Submission to:
Joint Committee on Human Rights

Legislative Scrutiny:
Border Security, Asylum and Immigration Bill
April 2025

1. The Border Security, Asylum and Immigration Bill ("the bill") pursues much the same policy strategy and aim as that of the previous administration. That strategy and aim ("the strategy") is one of deterrence and prevention. The bill is, accordingly, dominated by provisions for enabling enforcement to prevent arrival or entry to the UK and penalising the people whose arrival is intended to be deterred or prevented.

2. There is an overriding human rights incompatibility of this strategy. It is set without any or any proper regard to the human rights of the people affected, including the shared obligations of the UK to guarantee refugees' right to asylum (to both seek and receive it)[i] and to safeguard victims of human trafficking.[ii] It is concerned solely to deter and prevent journeys to the UK. As such, it not only fails the obligation to share responsibility. It ignores the consequences of that failure.

3. Those consequences include encouraging or licencing others to fail likewise.[iii] The consequences are also to prolong the conditions in which people are compelled to attempt dangerous journeys and rely on people, including organised criminals, who may abuse them.[iv] This includes leaving refugees in search of asylum, victims of human trafficking in trafficking situations, and people more generally in dire circumstances. It equally includes sustaining the conditions in which organised criminals and other abusers may thrive. None of this is in any real sense compatible with human rights obligations.

4. Given the restriction on word count, we have restricted this submission to Questions 2, 4, 6 and 9 from the Call for Evidence. However, that we have not answered a particular question or addressed a particular provision is no indication of any lack of human rights concern arising from the question or provision.

Is Clause 18 compatible with the Refugee Convention? (Question 2)

5. Clause 18 is an extension of existing offences under section 24 of the Immigration Act 1971 of arriving or entering in breach of immigration laws ("the

section 24 offences").[v] It constitutes an aggravation of these where it is said the person has, on a boat journey by which they arrived from France, Belgium or the Netherlands, done something that caused serious physical or psychological injury, or created a risk of that, to someone else.

6. Clause 18 is, therefore, incompatible with Article 31 of the Refugee Convention in the same way as the existing section 24 offences. This is primarily because the statutory defence by which Article 31 is given limited application in UK law is not made available to these offences.[vi] Nonetheless, were these offences added for these purposes that would still not achieve compatibility because the statutory defence is constructed too narrowly to satisfy Article 31. That is especially so since the amendment of the statutory defence by section 37 of the Nationality and Borders Act 2022.[vii]

7. However, this is not all that must be said about the human rights impact of Clause 18. Clause 18 is exclusively concerned with people making the journey to the UK, not by someone exploiting these people. It can only be committed by someone who arrives to the UK by boat from France, Belgium or the Netherlands. While the people and journeys targeted by the offence are narrowly constructed,[viii] their relevant acts are widely constructed to capture anything done – however well intentioned, done in panic or fear, involuntary, done by mistake, or triggered by trauma – that created a risk of serious physical or psychological harm to someone, even if none was caused. The person put at such risk may be another passenger, a rescuer or other person, including someone exploiting the people in the boat or someone seeking to intercept or prevent their journey by whatever means (including dangerous or unlawful means).[ix]

8. Given the conditions of people on these boats – including those viscerally described by the Home Secretary at Second Reading[x] – the risk of committing the offence, even with no ill-intent or recklessness, is severe. The construction of the offence plainly extends far further than the examples given by ministers of what they intend by the offence,[xi] and it seems highly likely these examples would be capable of prosecution under existing criminal law offences in any event or via extradition to France, Belgium or the Netherlands as appropriate.

9. **On the face of it, therefore, Clause 18 is purely punitive in intent and should be deleted.** Ministers have failed to give any serious attention to the realities of the people at risk of being prosecuted even while laying great emphasis on those same realities in promoting other provisions of this bill. This is a dehumanisation of people – their realities are simply overlooked when it comes to them and their rights. In this way, Clause 18 is emblematic of much of the bill (and much of the strategy that it continues to serve). The people – whose needs, interests and rights – ought to be at the centre of attention to ensure their safety, their right to asylum, and their capacity to escape human traffickers are at best ignored and at worst being harmed including contrary to their human rights.

