Bill

Purpose of the Bill

1. The Border Security Asylum and Immigration Bill ('the Bill') was introduced in the House of Commons on 30 January 2025. It had its Second Reading in the House of Lords on 2 June 2025. The purpose of the Bill is to "improve UK border security and strengthen the asylum and immigration system by creating a framework of new and enhanced powers and offences."¹
2. As Richard Alcock CBE, Director of Strategy and Policy at Border Security Command, told us in oral evidence before the Committee: "the primary focus of the Bill is around putting in place the required powers to enable the capabilities to be built to bring people to justice, because there is no better deterrent than making sure that criminals cannot profit from their crimes, that we can bring people to justice promptly and that there is that disincentive of engaging in the criminal activity in the first place."²

Summary of the Bill

3. In summary, the Bill:
 - a. makes the post of Border Security Commander a statutory role;
 - b. creates new criminal offences of supplying or handling items to be used in connection with illegal immigration, and of collecting information to be used for arranging an unauthorised journey to the UK ('precursor' offences);
 - c. creates a new offence of endangering another person during a Channel crossing;
 - d. provides immigration officers and police with new powers to seize unauthorised migrants' mobile phones or other electronic devices if they suspect they contain information about organised immigration crime;
 - e. provides for easier access to HMRC customs data to help build up intelligence;

1 Explanatory Notes, HL Bill 101-EN, para 2

2 [Richard Alcock CBE](#), Q20

- f. provides for powers to take biometric data from people abroad being considered for relocation to the UK;
- g. repeals the Safety of Rwanda Act 2024 and the majority of the Illegal Migration Act 2023;
- h. retrospectively validates the detention of persons under consideration for deportation;
- i. strengthens law enforcement powers in relation to serious crime and expands the existing scheme of serious crime prevention orders;
- j. retroactively permits the charging of certain fees that were charged without proper legal authorisation.

Human rights framework

- 4. The Bill engages various rights guaranteed by the European Convention on Human Rights, incorporated into domestic law through the Human Rights Act 1998 (“Convention rights”), as well as international human rights obligations under the UN Convention Relating to the Status of Refugees 1951 (“the Refugee Convention”), Protocol against Smuggling of Migrants by Land, Sea and Air 2000 (“the Smuggling Protocol”), and the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (“ECAT”).

Refugee Convention

- 5. The Refugee Convention is binding on the UK as a matter of international law. The UK is under a legal duty to implement all its international treaty obligations in good faith.³ The Refugee Convention has not been incorporated into domestic law, but its binding nature means that all subsequent domestic legislation should be assumed to comply and should therefore be construed, where there is any ambiguity, consistently with the obligations the Convention imposes on the State.⁴
- 6. For the purpose of assessing this Bill’s compatibility with the Refugee Convention, the most relevant provisions include:
 - a. Article 31, which prohibits the general imposition of penalties on refugees on account of their unlawful entry or presence in the country where they claim asylum. This protection applies to refugees who “come directly” from the state where they faced persecution.

³ Article 26 of the Vienna Convention on the Law of Treaties

⁴ *R v Secretary of State for the Home Department, ex parte Brind* [1991] 1 AC 696

- b. Article 33(1), which guarantees against ‘refoulement’. This provides that states must not expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Article 33(2) provides that the principle of non-refoulement does not apply to a refugee where there are reasonable grounds for regarding them to be a danger to the security of the country; or where, as a result of their committing a particularly serious crime, they constitute a danger to the community of that country.

Smuggling Protocol

- 7. Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, provides that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling.⁵ “Smuggling” is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”⁶

Council of Europe Convention on Action against Trafficking in Human Beings

- 8. The Bill, and the retention of section 29 of the Illegal Migration Act (discussed below), engage the prohibition of slavery in Article 4 ECHR and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). There are a number of obligations flowing from these prohibitions of slavery and human trafficking, including the positive obligation to put in place an appropriate legislative and administrative framework; the positive obligation to take operational measures to protect victims or potential victims of human trafficking or slavery; and the procedural obligation to investigate and prosecute the perpetrators of slavery or human trafficking.

UN Convention on the Rights of the Child

- 9. Under Article 3(1) of the UN Convention on the Rights of the Child (UNCRC), the best interests of the child must always be a primary consideration in all actions concerning children. This obligation has been given some effect in domestic law in the immigration context in section 55 of the Borders, Citizenship and Immigration Act 2009, which requires the Secretary of State

5 Article 5, Protocol against the Smuggling of Migrants by Land, Sea and Air

6 Article 3, Protocol against the Smuggling of Migrants by Land, Sea and Air

to ensure that any functions relating to immigration, asylum or nationality are discharged having regard to the need to safeguard and promote the welfare of children in the UK.⁷

Convention rights

- 10.** Upon introduction of the Bill, the Minister made a statement under section 19(1)(a) of the Human Rights Act declaring that, in her view, the provisions of the Bill are compatible with Convention rights. The Convention rights most relevant to this Bill (and the retained provisions of the Illegal Migration Act), are:
- a.** Article 2 protects the right to life. It is a violation of Article 2 to remove a person to face a real risk of death or serious risks to life.⁸
 - b.** Article 3 prohibits torture or inhuman or degrading treatment or punishment. It is a violation of Article 3 to remove a person where there is a real risk they will suffer such treatment or punishment.⁹
 - c.** Article 4 prohibits slavery and forced labour. It is a violation of Article 4 if a person is removed to another country where there is a real risk of slavery or forced labour.¹⁰
 - d.** Article 5 protects the right to liberty and security of persons and ensures protection from unjustified deprivations of liberty. It is engaged by the various offences contained within the Bill, and the various powers that may be used in a manner that amounts to a deprivation of liberty.
 - e.** Article 8 guarantees the right to respect for private and family life and is engaged by phone searches and seizures, collection and retention of personal data, electronic monitoring, the imposition of conditions such as curfews and geographic exclusions, and decisions to remove a person with strong personal relationships in the UK.
 - f.** Article 13 provides for the right to an effective remedy. It is engaged by provisions that deny an effective remedy for breaches of Convention rights.

⁷ As made clear by the Supreme Court in the case of *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 at [24], this also impacts on the content of Article 8 ECHR, because section 55 means that “any [immigration] decision which is taken without having regard to the need to safeguard and promote the welfare of any children involved will not be “in accordance with the law” for the purpose of article 8(2) [ECHR]”

⁸ *Al Nashiri v Poland*, Application No. 28761/11, 16 February 2015, para 576

⁹ *Soering v UK*, Application No. 14038/88, 7 July 1989

¹⁰ *VF v France*, Application No. 7196/10, 29 November 2011

- g.** Article 1, Protocol 1 protects a person's right to the peaceful enjoyment of their possessions. It is engaged by provisions which criminalise the supply or handling of certain items and powers to search, seize and retain certain items.

Our inquiry

- 11.** The JCHR undertook a legislative scrutiny inquiry on the Bill, calling for evidence from interested parties. The Committee received 36 written submissions. The Committee also held an oral evidence session with legal and academic experts as well as a representative from Border Force UK. This report analyses the human rights implications of some of the key provisions in the Bill and puts forward recommendations and draft amendments to improve the Bill's compliance with human rights law.
- 12.** During the course of our inquiry, the House of Lords Constitution Committee published a unanimous report on this Bill. We endorse their conclusions and recommendations.¹¹
- 13.** It was not within the scope of this inquiry to look at wider issues such as the root causes of the refugee crisis or proposals for offering safe and legal routes to those in need of protection. Whilst this Bill focuses exclusively on tackling organised immigration crime, we encourage the Government to seek to address the underlying root causes which are fuelling the global refugee crisis. The UNHCR, in its recent report on global trends, stated: "[f]or the number of forcibly displaced people to reduce, meaningful progress is required on the root causes—conflict, disregard for the basic tenets of International Humanitarian Law, other forms of violence and persecution."¹² We agree and we hope that the Government will continue in its efforts to tackle the root causes of this crisis.

¹¹ [House of Lords - Border Security, Asylum and Immigration Bill - Select Committee on the Constitution](#)

¹² UNHCR [Global-trends-report-2024.pdf](#), 2024, p12

2 New immigration offences

The precursor offences

14. Clauses 13 - 17 of the Bill create three new precursor offences.¹³ The measures are intended to “target the activities of facilitators and OCGs [organised criminal gangs] who look to profit from OIC [organised immigration crime].”¹⁴ They all engage Convention rights and obligations under other international conventions.

Clauses 13 - 14: Supplying, or handling, articles for use in immigration crime

Elements of the offences

15. Clauses 13 and 14 introduce the offences of “supplying” (or offering to supply) or “handling”¹⁵ a “relevant article” for use in the commission of certain immigration offences.¹⁶ In its ECHR memo, the Government states that these offences will “strengthen the ability of law enforcement agencies to tackle the supply chains for the people smuggling networks”.¹⁷ Clause 17 provides that the UK can exercise extraterritorial jurisdiction over these offences, meaning that the offences can be prosecuted in the UK irrespective of where they were committed and irrespective of the nationality of the perpetrator.¹⁸ The offences attract a sentence of up to fourteen years’ imprisonment

13 Clause 17 provides for the UK to exercise extraterritorial jurisdiction over these offences, meaning that they can still be prosecuted in the UK even though they were committed outside the UK’s jurisdiction.

14 Explanatory Notes, paras 30–31

15 The acts include receiving or arranging to receive, removing or disposing of a relevant article for the benefit of another person, or assisting another person to remove or dispose of a relevant article.

16 The immigration offences are set out in sections 24 and 25 of the Immigration Act 1971 (illegal entry etc and assisting unlawful immigration).

17 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), para 21

18 Clause 17

16. A “relevant article” is defined in clause 15 as meaning “any thing or substance”, subject to an exhaustive list of exemptions, which includes items such as food, drink, medicine, clothing and shelter.¹⁹ Items that are not exempt would include mobile phones, SIM cards, power banks, which are all commonly supplied or received by those seeking asylum. The physical acts (actus reus) of supplying (or offering to supply) or handling “any thing or substance” are therefore extremely broad and the exhaustive list of exempted items is restrictive.
17. The mental element (mens rea) of the offences requires that the person supplying or handling the item “knows or suspects” that the item is to be used in connection with certain immigration offences.²⁰ This is a low threshold compared to, for example, intention or recklessness. We note that comparable precursor terrorism offences have a higher mental element, requiring intention to commit or assist in the commission of terrorist acts.²¹ Liberty notes that the suspicion threshold is “seldom applied in criminal law because such a low threshold risks a disproportionate and unjust response to a person who did not intend to commit a crime or do harm”²² and gives the following example to illustrate the type of conduct that would be caught by this offence:

A woman fleeing persecution has her phone stolen in a migrant camp in France. Her grandfather, a British citizen in the UK, is concerned for her safety as without a phone she is unable to call the police if she is assaulted. He suspects that she may also use a phone to contact smugglers, but he is so concerned for her that he travels to France and gives her a mobile phone. She accepts the phone, knowing that she’ll also use it to check weather reports to ensure she attempts to cross the Channel when waves are low, reducing her risk of death. She and her grandfather would have committed offences under clauses 14 and 13, respectively.²³

18. This would be subject to the reasonable excuse defence, as discussed below.
19. ILPA offers a further example:

A well-meaning individual providing voluntary humanitarian assistance in Calais hands out SIM Cards. A father receives one and passes a mobile phone and the SIM card to his daughter. Both the father and the well-meaning individual may be prosecuted for having supplied

19 Clause 15

20 Clause 13(1)(b) and Clause 14(2). The relevant immigration offences are sections 24 or 25 of the Immigration Act 1971 (illegal entry etc and assisting unlawful immigration).

21 Section 5 Terrorism Act 2006 - which prohibits anyone from engaging in any conduct in preparation for an intended act of terrorism.

22 [Liberty](#), BAI0003, para 9

23 [Liberty](#), BAI0003, para 12

a relevant article under Clause 13, which was not for ‘carrying out a rescue’ or ‘acting on behalf of an organisation’. The daughter has handled the articles, under Clause 14, for which again there is no listed ‘reasonable excuse’.²⁴

Reasonable excuse defence

- 20.** Both the offences of “supplying” and “handling” items for use in certain immigration crimes provide for a “reasonable excuse” defence. The Bill sets out two, non-exhaustive, examples of what constitutes a “reasonable excuse” for each offence: (i) actions taken to rescue a person from danger or serious harm, and (ii) actions taken on behalf of an organisation which aims to assist asylum-seekers for free.²⁵

Clause 16: Collecting information for use in immigration crime

Elements of the offence

- 21.** Clause 16 creates the offence of collecting, making a record of, possessing, viewing or otherwise accessing information²⁶ in circumstances where there is a “reasonable suspicion” that the information is “likely to be useful” to a person organising or preparing for a “relevant journey”.²⁷ A “relevant journey” is defined as a journey from outside the UK to the UK where the entry or arrival is illegal.²⁸ The offence attracts a sentence of up to five years’ imprisonment.²⁹ The Government’s intention is to allow law enforcement agencies to act early in combatting the preparation of organised immigration crime.³⁰ In its Impact Assessment of the Bill, the Government gives examples of the type of conduct that will be the target of this offence: “research into viable locations and departure points, dates and times and transport for a journey to the UK.”³¹
- 22.** There is no express distinction in clause 16 between those who engage in such conduct as smugglers, and those who engage in such conduct as asylum seekers, victims of modern slavery, or persons (including children)

24 [ILPA, House of Lords Second Reading Briefing](#), 2 June 2025, para 48

25 Clause 13 (2) and (3) and clause 14 (2) and (3)

26 Clause 16(1)(a)(b) and (c)

27 Clause 16 (1) and (2)

28 Clause 16(5)

29 Clause 16(10)

30 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), para 40

31 Pillar 3(a)(2) [Border Security, Asylum and Immigration Bill 2025: overarching impact assessment \(accessible\) - GOV.UK](#)

who may be coerced into carrying items such as phones. Liberty gives the following example to illustrate the type of conduct that would be caught by this offence:

A teenage boy in northern France sends his mother in the UK a screenshot of a weather report related to the Channel showing that there are no waves tomorrow. She reads the message. He crosses to the UK the following day on a dinghy with 45 other people. She has committed an offence under clause 16, as has her son.³²

- 23.** The information that is collected, recorded, possessed, viewed, or accessed does not have to be specifically designed for use in immigration crime - the offence covers information that “may also be useful to members of the public at large for any purpose.”³³ This could, therefore, include generic information such as reports of the weather forecast in the Channel, maps, or first aid manuals.
- 24.** This offence mirrors section 58 of the Terrorism Act 2000 (collection etc of information likely to be useful in committing or preparing an act of terrorism). In interpreting the scope of the section 58 offence, the House of Lords (in its former judicial capacity) considered what types of information would be caught by the offence, finding that: “Parliament cannot have intended to criminalise the possession of information of a kind which is useful to people for all sorts of everyday purposes and which many members of the public regularly obtain or use, simply because that information could also be useful to someone who was preparing an act of terrorism.”³⁴ Clause 16(4) appears designed to make clear to the courts that Parliament intends to do exactly that in the context of this new offence. Dr Dinesson, Lecturer in Law at the University of York, notes that this is “an exceedingly broad form of a crime of possession.”³⁵

Defences

- 25.** Clause 16 provides for two defences. The first defence requires the person to show that the action or possession was for the purposes of a journey to be “made only by them”.³⁶ In theory, this appears to afford a defence to a person crossing the Channel by boat without any other persons in the boat. If this is correct, the defence would not apply to couples travelling together, or parents travelling with children. We have no evidence as to how many

32 [Liberty](#), BAI0003, para 4

33 Clause 16(4)

34 *R v G; R v J* [2009] UKHL 13 para 42

35 [Dr Dinesson](#), BSAI0012, para 17

36 Clause 16(5)

Channel crossings by small boat are made by one person travelling alone but we expect that, if any, the numbers are negligible. This defence may, therefore, be largely irrelevant.

