Amnesty International UK

BRIEFING

Border Security, Asylum and Immigration Bill, HL Bill 101

House of Lords Committee, June 2025 – Clause 43 (Conditions of Leave)

Clause 43 stands out as the most glaring bid to overreach power at the Home Office. As addressed in this briefing, if ministers' stated reasons for seeking this increase in power at the department have real or sufficient justification, this Clause remains a singularly inappropriate means to achieve that. **We, therefore, support Lord Anderson of Ipswich, Lord Kirkhope of Harrogate and Baroness Hamwee's opposition to this Clause standing part of the Bill.**

The Keeling Schedule below identifies changes (in red italics) that Clause 43(2) would make to Section 3(1) of the Immigration Act 1971. The most fundamental objection to Clause 43 is it treats what are plainly exceptional powers as if ordinary powers for regulating immigration.

3 General provisions for regulation and control.

(1) Except as otherwise provided by or under this Act, where a person is not a British citizen—

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;

(b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely—

(i) a condition restricting his work or occupation in the United Kingdom;
(ia) a condition restricting his studies in the United Kingdom;
(ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;
(iii) a condition requiring him to register with the police.
(iv) a condition requiring him to report to an immigration officer or the Secretary of State; ~~*and*~~
(v) a condition about residence*; and*
(vi) an electronic monitoring condition (see Schedule 1A);
(vii) a condition requiring the person to be at a particular place between particular times, either on particular days or on any day;
(viii) a condition requiring the person to remain within a particular area;
(ix) a condition prohibiting the person from being in a particular area;
(x) such other conditions as the Secretary of State thinks fit.

Clause 43 makes two further changes in addition to those identified in the Keeling Schedule:

- Clause 43(3) defines an "electronic monitoring condition" to mean a condition requiring someone to comply with arrangements for monitoring their location, which may include their wearing an electronic tag.
- Clause 43(4) extends the conditions that may be imposed on immigration bail under paragraph 2(1) of Schedule 10 to the Immigration Act 2016 to match the extension, made by Clause 43(2), of conditions on limited leave to enter or remain.

The purpose of section 3 of the Immigration Act 1971

Amending existing Acts of Parliament requires care to avoid inadvertently changing the law more fundamentally than may be intended or appropriate. It matters, therefore, to understand the purpose of section 3 of the Immigration Act 1971 before simply adding power to impose conditions of the nature of those contained in Clause 43.

Section 3 is aptly entitled "*General provisions for regulation and control*." It sits in Part 1 of the Act, which is entitled "*Regulation of Entry and Stay in United Kingdom*." The purpose of Part 1 is to set the basic foundations of the UK's immigration system – which now regulates the lives of millions of people who apply to and/or do visit or come to the UK for work, study, joining family and other reasons. Section 3(1)(c) establishes the basic conditions that may be placed upon permission granted to any of these people to come or to stay temporarily. Those conditions have been expanded over time.[1] While there may be room for debate as to whether all additions are equally suitable for inclusion as general powers to be applied to such a wide class of people, the basic position remains that section 3 concerns "*general provisions*."

The purpose of Clause 43

Clause 43 was introduced in Committee in the other place. In speaking to Government New Clause 30 (which is now Clause 43), the Minister offered the following justification for it:[2]

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

The concern, as there expressed, is not one of generality. The ordinary position is that a person who is said to pose such a threat is not admitted to the UK or permitted to stay. The millions of people upon whom conditions under section 3(1) may be imposed are, on the face of the minister's justification, not intended to be made susceptible to conditions in Clause 43. Given the exceptional nature of those conditions, that is minimally appropriate. However, that alone

[1] Amendments have been made by the Asylum and Immigration Act 1996; UK Borders Act 2007; Borders, Citizenship and Immigration Act 2009; and Immigration Act 2016.

[2] *Hansard* HC, Committee, 13 March 2025 : Col 265 *per* Minister for Border Security and Asylum

undermines any case for amending section 3(1)(c) in this way. There are further concerns regarding the minister's justification and what is contained in Clause 43.

First, that justification misunderstands what the clause does. The clause does not 'level up' section 3(1)(c) to match conditions on immigration bail. Instead, it extends section 3(1)(c) far further. Amendments to paragraph 2(1) of the Immigration Act 2016 are therefore made to extend conditions on immigration bail to 'level up' these to the far extended powers to be introduced within section 3(1) of the Immigration Act 1971 (not the other way round).

Second, it plainly does not follow, in any case, that general powers under section 3(1)(c) should extend as far as powers to impose conditions on immigration bail. People granted immigration bail are either facing removal or awaiting some further consideration of whether they should be permitted to enter or stay. The people to whom section 3(1) applies are people permitted to enter or stay because they fulfil the general requirements for such permission – whether to visit, work, study, join family or for other reasons.

Third, immigration powers are generally – or ought to be – for regulating immigration. There are distinct policing, probation, and national security powers available for protecting the public, including under the Terrorism Prevention and Investigation Measures Act 2011 ("the TPIMA 2011"). Migrants to the UK are subject to these other powers like anyone else in the UK capable of putting other members of the public at risk. There is, therefore, neither need nor proper purpose to subjecting them to additional powers for securing public safety.

Fourth – which follows from the previous matter – Clause 43 demonstrates one danger of not properly distinguishing between powers according to their true nature and purpose. The exceptional powers for severely restricting freedom of movement in Clause 43 are akin to several powers found in the TPIMA 2011. That Act provides various safeguards concerning the use of those national security powers. None of those safeguards are found in Clause 43. They are, of course, not found in the general legislative rubric into which Clause 43 will insert what are plainly exceptional powers. Immigration officials, who have none of the same experience, training, and supervision that might be expected of different authorities are thereby to acquire exceptional powers. Moreover, these powers are to be delivered to them with none of the statutory safeguards that apply in other contexts.

For all the above reasons, Clause 43 should be removed from the Bill. That it was ever included provides stark example of the longstanding problem of failing to distinguish between what is an immigration matter and what is not (including policing and national security matters).[3] This too-frequent oversight treats migrant people as if either less safe, less human, or less deserving respect than other people (or each of these); and gives licence and even, with the constant tendency to extend Home Office power, opportunity for abuse of power over this group of people. For years and decades, Parliament has sanctioned this approach by passing bill after bill with ever more power to the department and ever less constraint upon it. The results have clearly satisfied nobody while doing real harm to some. That should not be continued.

[3] An example of this in the other direction is to be found in Clause 144 of the Crime and Policing Bill HL Bill 111, which is currently awaiting its Second Reading in the House of Lords. This measures in effect gives a police officer an implicit immigration power – to determine that someone must leave the UK – notwithstanding that the officer will have none of the experience, training, supervision or even information and context with which to make such a decision.