Retention of provisions of the Illegal Migration Act 2023 (Question 4)

10. **We are gravely concerned at the retention of provisions of the Illegal Migration Act 2023. The Act should be repealed in its entirety.** Having regard to word count constraints, we provide only brief response to ministers' explanation for this retention:

    10.1. In Committee, the Minister rehearsed the statement of compatibility given by the Home Secretary.[xii] We intend no criticism of that rehearsal, which contrasted starkly with the statements given by her predecessors on the Illegal Migration Act 2023 and Safety of Rwanda (Asylum and Immigration) Act 2024. We merely express our doubt that a statement of compatibility on a bill can be expected to affirm the compatibility of measures in other legislation that are not to be repealed. That includes, as here, where there was no statement of compatibility made on the respective bills and where other measures in such legislation are being repealed by the bill on which the present statement is made.

    10.2. In Committee, the Minister generally explained the purpose of retaining six provisions of the Illegal Migration Act 2023 to be that they have "*operational utility and benefit*" and are "*important tools*" in operating the immigration system.[xiii] What little further was said indicated they were expected to aid delivery of the strategy of deterrence and prevention, including by increasing removals from the UK (which seems partly intended to aid a deterrent effect and partly to satisfy a distinct and heightened commitment to delivering more enforcement).[xiv]

    10.3. There are two critical problems with this. First, as summarised in this submission's introduction, the strategy is not designed to deliver on the UK's human rights obligations. Second, and related to the first, the strategy is designed to fail in its own terms. This is because it fails to account for and address the human rights and realities of the people whose journeys to the UK it aims to deter or prevent and whose continued need to attempt such journeys provide the opportunity for exploitation that the strategy seeks to end.

    10.4. As regards section 29 of the Illegal Migration Act 2023, this has received particular attention. It is important not to consider this provision in isolation from section 63 of the Nationality and Borders Act 2022, which it amends to substitute an obligation for that provision's discretion to deprive a victim of slavery or human trafficking of protection. The Committee's findings and recommendations on section 63 are no less relevant to section 29, which enlarges the potential incompatibility of section 63.[xv]

    10.5. Among the circumstances in which section 63, including as amended by section 29 if that provision is commenced, would permit or require deprivation of protection to a victim are convictions of any offence that

has resulted in a 12 months prison sentence and conviction of any offence listed in Schedule 4 to the Modern Slavery Act 2015.[xvi] In addition to the Committee's previous findings concerning the list of offences, we must emphasise that the defences that are excluded from the listed offences are not merely where someone commits the offending act in connection with their being enslaved or trafficked under compulsion or when a child.[xvii] The defences are solely available where a reasonable person in the circumstances of the defendant would have committed the act (and if an adult would have had no reasonable alternative to doing so).[xviii] Whether there are reasons for prosecuting and convicting a person for an act that it is clearly acknowledged a reasonable person in the defendant's shoes would have committed (even had no choice but to commit) is one matter. It is an entirely different order of things for that to then permit or even require the person to be deprived of such vital protections as those designed to protect victims of modern slavery.

The threshold for imposing electronic monitoring requirements (Question 6)

11. The Call for Evidence identifies what are now – after the addition of two Government new clauses – Clauses 48-52. One of these additions (now Clause 43) also concerns electronic monitoring alongside other wide powers to restrict freedom of movement. The contrast between the power to impose electronic monitoring under Clauses 48-52 and the power to impose that and other wide powers to restrict freedom of movement under Clause 43 is stark. The contrast includes the absence of threshold, who may exercise the power, and the extraordinary range of people against whom it may be exercised.

12. We leave others to make submissions on Clauses 48-52 and intend no endorsement for these clauses in the contrast we draw with Clause 43. Nonetheless, we draw the following matters to the attention of the Committee:

    12.1. Clause 43 is to introduce an extension of 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 ("the 1971 Act"). As regards electronic monitoring, it includes the addition of Schedule 1A to the 1971 Act. Finally, it is to amend Schedule 10 of the Immigration Act 2016 so that potential restrictions on immigration bail are made as extensive as the additions to the 1971 Act will make the potential restrictions on grants of leave.[xix]

    12.2. Clause 43 is an extraordinary overreach of power. Section 3(1)(c) of the 1971 Act concerns the general administration of immigration policy. Its original content permitted restrictions on employment or occupation and the requirement to register with the police to be made a condition on leave to enter or remain. Section 3(1)(c) has been extended since its first introduction. It now permits restriction on work[xx] or occupation and studies,[xxi] the requirement to maintain and accommodate oneself and any dependents without recourse to public funds,[xxii] the requirement to

report to an immigration officer,[xxiii] and a restriction about residence.[xxiv] It is clearly arguable that some of this extension of section 3(1)(c) goes beyond general administration. Nonetheless, Clause 43 remains exceptional. It would permit electronic monitoring, curfews, exclusions from specified areas, confinement to specified areas, and such other restrictions "*as the Secretary of State thinks fit*". This goes far beyond general administration.

