

# Border Security, Immigration and Asylum Bill

## House of Commons Second Reading Briefing

February 2025

### Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the UK justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This briefing addresses the Border Security, Immigration and Asylum Bill ("the Bill") in advance of its Second Reading in the House of Commons. In setting out our position, we make reference to previous briefing work on recent immigration bills<sup>1</sup> and our 2023 report titled, "Lowering the Standard: A Review of Behavioural Control Orders in England and Wales" ("Behavioural Control Orders Report").<sup>2</sup> The report identified systemic problems with the way in which Behavioural Control Orders (like Serious Crime Prevention Orders) are operating in practice and the challenges they present to the Police and other enforcement bodies in practice.

### Support for Measures in the Bill

3. We welcome the Government's decision to fully repeal the Safety of Rwanda (Asylum and Immigration) Act. That Act set a concerning Parliamentary precedent to legislate a legal fiction by overturning a Supreme Court decision on a finding of fact and undermined the UK's proud reputation for upholding our domestic and international legal obligations.<sup>3</sup>
4. We also welcome the decision to repeal many of the provisions of the Illegal Migration Act. That legislation was unworkable, breached our international law obligations and contained deeply unfair retrospective powers.<sup>4</sup>

---

<sup>1</sup> See JUSTICE briefings on the [Nationality and Borders Act](#), [Illegal Migration Act](#) and the [Safety of Rwanda \(Asylum and Immigration\) Act](#).

<sup>2</sup> JUSTICE, '[Lowering the Standard: a review of Behavioural Control Orders in England and Wales](#)' (September 2023)

<sup>3</sup> JUSTICE briefings on the '[Safety of Rwanda \(Asylum and Immigration\) Act](#)'

<sup>4</sup> JUSTICE briefings on the '[Illegal Migration Act](#)'

## Concerns about Measures in the Bill

5. Despite the above, we have concerns about certain aspects of this Bill which we have set out in this briefing, in particular: (a) provisions from the Illegal Migration Act and Nationality and Borders Act which have not been repealed; (b) new immigration powers on deportation, seizure of mobile phones and retrospective powers; (c) the impact of expanding Serious Crime Prevention Orders ('SCPOs') and their efficacy; and (d) the scope and disproportionately high sentences of the new proposed criminal offences

## A rights-based and evidence-led approach to immigration and asylum policy

6. This is an important opportunity to reset the UK's approach to immigration and asylum policy. Far too often, over successive governments, Home Office policy has been too focused on new immigration powers rather than an evidence-led approach to complex issues.
7. We acknowledge that there are significant, complex challenges which the Government is looking to address, including the number of small boats crossings into the UK. However, policy issues such as tackling the people smuggling gangs which operate across Europe requires international cooperation, which will not be possible unless we are steadfast in our commitment to international legal instruments such as the ECHR and the Refugee Convention. For example, the UK-EU Trade and Cooperation Agreement allows the EU to unilaterally terminate international law enforcement and judicial cooperation in criminal justice if the UK withdraws from the ECHR.<sup>5</sup>
8. It is not a promising start that, despite acknowledging that an Equality Impact Assessment has been prepared, this has not been made publicly available with the other released Bill documents.

## Illegal Migration Act and Nationality and Borders Act

### Illegal Migration Act ('IMA')

9. Whilst we welcome the decision to repeal most of its provisions, we are concerned that the following provisions from the IMA will remain and call on the Government to also repeal them:
  - a. **Section 12 IMA** provides that it is for the Home Secretary to determine what a reasonable period of immigration detention is rather than for our independent courts and tribunals as was the case before. There are serious questions about whether this approach to detention is compatible with Article 5

---

<sup>5</sup> EU – UK Trade and Cooperation Agreement, [Article 524](#)

ECHR (the right to liberty); as the Court of Appeal has previously found that it is *'the objective approach of the courts which reviews the evidence available at that time that removes any question that the period of detention can be viewed as arbitrary in terms of Article 5'*.<sup>6</sup>

