Written evidence submitted by the Public Law Project for the House of Commons' Committee Stage of the Border Security, Immigration and Asylum Bill (BSAIB04)

- The Border Security, Immigration and Asylum Bill is intended to reform the UK's immigration and asylum system by creating a new border security agency, new immigration offences and powers to disrupt traffickers, and repealing previous immigration legislation.

- The Public Law Project (PLP) welcomes provisions within the Bill which will repeal the Safety of Rwanda (Immigration and Asylum) Act 2024 (SoRA) (Clause 37). PLP represented the lead claimant in a judicial review against the Safety of Rwanda Act and so fully support the Government's commendable action to remove this harmful and unworkable legislation from the statute book.[1]

- While PLP welcomes the repeal of most of the Illegal Migration Act 2023 (Clause 38), we are concerned by aspects which have been retained and the consequences of "cherry picking" the IMA. In particular, we are concerned that the Bill retains provisions which:
  - weaken judicial scrutiny of immigration detention (section 12 of the IMA);
  - remove protections for victims of modern slavery who have been coerced into committing criminal offences in the UK (section 29 of the IMA); and
  - make asylum and human rights claims from a raft of countries inadmissible, including Albania, India, and Georgia, where there are serious concerns relating to human trafficking, blood feuds, and the persecution of LGBTQIA+ people (section 59 of the IMA).

- Furthermore, we are concerned by Clause 41 of the Bill, which expands the Home Office's powers of detention retrospectively. The Government has not adequately justified this exceptional constitutional step, which would deny justice to people who have been – or are being currently – unlawfully detained.

- PLP recommends that Parliament should:
  - Repeal the Illegal Migration Act in full; and
  - Leave out Clause 41(7) from the Bill so that the Home Office's detention powers only have prospective effect.

About PLP

1. The Public Law Project (PLP) is a national legal charity dedicated to promoting the rule of law, expanding access to justice, and securing government accountability. We do this through legal casework and litigation, research, policy advocacy, training, and events. One of PLP's priority areas is working towards a fair and humane immigration system, where people's human rights and dignity are respected and where procedures are fair.

[1] https://publiclawproject.org.uk/latest/plp-client-will-not-be-removed-to-rwanda/

2. Given PLP's organisational expertise and experience, this briefing focuses on Part II of the Bill which relates to asylum. However, PLP echoes the concerns expressed by others that the Bill's new criminal offences in Clauses 13 to 18 should not be applied to refugees as opposed to smugglers and traffickers, and concerns related to the intrusive powers to seize electronic devices in Clauses 19 to 26.[2]

Retaining concerning parts of the Illegal Migration Act

3. While PLP strongly supports the repeal of the Safety of Rwanda Act and the repeal of most of the Illegal Migration Act, we are concerned that the Government intends to retain some troubling IMA provisions. PLP are especially concerned about the retention of three provisions of the IMA: section 12; section 29; and section 59.

4. The Government has yet to explain and justify with evidence why these provisions are being retained, beyond stating there are "operational benefits".[3] The Home Secretary gave no explanation in her speech at Second Reading, nor are reasons given in the Explanatory Notes to the Bill. Indeed, at para. 44, the Explanatory Notes read simply that: "Some provisions have been retained either in their current form or with amendment where operational benefit exists."[4] These benefits have not been outlined even in brief, let alone justified with detailed and specific evidence. To retain provisions with such serious consequences for human rights and dignity, far greater justification is needed. **PLP recommends the Government provide further explanation on how they have 'cherry picked' which IMA provisions to retain.**

5. **Section 12**: Section 12 weakens independent judicial scrutiny of Home Office detention and expands the arbitrary power of the Home Secretary to detain some of the world's most persecuted people – including refugees, trafficking survivors, and children.

6. It does this by modifying the so-called *Hardial Singh* principles, which were established in the High Court case of *R v Governor of Durham Prison ex p. Hardial Singh* in 1984.[5] This case concluded that there was an implied time limitation on immigration detention that it was restricted to what was reasonably necessary for the purposes of deporting someone. Where it becomes clear that a person cannot be deported, the Court decided that the Home Office cannot lawfully exercise the power.

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[2] https://www.helenbamber.org/resources/reportsbriefings/briefings-border-security-asylum-and-immigration-bill-2025

[3] https://publications.parliament.uk/pa/bills/cbill/59-01/0173/en//240173en.pdf, para. 44.

[4] See footnote 3.

[5] [1984] 1 All ER 983.

Hardial Singh further decided that it is for a Court to assess the reasonableness of immigration detention objectively.

7. Section 12 of the IMA reversed this position, declaring that the reasonableness of immigration detention is based on the personal view of the Home Secretary, rather than the objective assessment of a Court. The provision adds that the Home Secretary can continue to detain irrespective of whether the person can be deported. There is no time limit on this provision, meaning that it authorises indefinite detention – based only on the opinion of the Home Secretary.