26. The second defence requires the person to show that they had a “reasonable excuse”.³⁷ There are three categories of reasonable excuse listed. These are non-exhaustive. The first is that, at the time of the person’s action or possession, the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person organising preparing for or undertaking a journey of the kind described. The second category of reasonable excuses sets out examples of where the person’s action or possession was for the purposes of, inter alia, journalism, academic research, or rescue operations. The third category provides a reasonable excuse defence to persons acting for organisations providing free assistance to asylum seekers.³⁸
27. We acknowledge that this list is non-exhaustive, however, those seeking asylum, or the family members of those seeking asylum, are not provided with an express defence. Migrant Rights Network states that, even though certain humanitarian activities are granted a defence, this will still limit assistance to asylum seekers: “[h]undreds of people have been arrested in Europe over the last decade for carrying out similar activities using legislation introduced to target people who facilitate the movement of undocumented migrants, including where there are exclusions for people doing humanitarian work.”³⁹
28. We also note that the reasonable excuse defence does not specify providers of legal services, who play a crucial role in safeguarding the rights of asylum seekers. Justice told us:

“[t]he offence in clause 16(1) is sufficiently broad to potentially include information such as client documents or the publication of information in relation to an asylum-related legal claim. Those who represent asylum-seekers in the UK, provide legal advice about their rights and publicise their work should be confident they will not be included within the offence in clause 16. Uncertainty for those providing legal services to vulnerable individuals risks an unjustified risk to access to justice and the rule of law.”⁴⁰

37 Clause 16(7) and (8)

38 Clause 16(8)

39 [Migrant Rights Network](#), BSAI0014, para 3

40 [Justice](#), BSAI0027, para 4

Compatibility of the precursor offences with human rights obligations

- 29.** These provisions engage rights under the Refugee Convention, in particular, Article 31, which prohibits the general imposition of penalties on refugees on account of their unlawful entry or presence in the country where they claim asylum.⁴¹ These provisions are also relevant to the UK's obligations under the Smuggling Protocol, which supplements the UN Convention on Transnational Organised Crime. Further, the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) includes a 'non-punishment provision' for victims of human trafficking who have engaged in illegal activities, provided that they have been compelled to do so.⁴² These offences could also potentially interfere with Convention rights in some cases, notably Article 5 ECHR (the right to liberty and security) and Article 1 of Protocol 1 ECHR (peaceful enjoyment of possessions), which are incorporated into domestic law by the Human Rights Act.

Compatibility of the precursor offences with Convention rights

- 30.** Article 5 and Article 1 Protocol 1 (A1P1) are potentially engaged by the precursor offences. Article 5(1)(a) permits the lawful detention of a person after conviction by a competent court. This is engaged as the offences attract a sentence of imprisonment. The lawfulness of detention is assessed in the context of the general principles implied by the Convention, which includes the principle of the rule of law, legal certainty, proportionality and protection against arbitrariness.⁴³ A1P1 is potentially engaged by the offences as the effect of the clauses is to interfere with people's use of their property, including items that could be possessed for legitimate purposes. A1P1 may be lawfully interfered with if the interferences are (a) in accordance with the law (which requires the effect of the law to be sufficiently foreseeable and requires the law to contain sufficient safeguards against arbitrary interference) (b) in pursuit of a legitimate aim, and (c) necessary and proportionate.⁴⁴

41 Note that Article 31 of the Refugee Convention is given partial effect through section 31 of the Immigration and Asylum Act 1999. [Section 31](#) provides a statutory defence for refugees committing particular offences, providing they satisfy stated conditions. These specified offences include: forgery and connected offences; use of deception to obtain or seek to obtain leave to enter or remain or to secure avoidance, postponement or revocation of enforcement action; falsification of documents and offences under the Identity Documents Act 2010.

42 Article 26, Council of Europe Convention on Action against Trafficking in Human Beings 2005.

43 *Simons v Belgium* (dec.), Application No. 71407/10, 28 August 2012, para 32

44 *Sunday Times v UK* (No.1) (1979) 2 EHRR 245

- 31.** The requirement that interferences are in “accordance with the law” requires not only prescription in law, but a certain “quality” of law to make it compatible with the rule of law.⁴⁵ In particular, this requires that the law be formulated with sufficient precision to allow citizens to regulate their conduct and foresee the consequences of their actions.⁴⁶ Where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied.
- 32.** Although the new offences would be prescribed by law, concerns were raised in the written evidence by a number of stakeholders as to whether these offences are sufficiently precise to enable persons to regulate their conduct and whether the safeguards are adequate to protect against arbitrary interference. Professor Sarah Singer told us that “these offences seem to be deliberately quite widely drafted with a very low bar for prosecution. This has a real risk of infringing the principle of legal certainty, which is required by Article 5 of the European Convention on Human Rights. A criminal penalty also has to have respect to Article 7 of the European Convention on Human Rights, which has been interpreted as requiring that offences and penalties must be clearly defined by law.”⁴⁷ Dr Dinesson notes, in relation to clause 16, that “unclear and vague laws may contravene Article 7 of the ECHR and the principles of legal certainty and foreseeability.”⁴⁸ Zoe Bantleman, Legal Director at ILPA told us: “[it] is not the intention, from the [ECHR] memorandum, of this Government to prosecute parents and, if that is the case, what we are saying is that for the law to be sufficiently precise and clearly defined, as is required by Articles 5 and 7 of the European Convention on Human Rights, and indeed by the rule of law itself, that should be put on the face of the Bill rather than keeping it in the [ECHR] memorandum.”⁴⁹
- 33.** Whilst we do not consider the offences lack clarity, accessibility, and foreseeability to the extent that they would breach the requirements of the Convention, we do, however, consider there is room for greater clarity and precision to guard against the arbitrary interference with Convention rights.
- 34.** Although the Government puts forward a legitimate aim of “disrupting the criminal networks engaged in smuggling people to the UK,”⁵⁰ as currently drafted, there is no distinction between those who are smugglers and those

45 Kopp v Sweden (1999) 27 EHRR 383; Gillan and Quinton v UK (2010) 50 EHRR 45

46 Del Río Prada v Spain [GC], Application No. 42750/09, 21 October 2013, para 125; Creangă v. Romania [GC], Application No. 29226/03, 23 February 2012, para 120; Medvedyev and Others v France [GC], Application No. 3394/03, 29 March 2010, para 80.

47 [Professor Sarah Singer](#) Q2

48 [Dr Dinesson](#), BSAI0012, para 1

49 [Zoe Bantleman](#) Q4

50 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), para 28

who are smuggled or otherwise exploited. During Committee stage in the Commons, the Minister for Border Security and Asylum stated: “it is not the intention to target asylum seekers with these new offences.”⁵¹ However, Professor Sarah Singer told us in oral evidence: “these offences will not be targeted at the people who conduct people-smuggling operations, most of whom never set foot on UK soil and will not be reached by the new offences. Rather, who will be targeted? (...) [T]he very vulnerable people who are seeking asylum in this country and making these irregular journeys, because they have no other option.”⁵² There is an apparent disconnect between the legitimate aim and the operational effect of the offences.

35. There are also questions as to the proportionality of these offences in some circumstances. Freedom from Torture state that: “clauses 13 - 15 are not rationally connected to the objective of stopping preparatory steps towards engaging in immigration crime, are disproportionate to their stated aim, and therefore incompatible with both Article 1 of Protocol 1 and Article 14 of the ECHR.”⁵³
36. In relation to clause 16, for example, it is questionable that the criminalisation of the mother and her son for supplying and handling a mobile phone used (amongst other things) to assist in his irregular arrival would be proportionate. The reasonable excuse defence is a crucial safeguard, but the non-exhaustive examples leave room for uncertainty. Perhaps in practice, the mother and her son would not be prosecuted in these circumstances, bearing in mind the CPS’s prosecutorial discretion and the application of the public interest test, but there is no guarantee on the face of the Bill. Dr Dinesson notes that sections 57 and 58 of the Terrorism Act 2000 have been subject to legal challenges on Convention grounds, but have been held to be proportionate on the grounds of national security. However, she notes, “it is unclear whether the same can be said for immigration offences.”⁵⁴ There is, therefore, concern that these offences may be disproportionate in individual cases.
37. The Northern Ireland Human Rights Commission (NIHRC) notes the disproportionate impact that these offences may have on vulnerable groups. Noting the absence of a defence for a person who is coerced or exploited, the NIHRC states: “[t]o fail to consider and address the specific needs of the vulnerable will impact upon women and children

51 [Border Security, Asylum and Immigration Bill \(Fourth sitting - Hansard - UK Parliament\)](#), col.128

52 [Professor Sarah Singer](#), Q1

53 [Freedom from Torture](#), BSAI0035, p2

54 [Dr Dinesson](#), BSAI0012, p1

disproportionately. Women who are subject to coercive control, children who are criminally exploited, and victims of trafficking and modern slavery require more.”⁵⁵

38. CONCLUSION

We are concerned that the breadth of these precursor offences poses a risk of unintended harms to those who are most vulnerable. To mitigate this risk, we consider that the precursor offences would benefit from greater circumscription and more robust safeguards and propose various amendments (below).

Compatibility of the precursor offences with Refugee Convention and Smuggling Protocol

- 39.** The risks of criminalisation of refugees for acts intrinsic to seeking asylum are already high, particularly since the introduction of offences under the Nationality and Borders Act 2022 (NABA). We are concerned that the new precursor offences increase the risk of criminalisation of asylum seekers. The Refugee Council points out that between 22 June 2022 (when NABA came into force) and the end of June 2024, 556 people were charged with ‘illegal arrival’, and 455 were convicted: “[t]hose convicted will not be members of criminal gangs but people who are trying to reach the UK in order to apply for asylum.”⁵⁶ Freedom from Torture notes that “the caselaw is replete with examples in which the ‘true reach’ of Article 31 has not been honoured. Over the last decade the Criminal Cases Review Commission (CCRC) has referred numerous cases to the Court of Appeal in which refugees were wrongly prosecuted and convicted of false document offences (to which the statutory defence applies). If the public interest test had acted as an effective safeguard these offences would never have reached the courts.”⁵⁷ These new offences increase the likelihood that asylum seekers will be criminalised, raising questions as to the compatibility of these new offences with Article 31 of the Refugee Convention and Article 5 of the Smuggling Protocol.

55 Northern Ireland Human Rights Commission, [Submission to the House of Lords on the Border Security, Asylum and Immigration Bill](#), para 3.20

56 [Refugee Council](#), BSAI0029, para 18

57 [Freedom from Torture](#), BSAI0035, para 8

Article 31 Refugee Convention

40. Article 31 prohibits the general imposition of penalties on refugees on account of their unlawful entry or presence in the country where they claim asylum.⁵⁸ This protection applies to refugees who “come directly” from the state where they faced persecution.⁵⁹ Whether Article 31 protects refugees from the imposition of these new criminal penalties in the Bill depends on (i) whether the individuals concerned have “come directly” to the UK, and (ii) whether the penalties are imposed “on account of their illegal entry or presence”.
41. The first question is, therefore, whether those crossing the Channel from France, or elsewhere, can be said to have “come directly” to the UK. The Committee agrees with its predecessor that those who enter or arrive in the UK after crossing the Channel are unlikely to forfeit the protection of Article 31 simply by virtue of their indirect means of arrival.⁶⁰ The Refugee Convention was drafted in specific recognition of the fact that ‘illegal’ entry was often necessary for genuine refugees deserving of protection, as reflected in the travaux préparatoires for Article 31,⁶¹ and as confirmed by experts assembled by the UNHCR in 2001.⁶² This is consistent with the

58 Article 31 of the Refugee Convention is given partial effect through section 31 of the Immigration and Asylum Act 1999. Section 31 provides a statutory defence for refugees committing particular offences, providing they satisfy stated conditions. These specified offences include: forgery and connected offences; use of deception to obtain or seek to obtain leave to enter or remain or to secure avoidance, postponement or revocation of enforcement action; falsification of documents and offences under the Identity Documents Act 2010.

59 Section 37 of the Nationality and Borders Act 2022 sets out the UK’s interpretation of Article 31(1) of the Refugee Convention and the circumstances in which refugees who have entered a country illegally, or are present in a country illegally, are immune from penalties.

60 [Legislative Scrutiny: Nationality and Borders Bill \(Parts 1, 2 and 4\) – Asylum, Home Office Decision-Making, Age Assessments, and Deprivation of Citizenship Orders - Joint Committee on Human Rights](#), para 74; and [Legislative Scrutiny: Illegal Migration Bill](#), para 122

61 “A refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge. It would be in keeping with the notion of asylum to exempt from penalties a refugee, escaping from persecution, who after crossing the frontier clandestinely, presents himself as soon as possible to the authorities of the country of asylum and is recognized as a bona fide refugee.” [The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis | UNHCR UK](#)

62 “The drafters [of the Refugee Convention] only intended that immunity from penalty should not apply to refugees who found asylum, or were settled, temporarily or permanently, in another country.” Summary Conclusions: Article 31 of the 1951 Convention (adopted at the expert roundtable organised by the UNHCR and the Graduate Institute of International Studies, 8–9 Nov 2001), para 10(c)

interpretation of Article 31 made by the High Court, which concluded that “any merely short term stopover en route to such intended sanctuary cannot forfeit the protection of the article.”⁶³

42. Thirdly, Article 31 provides protection from penalties where they are imposed “on account of their illegal entry or presence”. In September 2024, the United Nations High Commissioner for Refugees (UNHCR) published legal guidance on international protection relating to non-penalisation of refugees on account of irregular entry.⁶⁴ In line with Article 31, it acknowledges that, in seeking asylum, many are compelled to arrive, enter or stay in a territory without authorisation or documentation, or “with documentation which is insufficient, false or obtained by fraudulent means, or by using clandestine modes of entry”.⁶⁵ The UNHCR legal guidance is clear that refugees cannot be penalised if they have been involved in organising, or assisting their own or others’ irregular entry or stay if they took these actions to secure their own, or others’, entry for humanitarian

63 R v Uxbridge Magistrates Court and Another ex p Adimi [2001] QB 667 at [17]-[18]: “[I]t is the [Secretary of State’s] contention that Article 31 allows the refugee no element of choice as to where he should claim asylum. He must claim it where first he may: only considerations of continuing safety would justify impunity for further travel. For my part I would reject this argument. Rather, I am persuaded by the applicants’ contrary submission, drawing as it does on the travaux préparatoires, various conclusions adopted by UNHCR’s executive committee (ExCom), and the writings of well respected academics and commentators (most notably Professor Guy Goodwin-Gill, Atle Grahl-Madsen, Professor James Hathaway and Dr Paul Weis), that some element of choice is indeed open to refugees as to where they may properly claim asylum. I conclude that any merely short term stopover en route to such intended sanctuary cannot forfeit the protection of the article.” In the subsequent case of R v Asfaw [2008] UKHL 31, the House of Lords confirmed that “a short stopover” in another country on the way to claiming asylum in the UK does not preclude reliance on Article 31 of the Refugee Convention. Immigration and Asylum Act 1999 s.31: “the fact a refugee stopped in a third country in transit is not necessarily fatal and may be explicable: the refugee has some choice as to where he might properly claim asylum. The main touchstones by which exclusion from protection should be judged are the length of the stay in the intermediate country, the reasons for delaying there and whether or not the refugee sought or found protection de jure or de facto from the persecution from which he or she was seeking to escape...”

It should be noted that this view is not universally accepted. See the Policy Exchange Paper by Ekins, Finnis and Murray: [Policy Exchange - The Nationality and Borders Bill and the Refugee Convention 1951](#), 31 January 2022

- 64 Note that UNHCR’s Guidelines on International Protection, issued since 2001, are authoritative legal interpretive guidance documents.
- 65 Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees: [UNHCR issues latest guidance against penalization of asylum-seekers for irregular entry | UNHCR](#), para 4

reasons.⁶⁶ The opinion of the UNHCR is of significance, not least because the UK has committed, in Article 35 of the Refugee Convention, to “co-operate with the Office of the [UNHCR] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.”⁶⁷

43. Some causal connection between the penalty and the illegal entry or presence must therefore be demonstrated. Arguably, where an act is intrinsic to the “illegal entry or presence”, it falls within the scope of Article 31. For example, the Divisional Court in *Adimi* determined that the offence of using false documents falls within the protective scope of Article 31 because the use of false documents was necessary to affect the unlawful entry.⁶⁸ Simon Brown LJ said: “[w]hat, then, was the broad purpose sought to be achieved by Article 31? Self-evidently it was to provide immunity for genuine refugees whose quest for asylum reasonably involved them in breaching the law. In the course of argument my Lord suggested the following formulation: ‘Where the illegal entry or use of false documents or delay can be attributed to a bona fide desire to seek asylum, whether here or elsewhere, that conduct should be covered by Article 31.’ That seems to me helpful.”⁶⁹ It is possible that the acts of supplying/handling articles and collecting information for use in immigration crime would be considered intrinsic to the act of illegal entry/arrival and therefore within the protective scope of Article 31. If so, penalising asylum seekers under these new offences could violate the UK’s obligations under Article 31.
44. Article 31 is partially incorporated into domestic law by way of section 31 of Immigration and Asylum Act 1999. However, the Committee agrees with its predecessor that this provision is not fully compliant with the Refugee Convention.⁷⁰ As noted by ILPA: “It only provides a narrowly constituted defence—placing an evidential burden on defendants—to an insufficient list of offences, including forgery and connected offences, possession of false identity documents, deception, and falsification of documents. Therefore, while there is a defence for arriving with false documents, there is no statutory defence for arriving without the appropriate immigration documents. Instead of protection, under this framework of criminalisation, individuals fearing persecution face prosecution.”⁷¹ We note that the

66 Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees: [UNHCR issues latest guidance against penalization of asylum-seekers for irregular entry](#) | UNHCR, para 30

67 Article 35, Refugee Convention

68 *R v Uxbridge Magistrates Court and Another ex p Adimi* [2001] QB 667

69 *R v Uxbridge Magistrates Court and Another ex p Adimi* [2001] QB 667, para 15

70 JCHR, [Legislative Scrutiny: Nationality and Borders Bill](#) (Parts 1, 2 and 4), 12th report of Session 2021–2022, 12 January 2022, para 137

71 [ILPA](#), para 11

UNHCR has previously expressed “deep concern” about the limits of the section 31 defence.⁷² We also note the recommendation of our predecessor Committee that section 31 should be amended to cover all offences relating to unauthorised entry.⁷³ Domestic law would offer no statutory defence for those prosecuted for these new offences, or for the underlying offences of illegal entry/arrival or assisting unlawful migration.

