Border Security, Asylum and Immigration Bill

House of Lords Committee Stage Briefing

June 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, Asylum and Immigration Bill ("the Bill") in advance of its Committee Stage in the House of Lords. In expressing our concerns about the Bill, alongside our support for certain tabled amendments, we draw attention to our proposed amendments, previous briefings[1] and independent legal advice[2] obtained by us in relation to the impact of Serious Crime Prevention Orders ("SCPOs") on procedural fairness and human rights.[3]

Support for Measures in the Bill and Ongoing Concerns

3. We continue to support 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.[4]

4. We also welcome the provisions in the Bill to repeal many of the provisions of the Illegal Migration Act ("IMA"). That legislation was unworkable, breached the UK's international law obligations and contained deeply unfair retrospective powers.[5] However, we consider that the Bill must go further. As currently

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[1] JUSTICE, *Briefings to House of Commons on Border Security, Asylum and Immigration Bill, (*2025).

[2] King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025).

[3] King and Spalding, '*The Human Rights Implications of Behavioural Control Orders,*' (2023); and King and Spalding, '*The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion*', (2025).

[4] JUSTICE briefings on the '*Safety of Rwanda (Asylum and Immigration) Act'*.

[5] JUSTICE briefings on the *'Illegal Migration Act'*.

drafted, several provisions from the IMA and Nationality and Borders Act ("NABA") have not been repealed. We strongly urge members of parliament to support amendments aiming to repeal provisions from these Acts.

5. We are supportive of the Government's intention to prioritise the determination of both asylum appeals and deportation appeals in the First-tier Tribunal. The appeal backlog is currently at an all-time high, with 41,987 asylum appeals outstanding in December 2024, taking on average 50 weeks to determine an appeal.[6] This is a 500% increase from the start of 2023 when 7,113 outstanding appeals were recorded.[7] However, we are concerned that Clauses 46-47, providing that asylum appeals for those in supported accommodation and non-detained deportation appeals should be concluded with 24 weeks, are currently unrealistic, will not properly address the backlog and could have damaging consequences on the fair administration of justice. Addressing the backlog requires practical engagement with case management, Home Office compliance with deadlines and increasing access to legal representation to ensure individuals have a fair opportunity to present their case fully and efficiently rather than the legislation of impractical timeframes. The efforts to reduce delay must not come at the expense of procedural fairness. This is of particular concern given that amendment Clause 46 only applies to appeals lodged by asylum seekers housed in supported accommodation. We foresee that this will result in even longer delays (increasing the current 50-week average) for asylum seekers outside of supported accommodation, which unfairly and unnecessarily discriminates against this cohort as they will be left to wait even longer in limbo. **Therefore, we support Amendments 155 and 156, tabled by Baroness Hamwee, which intends to probe whether the resources of the Tribunal and legal aid practitioners are sufficient to ensure cases are heard fairly within this 24-week timeframe.**

6. We are also gravely concerned about the effectiveness of expanding Serious Crime Prevention Orders, particularly given the recent proliferation of similar types of Behavioural Control Orders across the justice system, including those created by the Crime and Policing Bill.[8] In our 2023 working party report which explored the effectiveness of Behavioural Control orders at preventing harm, we identified systemic issues relating to the fairness of Behavioural Control Orders; their incompatibility with human rights

[6] R. Syal, '*Number of UK asylum seekers awaiting appeals up by nearly 500% in two years*', (The Guardian, 16 March 2025).
[7] HM Government, '*Immigration system statistics, year ending December 2024*', (27 February 2025).

[8] See for example, Child Criminal Exploitation Prevention Orders, Youth Diversion Orders and the expansion of Criminal Behaviour Orders which are already available on acquittal.

including their interference with the right to a fair trial,[9] the inconsistent approaches adopted by the Police, Crown Prosecution Service and the Courts when dealing with orders and the inability of the Police to properly monitor or respond to breaches of Behavioural Control Orders due to capacity issues.[10] This creates postcode lotteries for victims and undermines the rule of law by making enforcement of the law depend on the victims' location rather than circumstances.[11] A lack of data and insufficient monitoring or evaluation also makes it impossible to determine the success rate of orders like Serious Crime Prevention Orders and it is unclear what evidence-base the Government has used, and what consultation that it has undertaken, to determine that expanding them will achieve their intended outcome.

Supported Amendments

Time limit on immigration detention

7. We urge Peers to support Amendments 132, 133, and 134, tabled by Lord German. These amendments provide for a time limit of 28 days detention for immigration purposes; a general criteria for detention to ensure detention for the purpose of removal will only be used when strictly necessary and proportionate and when the person can shortly be removed; and judicial oversight of detention, via the First-tier Tribunal, with automatic bail hearings after 96 hours of detentions.