8. **Retaining section 12, therefore, hands arbitrary power to the Government and weakens the fundamental constitutional function of judges to protect people from unreasonable detention. PLP recommends that section 12 of the IMA is repealed.**

9. **Section 29**: Section 29 of the IMA disapplied certain legal protections for victims of trafficking who are convicted of offences in the UK or who are otherwise liable to be deported. Specifically, section 29 removed the trafficking victim's right to a "recovery period" of 30 days where they are given time to heal and not be deported from the UK (section 61 of the Nationality and Borders Act 2022) and removed the obligation on the Home Office to grant the victim a limited period of leave to remain in the UK (65 of the Nationality and Borders Act 2022).

10. This is extremely concerning because it is well-established that trafficking victims may commit offences due to pressure and coercion from their traffickers. Victims remain entitled to the "recovery period" even if they commit offences by virtue of Article 13 of the European Convention on Action Against Trafficking in Human Beings (ECAT), of which the UK is a signatory.[6] As such, the retention of section 29 very likely violates the UK's international obligations.

11. While prosecutors have a discretion not to pursue cases against trafficking victims and there is a defence under section 45 of the Modern Slavery Act 2015 of committing offences due to coercion, these safeguards are never guaranteed. As a Home Affairs Select Committee report found in December 2023, victims of human trafficking continue to be prosecuted for criminal acts they were compelled to commit due to the difficulty identifying victims of trafficking and misunderstanding about the defence.[7]

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[6] https://rm.coe.int/guidance-note-on-recovery-and-reflection-period-group-of-experts-on-ac/1680b1a3ca, para. 35.

[7] https://publications.parliament.uk/pa/cm5804/cmselect/cmhaff/124/report.html#heading-3, para. 166.

12. Therefore, there is a very real risk that section 29 will enable trafficking victims to be removed from the UK in violation of international law. As the Council of Europe's Guidance Note on re-trafficking states, this carries with it the risk that they will be re-trafficked, face retribution by the traffickers, and be ostracised by their family or community.[8]

13. The Prime Minister has previously stated, "*We will approach the [migration] issue with humanity and with a profound respect for international law.*"[9] The Attorney-General echoed this, stating: "*International law is not simply some kind of optional add-on, with which States can pick or choose whether to comply*."[10] Retaining section 29 of the IMA satisfies neither the letter nor the spirit of these statements.

14. As Dame Angela Eagle MP, the Immigration Minister, noted at Second Reading in response to concerns expressed by Lisa Smart MP about the retention of section 29, "the vast majority" of the IMA's modern slavery provisions are being repealed by this Bill. The only exception is section 29. Yet, the Government has given no explanation for this. **PLP recommends that section 29 should be repealed by Parliament.**

15. **Section 59**: This provision makes asylum and human rights claims from a range of countries inadmissible. These countries include EEA states as well as Albania, India, and Georgia. Whilst the power not to admit asylum claims from a list of safe countries previously existed, s.59 expanded the power in two ways which are of considerable concern.

16. Firstly, it expanded the requirement to certify claims as inadmissible beyond asylum claims for all the countries on the list to human rights claims as well. While EEA nations might generally be safe in terms of asylum claims, an individual may nevertheless have valid human rights grounds not to be removed from the UK. **Enacting s.59 and preventing human rights claims of this kind would facilitate violations of the ECHR and litigation against the Government in the domestic courts under the Human Rights Act 1998 (HRA) and in the Strasbourg Court.**

17. Secondly, s.59 added Albania, India, and Georgia to the "safe list". Charities such as Rainbow Migration have consistently highlighted safety concerns in India and Georgia,

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[8] https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44 , para. 3.

[9] https://www.politico.eu/article/britain-keir-starmer-never-leave-european-convention-human-rights-political-community-summit/

[10] https://www.gov.uk/government/speeches/attorney-generals-2024-bingham-lecture-on-the-rule-of-law

particularly in relation to minority communities such as LGBTQIA+ people.[11] As the Secondary Legislation Scrutiny Committee put it at the time that India and Georgia were included in the safe countries list in 2024, declaring Georgia and India as generally safe contradicts the Home Office's own recent decisions to grant asylum claims from both countries. Claims which would have been successful prior to section 59, based on the Home Office's objective assessment of the evidence and facts, would not be successful under the new provision.[12] **This denies protection to people who, by the Home Office's own decisions, need it.**

18. The same is true for Albania. As the Migrant and Refugee Children's Legal Unit (MiCLU) has highlighted, "any assertion that Albania is a 'safe state' for all its nationals is at best fundamentally flawed and that it would be a misrepresentation to insist that there is no risk of persecution for nationals in that state."[13] The Home Office itself has produced several Country Profile Information Notes (CPINs) in relation to Albania, highlighting real risks in relation to human trafficking, blood feuds, and LGBTQIA+ persecution.[14]

19. In February 2025, PLP launched a report entitled *Punishing the victim: How the UK's asylum system harms the people it should protect – A case study of Albanian nationals*. The report details six case studies of the dangers faced by Albanian asylum seekers and trafficking survivors if they were to be returned to Albania as per section 59:
    - **Timi**, who is a survivor of life-threatening anti-LGBTQI+ violence and persecution in Albania at the hands of his father and classmates.
    - **Hasan and Gezim**, who were trafficked by violent criminal gangs as children to smuggle drugs across international borders.
    - **Ola**, survivor of a violent father, who was trafficked to Spain by her abusive ex-boyfriend who forced her to work in a brothel.
    - **Ervin and Arber**, who are survivors of blood feuds where family dishonour or debt bondage is passed onto male children, often settled by murder and violence.