Compatibility with Article 5 Smuggling Protocol

45. Article 5 of the Protocol against Smuggling of Migrants by Land, Sea and Air, 2000, provides that migrants should not be liable to criminal prosecution for the fact of having been smuggled, with intent, by persons in order to obtain, directly or indirectly, financial or other material benefits.⁷⁴ If these offences effectively amount to the criminalisation of those who have been smuggled, Article 5 will be violated.

Compatibility with ECAT

46. Article 26 of ECAT provides for a ‘non-punishment provision’ for victims of human trafficking who have engaged in illegal activities, provided that they have been compelled to do so.⁷⁵ In circumstances where victims of trafficking have committed an offence of supplying or handling relevant articles, or collecting information likely to be useful in immigration crime, they must not be prosecuted if the commission of these offences was a result of trafficking. Any prosecution of victims in such circumstances would breach Article 26 ECAT.

Compatibility with the UNCRC

47. The UN Convention on the Rights of the Child provides that, in all actions concerning children, the best interests of the child shall be a primary consideration.⁷⁶ Section 55 of the Borders, Citizenship and Immigration Act 2009 places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK.⁷⁷

72 UNHCR, UNHCR Observations on the Nationality and Borders Bill 141, 2021–22, October 2021, para 182

73 JCHR, [Legislative Scrutiny: Nationality and Borders Bill](#) (Parts 1, 2 and 4), 12th report of Session 2021–2022, 12 January 2022, para 137

74 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organised Crime, 2000

75 Article 26, Council of Europe Convention on Action against Trafficking in Human Beings 2005.

76 Article 3, UNCRC

77 Section 55 of the Borders, Citizenship and Immigration Act 2009

48. We note the Children’s Commissioner’s concerns as to the potential criminalisation of children, including child victims of trafficking wrongly assessed as adults who would, if convicted, be placed in adult prisons in violation of their rights.⁷⁸ This concern is echoed by the Refugee and Migrant Children’s Consortium, which argues that the offences are “especially troubling given the well-documented failures in age assessment, where children are frequently misclassified as adults and thus exposed to adult criminal justice processes.”⁷⁹ They note that, since the introduction of NABA, “at least 26 children with ongoing age disputes, arrested as adults after a cursory age determination on arrival, have been charged. At least 16 of these children have spent time in adult prisons, sharing cells with adults.”⁸⁰ Further, evidence from local authorities’ children’s services shows that, over an 18-month period, more than 1,300 children were wrongly assessed as adults by the Home Office. In the first half of 2024, over 250 children were wrongly treated as adults.⁸¹
49. We acknowledge that the Code for Crown Prosecutors is clear that the criminal justice system treats children and young people differently from adults and that prosecutors must consider the best interests and welfare of the child or young person, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.⁸² However, we are concerned that the best interests of children entering or arriving in the UK are not being adequately safeguarded due to erroneous age assessment. We have not considered this issue as part of our current inquiry, but we note the concerns of our predecessor Committee with regard to age assessments, which remain relevant.⁸³ The enhanced risk of criminalisation, coupled with the risk of misidentification of children as adults, risks non-compliance with the rights of vulnerable children.

78 [Children’s Commissioner](#), BSAI0018p6

79 [Refugee and Migrant Children’s Consortium](#), BSAI0019, para 8

80 [Refugee and Migrant Children’s Consortium](#), BSAI0019, para 11

81 [Refugee and Migrant Children’s Consortium](#)., BSAI0019, para 14

82 [The Code for Crown Prosecutors | The Crown Prosecution Service](#)

83 JCHR, [Legislative Scrutiny: Nationality and Borders Bill](#) (Parts 1, 2 and 4), 12th report of Session 2021–2022, 12 January 2022, Chapter 7

Conclusions and Recommendations on Precursor Offences

50. **CONCLUSION**

We support the Government's intention to disrupt and deter organised immigration crime and to safeguard life. However, we are concerned that the precursor offences, as currently drafted, create uncertainty, extend beyond the Government's stated legitimate aim, and risk inadvertently criminalising persons who ought to be protected from criminal penalty. The scope is broad, the thresholds are low, and the penalties are high. To ensure compliance with the Refugee Convention, the Smuggling Protocol, and the Council of Europe Convention Against Trafficking, we propose a series of amendments.

51. **RECOMMENDATION**

In relation to clauses 13 and 14:

- a. The Government should give consideration to amending the scope of the offences to ensure that they only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain. (See Amendments 1 and 2, Annex).
- b. The mental threshold should be changed from "knows or suspects" to "intends" that, or is "reckless" as to whether, the relevant article is to be used in connection with the commission of the specified immigration offences. (See Amendments 3 and 4, Annex).
- c. The defence of "reasonable excuse" ought to explicitly provide that it must be interpreted compatibly with Article 31 of the Refugee Convention, Article 5 of the Smuggling Protocol, and section 26 of the Council of Europe Convention Against Trafficking. (See Amendments 5 and 6, Annex)
- d. The offences in clauses 13 and 14 should be added to the existing defence in section 31 of the Immigration and Asylum Act 1999. This would, in certain circumstances, provide a defence to refugees who come to the UK directly from a country where their life or freedom was threatened. (See Amendment 7, Annex).

52. **RECOMMENDATION**

Clause 15 should be amended to ensure that the list of exempted "relevant articles" includes items commonly used by asylum seekers. At a minimum, this must include items such as hygiene kits. (See Amendment 8, Annex).

53.

RECOMMENDATION

In relation to clause 16:

- a. The Government should give consideration to amending the scope of the offences to ensure that they only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain. (See Amendment 9, Annex)
- b. Clause 16(2) should be removed and replaced with a requirement that the person intended the information to be useful in organising or preparing for a relevant journey, or was reckless as to whether the information would be useful to a person organising or preparing for a relevant journey. (See Amendment 10, Annex).
- c. The defence of “reasonable excuse” ought to explicitly provide that it must be interpreted compatibly with the Article 31 of the Refugee Convention, Article 5 of the Smuggling Protocol, and section 26 of the Council of Europe Convention Against Trafficking. (See Amendment 11, Annex).
- d. The offence in clause 16 should be added to the existing defence in section 31 of the Immigration and Asylum Act 1999. This would, in certain circumstances, provide a defence to refugees who come to the UK directly from a country where their life or freedom was threatened. (See Amendment 7, Annex)

54.

RECOMMENDATION

More broadly, we agree with our predecessor Committee that the Government should fully incorporate Article 31 of the Refugee Convention into section 31 of the Immigration and Asylum Act 1999. Section 31 should include the new offences in this Bill and the offence of illegal entry/arrival under section 24 of the Immigration Act 1971. (See Amendment 3, Annex).

Clause 18: Endangering another during sea crossing to UK

55. Clause 18 makes it an offence for a person, while journeying by water to the UK from France, Belgium or the Netherlands, to do an act that “caused or created a risk” of “death or serious personal injury” (physical or psychological) to another person. The Secretary of State, referring to

this offence in her written statement on the Bill, said: “[t]hose involved in physical aggression, intimidation or coercive behaviour, including preventing offers of rescue while at sea, will face prosecution.”⁸⁴

56. However, the offence is drawn far more widely than this. The Refugee Council warns: “[g]iven that many of the boats now used are barely sea worthy and overcrowded, this could cover many more people than those whom the offence is apparently targeted at.”⁸⁵ Migrant Help raised concerns that this clause is likely to affect “those most vulnerable groups who are often coerced or compelled to steer due to not being able to afford the crossing otherwise.”⁸⁶
57. We note the research of Vicky Taylor, Associate Director at Border Criminologies, at the Centre for Criminology at the University of Oxford, whose findings highlight that “the most common reasons for driving the dinghy were being under duress from smugglers in Northern France; needing a discount on the crossing; or having previous experience driving boats, either from previous employment or irregular journeys.”⁸⁷ In the case of *R v Ahmed*, the defendant was an 18 year old Sudanese boy fleeing the Janjaweed in Sudan. He was offered a reduced fee if he agreed to pilot the boat. He was sentenced to 18 months in a young offender’s institution.⁸⁸ The offence is only committed if a person commits an offence of illegal entry/arrival under section 24 of the Immigration Act 1971, and the journey in question resulted in that illegal entry/arrival. The offence is, therefore, targeted at those who cross the Channel and not just the smugglers. Of those who cross the Channel, 94% are seeking asylum, with 71% of those granted protection, and 10% referred as potential victims of modern slavery.⁸⁹ We have no evidence as to the numbers of smugglers who cross the Channel, but the Minister stated in Committee stage debate that: “In practice, the focus will be intelligence-led and targeted at those who law enforcement believe to be working in connection with organised criminal networks. Believe you me,... those networks exist in the UK and they come across on small boats themselves.”⁹⁰ We note the report of the Independent Chief Inspector of Borders, in 2020, found that “small boats investigations were difficult because there were no organised crime group

84 [Written statement by the Home Secretary, UIN HCWS406, 30 January 2025](#)

85 [Refugee Council](#), BSAI0029, para 15

86 [Migrant Help](#), BSAI0023, Q2

87 Vicky Taylor, [No Such Thing as Justice Here, The Criminalisation of People on Small Boats](#), February 2024, p8

88 [2023] EWCA Crim 1521

89 [ILPA](#), para 16, citing Home Office, ‘[Immigration system statistics](#), year ending September 2024: How many people come to the UK irregularly?’ (28 November 2024) section 3 accessed 7 February 2025.

90 House of Commons, Committee Stage, Fourth Sitting, Col.128 [Border Security, Asylum and Immigration Bill \(Fourth s - Hansard - UK Parliament\)](#)

members onboard the boats, although one of the migrants might have agreed with the facilitators to act as a “chaperone” for a reduced fee. Much of the organised criminal activity took place in France.”⁹¹ It is not clear how many of those crossing the Channel are those responsible for organised immigration crime, but it is clear that the vast majority are refugees and victims of modern slavery.

- 58.** There is no requirement for actual harm to be caused in order to commit this offence. Nor is there any requirement for intention. Acts that are reckless, involuntary, mistaken, or triggered by trauma, would all be covered by the scope of this offence. There is no threshold for the level of risk that must be created. A low risk would suffice. The clause does not provide for any defences. Amnesty notes that, “[g]iven the conditions of people on these boats... the risk of committing the offence, even with no ill-intent or recklessness, is severe.”⁹²
- 59.** ILPA gives an example of the type of conduct that would be caught by this offence:

A refugee who suffers from post-traumatic stress disorder from crossing the Mediterranean, panics, and partially stands up in a dinghy, causing it to become more unstable, unintentionally creating a low, rather than a real or a severe, risk of the boat capsizing and serious injury, could be caught by this new offence and sentenced to up to five years of imprisonment.⁹³

Compatibility with Convention Rights

- 60.** Clause 18 engages Article 5 (as the offence attracts a sentence of imprisonment) and Article 8 (as parents may be imprisoned for acts done in relation to their children) ECHR, which are incorporated into domestic law by the Human Rights Act. The requirements for justified interference with these qualified Convention rights are set out above (Paragraph 30).
- 61.** The Home Office considers that the offence pursues a legitimate aim, which is to deter individuals from coming to the UK by dangerous irregular routes, to deter overcrowding on boats, and prevent loss of life at sea.⁹⁴ The Home

91 [An Inspection of the Home Office’s response to in-country clandestine arrivals \(‘lorry drops’\) and to irregular migrants arriving via ‘small boats’](#), p74

92 [Amnesty International UK](#), BSAI0002, para 8

93 [ILPA](#), BSAI0036, para 17

94 UK Parliament Hansard, ‘Written Statement: Border Security, Asylum and Immigration Bill – Rt Hon Yvette Cooper, Secretary of State for the Home Department - Statement UIN HCWS406’, 30 January 2025.

Secretary believes that this provision is necessary to discharge the UK's positive obligation under Article 2 ECHR (to protect life).⁹⁵ We welcome this intention.

62. However, the offence is widely drafted. The actus reus is much broader than the specific examples given by the Minister of “aggression” and “coercion” at sea. The offence can be committed without any intention or even recklessness. There are no exemptions for vulnerable groups and no defences.
63. A particular concern arises in the context of the liability of parents. The Children’s Commissioner notes with concern that there is no exemption for children, or parents with children.⁹⁶ The Home Office acknowledged that this offence could lead to an interference with Article 8 rights, in particular as it applies to parents.⁹⁷ For instance, a parent who left dry land to put a child in a small boat crossing the Channel would, simply by doing so, be committing an act that put the child in danger.⁹⁸ A conviction could lead to imprisonment for a maximum of 5 or 6 years depending on the underlying immigration offence, resulting in the break-up of a family. The ECHR Memorandum states that “parents who bring their children on the type of journeys that the Endangerment Offence captures will be excluded from prosecution in almost all circumstances”.⁹⁹ It also states that the prosecution of parents will only occur in the “most serious allegations”.¹⁰⁰
64. The Home Office recognises that prosecution might be disproportionate in individual cases, particularly if a parent were prosecuted in anything other than the most serious circumstances. They nevertheless consider that clause 18 is compatible with Article 8, because the CPS will exercise their usual prosecutorial discretion, and the courts will be able to consider all the circumstances when deciding the appropriate sentence.¹⁰¹ This is not, however, on the face of the Bill and relies upon prosecutorial discretion as

95 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), at para 53

96 [Children’s Commissioner](#), BSAI0018, p6

97 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), paragraphs 58–63

98 The offence is committed if a person performs the act in question after first leaving dry land for the purpose of making the journey (new section 24(E1A)(c) and (E1B)(b)(i) of the Immigration Act 1971). ‘Dry land’ is defined to include land not covered by water at that time (new section 24(E1B)(c)). So it would seem that the offence could be committed if a person walked into shallow water holding a child and placed the child in a boat.

99 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), paragraphs 58–63

100 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), paragraphs 58–63

101 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), paragraphs 58–63

a safeguard. All CPS prosecutors (in England and Wales) must follow the Code Test.¹⁰² This states that they must apply the principles of the ECHR, in accordance with the Human Rights Act 1998, at each stage of a case. Whilst this is an important safeguard, it is not a substitute for clarity on the face of the Bill. Compatibility with Article 8 should not rest on the shoulders of the CPS. Alison Harvey, barrister at One Pump Court, gave us an example of why prosecutorial discretion is “not a sufficient safeguard”: “I point the committee to the case of SXH v the Crown Prosecution Service, 2017, in the Supreme Court. That was a lady who sought to bring a claim that her prosecution and her detention for her prosecution were a breach of her human rights under Article 8 and failed. She was a lady who had been raped in Somalia at age six in front of her disabled mother. Her mother had subsequently been murdered. She was stopped at port in the UK. She was prosecuted under the Identity Documents Act, to which the Article 31 statutory defence does not apply.”¹⁰³

Compatibility with Article 31 Refugee Convention

65. As with clauses 13, 14, and 16, clause 18 raises questions as to its compatibility with Article 31 of the Refugee Convention. As above, the offence is clearly a “penalty” and is to be imposed on those who “come directly” to the UK. However, on its face, the offence does not appear to fall foul of Article 31, because it does not penalise illegal entry as such or acts that are intrinsic to illegal entry/arrival. It only applies to dangerous acts carried out after a person first leaves dry land. However, if the breadth of the offence meant that, in practice, it effectively criminalised the act of crossing the Channel in a small boat to claim asylum as this is inherently dangerous, and that parents were liable for placing their children in boats, then this might violate Article 31.
66. It is unclear on the face of the Bill if the very act of taking another person on a ‘dangerous journey’ will be sufficient to constitute an offence on the basis of creating the risk of death or serious injury which might arise in any Channel crossing. A letter we received from the CPS states: “The endangerment offence potentially fills a gap between the current Section 24 (illegal arrival/entry offence) and Section 25 provisions. Each boat has someone steering it across the Channel who, by the very nature and condition of those boats, the overcrowding and the lack of lifesaving equipment, puts others in that boat in danger of losing their life.”¹⁰⁴ If “by the very nature and condition” of the boats, piloting alone fulfils the elements of this offence, the implication is that there is no need for

102 [The Code for Crown Prosecutors](#)

103 [Alison Harvey Q6](#)

104 [Letter](#) from Sarah Dineley, Deputy Chief Prosecutor at the CPS to Lord Alton, Chair of the JCHR, dated 5 June 2025

aggression or coercion or any threats to others. If so, the clause may catch asylum seekers themselves who may have little to no agency and are coerced into piloting the boat.