- b. **Section 29 IMA** significantly lowers the 'public order' exemption from trafficking and modern slavery protections. This means that any non-British citizen sentenced to *any* period of imprisonment will not be granted limited leave to remain as a victim of trafficking and can be removed even when they had a pending conclusive grounds decision, irrespective of their personal circumstances. This is concerning as many victims of trafficking and modern slavery are exploited into committing criminal offences. A previous Independent Anti-Slavery Commissioner said, in 2021, that limiting the public order exemption would *'severely limit our ability to convict perpetrators and dismantle organised crime groups'* and increase genuine victims *'vulnerability to further exploitation'*.<sup>7</sup>
- c. **Section 59 IMA** – prior to the IMA, asylum claims from people from EU countries were automatically deemed inadmissible. Section 59 IMA extends this so that asylum claims by individuals from some non-EU countries, including Albania,<sup>8</sup> as well as human rights claims by people from those countries are also deemed inadmissible. Human rights claims are not based exclusively on risk abroad. They may include, for example, family circumstances in the UK so should not be excluded solely on nationality.

#### Nationality and Borders Act ('NABA')

- 10. The Bill does not repeal any of NABA. This is despite the previous Government dropping provisions from the Bill which remain on the statute book, such as the differentiation between Group 1 and Group 2 refugees<sup>9</sup> (still in force), and further concerning provisions such as:
  - a) An accelerated appeal process for detained individuals, a similar process to what the Court of Appeal previously found to be unlawful in 2015 when it was the Detained Fast Track<sup>10</sup> (partly in force);

---

<sup>6</sup> *Fardous v. Secretary of State for the Home Department* [2015] EWCA Civ 931.

<sup>7</sup> This was in relation to a less restrictive proposal in NABA, to lower it to those with a 12-month sentence of imprisonment or more. Joint Committee on Human Rights, *'Legislative Scrutiny: Nationality and Borders Bill'* (21 December 2021)

<sup>8</sup> US State Department reports have found *'significant human rights issues'* in Albania such as problems with corruption and the independence of the judiciary, and the Government does not *'fully meet the minimum standards for the elimination of trafficking'*.

<sup>9</sup> Hansard, *'Illegal Migration Update'* (8 June 2023)

<sup>10</sup> *'Fast-track asylum appeal system suspended by Court of Appeal'* (BBC News, 26 June 2015)

- b) “No notice” removal provisions which removed the courts oversight in certain cases and could give rise to serious injustice (partly in force); and
- c) Limitations on appeal rights for “late” claims, even if there were good reasons for such a late claim being made (not currently in force).<sup>11</sup>

We urge the Government to go further and repeal such unworkable provisions which undermine access to justice.

## New immigration powers

### Deportation

11. Clause 41 of the Bill would allow the Home Secretary to detain individuals when deportation action is only being considered, rather than after a decision has been made. The Government state that this is required because of the public interest in deportation and there are ‘*some cases*’ with a significant national security risk.<sup>12</sup> However, the proposed clause goes much wider than cases with a national security risk. We are concerned that, coupled with the significant detention powers retained from the Illegal Migration Act (see above), this risks breaches of Article 5 ECHR and will give rise to an expensive and ineffective extension of the use of detention powers; most of those who leave immigration detention are not deported - 52% of individuals leaving immigration detention are being released on bail.<sup>13</sup>
12. There are practical improvements to the deportation casework of foreign national offenders which should be prioritised over a significant extension of deportation powers. For example, the previous Independent Chief Inspectors of Borders and Immigration highlighted the ‘*insufficient information to effectively identify which FNOs can be removed from the country today*’ and stated, ‘*this is no way to run a government department*’.<sup>14</sup> He highlighted that casework teams are ‘*often unable to progress cases*’ for the Early Removal Scheme and ‘*the delays in caseworking add to the significant costs of detaining FNOs when there are well-documented pressures on the prison estate*’.<sup>15</sup> It should also not be a retrospective power (see below).

---

<sup>11</sup> See JUSTICE’s briefings on the [Nationality and Borders Act](#).

