

Border Security, Asylum and Immigration Bill 2025: Briefing for Commons Second Reading

Summary

- Freedom from Torture, Helen Bamber Foundation and Refugee Action support the repeal of the Safety of Rwanda (Immigration and Asylum) Act 2024 and the repeal of most of the Illegal Migration Act 2023 (IMA).
- The IMA should be repealed in its entirety. In particular, we are alarmed that the Bill retains sections 59 and 29 of the Illegal Migration Act which, respectively, make asylum and human rights claims from a raft of countries inadmissible, including Albania and India, and prevent some people from claiming modern slavery protections.
- We are concerned that the Government has not taken the opportunity to repeal or reform elements of the Nationality and Borders Act 2022 that inhibit access to justice, risk inherent unfairness and give rise to a significant risk of return to persecution.
- We are alarmed by the introduction of yet further criminal offences that could easily be applied to refugees as opposed to smugglers and traffickers, and are concerned that this Bill continues to treat the forced displacement of refugees as a national security rather than a human rights issue.
- Ultimately, this Bill represents some progress towards a fairer asylum system, through the repeal of regressive and dangerous previous immigration legislation, but further work is needed to prioritise the safety and access to protection of those seeking sanctuary in the UK.

Recommendation: Members of Parliament should vote in favour of the Border Security, Asylum and Immigration Bill at Second Reading (in order to repeal harmful immigration laws) but seek to significantly amend the Bill at Committee and Report stage.

Who we are

Freedom from Torture is the only human rights organisation dedicated to the rehabilitation of torture survivors who seek refuge in the UK. We do this by providing clinical, legal and welfare services to more than 1,000 torture survivors every year at our specialist centres across the UK.

Refugee Action exists to defend the right to safety that we all share. We're fighting the hostility that has a devastating, daily impact on refugees and our communities. We do this with life-changing support and system-changing campaigns that bring us all closer to safety, dignity and hope.

Helen Bamber Foundation is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. Its multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors.

Repeal of the Safety of Rwanda Act 2024

Clause 37 of the Bill repeals the Safety of Rwanda Act 2024. The survivors of trafficking, torture and persecution that we support have been living in terror of the cruel and unlawful project behind this deeply harmful piece of legislation for years; their despair and anxiety acting as an obstacle to rehabilitation and recovery. We welcome the Government's swift action to end the scheme and, with this clause, to remove a piece of legislation that continues to threaten the safety of survivors of trafficking and torture, as well as other refugees in the UK. This is a victory for all those who raised their voice against this cash-for-humans scheme.

Repeal of most of the Illegal Migration Act 2023

Clauses 38 and 39 repeal many of the most harmful elements of the Illegal Migration Act including:

- Section 1(5): which removes the obligation in section 3 of the Human Rights Act 1998 for judges to interpret the Act in a way that is compatible with human rights;
- Section 2: the "duty to remove" - in practice a ban on seeking asylum in the UK;
- Section 5: the requirement to declare protection claims by anyone subject to the section 2 duty, as well as certain human rights claims, inadmissible;
- Section 6: which provides that individuals may be removed either to their own country of origin if deemed safe or a listed 'safe third country' that will admit them;
- Section 30: which prohibits the grant of leave or entry clearance for those subject to the duty;
- Section 55: which grants Ministers the power to decide whether to comply with an interim measure of the European Court of Human Rights.

We commend the Government for taking this step to remove so much of this Act from the statute books. If the Illegal Migration Act were fully implemented it would prevent the Government from considering the vast majority of claims by people who arrive on our shores seeking sanctuary, effectively stripping those fleeing war, persecution and torture of their right to seek safety in this country, threatening the rule of law and the UK's ability to comply with its international obligations.

Retaining elements of the Illegal Migration Act 2023

During its passage through parliament, this piece of legislation was roundly condemned by cross-party parliamentarians, UNHCR, the Council of Europe, UN Special Rapporteurs, the governments of the devolved nations, the Children's Commissioner for England and Wales, faith leaders, and countless civil society groups. The current Home Secretary was scathing in her attacks on the legislation, stating that the Bill was "*an attempt to drag our whole country down*", which "*will not work to stop boat crossings*", and "*will stop children and trafficked people getting help and will play into the hands of criminal gangs, and [...] undermine our reputation in the eyes of the world as a country that believes in the rule of law*".¹ A mission-driven Government, focused on competence and with respect for international law should repeal this Act in its entirety.