67. However, the CPS also state, in respect to their approach to the existing section 25 offence of facilitation unlawful entry/arrival: “Our current guidance is clear... This is not just having a hand on the tiller; it is about being part of a management chain and being part of the organisation of that crossing.” If, in practice, prosecutions are only brought against those involved in the “management” of people smuggling, then the same approach may be taken to the clause 18 offence. The breadth of the clause and the resultant lack of certainty is unwelcome. Clarity is required on the face of the Bill.

Conclusions and recommendations on clause 18

68. **RECOMMENDATION**
The Government should ensure that clause 18 is sufficiently clear and circumscribed, reflects the legitimate aim it is intended to achieve, and is proportionate to that aim. In particular, a mental element should be introduced to ensure that only conduct which is intentional or reckless is criminalised. (See Amendment 12, Annex)

3 Powers of search, seizure and retention in relation to electronic devices

Clauses 19–26: Powers of search etc in relation to electronic devices

- 69.** Clauses 19–26 introduce new search, seizure and retention powers in relation to electronic devices. The Government’s objective is to allow for the recovery of information from migrants arriving irregularly that may relate to the offence of assisting unlawful migration or helping asylum seekers to enter the UK.

Scope of the new powers

- 70.** The new powers are exercisable when an immigration officer or a police constable who has received authorisation from a superintendent (“authorised officer”) has reasonable grounds to suspect that a relevant person is in possession of a relevant article that relates (or may relate) to the commission of an offence under section 25 or 25A Immigration Act 1971 (i.e. the offences of assisting unlawful immigration or helping asylum seekers to enter the UK.). A “relevant person” is defined as a person who has entered or arrived in the UK and has not been given leave to enter or remain, i.e. those arriving irregularly.¹⁰⁵ A “relevant article” is defined as “any thing” on which electronic information relating to the commission of an immigration offence may be stored (i.e. mobile phones, computers).¹⁰⁶

105 Clause 19(2)

106 Clause 19(4)

- 71.** Searches of a person may involve the search of the person’s mouth and may require the removal of outer clothing.¹⁰⁷ Reasonable force may be used.¹⁰⁸ The Bill also allows officers to retain data for as long as they deem “necessary”,¹⁰⁹ with a duty of onward disclosure to other agencies in certain circumstances.¹¹⁰
- 72.** The new powers appear to be a response to a decision of the High Court in 2022, which held that the Home Secretary had acted unlawfully by having an unpublished blanket policy to search for, and seize, mobile phones from migrants arriving in small boats from France. The court held, in particular, that existing powers only allowed searches for, and seizure of, mobile phones in specific circumstances. It followed that the general seizure of phones breached Article 8, because it was not ‘in accordance with the law’.¹¹¹

Compatibility with Convention rights

- 73.** The new powers would interfere with rights under Article 8 and Article 1 of Protocol 1, which are incorporated into domestic law by the Human Rights Act, because they would allow access to private information (stored electronically) and would interfere with the enjoyment of property (seizure and retention of electronic devices). The nature of the data liable to search, seizure and retention is likely to be personal and could contain sensitive information revealing political opinions or religious beliefs, or privileged information.
- 74.** The European Court has held that legislation applying to search and seizure must afford adequate and effective safeguards against abuse and arbitrariness.¹¹² Further, section 37 of the Data Protection Act 2018 requires that personal data processed for law enforcement purposes is adequate, relevant and not excessive.
- 75.** There are various safeguards within the clause that help to protect against arbitrary and excessive interferences. There is a requirement of reasonable suspicion that, although low, does place a limit on when the powers can be exercised. The powers are only to be used once per entry, when an irregular migrant is encountered,¹¹³ such that the checks cannot be excessive in number. Searches of a person cannot require the removal of anything other

107 Clause 20(3)

108 Clause 20(9)

109 Clause 21(6)

110 Clause 22

111 *R (HM) v Secretary of State for the Home Department* [2022] EWHC 695 (Admin)

112 *Naumenko v Latvia*, Application No. 50805/14, 23 June 2022, para 50; *Gillan and Quinton v UK*, Application No. 4158/05, 12 January 2010; *Beghal v UK*, Application No. 4755/16, 28 February 2019; *R (Roberts) v Metropolitan Police Commissioner* [2015] UKSC 79

113 Clause 20(2)

than outer clothing. Any item seized will have to be returned when it is no longer necessary for an authorised officer or the Secretary of State to retain it, subject to the duty to pass on items seized. These are likely to amount to adequate safeguards against arbitrary interference.

- 76.** Whilst the powers of search and seizure in these clauses are likely to be ‘in accordance with the law’ and in pursuit of the legitimate aim of crime prevention, there are questions as to necessity and proportionality. Liberty argues that “given the vast amount of data on mobile phones, it is highly unlikely that all data extracted would be necessary and as such it would be unlawful to extract data unless these clauses are more narrowly constituted ... such that it is not operated as a blanket policy”.¹¹⁴ If it is reasonable to suspect that the vast majority of those arriving in the UK by small boat have been smuggled or trafficked (and are therefore in possession of information relevant to ‘facilitation offences’¹¹⁵), these powers risk being applied as a blanket policy to all persons arriving by small boat irrespective of whether they have engaged in organised immigration crime. This could lead, in practice, to indiscriminate searches and seizures.
- 77.** Open Rights Group notes: “[o]ur concern is that these clauses risk invasive digital searches. The broad definition of “relevant articles” and the broad authority to search persons for electronic devices, especially the power to access, copy, and use data stored on those devices, raise serious privacy concerns. For migrants, refugees, and asylum seekers (who may already be in vulnerable positions), these provisions could lead to disproportionate invasions of digital autonomy. While the Bill states that searches must be “reasonable”, the broad scope of digital data that can be accessed (often without judicial oversight at the point of search) means that sensitive personal information may be collected and retained without adequate safeguards.”¹¹⁶
- 78.** Migrant Rights Network also notes the risk of disproportionality: “[m]obile phone seizures have also had limited success in other countries where the practice is commonplace, like Germany: 73% of data extracted from asylum seekers’ phones is unusable. As a result, mass device seizure as an immigration policy to target people seeking asylum is entirely disproportionate in relation to the capabilities of the technology, too, beyond the intense invasion of privacy and data rights.”¹¹⁷

114 [Liberty](#), BSAI0003, para 21

115 Section 25 Immigration Act 1971 which makes it a criminal offence to facilitate the entry into, or the continued stay in, the UK of an individual who is not lawfully entitled to enter or remain. Section 25A Immigration Act 1971 which makes it a criminal offence to help asylum seekers enter the UK.

116 [Open Rights Group](#), BSAI0011, p7

117 [Migrant Rights Network](#), BSAI0014, p7

79. Jesuit Refugee Services have supported numerous individuals whose phones were seized. They told us that: “[r]emoval of the phones meant people were unable to contact friends and family. Many young people arrive in the UK alone after a traumatising journey, and losing their connection to family and friends was a cause of significant distress. At the time, Social Services expressed concern about children in their care who could not contact family and friends after their phones had been seized on arrival in the UK. People lost the contact details of friends and family, in many cases permanently. The seizure of mobile phones made it much more difficult for people to contact and engage with essential services and to navigate their asylum claim. It thereby contributed to the poor working of the asylum process.”¹¹⁸
80. Whilst the Home Office may issue guidance about the use of the powers and training that will be required for authorised officers exercising those powers, any such guidance is not available for Parliamentary scrutiny during the passage of this Bill.

81. **CONCLUSION**

We are concerned that there is a risk that the new powers of search, seizure and retention, in practice, may lead to a blanket policy to search, and possibly seize and retain, items such as mobile phones from asylum seekers, victims of trafficking and children.

RECOMMENDATION

We recommend that the Government clarifies on the face of the Bill how these invasive powers will be used, in order to guard against the risk of indiscriminate searches. In circumstances where electronic devices are confiscated, the authorities must facilitate the contact of individuals with their close family members. We recommend this is clearly set out in guidance.

Clauses 34–35: Provision of biometric information by evacuees etc

82. Under clause 34, an authorised person¹¹⁹ may take biometric information from a person (including children) if the Government is in the process of facilitating their exit from a third country and they would need leave to enter the UK. This would cover, for example, crisis situations requiring evacuation. Biometric data would include data such as fingerprints and facial scans.¹²⁰ For children under 16, the presence of a responsible adult is

¹¹⁸ [Jesuit Refugee Services](#), BSAI0025, para 22

¹¹⁹ Meaning a person authorised by the Secretary of State, clause 34(6)

¹²⁰ Defined in section 15(1a) UK Borders Act 2007

required. In contrast to the current law, it will enable biometric information to be captured without individuals needing to make a UK immigration application.¹²¹

- 83.** Clause 35 provides that the information must then be passed to the Secretary of State, who can keep and use it for purposes relating to immigration, nationality, law enforcement or national security. The information cannot be kept for longer than necessary, and in any event no longer than 5 years, unless it can be held under another power.

Compatibility with Convention rights

- 84.** For collection and retention of biometric information to comply with Article 8 ECHR, the way the information will be used must be reasonably foreseeable, and the collection and retention must pursue a legitimate aim in a proportionate manner. There must be appropriate safeguards to prevent misuse of the information, especially if it will undergo automatic processing.¹²² Blanket and indiscriminate retention will not generally be compatible with Article 8.¹²³
- 85.** The ECHR memorandum¹²⁴ explains that the purpose of the power is to allow individuals' identity to be checked without needing them to make an immigration application, so the UK authorities can identify people of concern and make sure resources are concentrated on those who are genuine. This aim is legitimate. Clause 35 includes a range of safeguards to ensure that information is only used for specific purposes and is retained no longer than necessary.
- 86.** However, clause 35(7) provides that if the information is used to identify a person for the purposes of facilitating their departure from another state or territory, and the information is transferred to a third country or international organisation for that purpose, the transfer will automatically meet the requirement in the UK GDPR that it is "necessary for important reasons of public interest".¹²⁵ This means that the Secretary of State would

121 UK Home Office, 'Border Security, Immigration and Asylum Bill: ECHR Memorandum' (HO, 2025), para 108

122 *S and Marper v UK* [GC], Application Nos. 30562/04 and 30566/04, 4 December 2008, paras 95–104

123 *S and Marper*, para 125; *Gaughran v UK*, Application No. 45245/15, 13 February 2020, paras 87–98

124 UK Home Office, 'Border Security, Immigration and Asylum Bill: ECHR Memorandum' (HO, 2025), para.113

125 Article 49 of the UK GDPR provides that where there are no adequacy regulations or other appropriate safeguards in relation to a third country, personal data may be transferred there only if one of 7 specified conditions is met. One of those conditions, in paragraph (d), is that the transfer is necessary for important reasons of public interest. Article 49(4) provides that the public interest must be recognised in domestic law.

not need to consider, and a court would not be able to consider, whether a particular transfer of personal data to a third country or international organisation complied with that requirement - it would simply be deemed to have been met. The data protection regime is one of the mechanisms by which compliance with Article 8 ECHR is assured. The European Court has said that Article 8 requires there to be some consideration of the necessity and proportionality of sharing particular information with a third country.¹²⁶

87. With regard to children, Open Rights Group notes that collecting biometric data from children over 16 without consent could violate child protection standards: “According to the guidance of the Information Commissioner’s Office (ICO) on processing sensitive personal data under the UK GDPR, biometric data is categorised as special category data and requires explicit consent. The guidance stresses that when dealing with minors’ data, additional safeguards must be implemented to protect their rights. Therefore, collecting biometric data from children over 16 without proper consent could breach child protection standards, as it fails to meet the stringent consent requirements and the enhanced safeguards necessary for processing such sensitive information.”
88. ILPA notes that EU law specifically prohibits the transfer of personal data to a third country or international organisation for law enforcement purposes, “if there is a real risk that, as a result of such a transfer, the data subject might be subjected to torture, inhuman and degrading treatment or punishment or any other violation of his or her fundamental rights.”¹²⁷

89. **CONCLUSION**

We are concerned that clause 35(7) and (8), deeming transfer of personal data to third countries and international organisations to be necessary for important reasons of public interest, inappropriately disappplies the normal safeguards in data protection legislation when data is transferred to third countries.

RECOMMENDATION

Whilst recognising the need for the Home Office to act with expedition in these circumstances, and the potential national security concerns, we recommend the removal of clause 35(7) and (8) to ensure that the normal safeguards apply. (See Amendment 13, Annex)

126 Centrum för Rättvisa v Sweden [GC], Application No. 35252/08, paras 326–330.

127 Article 49 of Regulation (EU) 2024/1358, ILPA, House of Lords Second Reading Briefing, para 86

4 Asylum and Immigration

Repeal of immigration legislation

Clause 37: Repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024

- 90.** The Safety of Rwanda (Asylum and Immigration) Act 2024 (“SORA”) was passed after the Supreme Court held that the Government’s policy of removing asylum seekers to Rwanda, under the Migration and Economic Development Partnership (MEDP), was unlawful.¹²⁸ SORA was enacted to ensure that removals to Rwanda could go ahead without legal obstacles.
- 91.** The central provisions of SORA: confirm that the Republic of Rwanda is a safe third country for the purposes of removal; require any court or tribunal to conclusively treat Rwanda as a safe for the purposes of asylum and removal; and state explicitly that it is only for a Minister of the Crown to decide whether the UK will comply with an interim measure promulgated by the European Court of Human Rights.
- 92.** The Safety of Rwanda Bill sought to establish through legislative means that Rwanda was a safe country despite the Supreme Court’s conclusion that it was not.¹²⁹ A statement under section 19(1)(b) of the HRA was made when the Bill was introduced.¹³⁰ The predecessor JCHR published a critical report on the Safety of Rwanda Bill, concluding, inter alia, that it was incompatible with Article 13 ECHR (the right to an effective remedy), was inconsistent with respect for universal human rights and for the UK’s obligations under the ECHR (including compliance with interim measures), and risked damaging the UK’s reputation for respect for human rights and the rule of law.¹³¹

128 R (AAA and others) v Secretary of State for the Home Department [2023] UKSC 42

129 It should be noted that the Bill operated on the basis that the new, legally binding treaty with Rwanda met the concerns of the Supreme Court and thus legislating that the country was safe did not contradict the Supreme Court’s findings.

130 A statement under section 19(1)(b) HRA confirms that the Minister responsible for a Bill is unable to say that, in their opinion, the Bill is compatible with the rights guaranteed by the ECHR

131 JCHR, Legislative Scrutiny: Safety of Rwanda (Asylum and Immigration) Bill, [Second Report of Session 2023–24](#)

93.

CONCLUSION

Clause 37 of the Bill would repeal SORA in its entirety. This is consistent with the current Government's manifesto commitment to abandon the Rwanda policy. Repeal of SORA will remove the significant incompatibilities identified in the predecessor JCHR's report.