8. Calls for a statutory time limit have been made consistently by expert bodies, including the Home Affairs Select Committee, Joint Committee on Human Rights and the Brook House Inquiry report. For further details please see the joint briefing with Detention Action, Medical Justice, Bail for Immigration Detainees and ILPA, which can be found here.[12]

JUSTICE urges Peers to support Amendment 132, 133 and 134, tabled by Lord German, which would provide a 28-day time limit for detention and amend the immigration detention process.

[9] See independent legal advice sought by JUSTICE in 2023 and 2025: King and Spalding, *The Human Rights Implications of Behavioural Control Orders* (2023); and King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025).

[10] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023).

[11] *Ibid*., para 3.15

[12] Detention Action, *Briefing for MPs and Peers (supported by JUSTICE)*, (June 2025).

Illegal Migration Act ("IMA")

Clause 38 of the Bill provides for the repeal of the vast majority of the IMA.[13] Whilst we welcome the decision to repeal most of its provisions, we are concerned that sections 12, 29 and 59 from the IMA will remain and we therefore call on Peers to support amendments calling for their repeal.

Immigration detention and separation of powers (section 12 IMA)

9. **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 of the European Convention on Human Rights ("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'.*[14]

10. If a 28-day time limit on detention is passed, this would mitigate the impact of section 12 IMA, however, it should still be for the courts, and not the executive to determine a reasonable period of detention in any individual case, as required by Article 5.

11. **JUSTICE therefore urges Peers to table the following amendment, which would repeal section 12 of IMA:**

Clause 38(1), page 31, line 9, replace "11" with "12".

Modern slavery and trafficking protections (s.29 IMA)

12. **Section 29 IMA** significantly lowers the 'public order' exemption for trafficking and modern slavery protections. This means that any non-British citizen sentenced to *any* period of imprisonment will not receive any support as a victim of modern slavery, will not be granted limited leave to remain as a victim

[13] Clause 38 provides for the repeal of the following provisions of the Illegal Migration Act 2023: sections 1-6 and schedule 1; sections 7-11; sections 13-15 and Schedule 2; sections 16-28; sections 30-51; sections 53-58; sections 61; sections 66.

[14] *Fardous v. Secretary of State for the Home Department* [2015] EWCA Civ 931.

of trafficking and can be removed even when they had a pending conclusive grounds decision[15], 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 group"'* and increase genuine victims *"vulnerability to further exploitation".*[16]

JUSTICE therefore urges Peers to support Amendment 103, tabled by Baroness Hamwee and Lord German, which would repeal section 29 of the Illegal Migration Act.

Inadmissibility of asylum and human rights claim (s.59 IMA)

13. **Section 59 IMA** provides for the expansion of the list of countries from which asylum claims will be deemed inadmissible. Prior to the IMA, asylum claims from people from EU countries were automatically deemed inadmissible so an individual requires 'exceptional circumstances' to challenge their removal. Section 59 IMA extends this so that asylum claims by individuals from some non-EU countries (including countries with significant human rights concerns such as Albania [17]) 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. The test requiring exceptional circumstances is a very high threshold for such claims and there would be no appeal of this decision; only a narrow route by judicial review of the Home Secretary's decision. This risks decisions which breach our obligations under the Refugee Convention and ECHR.

[15] The National Referral Mechanism process for identifying victims of modern slavery is a two-stage process; an initial 'reasonable grounds' decision identifying if someone is a potential victim before a final 'conclusive grounds' decision is made on whether the individual is a victim of trafficking/ modern slavery.

[16] 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)

[17] 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'.*

JUSTICE urges Peers to support Amendment 104, tabled by Lord Browne of Ladyton, which would repeal section 59 of the Illegal Migration Act.

Nationality and Borders Act ("NABA")

14. We are concerned that the Bill does not repeal any provisions from NABA. JUSTICE maintains the concerns raised in our previous briefings on NABA, that the legislation risks creating a system where people with a legitimate basis to be in the UK could be removed without effective access to justice. We consider that certain provisions must be repealed to ensure we strike the correct balance between a fair system, where those in need of asylum and trafficking protections were supported, and facilitating the removal of those with no such claim.