<sup>12</sup> Border Security, Immigration and Asylum Bill [ECHR Memorandum](#) (30 January 2025), p22

<sup>13</sup> Home Office, ‘[Accredited official statistics: How many people are detained or returned?](#)’ (13 June 2024)

<sup>14</sup> The Independent Chief Inspector of Borders and Immigration, ‘[An inspection of the Home Office’s operations to effect the removal of Foreign National Offenders: October 2022 – February 2023](#)’ (June 2023), p2

<sup>15</sup> *Ibid.*, p6

### Seizure of mobile phones

13. Clauses 19 to 26 would allow for the seizure, without permission, of ‘relevant articles’ (likely mobile phones or electronic devices) to access information about the facilitation of illegal immigration. The High Court previously found that the blanket seizure of mobile phones of small boats arrivals was unlawful.<sup>16</sup> We acknowledge that this was in part because of the lack of proper legal authorisation for such a power. However, despite a requirement for the power to be used only where there are reasonable grounds of suspicion that a person has a relevant article, the definition of ‘relevant’ article is very broad and we are concerned that in practice this power may be used for the blanket seizure of mobile phones from anyone who arrives irregularly.

### Retrospectivity

14. Legal certainty requires individuals to know their rights and how they can be enforced. This is an important part of the UK’s legal system and our common law traditions. The Attorney General has spoken of the ‘*restoration of our reputation as a country that upholds the rule of law at every turn*’ and ‘*the strengthening of Parliament’s role in upholding the rule of law*’.<sup>17</sup> Lord Bingham emphasised that his first principles of the rule of law was that it was ‘*accessible and so far as possible intelligible, clear and predictable*’.<sup>18</sup> This means that that retrospective legislation should only be passed in ‘*very exceptional circumstances*’.<sup>19</sup> There are a couple of retrospective provisions in this Bill which we do not think are properly justified:
- a. Clause 41 would change the deportation rules (see above) but also states that they ‘*are to be treated as always having had effect*’. This is a significant retrospective power and limited information has been provided by the Home Office as to why it is required. It would be inappropriate to use this legislation to retrospectively authorise the unlawful detention of individuals, if this is the intention.
  - b. Clause 51 would retrospectively permit the Home Office to charge certain fees (for UK visa qualification and English language assessment services) which it has admitted it collected without proper legal authorisation.<sup>20</sup> We note the potential financial Home Office liability if such a change is

---

<sup>16</sup> [HM v Secretary of State for the Home Department](#) [2022] EWHC 695 (Admin)

<sup>17</sup> Attorney General, ‘[2024 Bingham Lecture on the rule of law](#)’ (15 October 2024)

<sup>18</sup> Lord Bingham, ‘[The Rule of Law Sir David Williams Lecture](#)’ (16 November 2006)

<sup>19</sup> House of Lords Constitution Committee, ‘[Nationality and Borders Bill](#)’ (21 January 2022), para 22

<sup>20</sup> Hansard, ‘[Immigration and Nationality \(Fees\) \(Amendment\) Order 2024](#)’ (11 November 2024)

not made, but query if that is sufficient to justify significant retroactive legislation which potentially engages Article 1 Protocol 1 of the ECHR.

15. Unless adequate, exceptional explanations for these provisions are provided by the Government, we urge Parliament to amend the legislation to remove their retrospectivity. There has been a growing trend in the use of retrospective powers by successive UK governments which sets a dangerous precedent for the rule of law in this country.

## The impact and efficacy of expanding Serious Crime Prevention Orders

### What are Serious Crime Prevention Orders

16. Serious Crime Prevention Orders (“SCPOs”) are a type of civil Behavioural Control Order, introduced by the Serious Crime Act 2007 (“the 2007 Act”) which can impose conditions upon a person subject to them. This includes prohibitions on a person's movements and travel; their ability to associate with other people; where they can live; where they can work; what items they can have in their possession as well as requirements to provide certain information on request.<sup>21</sup> Breach of a condition or requirement is a criminal offence, punishable by up to 5 years imprisonment.<sup>22</sup> Currently, SCPOs are available on complaint to the High Court (“SCPOs on Complaint”)<sup>23</sup> or following a conviction at the Crown Court (“SCPOs on Conviction”).<sup>24</sup>
17. SCPOs can be imposed upon any person aged 18 or over, on the basis that the person a) has committed, (b) facilitated the commission by another person or c) has conducted himself in a way that was likely to facilitate the commission, of a serious offence in England and Wales.<sup>25</sup> A non-exhaustive list of offences which could constitute a “*serious offence*” is set out in Schedule 1 of the 2007 Act and includes: fraud; money laundering; computer misuse; environmental crimes; child sex and prostitution and drug trafficking. However, the High Court and Crown Court can also exercise their discretion in deciding that an offence is “*sufficiently serious*” to merit an SCPO.<sup>26</sup> The court must also consider that there are “*reasonable grounds*” to believe that an order would protect the public by “*preventing, restricting or*