Clause 38: Repeal of certain provisions of the Illegal Migration Act 2023

94. The Illegal Migration Act 2023 (IMA) introduced significant changes to the UK's asylum system. In summary, it imposed a duty on the Secretary of State to make arrangements to remove any person who enters the UK irregularly and has not come directly from a territory where their life and liberty was threatened (which includes anyone who has stopped in or passed through a safe country). The asylum claim of any such individual would be declared inadmissible. In the absence of lawful routes to enter the UK in order to make an asylum claim, and given the requirement that an individual be within the UK in order to make such a claim, the IMA effectively prohibited the substantial majority of asylum seekers from having their claim for asylum considered in the UK. The intention behind the Bill was for those claims to be considered instead in a third country, with only Rwanda being identified as a country that would fulfil this function. The fall of the Rwanda policy thus removed any realistic possibility of the IMA's approach to asylum being practicable. The JCHR published a critical report on the Illegal Migration Bill, concluding that it "breaches a number of the UK's international human rights obligations and risks breaching others."¹³² The significant majority of the IMA has not yet been brought into force.
95. Clause 38 of the Bill repeals most of the provisions of the IMA. However, a number of provisions will not be repealed:
- a. Section 12, expanding powers of immigration detention (in force)
 - b. Section 29, strengthening the disqualification from modern slavery protections for migrants who have committed criminal offences or are otherwise considered a threat to public order (not in force)
 - c. Section 52, making First-tier Tribunal judges technically also Upper Tribunal judges (in force)
 - d. Section 59, expanding the rules on when an asylum or human rights claim to remain in the UK will not be processed because the person is from a safe country (partially in force)

132 JCHR, [Legislative Scrutiny: Illegal Migration Bill](#) 12th Report of 2022–2023, para 160

- e. Section 60, requiring the Home Secretary to make regulations capping the number of people who can enter the UK using “safe and legal routes”, such as refugee resettlement programmes
 - f. Section 62, expanding the circumstances in which the credibility of an asylum seeker’s story should be treated as damaged (in force).
96. The Explanatory Notes to the Bill notes that these provisions are not subject to repeal due to their “operational benefit”.¹³³
97. The JCHR’s predecessor committee raised concerns in relation to some of the above-mentioned provisions. We remain concerned by section 12, section 29, section 59 and section 62 IMA.

Section 12 IMA: immigration detention

98. The Government currently has the power to detain individuals for an indefinite period of time pending their deportation and removal from the UK. With the exceptions of children and pregnant women,¹³⁴ there are no statutory time limits on immigration detention.
99. Section 12 IMA modified the common law position to provide that it is for the Secretary of State, and not the courts, to determine what constitutes a reasonable period of detention. The previous Committee concluded that this change would result in an immigration detention system that was not consistent with Article 5 ECHR.¹³⁵
100. Professor Sarah Singer told us: “[t]his is an example of the expansive power that is being given to the Home Secretary and the reduction of judicial scrutiny. If the judiciary is not able to scrutinise a detention decision for reasonableness under the common law, or proportionality as required by Article 5 of the European Convention on Human Rights, it brings into question compatibility with our obligations there.”¹³⁶
101. Academics Dr Sabina Garahan and Dr Matthew Gillet argue, “by allowing detention for such period as ‘in the opinion of the Secretary of State’ is reasonably necessary, section 12(1)(b) conflicts with fundamental standards

133 [Explanatory notes](#), para.44

134 There is a time limit of 24 hours for detaining unaccompanied children in a short-term holding facility (Immigration Act 1971, Schedule 2, paragraph 18B inserted by the Immigration Act 2014). There is a 72-hour time-limit or not more than seven days where a longer period of detention of a is authorised personally by a Minister of the Crown, of pregnant women (Immigration Act 2016, s 60) and of accompanied children and their families in pre-departure accommodation (Immigration Act 2014, s 6).

135 JCHR, [Legislative Scrutiny: Illegal Migration Bill](#) 12th Report of 2022–2023, paras 194–202

136 [Professor Sarah Singer](#), Q6

of legal certainty, since the “opinion of the Secretary of State” is neither foreseeable nor open to legal challenge.” It would, of course, be open to challenge on public law grounds, such as irrationality.

- 102.** Others argue that it may be having little to no effect in practice. Medical Justice and Bail for Immigration Detainees submit that, in the context of applications before the High Court for release of detainees, “the Home Secretary often does not rely on section 12 and that when she does raise it her representatives often appear reluctant to place much weight on it.”¹³⁷ Nevertheless, in their joint written submission, Medical Justice and Bail for Immigration Detainees argued that section 12 should be repealed because “even if the Home Office does not currently rely on it, it is causing significant uncertainty about the law.”¹³⁸

103. RECOMMENDATION

Section 12 of the Illegal Migration Act modifies the common law position, making it for the Secretary of State, and not the courts, to determine what is a reasonable period of detention. We agree with our predecessor Committee and recommend the repeal of section 12 to restore certainty and ensure compliance with Article 5. (See Amendment 14, Annex).

Section 29 IMA: disapplication of modern slavery provisions

- 104.** Section 29 of the IMA is not yet in force. Upon commencement, it would amend section 63 of the Nationality and Borders Act 2022, which sets out disqualifications to providing a recovery period¹³⁹ to a potential victim of modern slavery based on grounds that the person is a threat to public order or has claimed to be a victim in bad faith. Section 63(3) NBA sets out categories of person who are considered to be a threat to public order. Section 29 of the IMA adds two further categories to that list, namely:
- a.** persons liable to deportation from the UK under section 3(5) or (6) of the 1971 Act on grounds of it being conducive to the public good or as a result of deportation of a family member or a recommendation following conviction;

¹³⁷ [Medical Justice and Bail for Immigration Detainees](#), BSAI0033, para10

¹³⁸ [Medical Justice and Bail for Immigration Detainees](#), BSAI0033, para 3

¹³⁹ Following a positive Reasonable Grounds decision, adult victims will be provided with a Recovery Period of at least 30 calendar days. This period begins on the day the Reasonable Grounds decision is made. During this period, support and assistance will also be provided on a consensual basis and potential victims will not be removed from the UK.

- b. persons liable to deportation under any other enactment that provides for such deportation.

- 105.** It also mandates that, unless there are ‘compelling circumstances’, non-British victims would be disqualified from protection if they have been sentenced to a period of imprisonment of any length. They will be denied a recovery and reflection period and denied limited leave to remain in the UK, and may therefore be removed from the UK. This significantly broadens the list of circumstances in which a victim of modern slavery would be treated as a threat to public order to include cases where the person has been sentenced to imprisonment regardless of the seriousness of their offence or the length of imprisonment. It would therefore exclude from protection victims compelled to commit criminal offences by their traffickers who are prosecuted and convicted due to their lack of knowledge of the availability of the defence from section 45 of the Modern Slavery Act 2015, as well as those victims convicted for immigration related offences. The previous Committee concluded that these provisions run counter to the UK’s obligations under ECAT and Article 4 ECHR.¹⁴⁰
- 106.** Sarah Dineley, Deputy Chief Crown Prosecutor at the CPS, stated: “[i]t is vital that, wherever possible, victims of trafficking are identified before any decisions are made on charge and prosecution; this is particularly important where the suspect is a child and reflects the findings of the ECtHR case of VCL and AN v The UK.” She also noted that the CPS has guidance on the application of the section 45 defence, “setting out steps that prosecutors must take when dealing with a case where the suspect or defendant might be a potential victim.”¹⁴¹
- 107.** Whilst survivors of modern slavery should be able to access the ‘Section 45’ defence,¹⁴² created to prevent the criminalisation of survivors for offences they were compelled to commit as a result of their exploitation, After Exploitation points out that “its application is narrow and there is a lack of awareness of the defence amongst professionals in the criminal justice system.”¹⁴³
- 108.** The Helen Bamber Foundation and Asylum Aid state the public order disqualification under the Nationality and Borders Act 2022 is already broad and is catching levels of behaviour that fall below the appropriate threshold for depriving a victim of protections. For example, “Asylum Aid recently represented a claimant, ‘EO’, whose case demonstrates just how wide reaching the impact of this provision can be. An extremely vulnerable

140 JCHR, [Legislative Scrutiny: Illegal Migration Bill](#) 12th Report of 2022–2023, para 53

141 [Letter](#) from Sarah Dineley, Deputy Chief Prosecutor at the CPS to Lord Alton, Chair of the JCHR, dated 5 June 2025, Q6

142 Section 45 Modern Slavery Act 2015

143 [After Exploitation](#), BSAI0009, p4

survivor of sexual exploitation, EO was sentenced to 12 months in prison for a single offence–fraud–over 10 years ago. Despite being assessed as posing a very low risk to the public by a probation officer, she was still subject to a public order disqualification until Asylum Aid brought a legal challenge to that decision.”¹⁴⁴

- 109.** The Law Society notes that there is limited ability to challenge decisions to disqualify someone from modern slavery protections: “there is no formal route to appeal or request reconsideration and so a challenge can only be brought by judicial review, which is a limited form of review and not a full reconsideration of the merits of the case.”¹⁴⁵
- 110.** ILPA notes that “[t]his provision disproportionately impacts survivors who were forced to commit crimes as part of their exploitation and who have received convictions. Analysis conducted in 2024 clearly demonstrates that, of the 338 people disqualified (including 40 children): 70% of all disqualified individuals were acknowledged as having an element of criminal exploitation in their case (73% of adult cases and 65% of child cases), compared to an average of 44% of NRM referrals with an element of criminal exploitation from 2020 and 2023.”¹⁴⁶
- 111.** In oral evidence to the Committee, Dr Marija Jovanovic told us: “[v]ictims are losing trust in the system. There is some evidence that since 2016 the proportion of those who refuse to engage with support services has soared by 630%. Without victims engaging there is no chance of prosecution. Those are at a record low, only 58 in a whole year compared with 17,000 potential victims in the same period.”¹⁴⁷

Compatibility with ECAT and Article 4 ECHR

- 112.** Article 13 of ECAT requires state parties to provide a “recovery and reflection period” of at least 30 days to potential VOTs, i.e. when there are reasonable grounds to believe that the person concerned is a victim of trafficking. During this period, the UK must not enforce any expulsion order against them and must authorise the persons concerned to stay in their territory, unless “grounds of public order prevent it or if it is found that victim status is being claimed improperly”. Article 4 ECHR is read by the courts as reflecting the principles set out in ECAT.

144 [Helen Bamber and Asylum Aid](#), para 12

145 [Law Society](#) of England and Wales, para 18

146 [ILPA](#), para 51, citing: Dr Noemi Magugliani, John Trajer and Dr Jean-Pierre Gauci, ‘Assessing the Modern Slavery Impacts of the Nationality and Borders Act: One Year On’ (June 2024) 37; and IOM, ‘Updated analysis of the National Referral Mechanism data’ (24 January 2024).

147 [Dr Marija Jovanovic](#), Q13

113. There is no definition in ECAT of what could be considered as “grounds of public order”. GRETA notes that “the grounds of public order should always be interpreted on a case-by-case basis, and it is not possible to automatically disqualify a victim from access to the recovery and reflection period on the basis that the person has violated migration laws. The grounds of public order are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period.”¹⁴⁸

114. RECOMMENDATION

We agree with our predecessor Committee that section 29 IMA, which broadens the public order disqualification in section 63 of the Nationality and Borders Act, is not compatible with the UK’s obligations under ECAT and Article 4 of the ECHR. We recommend that the Government repeal this provision. (See Amendment 14, Annex).

Section 59 IMA: inadmissibility of certain asylum and human rights claims

115. Section 59 IMA (partially in force)¹⁴⁹ amends section 80A of the Nationality, Immigration and Asylum Act 2002, which provides that asylum claims and human rights claims from nationals of listed states must be declared inadmissible. Section 59 IMA principally does two things. First, it extends the list from EU nationals to nationals of Albania, Iceland, Liechtenstein, Norway and Switzerland.¹⁵⁰ Second, it amends section 80A such that the inadmissibility provisions apply to human rights claims (that is, a claim by a person that to remove them from the UK would be unlawful under section 6 of the Human Rights Act 1998 which provides that a public authority must not act contrary to the ECHR) as well as asylum claims. Therefore, if enacted, all asylum and human rights claims made by nationals of the listed countries will be automatically inadmissible such that the merits of the claims will not be considered. Notably, the Secretary of State must (rather than may) declare these asylum and human rights claims inadmissible, unless there are exceptional circumstances.

148 [Council of Europe Group of Experts on Action against Trafficking in Human Beings \(GRETA\) \(IMB0024\)](#), para.16

149 [The Illegal Migration Act 2023 \(Commencement No. 1\) Regulations 2023](#) bring section 59 into force only “for the purpose of making regulations”.

150 [The Nationality, Immigration and Asylum Act 2002 \(Amendment of List of Safe States\) Regulations 2004](#) add Georgia and India to the list, but this will not take effect until section 59 IMA is fully commenced.

- 116.** Inadmissibility procedures allow a State to declare claims “inadmissible” when the claim is made by nationals of countries that are deemed safe. Section 80A(5) provides two non-exhaustive examples of exceptional circumstances. These are narrowly construed: first, where the listed state is derogating from the ECHR, and second, where the state is subject to proceedings¹⁵¹ before the EU due to the risk of a serious breach of Article 2 of the Treaty on European Union.¹⁵² ‘Exceptional circumstances’ have been defined narrowly by the courts.¹⁵³ There is no right of appeal (as the asylum/human rights claims are not refused—they are simply not considered).
- 117.** Our predecessor Committee concluded that that whilst the listed States may be considered to be safe ‘in general’, this does not guarantee their safety for all individuals, particularly those who are members of a particular social group. It must be possible for such individuals who face a real risk of persecution upon return to make a protection or human rights claim that must be considered on its merits in order to guard against the risk of refoulement.¹⁵⁴
- 118.** The implications for Albanian women and children are particularly concerning. For example, an Albanian woman who has been trafficked to the UK and faces a real risk of reprisals and re-trafficking upon return to Albania, could be returned to Albania unless she can demonstrate “exceptional circumstances” according to the determination of the Secretary of State. The UK country guidance and decisions of UK courts have recognised that certain groups of Albanian citizens may be at risk of persecution.¹⁵⁵
- 119.** Section 59 includes a Henry VIII clause that permits the Secretary of State to add to the list of safe countries by regulations. This power is in force and has already been used to add Georgia and India to the list.¹⁵⁶ There are serious

151 Under Article 7(1) TEU

152 Article 2 TEU: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

153 ZV (Lithuania) v Secretary of State for the Home Department [2021] EWCA Civ 1196, [34]-[35], requiring (in relation to UK’s former obligations under the Spanish Protocol) “compelling reasons to believe that there is a clear risk that they will be liable to persecution in the country of origin” and “plainly cogent evidence (typically of some systemic default)”.

154 JCHR, [Legislative Scrutiny: Illegal Migration Bill](#) 12th Report of 2022–2023, para 160

155 [UNHCR legal observations on the Illegal Migration Bill, 02 May 2023](#), para 17

156 The Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024

concerns amongst stakeholders in relation to the addition of these states. Over 180 Indian nationals were granted asylum in the 2 years to September 2024, and 53 Georgian nationals.¹⁵⁷

- 120.** In relation to Georgia, the Refugee Council notes that “in December 2024 the current Government sanctioned five Georgian officials for serious human rights violations. This included the Minister for Interior and the Director of the Tbilisi Police Department. The press release issued by the Foreign, Commonwealth and Development office at the time noted that ‘UN experts have condemned the pattern of repression and human rights violations in Georgia.’”¹⁵⁸ Rainbow Migration notes that, “[w]ithin the last year, the Georgian government has introduced repressive new laws to restrict the rights of LGBTQI+ people, including a ban on same-sex marriage, gender-affirming care, and on sharing information that could be perceived as ‘LGBTQI+ propaganda’ in schools and in the media Stephen Doughty MP, recognised this threat and has stated that Georgia’s new laws ‘undermine fundamental rights of freedom of expression and assembly, and risk discriminating against and stigmatising Georgia’s LGBT+ groups.’”¹⁵⁹ The Government’s recent condemnation of Georgia’s new laws highlights a further problem with section 59 - there is no statutory review mechanism for the designation of safe states. Whilst countries can be added and removed by way of regulations, there is no legal obligation to review the safety of listed states.
- 121.** In relation to India, Rainbow Migration shared two examples of clients who have been granted asylum in the UK:
- a.** “A trans woman from India came out to her parents at age fourteen. They reacted very negatively, locking her in the house and refusing to let her out. They forced her to undergo harmful conversion practices, which the UN rightly identify as “degrading” and “inhuman”.
 - b.** “A lesbian woman from India had an engagement arranged for her against her will. She told her fiancé about her sexuality and managed to get the engagement called off. However, her family later found out that the reason he had called off the wedding was because she was a lesbian, and she knew that her only option was to flee the country so that her family would not kill or seriously hurt her. After arriving in the UK and being granted asylum, she was informed by a family member in India that another family member said that if she were to return to

¹⁵⁷ [Helen Bamber and Asylum Aid](#), para 27

¹⁵⁸ [Refugee Council](#), para 25

¹⁵⁹ [Rainbow Migration](#), para 10, citing <https://civil.ge/archives/624795> and [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

India, they would ‘try to kill me, but even if they could not capture me or kill me, they would still throw acid on [my] face as a punishment for dishonouring the family.’”¹⁶⁰

- 122.** In its observations on the Bill, the UNHCR states: “while designation of safe countries may be used as a procedural tool to prioritise or accelerate the examination of applications in carefully circumscribed situations, it does not displace the requirement for an individualised assessment of an asylum claim. Section 59 therefore gives rise to a risk of refoulement, and UNHCR encourages that it be repealed.”¹⁶¹

123. RECOMMENDATION

We share the concerns of our predecessor Committee that, whilst the states listed may be considered safe in general, this does not guarantee the safety of all individuals from these states, especially those who are members of particular social groups facing persecution. It must be possible for such individuals who face a real risk of persecution upon return to make a protection or human rights claim which must be considered on its merits in order to guard against the risk of refoulement. If the Government chooses to bring section 59 of the Illegal Migration Act into force, it should, at the very least, periodically review the list of safe, with a particular consideration of the rights of minority groups.