15. **Differentiating between Group 1 and Group 2 refugees, section 12 NABA:** This provision sought to only grant temporary refugee permission to those who did not arrive directly from the country they fled from, though in reality most of these individuals would remain in the UK but require multiple applications to renew their permission to remain in the UK.[18] As the barrister Colin Yeo observed, *"what it does do is make more work for officials, thereby worsening the backlogs in the appeal system…it is actually counterproductive".*[19] This was abandoned by the previous Government in June 2023 though it remains on the statute book.[20] In light of the urgent need to address the asylum backlog, acknowledged rightly by the new Government, it is surprising that this provision has not been repealed. It should be.

16. **Reductions in modern slavery/ trafficking protections**: **section 59** (not in force) requires a decision-maker to hold late disclosure of information as damaging to credibility; despite the well-known difficulties many will have disclosing traumatic incidents. **Section 63** (in force) excludes certain victims from modern slavery / trafficking protection by significantly extending the public order exception to anyone with a criminal conviction of 12 months' imprisonment.

17. As set out above in relation to the IMA, many victims are trafficked into criminal activity. A joint report by the British Institute of International and Comparative Law, Human Trafficking Foundation and Anti-Trafficking Monitoring Group found that, in early 2023, 70% of disqualified individuals under the public

[18] Colin Yeo, *'Detailed policy on differential treatment of refugees announced,'* (Free movement, 28 June 2022)

[19] *Ibid*.

[20] UK Parliament, *'Illegal Migration Update: Statement made on 8 June 2023'*.

order exemption had an element of criminal exploitation in their case.[21] Following a legal challenge, the previous Government's policy on interpreting section 63 had to be updated to require an assessment of the risk of re-trafficking.[22] However, we remain concerned that section 63 casts its net too wide when assessing public order exemption.

18. Such provisions risk undermining the UK's reputation as a world-leader in the fight against modern slavery and non-compliance with our international obligations under the Council of Europe Convention on Action against Trafficking ('ECAT'). As the then Victims' Commissioner and Independent Anti-Slavery Commissioner said at the time, NABA *"risks us failing to identify victims of modern slavery and providing them with the protection they need. Ultimately, this will only hinder us in stopping these criminals and preventing the victimisation of others."*[23] The Government should repeal section 59 and section 63.

19. Further, we highlight the following further provisions which we are particularly concerned about from an access to justice point of view and which we warned about during the passage of NABA[24]:

a) **Accelerated detained appeals (section 27, in force for making regulations).** In 2015, the Court of Appeal found that the then Detained Fast Track appeal process was unlawful because it created an unfair system for asylum and human rights appeals. The Court of Appeal found that the timetable would be "*so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their case"*. This clause requires the independent Tribunal Procedure Committee to set up an equivalent provision for detained appeals, which it has begun work on though accelerated appeals have not begun. Whilst we acknowledge the need to address the appeal backlog, a fast-track detained appeal process is not the way to address this. The previous attempt led to hundreds of cases having to be reconsidered by the Home Office as they were unfairly rushed, and any new rules are likely to be subject to further litigation. Clause 24 should be repealed to demonstrate the Government's commitment to fair rules that protect access to justice.

b) **Priority removal notices (sections 20 – 25, not in force).** Priority removal notices will give individuals liable for removal or detention a set period to access legal advice and provide any further grounds or evidence in support of a claim to the Home Office. After the 'cut-off' date, new claims will be subject

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[21] Naoemi Magugliani, John Trajer and Dr Jean-Pierre Gauci, '*Assessing the Modern Slavery Impacts of the Nationality and Borders Act: One Year On'*, (June 2024).

[22] Matrix Chambers, '*Secretary of State for the Home Department withdraws public order disqualification policy'*, (22 January 2024).

[23] Dame Vera Baird and Dame Sara Thornton, '*The Nationality and Borders Bill fails to grasp what being a victim of slavery means*', (11 January 2022).

[24] See JUSTICE's briefings on the *Nationality and Borders Act*.

to presumptions of damaged credibility (section 22), minimal weight of evidence (section 26). We stress the importance of ensuring individuals have adequate time to access legal advice to prepare legitimate challenges to removal. We also object to the attempt to bind the judiciary to the Home Office's approach on credibility for late claims; our independent judiciary can assess credibility objectively. Sections 23 and 24 provide for expedited appeals in the Upper Tribunal, with no onward appeal to the Court of Appeal; curtailing appeal rights in this way is an affront to access to justice. Such limited appeals will be for either initial claims, or fresh claims which have a realistic prospect of success, and risk being rushed with no mechanism to correct judicial error. Sections 20 – 25 should be repealed.