We are particularly concerned that sections 59 and 29 of the Illegal Migration Act are being retained:

¹ HC Deb, 13 March 2023, c590

- Section 59 makes asylum and human rights claims from a range of countries inadmissible and nationals from these countries would only be able to make asylum or human rights claims in “exceptional circumstances”. The list includes countries, such as India and Albania, from which Freedom from Torture continues to receive clients in need of therapeutic treatment in order to recover from torture. A quarter of the Helen Bamber Foundation’s clients are Albanian survivors of trafficking reliant on the asylum system for protection and security. While there are survivors of torture and trafficking reaching the UK and seeking sanctuary from these countries it cannot be considered that there is no risk of persecution at all for nationals of those states.
- Section 29 expands the scope of section 63 of the Nationality and Borders Act and provides that the Government must disapply someone from modern slavery protections if they are deemed a threat to public order (i.e. have been convicted of an offence and sentenced to a period of imprisonment) unless there are compelling circumstances. This poses a real risk that vulnerable individuals who have been exploited will be denied protections that should be afforded to them as survivors of trafficking, in potential breach of Article 4 of the European Convention on Human Rights (ECHR).

Retaining the Nationality and Borders Act 2022

The Government has an opportunity, with this legislation, to demonstrate its commitment to human rights and the rule of law, and to ‘*modernise the asylum and immigration system*’ [the Kings Speech 2024]. To do this will require repealing Parts 2 to 5 of the Nationality and Borders Act (as well as schedules 3 and 4). This Bill could help to restore order to the asylum system so that it operates fairly and efficiently, by removing laws that inhibit access to justice, risk inherent unfairness, are at odds with the European Convention on Human Rights (ECHR) and give rise to a significant risk of return to persecution. The Home Secretary herself recognised that the “*Nationality and Borders Act 2022 makes it harder to prosecute people traffickers, and that in fact it is adding six-month delays to the asylum system and pushing up the costs.*”²

Sections of the Act that make it harder for refugees who are admitted to the UK to access international protection, include:

- creating accelerated and detained appeal procedures for reasons unrelated to the merits of the claim (sections 20-27) that deny access to justice and put the most vulnerable appellants at a serious disadvantage;
- directing decision-makers (including judges) to consider giving “minimal weight” to evidence (section 26) or make adverse credibility findings under circumstances that carry a real risk of unfairness (sections 19 & 22);
- departing from well-established principles of UK law by importing the higher standard of proof used in civil litigation into the refugee determination process (section 32).

An effective appeal process is fundamental to any system for determining protection needs and the consequences of depriving an individual of such are potentially devastating. In the period from 2004 to 2021, around three-quarters (76%) of main applicants refused asylum at initial decision lodged an appeal and just under one third (30%) of those appeals were allowed.³ This means that the asylum appeal is a vital safeguard as the Government often gets the decision wrong the first time.

² HC Deb, 14 November 2022, c393

³ Asylum Statistics, House of Commons Library, 20 December 2024. Available at: [SN01403.pdf](#)

The provisions relating to evidence penalise the most vulnerable and those who have been failed by the system, by reducing the weight given to any evidence submitted after the applicant has been through a one-stop process. This could include independent expert medical evidence, such as the reports compiled by Freedom from Torture and Helen Bamber Foundation clinicians, that often proves determinative in asylum appeals involving survivors of torture.

The legal standard that previously applied to all parts of the protection test (*'reasonable degree of likelihood'*) was a test grounded in an understanding of the nature of persecution for a Convention-based reason, the reality of a person seeking asylum's experience of flight, and the serious implications of setting evidentiary expectations too high. In raising the standard of proof to *'a balance of probabilities'*, this Act significantly increased the risk of refugees being wrongly sent back to face persecution in breach of Article 33 of the 1951 Convention.

New criminal offences that will penalise refugees

Clauses 13 to 17 criminalise supplying or handling articles, or collecting information for use in immigration crime. These new offences are drafted broadly and although there are certain requirements for it to be considered an offence and there is a defence of having a reasonable excuse, there is a risk that individuals seeking only to assist refugees will be prosecuted. Clause 18 creates the criminal offence of endangering another during a sea crossing and is clearly aimed at those inside the boats, in a dangerous escalation of the criminalisation powers under the Nationality and Borders Act. With none of the ostensible safeguards that are included in the preceding provisions, this clause will likely result in the prosecution of vulnerable people acting out of desperation or under the coercive power of a smuggler.

We are alarmed that this Government, like its recent predecessors, is seeking to address asylum through the prism of criminality and national security. We have seen how the use of legislation to curtail the rights of migrants and set higher criminal penalties for immigration offences results in the wrongful prosecution of vulnerable migrants, including unaccompanied children and people acting under duress.

We fear that the provisions in this Bill and the debate that will accompany it risks casting all those forced to move across borders in search of protection as being a threat to our national security. Such a framing will further undermine public confidence in the principle of refugee protection and the importance of UK compliance with obligations under the Refugee Convention, the UN Convention Against Torture and the ECHR. With an emboldened far right in the UK and elsewhere, such a step is particularly dangerous at this point in time.

Further criminalisation, surveillance and state interference in the rights of vulnerable migrants will do nothing to address the causes of forced displacement and unauthorised movement through Europe to the UK. Such an approach will intensify the vulnerability of those who will continue to rely on the services of smugglers in the absence of safe routes, and heightens the risk faced by marginalised and racialised communities in the UK.

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