Section 62 IMA: damaged credibility

- 124.** The Bill does not repeal section 62 IMA. This means that if a person making a human rights or asylum claim does not allow the Home Office to look at everything (including private information) on their phone, then the Home Office shall take that into account as damaging the person’s credibility when deciding whether to believe the person.
- 125.** In respect of this provision, the previous JCHR concluded in its report on the Illegal Migration Bill: “we remain concerned that an asylum or human rights claimant’s credibility should not be damaged by conduct that may be explained by something other than dishonesty or an attempt to conceal relevant information. Vulnerable asylum seekers may have other justifications for not wanting to hand over access to all their private information to a government official, not least an understandable lack of trust in authority.” The Committee recommended amending the Bill to

¹⁶⁰ [Rainbow Migration](#), para 13

¹⁶¹ [UNHCR legal observations on the Illegal Migration Bill, 02 May 2023](#), para 6

make clear that the credibility of a claimant who has provided a reasonable excuse for their failure to provide a password etc requested by the Home Office will not be affected.¹⁶²

126.

RECOMMENDATION

Section 62 IMA should be amended, as recommended by our predecessor Committee, to make clear that the credibility of a claimant who has provided a reasonable excuse for their failure to provide a password or other methods of access requested by the Home Office will not be affected. (See Amendment 15, Annex).

¹⁶² [Twelfth Report of Session 2022–23](#), para.372

5 Retrospective powers: detention and fees

Clause 41: Detention and exercise of functions pending deportation

- 127.** Clause 41 amends the current powers contained in paragraph 2(2) to Schedule 3 of the IA 1971, which permits the Secretary of State to detain individuals liable to deportation on the grounds that their presence in the UK is not considered conducive to the public good.¹⁶³ According to the Government, this clause is intended to “clarify” that the Home Office may detain someone subject to deportation from the point at which the Home Office serves notification that deportation is being considered.¹⁶⁴ This means that persons liable to deportation can be detained (when notified in writing by the Secretary of State):
- a.** while the Secretary of State considers whether to make a deportation order, and
 - b.** where the Secretary of State decides to make a deportation order, pending the making of the deportation order.
- 128.** The clause also amends section 141 of the Immigration Act 1999 (fingerprinting) and regulation 2 of the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021 (photographs) to clarify that fingerprints and photographs can be taken when the Secretary of State is considering making a deportation order.
- 129.** The clause also amends section 51(2) of the Immigration Act 2016 (power to direct prison officer or prison custody officer to search for nationality documents) to “clarify” that the Secretary of State may direct a prison officer or prisoner custody officer to search for nationality documents

¹⁶³ Foreign nationals and their dependants will be considered for deportation if they meet the criteria set out in HO guidance [Conducive Deportation](#) or [Public Policy, Public Security or Public Health Decisions](#)

¹⁶⁴ UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025),, para.127

when the Secretary of State is considering making a deportation order. The Government states that this is necessary as a person may be searched for their nationality documents at any stage pending deportation.¹⁶⁵

Retrospective not clarificatory

- 130.** Despite the Government’s characterisation of this clause as clarificatory, the Impact Assessment makes clear that this involves retrospectively making it lawful to have detained persons (liable to deportation on the ground it was considered conducive to the public good) at a time when they did not have notice of an appealable immigration decision, because they had not yet made a human rights or protection claim.¹⁶⁶ To detain a person under paragraph 2(2) of Schedule 3 to the Immigration Act 1971, pending the making of the deportation order, a person must have been given notice.¹⁶⁷ As explained by ILPA, “a “Stage 1” deportation decision was not an appealable decision; therefore, individuals could not have received the requisite notice under the relevant Immigration (Notices) Regulations 2003, which only governs appealable decisions.”¹⁶⁸ Alison Harvey, barrister at One Pump Court, told us: “[t]here is no question that it is changing the law. It is not a clarification in any way. It is not in any way compatible with Article 5 (...) There was no law and people were deprived of their liberty. The Government now want to rewrite that piece of history.”¹⁶⁹
- 131.** We note that the House of Lords Constitution Committee has frequently raised concerns about retrospective provisions, arguing that retrospective legislation “is unacceptable other than in very exceptional circumstances” and that, when used, “measures with retrospective effect must have the strongest possible justification”.¹⁷⁰

Compatibility with Convention rights

- 132.** These provisions raise issues under Articles 5, 8, and 13 of the ECHR. Article 5 is engaged by this clause as those liable to deportation will be deprived of their liberty. Any interference with Article 5 is justified where it is in accordance with the law and proportionate to achieve a legitimate aim.

¹⁶⁵ UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), para.129

¹⁶⁶ Border Security, Asylum and Immigration Bill, Impact Assessment, paras 125–126

¹⁶⁷ In accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision)

¹⁶⁸ [ILPA](#), para 72

¹⁶⁹ [Alison Harvey](#), Q10

¹⁷⁰ Constitution Committee, [Legislative standards of the Constitution Committee: 2017–2024](#) (6 May 2025), paras 77 and 78

Article 5(1)(f) specifically provides for “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”. It is the Government’s position that “there are some cases where the power to detain pending deportation is necessary because of a real and significant national security risk where no alternative detention power exists.”¹⁷¹ The power of detention contained in this clause is therefore in accordance with a legitimate aim.

- 133.** However, Clause 41’s purpose is to provide a legal basis for the Home Office’s current practice of detaining people early in the deportation process, i.e. after a “Stage 1” deportation decision has been made, while the Secretary of State considers whether to make a “Stage 2” deportation order.¹⁷² Medical Justice and Bail for Immigration Detainees state that this is a “new power to detain those who are being considered for deportation, but in respect of whom no decision to deport has been made, and who have not committed a sufficiently serious offence to trigger the automatic deportation powers.”¹⁷³ The Law Society notes that the retrospective application of clause 41 raises “significant doubts as to its compatibility with Article 5 ECHR”, and that those who would otherwise be owed a remedy for unlawful detention will be denied that remedy.¹⁷⁴
- 134.** This clause also engages Article 8 because it gives powers to obtain biometrics and search documents. An interference with this right must be in accordance with the law and proportionate to the pursuit of a legitimate aim. It is the Government’s position that “the power to collect and hold biometric information, and to search for nationality documents, pursues the legitimate aim of identifying individuals when detaining them during the deportation process which is operationally vital in the interests of effective immigration control, public safety and the prevention of disorder or crime.”¹⁷⁵ Given the legitimate aim, it is unlikely that the collection of biometrics and searching of nationality documents to assist with deportation will be considered a disproportionate interference with Article 8.
- 135.** The denial of a remedy for unlawful detention also risks violating Article 5(5) and Article 13 ECHR (the right to an effective remedy). If individuals have been detained pending deportation between Stage 1 and Stage 2

171 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), para.131

172 Border Security, Asylum and Immigration Bill, Impact Assessment, paras 125–126

173 [Medical Justice and Bail for Immigration Detainees](#), para 24

174 [Law Society](#) of England and Wales, para 24

175 UK Home Office, ‘Border Security, Immigration and Asylum Bill: ECHR Memorandum’ (HO, 2025), para.138

deportation decisions without any lawful basis, as appears to be the case, then such individuals have a right to claim compensation. Clause 41 would remove the ability to make such claims.

136. RECOMMENDATION

The Government’s position is that clause 41 “clarifies” the law. However, the operational effect would appear to amount to retrospectively making it lawful to have detained persons liable to deportation. This does not comply with Article 5 ECHR, which requires a lawful basis for detention, and Article 13 ECHR, which guarantees an effective remedy. We recommend the repeal of this clause. (See Amendment 16, Annex)

Retrospective validation of fees

- 137.** Clause 57 of the Bill also has retrospective effect. It “establishes retrospective power for the charging of fees for services related to the comparability, recognition or assessment of qualifications obtained outside and within the United Kingdom”.¹⁷⁶ Such fees have been charged by the Government without any statutory basis.¹⁷⁷ This clause seeks to retrospectively provide a legal basis for those charges. But for clause 51, people who had paid the fees would have a claim in restitution to recover the amount unlawfully charged.
- 138.** There may be a breach of Article 1 of Protocol 1 if legislation deprives potential claimants of the value of their claim. To constitute a property right protected by the ECHR, the claim must have a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming that a claim of that kind can be brought.¹⁷⁸
- 139.** The ECHR memorandum suggests that a claim to recover fees would not meet this test, because its legal basis would be too uncertain.¹⁷⁹ The Government argues that the relevant case law¹⁸⁰ only covers claims wrongly levied by the State, and that it is open to question whether it would apply to claims against third party contractors. This seems doubtful, given that subsequent case law has established that the same principle applies to

176 [European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)], para 188

177 House of Lords Debate 11 November 2024, vol 842, col 1455

178 *Kopecky v Slovakia* [GC], Application No. 44912/98, 28 September 2004, para 52

179 [European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)], para.189

180 *R v Commissioners of Inland Revenue ex p Woolwich Equitable Building Society* [1990] 1 WLR 1400

transactions which are not purely private (where the fee is agreed as part of a normal contractual bargain) but have a public character (where the fee is the compulsory cost of a public service).¹⁸¹

- 140.** The Government maintains that in any event it is justified for legislation to take away these claims, because it is fair and in the public interest that service users should pay a reasonable fee for the service, and it is legitimate to rectify a technical mistake in the legal framework.¹⁸² The case law suggests that something more is needed, such as that the retroactive legislation is restoring a widely held understanding of the legal position that has been unexpectedly disrupted.¹⁸³ The Government has provided insufficient information to allow an assessment of whether this is the case.

141. CONCLUSION

The Government has provided for the retrospective validation of fees charged without any statutory basis. We ask the Government to clarify its justification for the retrospective validation of these fees.

181 Ipswich Town v Suffolk Chief Constable [2017] EWHC 375 (QB), at [77]; see also [80]-[81] (claim for restitution based on mistake of law).

182 [European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25), para.192]

183 E.g. National and Provincial v UK, Application No. 21319/93 et al, paras 80–83. Contrast e.g. Reilly and Hewstone v Secretary of State for Work and Pensions [2016] EWCA Civ 413; Zielinski v France, Application No. 24846/94 et al, paras 59–60 (both cases about Article 6).

6 Conditions on leave and bail

- 142.** At Committee stage in the Commons, the Government added clause 43. This introduces an extension of the existing conditions that may be applied to any grant of limited leave to enter or remain in the UK under section 3(1)(c) of the Immigration Act 1971. This covers persons not liable to detention. The new conditions include electronic monitoring, requirements to be at certain places at certain times, requirements to remain in certain places, prohibitions on being in certain areas, and any “such other conditions as the Secretary of State thinks fit.”¹⁸⁴ The Government’s rationale was explained by the Minister in Public Bill Committee proceedings:

Where a person does not qualify for asylum or protection under the refugee convention but cannot be removed from the UK because of our obligations under domestic and international law, they are granted permission to stay. Irrespective of the threat posed by the person, our legislation prevents us from imposing the same conditions that they may have been subjected to while on immigration bail. The new clause will end that disparity in the powers available to protect the public from the particular migrant who poses a threat. It also makes crystal clear the conditions that may be imposed when a person is subject to immigration bail.¹⁸⁵

- 143.** The current restrictions, set out in section 3(1)(c) of the Immigration Act 1971, permit restrictions to be placed on individuals such as restrictions on the right to work and study, requirements to report to immigration officers, and residency requirements. The introduction of the power to impose curfews, exclusions, confinement, and electronic monitoring go far beyond the existing permissible conditions. The nature of these restrictions may engage Article 5. Although persons will not be imprisoned, measures that are considered so severe as to be destructive of a person’s liberty are likely to engage Article 5.¹⁸⁶ These provisions also engage the right to private life (Article 8) as individuals may be subjected to restrictions on where they can

184 Clause 43

185 Hansard HC, Public Bill Committee, 9 th Sitting, 13 March 2025 : Col 265 per Minister for Border Security and Asylum

186 Secretary of State for the Home Department v JJ [2007] UKHL 45; Secretary of State for the Home Department v AP [2010] UKSC 24

live, who they can associate with, and where they can go. It should be noted that Article 8 cannot be relied on in order to complain of personal, social, psychological and economic suffering which is a foreseeable consequence of one's own actions, such as the commission of a criminal offence or similar misconduct.¹⁸⁷ Depending on the nature of the conditions, other Convention rights might also be engaged such as the right to freedom of assembly and association (Article 11).

144. The safeguards are limited to a prohibition that these powers cannot be used in relation to a British citizen or settled person. Other than this, they can be used by immigration officers with no threshold and no time limit. The ECHR memo states: "The fact guidance will need to specifically set out what circumstances need to exist to permit conditions that may be imposed does not imply the clause is not capable of being compatible with Article 5. Rather, it reflects the fact that any application of the new measures will be fact sensitive and case specific with bespoke assessments necessary for the powers to be exercised compatibly with Article 5."¹⁸⁸
145. The Minister for Border Security and Asylum, Dame Angela Eagle MP, said during the Bill's passage through the House of Commons that: "The powers will be used only in cases involving conduct such as war crimes, crimes against humanity, extremism or serious crime, or where the person poses a threat to national security or public safety".¹⁸⁹ Clause 43 is much broader than this intention.
146. Amnesty describes this as an "extraordinary overreach of power".¹⁹⁰ Public Law Project notes that these restrictions are akin to those imposed on national security grounds (Terrorism Prevention and Investigation Measures), and that the same types of restrictions would be used against those who have lawful immigration status.¹⁹¹
147. Following an analysis of clause 43, the House of Lords Constitution Committee, in its report on the Bill, concluded: "[w]e draw the attention of the House to the broad and subjective power in clause 43. We recommend narrowing the power to impose 'such other conditions as the Secretary of State thinks fit' and that safeguards on the use of the power should be included on the face of the Bill."¹⁹²

187 Denisov v Ukraine, Application No. 76639/11, 25 September 2018, para 98.

188 UK Home Office, 'Border Security, Immigration and Asylum Bill: ECHR Memorandum' (HO, 2025)

189 Public Bill Committee on the Border Security, Asylum and Immigration Bill, 13 March 2025, [col 268](#)

190 [Amnesty International UK](#)

191 [Public Law Project](#)

192 [House of Lords - Border Security, Asylum and Immigration Bill - Select Committee on the Constitution](#), para 26

148. We note the Minister's comments that these powers are intended to be used in cases involving, amongst other things, serious international crimes. Where there is sufficient evidence that persons have been involved in serious international crimes such as genocide, such persons must be investigated and prosecuted. We reiterate the previous recommendation of this Committee in its report on Accountability for Daesh Crimes, that the International Criminal Court Act 2001 should be amended to provide for universal jurisdiction over genocide, crimes against humanity, and war crimes.¹⁹³ We note and welcome that this recommendation was echoed by the International Development Committee in its recent report on the UK's role in upholding international humanitarian law, which also called for legislative amendments to provide for universal jurisdiction.¹⁹⁴

149. RECOMMENDATION

The requirements in clause 43 for imposing conditions such as electronic monitoring, geographical exclusions, and curfews, should be set out clearly on the face of the Bill and adequately circumscribed. In order to reflect the Government's intentions as stated by the Minister, the exercise of these powers should be expressly limited to cases involving conduct such as war crimes, crimes against humanity, genocide, extremism or serious crime, or where the person poses a threat to national security or public safety. Given the potential severity of interferences with the rights of individuals with any form of limited leave to remain, the exercise of these powers should be subject to judicial scrutiny. (See Amendment 17, Annex).

¹⁹³ JCHR, [Accountability for Daesh crimes](#), para 51

¹⁹⁴ International Development Committee, [Protection not permission: The UK's role in upholding international humanitarian law and supporting the safe delivery of humanitarian aid](#), para 51

7 Treating certain crimes as “particularly serious”

- 150.** Clause 48 was added by way of Government amendment at Report stage in the Commons. It provides for the classification of certain sexual offences as “particularly serious” when determining exclusions from the protection against refoulement, regardless of period of imprisonment. The relevant offences are sexual offences under Schedule 3 of the Sexual Offences Act (SOA) 2003, which are the specified sex offences for which an individual will be subject to notification requirements. The Government’s intention is to “ensure that those who commit sexual offences and are considered to be a danger to the community of the UK are not able to benefit from refugee status.”¹⁹⁵ The operational effect of the clause would be to make a relevant individual ineligible for refugee status under the Immigration Rules.¹⁹⁶ Those who face exclusion from protection can rebut the presumption that they are a danger to the community.