---

<sup>21</sup> [Serious Crime Act 2007](#), s5

<sup>22</sup> Serious Crime Act 2007, s16(2)

<sup>23</sup> Serious Crime Act 2007, s1

<sup>24</sup> Serious Crime Act 2007, s19

<sup>25</sup> Serious Crime Act 2007, s2(1) and s6

<sup>26</sup> Serious Crime Act 2007, s2(2)(b)

*disrupting a persons involvement*” in serious crime, before imposing an order. SCPOs can last up to 5 years at a time, although they are subject to renewal.<sup>27</sup>

## Changes proposed by the Bill

18. The Bill contains provisions to expand the scope and availability of SCPOs. This will have wider implications for the criminal justice system beyond the asylum and immigration space. In particular, the Bill makes the following changes:
- a. *Inclusion of electronic monitoring* – Section 46 of the Bill makes it possible for the courts to impose electronic monitoring requirements / tagging on individuals who are subject to SCPOs across the United Kingdom.<sup>28</sup>
  - b. *Creation of Interim SCPOs* – Section 47 of the Bil creates a new type of “Interim SCPO”, where an application for a full order, has been made but not yet determined and the court considers it ‘just’ to impose one.<sup>29</sup> Applications for Interim SCPOs would be able to take place without notice being given to the person who is to be subject to it, “where notice of the application is likely to prejudice the outcome sought by the applicant.”<sup>30</sup>
  - c. *Extending the list of parties that can apply for a SCPO on complaint* - Currently only the Director of the Serious Fraud Office and the Director of Public Prosecutions can make an application to the High Court for an SCPO.<sup>31</sup> The Bill would expand this to the National Crime Agency, Her Majesty’s Revenue and Customs; the Police; the British Transport Police and the Ministry of Defence Police to apply for SCPOs on Complaint and Interim SCPOs.
  - d. *Inclusion of Notification Requirements* – Section 49 provides that a person subject to any type of SCPO must provide the police or applicant authorities with certain information within 3 days of an order coming into force.<sup>32</sup> Notifiable information includes not only name, address and contact details, but also social

---

<sup>27</sup> Serious Crime Act 2007, s16(5)

<sup>28</sup> Inserts new section 5B-5D into the Serious Crime Act 2007. This change will affect all types of SCPOs in England and Wales, and “terrorist-related” SCPOs in Scotland and Northern Ireland.

<sup>29</sup> Inserts new section s.5E into the Serious Crime Act 2007

<sup>30</sup> Inserts new Section 5F into Section 47 of the Serious Crime Act 2007.

<sup>31</sup> Unless it is a terrorist-related SCPO in which case a chief officer of the police can apply but only after they have consulted with the Director of Public Prosecutions.

<sup>32</sup> See Section 1(1) of new Schedule 1A which is inserted into the Serious Crime Act 2007 by section 49 of the Bill

media and gaming usernames, vehicle information, financial information and employment details.<sup>33</sup> Failure to provide the required information within the required timeframe without reasonable excuse; knowingly providing false information or not updating the applicant body to changes to the information is a criminal offence. The maximum penalty is a fine; imprisonment up to 6 months or 5 years depending on whether it is summary conviction or indictment.<sup>34</sup> It is unclear whether a breach of a notification requirement will also constitute a breach of an order and if so, how this will affect the punishment.