c) **Late provision of evidence in asylum or human rights claim (section 26, not yet in force).** This clause requires decision-makers to give minimal weight to late evidence unless there are good reasons. We disagree with an automatic burden on individuals to show such good reasons before their evidence can be properly assessed and the extensions of these presumptions to the judiciary being a concerning restriction on judicial independence. Late disclosure is already a factor in determining the credibility of evidence.

d) **Removals: notice requirements (section 46, in force).** Whilst it was welcome that section 46 clarified in legislation that an individual would usually require 5 working days' notice of their proposed removal date, there were exceptions which could lead to 'no notice' removals. Such removals are contrary to access to justice and the rule of law. 10B creates an exemption when a planned removal fails including adverse weather conditions and disruption (which is widely interpreted by the Home Office). 10E is especially problematic as it applies when a planned removal does not take place due to an individual taking judicial review action. Whilst removal must take part within 21 days of the court's decision, the clause runs the risk of an individual being removed before they can seek legal advice on the outcome. 10B and 10E should be repealed.

JUSTICE urges Peers to support Amendment 116, tabled by Lord German and Baroness Hamwee, which would repeal the above-mentioned sections (sections 12, 20-27, 46, 59 and 63) of the Nationality and Borders Act.

New criminal offences

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

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

21. We welcome 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 clauses 13, 14 and 16, the Bill sets out a (non-exhaustive) list of circumstances in which the defence of "reasonable excuse" will apply. Under clause 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.

23. 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. Those who represent asylum-seekers in the UK, provide legal advice about their rights and publicise their work should be confident that they will not be caught by one of the offences, given the wide drafting of the Bill. Although the Bill does not necessarily preclude a defence for such individuals, in our view they should be specifically exempt from prosecution. Otherwise, those providing legal services to vulnerable individuals are left in an uncertain position which in turn, creates an unjustified risk to access to justice and the rule of law.

JUSTICE urges Peers to support Amendment 60, tabled by Baroness Hamwee, which would provide specific protection from prosecution for those providing legitimate legal services.

Broad Construction of Offences and disproportionate maximum sentences

24. The new offences attract very high maximum sentences:

    Clause 13 (Supplying articles for use in immigration crime): 14 years' imprisonment

    Clause 14 (Handling articles for use in immigration crime): 14 years' imprisonment

    Clause 16 (Collecting information for use in immigration crime): 5 years' imprisonment

    Clause 18 (Endangering another during sea crossing to United Kingdom): 6 years' imprisonment for an offence committed in connection with an offence under subsection (A1) and 5 years' imprisonment for an offence committed in connection with an offence under subsection (B1), (D1) or (E1).

25. To place these in context, the sentences for the offences in Clause 13 and 14 are equivalent to the maximum sentence for the offence of possession of articles for use in terrorism, which is 15 years. Given the severity of the sentences for all four of the new offences, it is crucial that a particularly forensic approach is taken to the drafting of the new offences to safeguard against any unintended consequences such as the criminalisation of those seeking asylum.

26. We 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."*

27. However, we are concerned by the broad construction of these offences which, as currently drafted, may unintentionally catch vulnerable individuals, such as asylum seekers and victims of trafficking. Given that the Government's intention in introducing these new offences is to target supply chains for people smuggling networks and to prevent risk to lives at sea posed by those connected to the facilitation of crossings, it is vital that the Bill is amended to ensure that these vulnerable groups are not inadvertently criminalised and subject to long period of incarceration. Therefore, we support the amendments tabled by Lord German and Baroness Hamwee which seek to expressly protect those seeking asylum from being caught by these offences.

28. In particular, we support Amendments 46 and 55 which seek to ensure that that the new criminal offences under Clauses 14 (handling articles for use in immigration crime) and 16 (collecting information for use in immigration crime) only target individuals involved in people smuggling rather than vulnerable

individuals seeking protection. These amendments seek to safeguard vulnerable individuals from criminalisation by amending the statutory defences to include those who did not gain financially from their actions. We consider that these amendments will bring the Bill closer to the Government's stated aim of targeting smuggling networks.

29. For the same reasons, we support Amendment 51 which seeks to exclude telephonic devices and any means of charging a telephonic device, from the meaning of "relevant article" for the purposes of the offences created by Clauses 13 and 14. This amendment provides a further safeguard against the broad definition of "relevant article" as currently drafted in the Bill to ensure that individuals who simply have telephones, which is likely to be the majority of people, including asylum seekers, are not charged by reason of possessing a telephone and charger alone. Again, we consider this necessary given that a possible 14-year sentence for simply handling a telephone is otherwise clearly disproportionate.