12.3. Ministers' explanation for these powers also indicates an intention that is clearly distinct from general administration. None of ministers' explanation for these powers is reflected in the drafting of this clause. The explanation raises matters of national security or policing, not immigration.[xxv] However, Clause 43 gives powers to immigration officials, whose training, competence, supervision and functions are not appropriate to the exercise of such powers. It does so with no constraint on the circumstances in which they may exercise these powers, the duration for which they may do so, or any other limitation save that they cannot impose these on a British citizen or settled person.[xxvi]

12.4. While a British citizen may not be expelled from their own country, there is no reason to conclude that the national security or policing concerns raised by ministers have any particular connection to the nationality or immigration status of people in the UK.[xxvii] Simply introducing the new powers as if matters of general administration of immigration policy does not alter that. On the other hand, treating these as matters of general administration tends to affirm a harmful and erroneous notion of immigration and immigrant people as ordinarily or inherently threatening to the public and national security.

12.5. Accordingly, Clause 43 raises concerns of interference with private life (Article 8) and of discrimination (Article 14). Insofar as it could be applied to a refugee, it offends in principle Article 26 of the Refugee Convention albeit the drafting of the clause is neither refugee-specific nor in any way constrained in its application leaving the provision (though not necessarily its application) seemingly "*applicable to aliens generally in the same circumstances*" albeit for improper reasons (i.e., due to its unconstrained scope).

12.6. Clause 43 also provides stark example of a wider human rights concern that has long affected immigration policy. Laws that are made without proper constraints on their application provide greater invitation to excessive exercise of power and require greater intervention of lawyers and courts to protect people from such excess. Moreover, if Parliament passes such laws, it deprives lawyers and courts of tools to provide that protection other than reliance on the Human Rights Act 1998. In effect, human rights are made to do the work that Parliament (and governments who present these laws to it) have failed to do in properly assessing what is or is not needed and constructing the laws to clearly reflect that

assessment – including by clearly and narrowly specifying relevant purposes and constraints on the powers and duties that are given. Conversely, the greater work that is required of human rights, the more disquiet is stirred at their doing so much work. This concern is now deeprooted and widespread in immigration policy and the consequences for respect for the Human Rights Act 1998 and the 1950 European Convention on Human Rights are clear for all to see.[xxviii]

12.7. **Clause 43 is not merely far to broadly drafted. Even if a targeted provision could be justified, it would not be suitable as an amendment to section 3(1)(c). Clause 43 should therefore be deleted.**

Other human rights issues (Question 9)

13. We would invite the Committee to consider the absence of any repeal of the Nationality and Borders Act 2022. We remind the Committee of its previous findings and recommendations concerning that Act[xxix] and of the assessment of the UN High Commissioner for Refugees on the passing of that Act:

> "*UNHCR, the UN Refugee Agency, regrets that the British government's proposals for a new approach to asylum that undermines established international refugee protection law and practices has been approved.*"[xxx]

14. That was an unusually damning and public indictment of national legislation and policy by the High Commissioner. It was supported by detailed analysis published previously by his agency.[xxxi] That the Illegal Migration Act 2023 and Safety of Rwanda (Asylum and Immigration) Act 2024 went to even greater lengths in disrespecting and disregarding human rights obligations has, to some extent, obscured the severity of the Nationality and Borders Act 2022.

15. Ministers have suggested there to be some operational utility in retaining all of that Act – in the same way they believe there to be utility to retaining six provisions of the Illegal Migration Act 2023.[xxxii] The starting error here is that operational utility is not being assessed, properly or at all, against human rights obligations. Insofar as these may be said to have such utility, that utility is illegitimate for serving a strategy that is incompatible with those obligations – most particularly obligations to protect life at sea,[xxxiii] ensure the right to asylum, and protect victims of human trafficking.

16. However, there is no real utility in this disregard of human rights obligations. The consequence of disregarding or seeking to avoid such obligations – including under the Refugee Convention – is to:

16.1. Perpetuate and exacerbate conditions in which people are dependent on organised criminals, compelled to attempt dangerous journeys and vulnerable to other forms of exploitation.