- e. *Creation of SCPOs on Acquittal or during Appeal in the Crown Court* - Section 50 increases the powers of the Crown Court to impose SCPOs.<sup>35</sup> In particular, the Crown Court will be able to impose an SCPO on a person following their acquittal or when allowing an appeal provided that it is a) "*satisfied*" that the person has been involved in serious crime (whether in England and Wales or elsewhere) and b) when the court has "*reasonable grounds*" to believe that an SCPO would protect the public by preventing, restricting, or disrupting involvement by the person in serious crime in England and Wales. This is in spite of a jury finding a person innocent of an offence. As with any other type of SCPO, the Crown Court will be able to impose conditions including restrictions and requirements; they last 5 years and breach is punishable by up to 5 years imprisonment.

## Our concerns

- 19. Our report on Behavioural Control Orders identified significant concerns about the efficacy of orders like SCPOs and how they were operating in practice. We consider that the expansion of SCPOs, without a thorough review and consultation, will only frustrate existing pressures within the Behavioural Control Order regime, as follows:
  - a. ***No evidence or data to show that SCPOs are working*** - There has been no official review of the way that SCPOs are functioning currently. Data relating to their use is not published centrally and therefore, it is impossible to confirm whether SCPOs are a successful or proportionate and cost effective measure to "*prevent, restrict or disrupt*" a person's involvement in a serious criminal offence.

---

<sup>33</sup> The list of notifiable information can be extended by way of regulations made by the Secretary of State under section 49(5)(j)

<sup>34</sup> See sub-section (3) of new Schedule 1A which is inserted into the Serious Crime Act 2007 by section 49 of the Bill.

<sup>35</sup> by inserting a new Section 19A into the Serious Crime Act 2007.



- b. ***Inconsistent use of orders across the country*** - There is significant variation in the use of SCPOs, across the country, and the types of conditions and requirements they impose.<sup>36</sup> This is problematic for the rule of law and undermines the effectiveness of the measures. This is due, in particular, to:
- i) A lack of resourcing, training and infrastructure to monitor and enforce orders properly. It is difficult to understand how applicants and enforcement bodies will have the capacity to deal with the addition of two new types of SCPO, let alone facilitate the extra demands caused by electronic monitoring and notification requirements. As stated in the Government's Impact Assessment, only 13 out of 43 police forces have clear arrangements in place relating to the use of SCPOs and monitoring and enforcement.<sup>37</sup> This will be further complicated by the fact it is envisaged that an individual might be subject to more than one SCPO at a time, particularly given that poor communication infrastructure between different courts and police forces often leads to current breaches of orders going unnoticed.<sup>38</sup>
  - ii) Overlap with other orders and offences: conduct covered by a Behavioural Control Order often falls within the remit of several other offences and Behavioural Control Orders. This causes confusion in determining when to pursue a criminal offence; when to impose an order and which order to use. The type of offence that can lead to an SCPO is extremely broad. As currently drafted, it has the potential to overlap with Labour Market Enforcement Orders, Sexual Risk Orders, Sexual Harm Prevention Orders, Serious Violence Reduction Orders; Female Genital Mutilation Orders; Slavery and Trafficking Prevention Order; Slavery and Trafficking Risk Orders, Violent Offender Order, amongst others.

The situation is chaotic and untenable. Rather than introducing two further types of SCPO, the Government should be working to streamline and simplify the range of orders currently in existence.

- c. ***Setting people up to fail*** – Breaches of conditions within orders are common.<sup>39</sup> Often, this is because individuals lack adequate support to comply with the restrictions and requirements imposed by the orders and/or do not fully understand the rules that they were expected to abide by. This is worsened in situations where individuals are neurodivergent; have intellectual disability and/or language barriers. All too often, insufficient screening is available to ascertain whether this is the case. The Government

---

<sup>36</sup> JUSTICE '[Lowering the Standard: a review of Behavioural Control Orders in England and Wales](#)' (September 2023)

<sup>37</sup> [Home Office Draft Impact Assessment Rationale for Intervention](#) (B), 2 April 2024

<sup>38</sup> JUSTICE '[Lowering the Standard: a review of Behavioural Control Orders in England and Wales](#)' (September 2023)

<sup>39</sup> Albeit, difficult to assess situation fully due to lack of data.

must therefore ensure sufficient safeguards and support is in place to ensure that an individual understands the terms of the order and is supported to comply with it.