Compatibility with Refugee Convention

- 151.** The Refugee Convention, in its Article 33(2), allows for refugees to be excluded from non-refoulement protections where there are reasonable grounds for regarding them as a danger to the security of the UK or where if, having been convicted of a particularly serious crime, they constitute a danger to the community in the UK.
- 152.** For these purposes, a particularly serious crime, in domestic law, is a crime for which a person is sentenced to a period of imprisonment of at least 12 months.¹⁹⁷ The threshold is therefore amended by this provision in the Bill - a person could be excluded from protection under the Refugee Convention for a conviction of any of these offences, irrespective of the length of the sentence. In theory, this could mean that more people could be excluded from the protection of non-refoulement under Article 33 of the Refugee Convention.

¹⁹⁵ Supplementary ECHR memorandum, para 13

¹⁹⁶ By way of refusal of asylum under paragraph 336; revocation under paragraph 338A; or exclusion from humanitarian protection under paragraph 339D

¹⁹⁷ Section 72 of the Nationality, Immigration and Asylum Act, as amended by section 38 NABA

153. However, in practice, the lowering of this threshold may have very little effect. Professor Sarah Singer told us: “the Nationality and Borders Act introduced a new interpretation of Article 33(2) [Refugee Convention]... It would be highly unlikely to have a case under the Sexual Offences Act that did not meet that already very low bar [of a twelve months’ sentence of imprisonment].”¹⁹⁸

Compatibility with Convention rights

154. In the supplementary ECHR memorandum published by the Government, it is noted that an individual affected by this amendment “would still be able to rely on Article 2 or 3 rights, if they faced a real risk of persecution, but their claim for refugee status would not be accepted.”¹⁹⁹ The Government also notes in its supplementary ECHR memorandum that this provision is likely to engage the right to respect for private and family life (Article 8 ECHR), but that this measure is “necessary in interests of the public”, and will be “exercised proportionately”, given that, according to the Government, individuals will be able to “argue against the presumptions made by the state regarding the seriousness of their offence, and the danger that they pose to the community.”⁴¹
155. The rebuttable presumption is an important safeguard to give refugees the opportunity to argue against the seriousness of their offence and the danger they pose to the community. The Convention also provides a safeguard as the principle of non-refoulement under certain rights, such as Articles 2 and 3, provides an absolute bar to removing or returning an individual to face real risks to life or real risks of torture, inhuman or degrading treatment or punishment.

156. **CONCLUSION**

Exclusions from the protections of the Refugee Convention are permitted in circumstances where individuals have committed “particularly serious crimes”. We acknowledge that the exclusion of individuals who pose a danger to the community is an important measure, and we support the Government’s intention to ensure that dangerous sex offenders cannot benefit from the protections of the Refugee Convention.

198 UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom (May 2021) para 22

199 Supplementary ECHR memorandum

8 Serious Crime Prevention Orders

- 157.** The Bill provides power to impose electronic monitoring as a requirement of a Serious Crime Prevention Order (SCPO). It also provides for the power to impose interim SCPOs whilst an application for a final order is pending. SCPOs, introduced by the Serious Crime Act 2007, are civil preventative orders that can impose tailored prohibitions, restrictions and requirements on a person for a period of up to five years to prevent or disrupt their involvement in serious crime. SCPOs may be imposed where a court is satisfied that a person has been involved in serious crime, and it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime. There is an indicative list of ‘serious offences’ in Schedule 1 to the 2007 Act for which an SCPO can be applied. Serious offences include fraud, money laundering, terrorism, drug and people trafficking. Examples of measures that can be included in an SCPO are also set out in the 2007 Act, they include restrictions on movement, association with others, phone and social media usage and finances.
- 158.** SCPOs can be obtained from the High Court in a stand-alone application or from the Crown Court by application following a person’s conviction for a serious crime. Only the DPP, the Director of the Serious Fraud Office and (in respect of terrorism related serious crime) Chief Officers of Police can bring applications for SCPOs.

Electronic monitoring

- 159.** Clause 52 provides the courts with the power to impose electronic monitoring²⁰⁰ as part of SCPO requirements. Electronic monitoring can be imposed where there are “reasonable grounds to believe that the [overall] order would protect the public” and that this particular requirement is “appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious

200 There is no definition in the Bill. The Ministry of Justice in its Electronic Monitoring Strategy has defined electronic monitoring in England and Wales to include the wearing of ankle tags (curfew tags, GPS tags, alcohol tags) overseen by a “supporting service”. Electronic Monitoring in Criminal Justice System, Ministry of Justice, June 2022, PDF p 6

crime.” Electronic monitoring can be imposed for up to twelve months at a time, subject to extension upon application. The Bill does not specify the grounds on which such extensions may be made.

- 160.** Open Rights Group note that “the Bill’s provisions offer limited procedural safeguards (for instance, reliance on “reasonable grounds” rather than rigorous independent judicial oversight). Such a low threshold can lead to overly broad applications of state power.”²⁰¹ Migrant Help states that “the use of electronic monitoring is also actively discouraged by human rights experts for the “stigmatizing and negative psychological effects”, which are likely to be “disproportionate to the benefits of such monitoring”.²⁰² They also note that “[p]eople in our Network who have experienced electronic monitoring said that it made them feel ‘inhuman’ and severely negatively impacted their mental health.”²⁰³
- 161.** The power to impose electronic monitoring engages Article 8, which requires that any interferences with the right to private and family life are in accordance with the law, in pursuit of a legitimate aim and necessary and proportionate to that aim. Generally, measures imposed by way of an SCPO will be justified on the basis that they can only be imposed where the court is satisfied (on the civil standard of proof–i.e. more likely than not) that the individual “has been involved in serious crime” and the court has reasonable grounds to believe that the order would protect the public. Furthermore, the courts, as public authorities, are obliged under the HRA to act compatibly with human rights, so any conditions that are imposed must not violate human rights, including by interfering with Article 8 disproportionately. The power is clear and adequately prescribed, and in pursuit of the legitimate aim of preventing serious crime. However, the threshold test is whether the electronic monitoring is “appropriate”. In order to comply with Article 8, the test ought to be one of necessity and proportionality.

162. RECOMMENDATION

Given the severe infringement on the right to privacy posed by the imposition of electronic monitoring, the threshold test for electronic monitoring should be one of “necessity and proportionality”, not whether it is “appropriate”. Clause 52 should be amended accordingly. (See Amendment 18, Annex).

201 [Open Rights Group](#), p4

202 [Migrant Help](#) Q6

203 [Migrant Help](#) Q6

Interim SCPOs

- 163.** Clause 53 introduces a new interim SCPO (ISCPO) which would allow the High Court to impose requirements on the subject while the full application is pending. The test for imposing an ISCPO is whether the court “considers it just to do so”. The aim of this provision is to provide for the immediate mitigation of potential risks and prevent harm to the public before criminal activities take place.
- 164.** ISCPOs could be obtained without notice being given to the subject if the High Court accepts that “the outcome sought by the applicant” (presumably protecting against serious crime) is likely to be prejudiced by notice being given. Where an order is made without notice, the subject of the ISCPO must be given an opportunity to make representations as soon as reasonably practicable. The ISCPO, once made, would not be binding on the subject until they have been given notice of it (which must be done within 7 days). It would also expire at a determined date or at the point when the full SCPO application is determined.
- 165.** The provision is sufficiently clear and accessible. The aim of preventing serious crime is legitimate. As to whether it is necessary and proportionate, it is notable that the threshold for imposing an ISCPO is merely that the court considers it “just”. It is arguable that a more rigorous threshold test would ensure that the use of ISCPOs (potentially without notice), and the interference with Article 8 rights involved, is proportionate. Migrant Help raised a concern that “the lack of clarity around the criteria for “just to do so” could lead to overly broad applications of interim orders in situations where they may not be strictly necessary.”²⁰⁴

166. CONCLUSION

Given that the threshold for imposing interim SCPOs is substantially lower than for full SCPOs, there is a risk that they could be imposed in circumstances that do not justify a full SCPO.

RECOMMENDATION

To ensure respect for Convention rights, the prosecuting authorities and the courts must be careful to only seek and impose these interim orders where risks are imminent, such that an interim order is required.

Conclusions and recommendations

New immigration offences

1. We are concerned that the breadth of these precursor offences poses a risk of unintended harms to those who are most vulnerable. To mitigate this risk, we consider that the precursor offences would benefit from greater circumscription and more robust safeguards and propose various amendments (below). (Conclusion, Paragraph 38)
2. We support the Government's intention to disrupt and deter organised immigration crime and to safeguard life. However, we are concerned that the precursor offences, as currently drafted, create uncertainty, extend beyond the Government's stated legitimate aim, and risk inadvertently criminalising persons who ought to be protected from criminal penalty. The scope is broad, the thresholds are low, and the penalties are high. To ensure compliance with the Refugee Convention, the Smuggling Protocol, and the Council of Europe Convention Against Trafficking, we propose a series of amendments. (Conclusion, Paragraph 50)
3. In relation to clauses 13 and 14:
 - a. The Government should give consideration to amending the scope of the offences to ensure that they only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain. (See Amendments 1 and 2, Annex).
 - b. The mental threshold should be changed from "knows or suspects" to "intends" that, or is "reckless" as to whether, the relevant article is to be used in connection with the commission of the specified immigration offences. (See Amendments 3 and 4, Annex).
 - c. The defence of "reasonable excuse" ought to explicitly provide that it must be interpreted compatibly with Article 31 of the Refugee Convention, Article 5 of the Smuggling Protocol, and section 26 of the Council of Europe Convention Against Trafficking. (See Amendments 5 and 6, Annex)

- d. The offences in clauses 13 and 14 should be added to the existing defence in section 31 of the Immigration and Asylum Act 1999. This would, in certain circumstances, provide a defence to refugees who come to the UK directly from a country where their life or freedom was threatened. (See Amendment 7, Annex). (Recommendation, Paragraph a)) (Recommendation, Paragraph 51)
- 4. Clause 15 should be amended to ensure that the list of exempted “relevant articles” includes items commonly used by asylum seekers. At a minimum, this must include items such as hygiene kits. (See Amendment 8, Annex). (Recommendation, Paragraph 52)
- 5. In relation to clause 16:
 - a. The Government should give consideration to amending the scope of the offences to ensure that they only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain. (See Amendment 9, Annex)
 - b. Clause 16(2) should be removed and replaced with a requirement that the person intended the information to be useful in organising or preparing for a relevant journey, or was reckless as to whether the information would be useful to a person organising or preparing for a relevant journey. (See Amendment 10, Annex).
 - c. The defence of “reasonable excuse” ought to explicitly provide that it must be interpreted compatibly with the Article 31 of the Refugee Convention, Article 5 of the Smuggling Protocol, and section 26 of the Council of Europe Convention Against Trafficking. (See Amendment 11, Annex).
 - d. The offence in clause 16 should be added to the existing defence in section 31 of the Immigration and Asylum Act 1999. This would, in certain circumstances, provide a defence to refugees who come to the UK directly from a country where their life or freedom was threatened. (See Amendment 7, Annex) (Recommendation, Paragraph 53)
- 6. More broadly, we agree with our predecessor Committee that the Government should fully incorporate Article 31 of the Refugee Convention into section 31 of the Immigration and Asylum Act 1999. Section 31 should include the new offences in this Bill and the offence of illegal entry/arrival under section 24 of the Immigration Act 1971. (See Amendment 3, Annex). (Recommendation, Paragraph 54)

7. The Government should ensure that clause 18 is sufficiently clear and circumscribed, reflects the legitimate aim it is intended to achieve, and is proportionate to that aim. In particular, a mental element should be introduced to ensure that only conduct which is intentional or reckless is criminalised. (See Amendment 12, Annex) (Recommendation, Paragraph 68)

Powers of search, seizure and retention in relation to electronic devices

8. We are concerned that there is a risk that the new powers of search, seizure and retention, in practice, may lead to a blanket policy to search, and possibly seize and retain, items such as mobile phones from asylum seekers, victims of trafficking and children. (Conclusion, Paragraph 81)

We recommend that the Government clarifies on the face of the Bill how these invasive powers will be used, in order to guard against the risk of indiscriminate searches. In circumstances where electronic devices are confiscated, the authorities must facilitate the contact of individuals with their close family members. We recommend this is clearly set out in guidance. (Recommendation, Paragraph 81)

9. We are concerned that clause 35(7) and (8), deeming transfer of personal data to third countries and international organisations to be necessary for important reasons of public interest, inappropriately disappplies the normal safeguards in data protection legislation when data is transferred to third countries. (Conclusion, Paragraph 89)

Whilst recognising the need for the Home Office to act with expedition in these circumstances, and the potential national security concerns, we recommend the removal of clause 35(7) and (8) to ensure that the normal safeguards apply. (See Amendment 13, Annex) (Recommendation, Paragraph 89)

Asylum and Immigration

10. Clause 37 of the Bill would repeal SORA in its entirety. This is consistent with the current Government's manifesto commitment to abandon the Rwanda policy. Repeal of SORA will remove the significant incompatibilities identified in the predecessor JCHR's report. (Conclusion, Paragraph 93)
11. Section 12 of the Illegal Migration Act modifies the common law position, making it for the Secretary of State, and not the courts, to determine what is a reasonable period of detention. We agree with our predecessor

Committee and recommend the repeal of section 12 to restore certainty and ensure compliance with Article 5. (See Amendment 14, Annex). (Recommendation, Paragraph 103)

12. We agree with our predecessor Committee that section 29 IMA, which broadens the public order disqualification in section 63 of the Nationality and Borders Act, is not compatible with the UK's obligations under ECAT and Article 4 of the ECHR. We recommend that the Government repeal this provision. (See Amendment 14, Annex). (Recommendation, Paragraph 114)
13. We share the concerns of our predecessor Committee that, whilst the states listed may be considered safe in general, this does not guarantee the safety of all individuals from these states, especially those who are members of particular social groups facing persecution. It must be possible for such individuals who face a real risk of persecution upon return to make a protection or human rights claim which must be considered on its merits in order to guard against the risk of refoulement. If the Government chooses to bring section 59 of the Illegal Migration Act into force, it should, at the very least, periodically review the list of safe, with a particular consideration of the rights of minority groups. (Recommendation, Paragraph 123)
14. Section 62 IMA should be amended, as recommended by our predecessor Committee, to make clear that the credibility of a claimant who has provided a reasonable excuse for their failure to provide a password or other methods of access requested by the Home Office will not be affected. (See Amendment 15, Annex). (Recommendation, Paragraph 126)

Retrospective powers: detention and fees

15. The Government's position is that clause 41 "clarifies" the law. However, the operational effect would appear to amount to retrospectively making it lawful to have detained persons liable to deportation. This does not comply with Article 5 ECHR, which requires a lawful basis for detention, and Article 13 ECHR, which guarantees an effective remedy. We recommend the repeal of this clause. (See Amendment 16, Annex) (Recommendation, Paragraph 136)
16. The Government has provided for the retrospective validation of fees charged without any statutory basis. We ask the Government to clarify its justification for the retrospective validation of these fees. (Conclusion, Paragraph 141)

Conditions on leave and bail

17. The requirements in clause 43 for imposing conditions such as electronic monitoring, geographical exclusions, and curfews, should be set out clearly on the face of the Bill and adequately circumscribed. In order to reflect the Government's intentions as stated by the Minister, the exercise of these powers should be expressly limited to cases involving conduct such as war crimes, crimes against humanity, genocide, extremism or serious crime, or where the person poses a threat to national security or public safety. Given the potential severity of interferences with the rights of individuals with any form of limited leave to remain, the exercise of these powers should be subject to judicial scrutiny. (See Amendment 17, Annex). (Recommendation, Paragraph 149)

Treating certain crimes as “particularly serious”

18. Exclusions from the protections of the Refugee Convention are permitted in circumstances where individuals have committed “particularly serious crimes”. We acknowledge that the exclusion of individuals who pose a danger to the community is an important measure, and we support the Government's intention to ensure that dangerous sex offenders cannot benefit from the protections of the Refugee Convention. (Conclusion, Paragraph 156)

Serious Crime Prevention Orders

19. Given the severe infringement on the right to privacy posed by the imposition of electronic monitoring, the threshold test for electronic monitoring should be one of “necessity and proportionality”, not whether it is “appropriate”. Clause 52 should be amended accordingly. (See Amendment 18, Annex). (Recommendation, Paragraph 162)
20. Given that the threshold for imposing interim SCPOs is substantially lower than for full SCPOs, there is a risk that they could be imposed in circumstances that do not justify a full SCPO. (Conclusion, Paragraph 166)

To ensure respect for Convention rights, the prosecuting authorities and the courts must be careful to only seek and impose these interim orders where risks are imminent, such that an interim order is required. (Recommendation, Paragraph 166)

Annex 1: List of amendments

Amendment 1

Clause 13, page 7, line 12, at end insert–

“and

(c) P derives a financial or material benefit, directly or indirectly, from the supply or offer to supply a relevant article.”