20. Providing insight into her own lived experience, Ola disclosed to a PLP researcher: "*If I wasn't Albanian and didn't know what it's really like, I'd ask why Albanians needed to be protected. If you listen to the media or politicians, Albanians are criminals or*

[11] https://www.rainbowmigration.org.uk/wp-content/uploads/2024/01/Briefing-on-Amendment-of-List-of-Safe-States-Regulations-2024-WEB-VERSION.pdf
[12] https://committees.parliament.uk/publications/42383/documents/210594/default/
[13] https://miclu.org/news/is-albania-a-safe-country
[14] https://www.gov.uk/government/publications/albania-country-policy-and-information-notes

thieves and you need to get rid of us. But there's lots of violence and corruption in my country and we do need help." [15]

21. Section 59, therefore, does not account for the reality that Albania is not a safe country for too many of its nationals.

22. PLP agrees with the speech of Shockat Adam MP during the Bill's Second Reading: "Genuine survivors of torture, trafficking and persecution from those nations deserve our help, not our suspicion. The retention of sections 59 and 29 of the Illegal Migration Act 2023 would restrict or even criminalise asylum and human rights claims from those very countries." [16] This was echoed by Olivia Blake MP, who said: "Although…section 59 has not been enacted, it will set a dangerous precedent if it remains on the statute books."[17] **PLP recommends that section 59 should be repealed by Parliament.**

23. As the Government stated in its first King's Speech, the UK's asylum system is "broken" and requires serious measures to fix it.[18] Retaining these aspects of the IMA will not help the Government fix the asylum system. Indeed, in her Second Reading speech, the Home Secretary herself stated that the IMA was a series of "failed gimmicks". The Home Secretary highlighted many of the true reasons for failures in the asylum system in her speech at Second Reading: "Under the last Government, asylum decision making collapsed, with a 70% drop in monthly decision making in the run-up to the election and an 80% drop in asylum interviews." [19] Instead of retaining aspects of the IMA, the Government should prioritise fixing these failures.

24. **Suggested amendment:** *Clause 38, Pages 30-31, Line 31 on Page 30 to Line 5 on Page 31, Leave out from "The following provisions" to "(h) section 66" and insert "The Illegal Migration Act 2023 is repealed."*

25. **Members explanatory statement**: This amendment would repeal the Illegal Migration Act 2023 in full.

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[15] https://publiclawproject.org.uk/resources/punishing-the-victim-how-the-uks-broken-asylum-system-fails-the-people-it-should-protect/
[16] https://hansard.parliament.uk/commons/2025-02-10/debates/EC0D77F7-9C12-49E0-ACE8-923FCBA4BF30/BorderSecurityAsylumAndImmigrationBill
[17] https://hansard.parliament.uk/commons/2025-02-10/debates/EC0D77F7-9C12-49E0-ACE8-923FCBA4BF30/BorderSecurityAsylumAndImmigrationBill

[18] https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf, p.54.

[19] https://hansard.parliament.uk/commons/2025-02-10/debates/EC0D77F7-9C12-49E0-ACE8-923FCBA4BF30/BorderSecurityAsylumAndImmigrationBill

New powers of executive detention which operate retrospectively

26. Clause 41 of the Border Security Bill creates new powers of executive detention. It seeks to empower the Home Office to detain people earlier in the deportation process – when the Home Office is deciding merely *whether* to make a deportation order. Clause 41(17) gives this power retroactive effect so that it operates as though it was always in force. Combined with the retention of section 12 of the Illegal Migration Act, new Clause 41 means that the power of immigration detention comes into effect earlier, operates retrospectively, and with less power for the courts to scrutinise arbitrary detention.

27. The Government's ECHR memo states at [127] that: "The clause clarifies the position as to the powers of detention in cases of deportation and ensures 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. As a clarificatory measure, the powers in the clause are to be treated as always having had effect."[20]

28. The House of Lords Constitution Committee has consistently decried the "unacceptability of retrospective legislation other than in very exceptional circumstances".[21] Beyond mere assertions, the Government has not provided a sufficient evidence-based justification for a retrospective power of detention. Clause 41 would make retrospectively lawful detentions which otherwise would have been unlawful. This is a denial of justice for those who, but for Clause 41, would have been entitled to a remedy for false imprisonment. **PLP recommends that Clause 41(17) should be removed from the Bill.**

29. **Suggested amendment:** *Clause 41, Page 35, Lines 32-3, Leave out "(17) The amendments made by subsections (1) to (13) are to be treated as always having had effect."*

30. **Members explanatory statement**: This amendment would remove the retrospective effect of the Home Office's detention powers in this provision.

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[20] https://publications.parliament.uk/pa/bills/cbill/59-01/0173/ECHRMemo.pdf
[21] https://committees.parliament.uk/publications/8606/documents/86994/default, para. 22.