16.2. Make the asylum system both unfair and inefficient, doing real harm to people while wasting public funds and creating or sustaining administrative chaos. The previous administration's wreckage of the asylum system provides acute example of this,[xxxiv] but it is not the only example from the past 25 years.[xxxv]

16.3. Undermine international commitment to shared refugee and other obligations. This harms many more people and greatly exacerbates the conditions in which organised criminals thrive and dangerous journeys are made.

17. Government urgently needs to recognise and act on the intimate connection between human rights compliance and administrative efficiency. Regrettably, failing to heed human rights obligations in lawmaking, policy and practice in the field of immigration has become routine. The impact of this is not merely serious harms done to many people, but a vicious cycle in which human rights law is more frequently called upon. That call is in response to what is neither practical nor responsible, yet the response is misused to ever more stridently condemn law, lawyers and respect for human dignity and to distract from the miserable failure of policy that necessitates the response.

18. **Substantial repeal of the Nationality and Borders Act 2022 should be included in this bill. We have not addressed all that should be included for repeal, but Part 2 should be among that.**

---

[i] Article 14, 1948 Universal Declaration of Human Rights ("the Universal Declaration); and the 1951 UN Convention relating to the Status of Refugees ("the Refugee Convention"), which is underpinned by a principle of shared responsibility. Neither instrument requires asylum to be sought or provided in any particular State. Article 3, 1950 European Convention on Human Rights ("the European Convention") also recognise the non-refoulement principle in the case of someone who would face a real risk of torture, inhuman or degrading treatment or punishment if expelled from the territory. [ii] The 2005 Council of Europe Convention on Action against Trafficking in Human Beings ("the AntiTrafficking Convention") is of especial significance in terms of prevention and protection. Article 4, 1948 Universal Declaration and Article 4, European Convention each prohibit slavery in absolute terms.

[iii] These consequences can be seen across the European Union, but also further afield. While various EU neighbours are determined to identify and implement means to deter and reduce the asylum responsibilities asked of them, countries such as Pakistan are threatening significant larger populations of refugees with expulsion. None of this is to anyone's good save those who will exploit the increasingly precarious condition of ever larger numbers of people. [iv] Over the last few years, a great deal of energy and resource has, for example, been put into intercepting attempts to cross the Channel. However, the number of people intercepted does not equate to a number of people prevented from crossing. Since the relevant circumstances of people intercepted are generally not addressed, people are simply compelled to make a new attempt.

[v] The Clause 18 offence can only be committed if one of section 24(A1), (B1), (D1) or (E1) is also committed: see subsection (E1A)(a) to be inserted by Clause 18. [vi] See section 31 of the Immigration and Asylum Act 1999. [vii] This is a matter on which the Committee has previously made findings and recommendations, see the Committee's Twelfth Report of Session 2021-22, HC 1007, HL Paper 143, January 2022, paragraphs 67ff (concerning then clause 36). [viii] New subsection (E1A)(b) restricts the offence to completed sea journeys from

France, Belgium or the Netherlands to the UK; and together with (E1A)(a) restricts the offence to people who complete these journeys and commit an offence of entering and arriving to the UK in breach of immigration law. [ix] That may be by official or non-State actors.

[x] *Hansard* HC, 10 February 2025 : Col 61

[xi] *Hansard* HC, Public Bill Committee, 5th Sitting, 11 March 2025 : Col 158 *per* Minister for Border Security and Asylum

[xii] *Hansard* HC, Public Bill Committee, 7th Sitting, 11 March 2025 : Col 219 *per* Minister for Border Security and Asylum

---

[xiii] *Hansard* HC, Public Bill Committee, 7th Sitting, 11 March 2025 : Col 225 *per* Minister for Border Security and Asylum

[xiv] The principle effect of disqualification for protection is to permit a person's expulsion including under section 32, UK Borders Act 2007 notwithstanding the exception to deportation under section 33(6A) of that Act.