Explanatory statement: This amendment gives effect to the JCHR’s recommendation that the scope of the offence in clause 13 should only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain.

Amendment 2

Clause 14, page 8, line 2, after “if” insert–“P derives a financial or material benefit, directly or indirectly from the handling of a relevant article, and”

Explanatory statement: This amendment gives effect to the JCHR’s recommendation that the scope of the offence in clause 14 should only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain.

Amendment 3

Clause 13, page 7, line 9, leave out “knows or suspects” and insert “intends that, or is reckless as to whether,”.

Explanatory statement: This amendment gives effect to the JCHR’s recommendation that the mens rea threshold for clause 13 ought to be one of intention or recklessness.

Amendment 4

Clause 14, page 8, line 9, leave out “knows or suspects” and insert “intends that, or is reckless as to whether,”.

Explanatory statement: This amendment gives effect to the JCHR’s recommendation that the mens rea threshold for clause 14 ought to be one of intention or recklessness.

Amendment 5

Clause 13, page 7, line 15, at end insert–

“(2A) For the purpose of subsection (2), a defence of reasonable excuse must be interpreted in accordance with Article 31 of the UN Convention Relating to the Status of Refugees 1951, Article 5 of the Protocol against Smuggling of Migrants by Land, Sea and Air 2000, and section 26 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005.

Explanatory statement: This amendment gives effect to the JCHR recommendation that the defence of reasonable excuse in clause 13 must be interpreted compatibly with the UK’s international legal obligations not to penalise refugees, smuggled persons, and victims of trafficking, in certain circumstances.

Amendment 6

Clause 14, page 8, line 14, at end insert–

(3A) For the purpose of subsection (3), a defence of reasonable excuse must be interpreted compatibly with Article 31 of the UN Convention Relating to the Status of Refugees 1951, Article 5 of the Protocol against Smuggling of Migrants by Land, Sea and Air 2000, and section 26 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005.

Explanatory statement: This amendment gives effect to the JCHR recommendation that the defence of reasonable excuse in clause 14 must be interpreted compatibly with the UK’s international legal obligations not to penalise refugees, smuggled persons, and victims of trafficking, in certain circumstances.

Amendment 7

After Clause 48, insert the following new Clause–

“Immigration crime offences: application of Refugee Convention defence

(1) Section 31 of the Immigration and Asylum Act 1999 (defences based on Article 31(1) of the Refugee Convention) is amended as follows

(2) After subsection (3)(c) insert–

“(d) section 13 of the Border Security, Asylum and Immigration Act 2025;

(e) section 14 of the Border Security, Asylum and Immigration Act 2025;

(f) section 16 of the Border Security, Asylum and Immigration Act 2025;

(g) section 24 of the Immigration Act 1971.”

(3) After subsection (4)(d) insert–

(e) section 13 of the Border Security, Asylum and Immigration Act 2025;

(f) section 14 of the Border Security, Asylum and Immigration Act 2025;

(g) section 16 of the Border Security, Asylum and Immigration Act 2025;

(h) section 24 of the Immigration Act 1971.”

Explanatory statement: This amendment gives effect to the JCHR recommendations that the offences in clauses 13, 14, and 16 of the Bill, as well as the offence of illegal entry etc under section 24 of the Immigration Act 1971, should be added to section 31 of the Immigration and Asylum Act 1999 , which provides a statutory defence for refugees in certain circumstances.

Amendment 8

Clause 15, page 8, line 38, at end insert–

“(fa) hygiene kits. “

Explanatory statement: This amendment gives effect to the JCHR recommendation that the list of exempted articles should be extended to include items such as hygiene kits.

Amendment 9

Clause 16, page 9, line 12, after “if” insert “P derives a financial or material benefit, directly or indirectly, from the supply or offer to supply a relevant article, and”

Explanatory statement: This amendment gives effect to the JCHR’s recommendation that the scope of the offence in clause 16 should only apply to persons involved in the smuggling of persons for direct or indirect financial or material gain.

Amendment 10

Clause 16, page 9, line 21, leave out subsection (2) and insert–

“(2) Those circumstances are where P intended that, or was reckless as to whether, the record or document, or any information contained in it, will be used by P or any other person in organising or preparing for a relevant journey or part of such a journey.”

Explanatory statement: This amendment gives effect to the JCHR recommendation that a mens rea threshold of intention or recklessness should be introduced for the offence in clause 16.

Amendment 11

Clause 16, page 10, line 3, at end insert–

“(7A) For the purpose of subsection (7), a defence of reasonable excuse must be interpreted compatibly with Article 31 of the UN Convention Relating to the Status of Refugees 1951, Article 5 of the Protocol against Smuggling of Migrants by Land, Sea and Air 2000, and section 26 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005.

Explanatory statement: This amendment gives effect to the JCHR recommendation that the defence of reasonable excuse in clause 16 must be interpreted compatibly with the UK’s international legal obligations not to penalise refugees, smuggled persons, and victims of trafficking, in certain circumstances.

Amendment 12

Clause 18, page 11, line 26, at end insert–

“and

(d) the person intended to cause, or create a risk of, death or serious personal injury, or was reckless in doing so.”

Explanatory statement: This amendment gives effect to the JCHR’s recommendation that a mens rea threshold of intention or reckless should be introduced into the clause 18 offence.

Amendment 13

Clause 35, page 30, line 20, leave out subsections (7) and (8)

Explanatory statement: This amendment gives effect to the JCHR recommendation that clause 35(7) and (8) should be removed to ensure that the normal safeguards apply to data transfers.

Amendment 14

Clause 38, page 31, line 15, at end insert–

“ (i) section 12;

(j) section 29”

Explanatory statement: This amendment gives effect to the JCHR recommendation that sections 12 and 29 of the Illegal Migration Act should be repealed.

Amendment 15

To move the following Clause–

“Treatment of claimants: claimant’s credibility

(1) Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (claimant’s credibility) is amended as follows

(2) In subsection (3)(da), after “failure” insert “without reasonable explanation”

Explanatory statement: This amendment gives effect to the JCHR recommendation that section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (claimant’s credibility), as amended by the Illegal Migration Act 2023, should be amended to provide a reasonable excuse defence for persons who fail to give certain information to the Home Office.

Amendment 16

Page 33, line 2, leave out clause 41

Explanatory statement: This amendment gives effect to the JCHR recommendation that clause 41 should be repealed as it retrospectively validates unlawful detention.

Amendment 17

Clause 43, page 38, line 30, at end insert–

“ (c) after subsection (1) insert—

(1A) The conditions contained in paragraphs (vi) to (x) of subsection (1) may only be imposed where the Secretary of State reasonably considers that the person poses a threat to national security, public safety or serious crime.”

Explanatory statement: This amendment gives effect to the JCHR recommendation that the imposition of strict conditions on persons with limited leave in the UK should only be permitted where an individual poses a threat to national security, public safety or serious crime.

Amendment 18

Clause 52, page 49, line 32, at end insert–

“(1A) The requirement may only be imposed where it is necessary and proportionate taking into account P’s rights under Article 8 of the European Convention on Human Rights.”

Explanatory statement: This amendment gives effect to the JCHR recommendation that electronic monitoring of persons such be a Serious Crime Prevention Order should only be permitted where it is necessary and proportionate in accordance with Article 8 of the European Convention on Human Rights.

Formal minutes

Wednesday 18 June 2025

Members present:

Lord Alton of Liverpool (Chair)

Lord Dholakia

Tom Gordon

Afzal Khan

Baroness Lawrence of Clarendon

Lord Murray of Blidworth

Lord Sewell of Sanderstead

Alex Sobel

Peter Swallow

Sir Desmond Swayne

Legislative Scrutiny: Border Security, Asylum and Immigration Bill

Draft Report (*Legislative Scrutiny: Border Security, Asylum and Immigration Bill*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 52 read and agreed to.

Paragraph 53 read.

Amendment proposed, leave out lines 12 to 16. (*Lord Murray of Blidworth*)

Question put, That the Amendment be made.

The Committee divided.

Content	Not Content
Lord Murray of Blidworth	Lord Alton of Liverpool
Lord Sewell of Sanderstead	Lord Dholakia
Sir Desmond Swayne	Tom Gordon
	Baroness Lawrence of Clarendon
	Alex Sobel
	Peter Swallow

Question negatived.

Question put, That the paragraph stand part of the Report.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Lord Sewell of Sanderstead
Tom Gordon	Sir Desmond Swayne
Baroness Lawrence of Clarendon	
Alex Sobel	
Peter Swallow	

Question accordingly agreed to.

Paragraph 54 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Lord Sewell of Sanderstead
Tom Gordon	Sir Desmond Swayne
Baroness Lawrence of Clarendon	
Alex Sobel	
Peter Swallow	

Question accordingly agreed to.

Paragraphs 55 to 102 read and agreed to.

Paragraph 103 read.

Question put, That the paragraph stand part of the Report

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Lord Sewell of Sanderstead
Tom Gordon	Sir Desmond Swayne
Baroness Lawrence of Clarendon	
Alex Sobel	
Peter Swallow	

Question accordingly agreed to.

Paragraphs 104 to 125 read and agreed to.

Paragraph 126 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Sir Desmond Swayne
Tom Gordon	
Baroness Lawrence of Clarendon	
Lord Sewell of Sanderstead	
Alex Sobel	
Peter Swallow	

Question accordingly agreed to.

Paragraphs 127 to 135 read and agreed to.

Paragraph 136 read.

Question put, That the paragraph stand part of the Report.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Lord Sewell of Sanderstead
Tom Gordon	Sir Desmond Swayne
Baroness Lawrence of Clarendon	
Alex Sobel	
Peter Swallow	

The Committee divided.

Question accordingly agreed to.

Paragraphs 137 to 161 read and agreed to.

Paragraph 162 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Lord Sewell of Sanderstead
Tom Gordon	Sir Desmond Swayne
Baroness Lawrence of Clarendon	
Alex Sobel	
Peter Swallow	

Question accordingly agreed to.

Paragraphs 163 to 166 read and agreed to.

Annex 1 brought up and read.

Amendment proposed, Annex 1, Page 68, leave out from “Amendment 15” until “the Home Office” on page 69. (*Sir Desmond Swayne*)

Question put, That the Amendment be made.

The Committee divided.

Content

Lord Murray of Blidworth

Sir Desmond Swayne

Not Content

Lord Alton of Liverpool

Lord Dholakia

Tom Gordon

Baroness Lawrence of Clarendon

Lord Sewell of Sanderstead

Alex Sobel

Peter Swallow

Question negatived

Amendment proposed, Annex 1, Page 69, leave out from “Amendment 17” until “serious crime” (*Sir Desmond Swayne*)

Question put, That the Amendment be made.

The Committee divided.

Content

Lord Murray of Blidworth

Lord Sewell of Sanderstead

Sir Desmond Swayne

Not Content

Lord Alton of Liverpool

Lord Dholakia

Tom Gordon

Baroness Lawrence of Clarendon

Alex Sobel

Peter Swallow

Question negatived.

Amendment proposed, Annex 1, Page 69, leave out from “Amendment 18” until end. (*Sir Desmond Swayne*)

Question put, That the Amendment be made.

The Committee divided.

Content	Not Content
Lord Murray of Blidworth	Lord Alton of Liverpool
Lord Sewell of Sanderstead	Lord Dholakia
Sir Desmond Swayne	Tom Gordon
	Baroness Lawrence of Clarendon
	Alex Sobel
	Peter Swallow

Question negatived.

Annex agreed to.

Question put, that the Summary be agreed to.

The Committee divided

Content	Not Content
Lord Alton of Liverpool	Lord Murray of Blidworth
Lord Dholakia	Lord Sewell of Sanderstead
Tom Gordon	Sir Desmond Swayne
Alex Sobel	
Peter Swallow	

Question accordingly agreed to.

Motion made, and Question put, That the Report be the Fourth Report of the Committee to both Houses.

The Committee divided.

Content	Not Content	Abstain
Lord Alton of Liverpool	Lord Murray of Blidworth	Lord Sewell of Sanderstead
Lord Dholakia	Sir Desmond Swayne	
Tom Gordon		
Alex Sobel		
Peter Swallow		

Resolved, That the Report be the Fourth Report of the Committee to the House of Lords and the House of Commons.

Ordered, That the Chair make the Report to the House of Lords and that Sir Desmond Swayne make the Report to the House of Commons.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

Adjourned till Wednesday 25 June at 2pm.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 14 May 2025

Dr Marija Jovanovic, Research Fellow in Business and Human Rights, Bonavero Institute of Human Rights, University of Oxford; **Zoe Bantleman**, Legal Director, Immigration Law Practitioners' Association (ILPA); **Professor Sarah Singer**, Professor of Refugee Law, Refugee Law Initiative, School of Advanced Study, University of London; **Alison Harvey**, Barrister, One Pump Court [Q1–13](#)

Richard Alcock CBE, Director of Strategy and Policy, Border Security Command [Q14–22](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

BSAI numbers are generated by the evidence processing system and so may not be complete.

1	After Exploitation	BSAI0009
2	Amnesty International UK	BSAI0002
3	Anand, Dr Amit (Assistant Professor of Law, School of Legal Studies, REVA University, Bengaluru)	BSAI0010
4	Anti-trafficking Monitoring Group; and Members of the Anti-Trafficking Monitoring Group are listed in the submission	BSAI0007
5	Children's Commissioner's Office	BSAI0018
6	Dinesson, Dr Kajsa (Lecturer in law, University of York, York Law School)	BSAI0012
7	Eboka, Miss Joy (Student, Northampton Academy)	BSAI0004
8	Freedom from Torture	BSAI0035
9	Garahan, Dr Sabina (Lecturer, Essex Law School/Human Rights Centre); and Gillett, Dr Matthew (Senior Lecturer, Essex Law School/Human Rights Centre)	BSAI0021
10	Helen Bamber Foundation; and Asylum Aid	BSAI0020
11	Immigration Law Practitioners' Association (ILPA)	BSAI0036
12	International Organization for Migration	BSAI0032
13	Jesuit Refugee Service UK	BSAI0025
14	Justice	BSAI0027
15	Liberty	BSAI0003
16	Medical Justice and Bail for Immigration Detainees (BID)	BSAI0033
17	Migrant Help	BSAI0023
18	Migrants' Rights Network	BSAI0014
19	Minetti, Dr Marta (Lecturer, Goldsmiths, University of London)	BSAI0005

20	No to Hassockfield	<u>BSAI0006</u>
21	Northern Ireland Human Rights Commission	<u>BSAI0034</u>
22	Open Rights Group	<u>BSAI0011</u>
23	Public Law Project	<u>BSAI0013</u>
24	Pulvirenti, Dr Rossella (Senior Lecturer in Law, Manchester Metropolitan University; and Senior Lecturer in Law, Manchester Metropolitan University); and Lalor, Dr Kay (Reader in Human Rights Law, Manchester Metropolitan University; and Reader in Human Rights Law, Manchester Metropolitan University)	<u>BSAI0016</u>
25	Rainbow Migration	<u>BSAI0031</u>
26	Refugee Council	<u>BSAI0029</u>
27	Refugee and Migrant Children's Consortium	<u>BSAI0019</u>
28	Riaz, Ayesha (Senior Lecturer in Law, University of Greenwich)	<u>BSAI0017</u>
29	Runnymede Trust	<u>BSAI0028</u>
30	Scottish Refugee Council	<u>BSAI0022</u>
31	The Law Society of England and Wales	<u>BSAI0026</u>
32	The Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC)	<u>BSAI0024</u>
33	Welsh, Dr Alice (Lecturer, University of York); and O'Brien, Professor Charlotte (Professor, University of York)	<u>BSAI0015</u>

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2024–25

Number	Title	Reference
3rd	Legislative Scrutiny: Mental Health Bill	HC 601
2nd	Accountability for Daesh crimes	HC 612
1st	Proposal for a Draft Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2024	HC 569
1st Special	Human rights and the proposal for a “Hillsborough Law”: Government Response to the Committees Third Report of Session 2023 - 2024	HC 739