- d. ***Impact on Human Rights and Privacy*** – Being subject to an SCPO is a serious and life-changing event, particularly given the duration of the SCPO and the punishment for breach. Individuals are subject to restrictions and requirements that can impact on their Article 5 right to liberty and security;<sup>40</sup> their Article 6 rights to a fair trial,<sup>41</sup> their Article 8 right to private and family life;<sup>42</sup> their ability to associate with other people in respect of Article 10<sup>43</sup> and their Article 1 Protocol 1 right to peaceful enjoyment of their possessions.<sup>44</sup> The introduction of electronic monitoring and notification requirements make the impact even more severe. JUSTICE has serious concerns about the proportionality of the measures, including the fairness of someone being subject to an SCPO and electronic monitoring and notification requirements despite them being acquitted of an offence. Procedural safeguards inherent within the criminal law must not be usurped by allowing courts to impose SCPOs upon a weaker standard of proof. For example, it is unclear how a court will determine that it is “*satisfied*” that a person has been involved in serious crime in the context of that person having just been acquitted by a jury in the Crown Court or how it can be reasonable for it to do so. We consider that this would amount to “*criminalisation by the backdoor*”. Furthermore, the test for refusing to provide notice for an Interim SCPCO is also set unduly low. Finally, and considering these impacts, we do not consider that there is adequate support to individuals to challenge an application for an SCPO or a condition contained therein; to vary an SCPO or seek to get it discharged.
- e. Before any expansion of SCPOs, there must be a thorough review of how SCPOs and related orders are functioning currently. In particular, the Government must streamline the existing orders within this space. Any review must identify how bodies are currently monitoring for equality and human rights impacts when applying for, imposing and enforcing orders and what adjustments are being made to ensure that those who are neurodivergent, have intellectual abilities and/or language barriers are supported. Significant investment is also required to ensure that applicants and enforcement bodies have the right resources to safely use SCPOs.

---

<sup>40</sup> European Convention on Human Rights, Article 5

<sup>41</sup> European Convention on Human Rights, Article 6

<sup>42</sup> European Convention on Human Rights, Article 8

<sup>43</sup> European Convention on Human Rights, Article 10

<sup>44</sup> European Convention on Human Rights, Article 1 Protocol 1

## New criminal offences

20. The Bill creates four new criminal offences: Supplying articles for use in immigration crime (**section 13**); Handling articles for use in immigration crime (**section 14**); Collecting information for use in immigration crime (**section 16**); and endangering another during sea crossing to United Kingdom (**section 18**). Our concerns in relation to these provisions are as follows.

### Defences: lack of specific protection for those providing legitimate legal services

21. It is to be welcomed that the defence of 'reasonable excuse' applies to each of the new offences: in other words, if a person has a reasonable excuse for engaging in the relevant conduct, they will not be guilty of the offence. The burden lies on the defence to adduce sufficient evidence of a reasonable excuse such that it is placed in issue. If they have done so, it is for the prosecution to prove beyond reasonable doubt (i.e. to the usual criminal standard) that the person charged did *not* have a reasonable excuse.
22. In respect of each offence under sections 13, 14 and 16, the Bill sets out a (non-exhaustive) list of circumstances in which the defence of 'reasonable excuse' will apply. Under section 13, for example, a person will have a reasonable excuse if their action was for the purposes of carrying out a rescue of a person from danger or serious harm. They will also have a reasonable excuse if they were acting on behalf of an organisation which aims to assist asylum seekers and does not charge for its services. However, whilst we welcome the inclusion of those examples already contained within the Bill, we consider there to be a notable and concerning omission, namely an exception for those providing legitimate legal advice and preparing legitimate legal claims. Although the Bill does not necessarily preclude a defence for such individuals, in our view they should be specifically exempt from prosecution. Uncertainty for those providing legal services to vulnerable individuals risks an unjustified risk to access to justice and the rule of law.
23. JUSTICE urges the Government to insert a provision affording explicit protection from prosecution to those providing legitimate legal services into sections 13, 14 and 16 of the Bill.