JUSTICE urges Peers to support the following amendments to the new offences which seek to expressly protect those seeking asylum from being caught by these offences:

Amendments 46 and 55, tabled by Lord German and Baroness Hamwee, which would ensure that the new offences are targeted at people smugglers rather than those seeking asylum by amending the statutory defences.

Amendment 51, tabled by Baroness Hamwee, which seeks to exclude telephones and charging devices from the definition of relevant article for the purposes of Clauses 13 and 14.

Amendments 32, 42 and 53, tabled by Baroness Hamwee, which seek to replace "suspects" with "believes", raising the level of the mens rea test for offences under clauses 13, 14 and 16.

Amendment 66, tabled by Lord German and Baroness Hamwee, which seeks to ensure that the offence in Clause 18 is targeted at people smugglers by clarifying that the act was intentional and done for financial gain.

New immigration powers

Retrospectivity

30. 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".*[25] 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".*[26] This means that that retrospective legislation should only be passed in *"very exceptional circumstances".*[27]

31. Clause 41 is retrospective in effect and in our view does not meet the this threshold. It would extend deportation powers for those who have received an initial decision to deport (stage 1) but not yet a deportation order (stage 2) and also states that they "are to be treated as always having had effect." The Government's Human Rights memorandum misleadingly characterises Clause 41 as solely clarificatory – ensuring "*it is clear in legislation that detention in any deportation case commences at the point the Secretary of State is considering whether to make a deportation order*" [emphasis added]. However, the Impact Assessment acknowledges that Clause 41 provides for a change to the law by extending the deportation powers currently governed by the Immigration Act 2014.[28]

32. The Government has been unlawfully detaining individuals following a stage 1 notice, as they recognise in the Impact Assessment that this is "*current practice in deportation case-working*." Revealing that the legislation currently in place does not accord with practice does not justify the introduction of a significant retrospective power, particularly not where the harm concerned is so serious as deprivation of liberty.

33. It is of course impossible to physically detain individuals retrospectively and therefore it is understood that this power will be used to authorise the previous unlawful detention of individuals, avoiding litigation and damages costs. It is unreasonable to play fast and loose with Article 5 for these purposes.

34. Further, we note that Clause 41 illustrates the complexity of the UK's current immigration law system seeing as the Home Office themselves were unaware that current practice did not accord with the

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[25] Attorney General, '*2024 Bingham Lecture on the rule of law'* , (15 October 2024).

[26] Lord Bingham, '*The Rule of Law' Sir David Williams Lecture*', (16 November 2006).

[27] House of Lords Constitution Committee, *'Nationality and Borders Bill',* (21 January 2022), para 22.

[28] Uk Government, *'Impact Assessment: Border Security, Asylum and Immigration Bill', (*30 January 2025), p.41.

legislation in force. However, retrospective powers are not the answer to mitigating against such complexity. Instead, we need better quality and clarity of the law in this area, resulting in simplification.

JUSTICE urges Peers to support Amendment 131, tabled by Lord German and Baroness Brinton, which would remove the retrospective power in Clause 41.

Conditions for limited leave to enter or remain

35. Clause 43 grants the Home Secretary the power to impose electronic monitoring and curfew conditions on anyone with limited leave to enter or remain in the UK. Dame Angela Eagle presented Clause 43 as narrow in intent, seeking to effect only those who cannot be deported but who continue to pose a real threat to the public.[29] However, there is nothing on the face of the Bill which limits the power in this way. As currently drafted, it would be open to the Government to impose tagging and curfew requirements on any individual with limited leave, such as those on student or tourist visas. We therefore support the removal of Clause 43 from the Bill to prevent the creation of a power which relies solely on the discretion of the Home Secretary not to misuse it.

JUSTICE urges Peers to support Lord Anderson, Lord Kirkhope and Baroness Hamwee in their intention to oppose the Question that Clause 43 stand part of the Bill.

Use of Artificial Intelligence

36. On 28 April 2025, the Government announced via press release for this Bill that artificial intelligence will be rolled out across asylum processing to speed up decision making.[30] The press release further explained that AI will be deployed to speed up access to relevant country advice, summarise interviews and

[29] Dame Angela Eagle, *'Immigration Minister, Speech on New Clause 41 to the Public Bill Committee'*, (13 March 2025).