[xv] See the Committee's Eleventh Report of Session 2021-22, HC 964, HL Paper 135, December 2021, paragraphs 62ff (on then clause 62). [xvi] Section 63(3) designates a person as a "*threat to public order*" for the purpose of disqualification from protection in the listed circumstances. Those circumstances include conviction of any offence listed in Schedule 4 to the Modern Slavery Act 2015 and where a person is convicted of any offence for which they receive a sentence of at least 12 months imprisonment: see section 63(3)(b) and (f) of the Nationality and Borders Act 2022. [xvii] Section 45(1) and (4), Modern Slavery Act 2015 [xviii] Section 45(1)(d) and (4)(c), Modern Slavery Act 2015

[xix] Far from merely ending a 'disparity' between conditions that may be imposed on a grant of leave and those that may be imposed on immigration bail, as suggested by the Minister for Border Security and Asylum (*Hansard* HC, Public Bill Committee, 9th Sitting, 13 March 2025 : Col 265), the provision only avoids a wide disparity the other way by greatly extending immigration bail conditions to prevent the disparity it would otherwise create. Whereas the existing greater restriction on immigration bail conditions may be justified by the need for immigration control pending a decision on whether to grant leave or pending removal from the UK, there is no similar immigration purpose to extending ordinary immigration conditions on grants of leave rather than, for example, ensuring adequate liaison between immigration and other authorities concerned with national security or policing for the latter to take any proportionate and reasonable step before or at the time leave may be granted. [xx] Section 34(2), Immigration Act 2016 substituted 'work' for 'employment. [xxi] Section 50, Borders, Citizenship and Immigration Act 2009 introduced the power to impose a restriction on studies. [xxii] Paragraph 1(1) of Schedule 2 to the Asylum and Immigration Act 1996 introduced the power to impose a restriction on recourse to public funds. [xxiii] Section 16, UK Borders Act 2007 introduced the power to impose a condition requiring reporting to an immigration officer (alternatively to the Secretary of State). [xxiv] Section 16, UK Borders Act 2007 introduced the power to impose a condition about residence. [xxv] *Hansard* HC, Public Bill Committee, 9th Sitting, 13 March 2025 : Col 265 *per* Minister for Border Security and Asylum

[xxvi] A British citizen is exempt from immigration control by sections 1(1) and 2(1)(a), Immigration Act 1971; and person who is settled (i.e., granted indefinite leave to enter or remain) may not have conditions under section 3(1)(c) placed on the leave that is granted to them (the provision expressly applies on to limited leave). [xxvii] The discrimination inherent in what is intended is that which led the House of Lords, albeit in connection with different provisions and circumstances, to quash the Human Rights Act 1998 (Designated Derogation) Order 2001 and declare section 23 of the Anti-terrorism, Crimes and Security Act 2001 to be incompatible with Articles 5 and 14 of the European Convention: *A & Ors v Secretary of State for the Home Department* [2004] UKHL 56.

[xxviii] The increasing extent to which direct confrontation was made with human rights obligations by the Nationality and Borders Act 2022, Illegal Migration Act 2023 and Safety of Rwanda (Asylum and Immigration) Act 2024 is an example of these consequences, but there is much legislation in the immigration area that has, over the last 25 years, sought to interfere with official and judicial decisionmaking in assessing evidence, determining facts and applying law as this relates to human rights matters. [xxix] See the Committee's Twelfth Report of Session 2021-22, HC 1007, HL Paper 143, January 2022, as summarised on page 4, "*Parts 2 and 4 of the Government's Nationality and Borders Bill make a number of changes to the UK's asylum system which are inconsistent with these rights and international commitments* [referring to provisions of the European Convention, the Refugee Convention and the 1989 UN Convention on the Rights of the Child]*, and as such, they concern us greatly.*" [xxx] Statement of Filippo Grandi,

UN High Commissioner for Refugees on 27 April 2022. [xxxi] Much of this remains available on the UNHCR UK website. [xxxii] *Hansard* HC, Public Bill Committee, 12th Sitting, 18 March 2025 : Col 372 *per* Minister for Border Security and Asylum

---

[xxxiii] Including under Article 98 of the 1982 UN Convention on the Law of the Sea. [xxxiv] As shown by Amnesty UK's *Gambling with Lives: how a bad policy wrecked the UK's asylum system*, February 2024. [xxxv] There is not space to provide a full analysis of other examples, but the announcement of an asylum 'legacy' by the Rt Hon John Reid, strongly associated with his reputed description of the Home Office as 'not fit for purpose', in 2006 relates in significant part to matters of concern: *Hansard* HC, 19 July 2006 :
Cols 328 & 338; and 25 July 2006 : Cols 736, 740 & 747.