### Maximum sentences

24. The maximum sentences for each of the new offences are as follows:
- a. Section 13: 14 years' imprisonment
  - b. Section 14: 14 years' imprisonment

c. Section 16: 5 years' imprisonment

d. Section 18: 4 years' imprisonment

25. The maximum sentence for the section 13 and 14 offences, in particular, are in our view disproportionately high. To place these in context, the offence of possession of articles for use in terrorism has a maximum sentence of 15 years.<sup>45</sup> In the context of the overcrowding crisis currently impacting the prison estate - which last summer reached '*near collapse*' in the words of the Lord Chancellor<sup>46</sup> - we strongly encourage the Government to take an evidence-based approach to determining the appropriate maximum sentences for any new offences. There is a notable lack of robust evidence that lengthier custodial sentences achieve a deterrent effect or a reduction in reoffending.<sup>47</sup> This is explicitly acknowledged within the Impact Assessment to the Bill itself with regard to the section 18 offence: '*There is limited understanding of the behavioural impact of this intervention, so the deterrence effect on dangerous behaviour may not be realised as intended*'.<sup>48</sup>
26. With regard to the Bill's likely impact on the prison population, the Impact Assessment estimates that between four and six prison places will be required per year in relation to the section 13 and 14 offences.<sup>49</sup> On the other hand, it notes that there is '*significant uncertainty regarding the volume of offences/ offenders each year [including] regarding how law enforcement and the courts will use this offence in practice [as well as the rates of convictions leading to immediate custody]*'.<sup>50</sup>
27. We also note that the Bill is deliberately widely drafted with a low threshold for prosecution so as to "*deliberately catch those acting at too much distance from the people smuggling to be prosecuted under section 25 of the Immigration Act 1971 and where there is insufficient evidence of belief or intention to prosecute an individual under the Serious Crime Act 2007... or for conspiracy*".<sup>51</sup> In this regard we note, first, that the possibility that the Bill will contribute to the severe prison overcrowding crisis cannot be discounted. Second, the lesser culpability of those whom the Government intends to criminalise under the new offences ought to be more accurately reflected in the corresponding maximum sentences. In this

---

<sup>45</sup>Terrorism Act 2000, sections 57(4)(a) and 58(4)(a)

<sup>46</sup> [Press release: Lord Chancellor sets out immediate action to defuse ticking prison 'time bomb'](#), July 2024

<sup>47</sup> See, e.g., Sentencing Council, [Reconceptualising the effectiveness of sentencing: four perspectives](#), (2024); Sentencing Council, [The Effectiveness of Sentencing on Reoffending](#), (2022)

<sup>48</sup> Bill [Impact Assessment](#), p. 77

<sup>49</sup> *Ibid.*, p. 58

<sup>50</sup> *Ibid.*, p. 78

<sup>51</sup> *Ibid.*, p. 30

regard, it is worth noting that the money laundering offences under sections 330, 331 and 332 of the Proceeds of Crime Act 2002 have a mental element of 'knows or suspects' or, in the case of the offences under sections 330 and 331, 'has reasonable grounds for knowing or suspecting' and a maximum sentence of 5 years.<sup>52</sup>

## Conclusion

28. We welcome the repeal of the Safety of Rwanda (Asylum and Immigration) Act and much of the Illegal Migration Act. However, as set out in this briefing, we have concerns about aspects of this Bill, in particular: (a) provisions from the Illegal Migration Act and Nationality and Borders Act which have not been repealed; (b) new immigration powers on deportation, seizure of mobile phones and retrospective powers; (c) the impact of expanding Serious Crime Prevention Orders ('SCPOs') and their efficacy; and (d) the scope and disproportionately high sentences of the new proposed criminal offences.

### For more information, please contact:

Philip Armitage, Public & Administrative Lawyer, JUSTICE – [parmitage@justice.org.uk](mailto:parmitage@justice.org.uk)

JUSTICE | 7 February 2025

---

<sup>52</sup> Proceeds of Crime Act 2002, sections 330(2), 331(2), 332(2), 334(2)(b)