[30] HM Government, '*Home Office Press Release: Sex Offenders to be stripped of refugee protections*', (28 April 2025).

streamline asylum processing without compromising on the quality of human decisions. However, there has been no information detailing precisely how AI will be used, how it will use personal information, what guidance has been provided to caseworkers and crucially how the impact of its use will be monitored and evaluated. As the Government have plainly stated their intention to increase the use of AI in the immigration sector, we consider it necessary for the Government to provide greater transparency on precisely how it will be used and its impact on decision making, particularly given the vulnerable position asylum seekers are in. Therefore, we support Amendment 103, tabled by Baroness Hamwee and Lord German, which seeks to probe the extent of artificial intelligence in immigration decision-making.

JUSTICE urges Peers to support Amendment 195, tabled by Baroness Hamwee and Lord German, which seeks to prevent the use of artificial intelligence in making immigration decisions where the system uses the relevant individual's personal data.

This is a probing amendment which seeks to understand the extent of artificial intelligence in immigration decision making

Serious Crime Prevention Orders

37. **Clauses 52-56** of the Bill expand the current scope and availability of Serious Crime Prevention Orders. SCPOs are a type of civil Behavioural Control Order, introduced by the Serious Crime Act 2007 which can impose onerous conditions upon a person subject to them, restricting their ability to be present in a particular area, access certain services, associate with certain persons, travel, own particular possessions and/or engage in certain activities.[31] Breach of a condition or requirement is a criminal offence, punishable by up to 5 years imprisonment.[32] Currently, SCPOs are available on complaint to the High Court ("SCPOs on Complaint")[33] or following a conviction at the Crown Court ("SCPOs on Conviction").[34]

[31] Serious Crime Act 2007, s5.

[32] Serious Crime Act 2007, s16(2).

[33] Serious Crime Act 2007, s1.

[34] Serious Crime Act 2007, s19.

38. 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.[35] The court must also consider that there are *"reasonable grounds"* to believe that an order would protect the public by "*preventing, restricting or 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.[36]

39. The Bill makes the following changes:

Inclusion of electronic monitoring – Section 52 of the Bill makes it possible for the courts to impose electronic monitoring requirements / tagging on individuals who are subject to SCPOs.[37]

Creation of Interim SCPOs – Section 53 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.[38] Applications for Interim SCPOs will 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."*[39]

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.[40] Section 54 would expand this to several other agencies including the National Crime Agency and HMRC.

Inclusion of Notification Requirements – Section 55 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.[41] Notifiable information includes not only name, address and contact details, but also social media and gaming usernames, vehicle information, financial information and

[35] It includes fraud; money laundering; computer misuse; environmental crimes; child sex and prostitution and drug trafficking. Serious Crime Act 2007, Schedule 1.

[36] Serious Crime Act 2007, s16(5).

[37] Inserts new section 5B-5D into the Serious Crime Act 2007. This change will affect all types of SCPO in England and Wales.

[38] Inserts new section 5E into the Serious Crime Act 2007.

[39] Inserts new section 5F into the Serious Crime Act 2007.

[40] 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.

[41] See Section 1(1) of new Schedule 1A which is inserted into the Serious Crime Act 2007 by section 49 of the Bill.

employment details.[42] 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.[43] 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.

Creation of SCPOs on Acquittal or during Appeal in the Crown Court - Section 56 increases the powers of the Crown Court to impose SCPOs.[44] 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 despite a jury finding a person innocent of an offence.

Urgent need for review

40. We are concerned that the provisions in the Bill to expand SCPOs have serious implications for the rule of law, human rights and procedural fairness, particularly the right to a fair trial under Article 6 ECHR. Independent legal advice obtained by JUSTICE confirm this. [45]

41. Moreover, expanding SCPOs will not be effective in preventing crime unless the Government takes urgent steps to address the systemic issues affecting the way that civil orders function. A report published by JUSTICE in 2023, identified far-reaching problems with the current system of Behavioural Control Orders, including SCPOs.[46] Before expanding SCPOs further, the Government must review how SCPOs are functioning currently, their interaction with existing civil orders and their wider impact upon the justice system, including on resources. In particular, they should address the following issues to ensure SCPOs are fit for purpose:

(a) **Lack of evidence or data to show that SCPOs work -** There has been no official review of the way that SCPOs currently function. Data relating to their use is not published centrally making it

[42] The list of notifiable information can be extended by way of regulations made by the Secretary of State under section 49(5)(j).

[43] See sub-section (3) of new Schedule 1A which is inserted into the Serious Crime Act by section 51 of the Bill.

[44] By inserting a new Section 19A into the Serious Crime Act 2007.

[45] King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025).

[46] JUSTICE, '*Lowering the Standard: a review of Behavioural Control Orders in England and Wales*', (2023).

impossible to confirm whether SCPOs are a successful, proportionate or cost-effective measure to "*prevent, restrict or disrupt*" a person's involvement in a serious criminal offence.

(b) **Overlap with other orders and offences:** conduct covered by SCPOs fall 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. As currently drafted, SCPOs have the potential to overlap with Labour Market Enforcement Orders; Terrorism Prevention and Investigations Measures; Gang Injunctions; Serious Violence Reduction Orders; Slavery and Trafficking Prevention Order; and Slavery and Trafficking Risk Orders, as well as potentially overlapping with new orders created by the Crime and Policing Bill and offences. That the Bill permits for SCPOs to only be imposed in Scotland for conduct that is terrorism related – blurring the lines further and duplicating Terrorism Prevention and Investigation Measures. The situation is chaotic and untenable. Rather than introducing two further types of SCPO, the Government should streamline and simplify the range of orders currently in existence.

(c) **Inconsistent use of orders across the country** – Evidence obtained via our report and freedom of information requests indicate a significant variation in the use of SCPOs across the country, and the types of conditions and requirements they impose.[47] This is problematic for the rule of law, creates postcode lotteries and undermines the effectiveness of the measures. We are particularly concerned by the Bills approach to electronic monitoring which permits England and Wales to impose more stringent conditions on a member of the public living there, than the rest of the UK. There is no clear justification for this. We consider that England and Wales should align with Scotland and Northern Ireland in omitting the use of electronic monitoring for SCPOs - particularly in the light of our concerns about its proportionality, outlined below.

(d) **A lack of resourcing, training and infrastructure to monitor and enforce orders properly.** The Government has not provided any reassurance about 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.[48] This will be further complicated by the fact that the Bill permits an individual to be subject to more than one SCPO

[47] *Ibid.*

[48] '*Home Office Draft Impact Assessment Rationale for Intervention*' (B), (2 April 2024).

at a time. Currently, poor communication infrastructure between different courts and police forces often leads to current breaches of orders going unnoticed.[49] Finally, the measures to expand SCPOs, which attract prison sentences of up to 5 years, are unworkable considering the current strain on the prison system and overcrowding. Again, the Government has not addressed the impact of SCPOs on the wider criminal justice system.

(e) **Setting people up to fail** – Breaches of conditions within orders are common.[50] 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. This is gravely concerning and raises serious concerns about procedural fairness.

42. **Therefore, we strongly support Amendment 207, tabled by Baroness Hamwee, which calls for a review of SCPOs alongside existing orders such as such Terrorism Prevention and Investigation Measures, Slavery and Trafficking Risk Orders and Gang Injunctions.** The review is necessary to prevent duplication and identify where additional resources and training is required. It will also provide the opportunity to identify how bodies are currently monitoring for equality and human rights impacts when applying for, imposing and enforcing orders and ensure that procedural fairness and the rule of law is upheld.

JUSTICE urges Peers to support Amendment 207, tabled by Baroness Hamwee and Lord German, which would require the Secretary of State to appoint an Independent Reviewer to conduct a review of civil orders designed to prevent serious crime prior to the provisions relating to Serious Crime Prevention Orders coming into force.

Disproportionate impact of Electronic Monitoring

43. Given the operational problems referred to above, we do not think it is practical or appropriate to introduce electronic monitoring via SCPOs. In particular, the current lack of resourcing, training and

[49] JUSTICE, '*Lowering the Standard: a review of Behavioural Control Orders in England and Wales*', (2023).

[50] Albeit, difficult to assess situation fully due to lack of data.

infrastructure to monitor and enforce orders properly, will only be exacerbated by introducing electronic monitoring via SCPOs.

44. Moreover, the Government has failed to provide evidence that the addition of electronic monitoring will improve the efficacy of SCPOs. On the contrary, there is significant evidence to show that electronic monitoring is a strain on financial and work-force resources. The equipment is often defective, with reports of broken chargers, incorrect GPS information, false tamper alerts or problems with associated case-management systems.[51] We note that the Public Accounts Committee report on tagging in 2022 found that the tagging programme had *"wasted £98 million of taxpayers' money"* whilst also concluding that the Ministry of Justice and HMPPS still "*do not know what works and for who, and whether tagging reduces reoffending*."[52] Not only are there ongoing practical issues with the tags themselves, there is no compelling evidence that tags act as a deterrent or increase compliance with the types of conditions contained within Behavioural Control Orders.

45. These limitations are significant when considering the severe impact that electronic monitoring has on an individual's rights under the ECHR. Being subject to an SCPO is already a serious and life-changing event, particularly given the duration of the SCPO, the restrictions it imposes and the punishment for breach. As set out in independent legal advice obtained by JUSTICE, SCPOs subject individuals to restrictions and requirements that can interfere with their rights under the ECHR including their right to a private and family life (Article 8), the right to freedom of thought and religion (Article 9), the right to freedom of expression (Article 10) and the right to peaceful assembly and association (Article 11).

46. We agree with the position stated in the legal advice, that the introduction of electronic monitoring and notification requirements increases the severity of the interference with human rights and, when considering the overall impact of the conditions and restrictions imposed upon an individual, could amount to an unlawful deprivation of their liberty under Article 5.[53] We therefore have grave concerns about the proportionality of the suggested changes, including the fairness of someone being subject to both electronic monitoring and notification requirements. This is even more alarming when considering that an individual can be subject to an SCPO without ever being found guilty of committing an offence.

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[51] Privacy International, '*Challenge to systemic quality failures of GPS tags submitted to Forensic Science Regulator*', (17 August 2022).

[52] Public Accounts Committee, *"Avoidable" mistakes in tagging programme "wasted £98 million of taxpayers' money"*, (21 October 2022).

[53] King and Spalding, '*The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion*', (2025).

47. Furthermore, the police and private companies do not have the resources to facilitate the increased use and monitoring of electronic monitoring in SCPOs. Indeed, they are unable to meet the current demand, resulting in serious delays in fitting tags. Given the police funding cuts set out in the Government's June 2025 Spending Review, and the Government's proposals to increase tagging for prisoners released early, resourcing issues will only worsen.[54] Increasing tagging for SCPOs is therefore impractical. JUSTICE remains gravely concerned about the ability of the police to monitor electronic monitoring to ensure it is being used safely, proportionately and fairly, given capacity issues.

48. **JUSTICE therefore urges Peers to table the following amendment, which would remove the provision permitting electronic monitoring requirements for serious crime prevention orders:**

Clause 52, page 48, line 26, leave out Clause 52.

Interim Orders without Notice / SCPOs on Acquittal

49. Clause 53 and Clause 56 of the Bill, which expands SCPOs to make them available without notice and on acquittal, will have serious ramifications beyond the immigration system. The inclusion of these provisions means that a member of the public can be subject to severe restrictions on their liberty, without ever having been found guilty of an offence and without having the opportunity to provide a legal defence.

50. We consider that SCPOs are equivalent in character and severity to the consequences of a criminal conviction. This is despite the Government's position that the SCPOs is not a penalty and that they are "civil" tools nor their insistence that the 2023 Supreme Court judgment in *Jones* confirms this. *Jones* must be confined to its particular facts and the statutory regime governing the Gang Injunctions in question in that case, which is distinct from (and offers more safeguards) than the regime governing SCPOs.[26]

51. Those subject to a SCPO should benefit from the full protections provided for under Article 6 ECHR. This includes having the case for imposing a SCPO made out to the criminal standard of proof; rules being in place to prohibit the admission of hearsay; adequate time and facilities being provided to prepare a

[54] '*Hundreds of prisoners freed early in England and Wales not fitted with tags*', (The Guardian, 19 September 2024).

defence to a SCPO and provision being made for legal assistance. Under no circumstances should an SCPO be imposed without a person having their evidence heard. As currently drafted, this is not the case. A retrospective right to appeal an interim SCPO in court, with vague and indeterminate timeframes, does not suffice and also gives rise to a potential breach of the reasonable time requirement under Article 6(1).[55]

52. Moreover, we do not consider that SCPOs should be imposed on individuals who have not been found guilty of an offence or who have been acquitted of an offence. 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 ever be reasonable for it to do so. This would amount to criminalisation by the backdoor. Procedural safeguards inherent within the criminal law must not be usurped by allowing judges to impose SCPOs and determine someone's involvement in crime, upon a weaker standard of proof and using evidence that would be otherwise inadmissible in a criminal trial.

53. **JUSTICE therefore urges Peers to table the following amendments, which would removes the provisions creating interim serious crime prevention orders and remove the provision allowing for the making of an order on acquittal:**

Clause 53, page 51, line 3, leave out Clause 53.

Clause 56, page 61, line 37, leave out Clause 56.

[55] Clause 49, 5F (2) of the Bill sets out that, when a court makes an ISCPO without notice, the court must provide the recipient of the ISCPO with the opportunity to make representations about the order "as soon as reasonably practicable" and at a hearing of which notice has been given to them.

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