



HOUSE OF LORDS

Select Committee on the Constitution

10th Report of Session 2024–25

Border Security, Asylum and Immigration Bill

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Select Committee on the Constitution

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Committee staff

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Tenth Report

BORDER SECURITY, ASYLUM AND IMMIGRATION BILL

Introduction

1. The Border Security, Asylum and Immigration Bill was introduced into the House of Lords on 13 May and had its second reading on 2 June.
2. The Government suggests that the Bill is designed to create “a framework of new and enhanced powers and offences that, when taken together, reinforce, strengthen and connect capabilities across the relevant government and law enforcement partners which make up the UK’s border security, asylum and immigration systems”.¹
3. The Bill follows a manifesto commitment to deliver a “fair and properly managed” immigration system, and a Bill to “modernise the asylum and immigration system” by “establishing a new Border Security Command and delivering enhanced counter-terror powers to tackle organised immigration crime” was promised in the King’s Speech 2024.²

Human rights

4. The Government acknowledges that the Bill is likely to engage a number of rights protected by the European Convention on Human Rights, including Article 2 (the right to life), Article 5 (the right to liberty and security), Article 6 (the right to a fair trial), and Article 8 (the right to private and family life). It has issued a statement of compliance with the Convention rights as given effect by the Human Rights Act 1998 and is of the view that the Bill’s measures comply with the relevant Convention rights or otherwise amount to justified and proportionate interferences with those rights.³
5. ***The House should consider the human rights implications of the Bill and, in doing so, it should take note of the expected report of the Joint Committee of Human Rights.***

Offences and sanctions

6. Part 1 of the Bill creates several new offences.
7. Clauses 13 and 14 create offences relating to supplying, or handling, articles for use in immigration crime.⁴ In both instances the Bill sets out:
 - a requirement of intent (or suspicion that the item will be used in immigration crime),

1 [Explanatory Notes to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25) – EN], para 2

2 Labour Party, *Change: Labour Party Manifesto 2024* (June 2024): <https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf> [accessed 12 June 2025]; The King’s Speech 2024, 17 July 2024: <https://www.gov.uk/government/speeches/the-kings-speech-2024> [accessed 12 June 2025]

3 [Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)]; [European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)]

4 “Immigration Crime” is defined to mean offences under ss.24 and 25 Immigration Act 1971 (ie offences of illegal entry and assisting unlawful immigration).

- a defence of reasonable excuse, to which a reverse burden of proof applies (including, but not limited to, where the relevant article was for the purpose of carrying out a rescue from danger or serious harm or where the individual was acting on behalf of a charitable organisation assisting asylum seekers), and
- a maximum penalty.

Clause 15 details a number of articles falling outside of the offences (e.g. food or drink, medicinal products, clothing, bedding and so on). The list of items is short. The “relevant articles” potentially falling within the scope of these offences is correspondingly wide.⁵

8. Clause 16 outlines an offence of collecting information for use in immigration crime. “Information” is defined broadly, including that which might “be useful to members of the public at large for any purpose”.⁶ It would be a defence to show that actions related solely to a journey to be made by the individual charged. A reasonable excuse defence would also apply.
9. Clause 18 amends section 24 of the Immigration Act 1971 to create a new criminal offence of endangering another during a sea crossing to the United Kingdom. This offence will be committed when—during a journey by water from France, Belgium or the Netherlands resulting in an illegal entry offence under the 1971 Act—a person acts in a way which “caused, or created a risk of, the death of, or serious personal injury to, another person.”
10. **The range of articles which might attract liability under clauses 13 and 14 of this Bill and the types of information which may fall within the clause 16 offence are both extensive.**
11. Further to this, none of these offences distinguish between those involved in “organised immigration crime” and others, such as asylum seekers. The UK’s relevant obligations under the Refugee Convention 1951 include the prohibition on imposing penalties on those who enter a country without permission where they do so in order to make a claim for asylum.⁷
12. *The House may wish to consider the appropriateness of these broadly framed offences and potential issues of compliance with the UK’s obligations under the Refugee Convention 1951. In considering these issues, we draw members’ attention to the work of the Joint Committee on Human Rights.*

Retrospective provisions

13. Clause 41 of the Bill amends the Immigration Act 1971 with retrospective effect to expand the power of executive detention prior to deportation. It allows for such detention “while the Secretary of State considers whether to make a deportation order” and “where the Secretary of State decides to make a deportation order, pending the making of a deportation order”.

5 House of Commons Library Briefing, *Border Security, Asylum and Immigration Bill*, [CBP 10185](#) (6 February 2025), p 17

6 [Border Security, Asylum and Immigration Bill](#), clause 16(4)

7 UN General Assembly, *Convention and Protocol Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p 137, 28 July 1951, <https://www.unhcr.org/uk/media/convention-and-protocol-relating-status-refugees> [accessed 12 June 2025]

These amendments to the 1971 Act are “to be treated as always having had effect”.⁸

14. In allocating an expanded power of detention “while the Secretary of State considers whether to make a deportation order” the clause would provide the legal basis for significant interferences with individual liberty, with retrospective effects. The only justification provided for the retroactivity of this clause is found in the human rights memorandum to the Bill which says: “[a]s a clarificatory measure, the powers in the clause are to be treated as always having had effect”.⁹
15. This Committee has frequently raised concerns about retrospective provisions, arguing that retrospective legislation “is unacceptable other than in very exceptional circumstances” and that, when used, “measures with retrospective effect must have the strongest possible justification”.¹⁰
16. **We reiterate our view that retrospective provisions must have the strongest possible justification. We are concerned by the limited justification of the retroactivity of clause 41 as “a clarificatory measure”¹¹, especially given that the clause expands the power of executive detention. *The Government should provide further justification for the retrospectivity of these powers and the House should ensure it is satisfied with the reasons given. Where no further justification is available the retrospective application of this clause should be removed.***
17. Clause 57 of the Bill also has retrospective effect. It “establishes retrospective power for the charging of fees for services related to the comparability, recognition or assessment of qualifications obtained outside and within the United Kingdom”.¹² Such fees have, in the absence of a statutory basis, been charged by several government departments, and this provision seeks to retrospectively provide a legal basis for those charges.
18. The Government considers that retrospective legislation “in the circumstances of this case is clearly justified and proportionate”, as “[s]ervice users paid reasonable fees for a service they received and it is in the public interest that they bear some of the costs of the service”.¹³ The Government claims that the failure to provide for a legal basis for charging the relevant fees was “an error” and that it was “foreseeable” that this mistake would be retrospectively corrected.¹⁴
19. **We do not consider the justification provided by the Government for the retroactivity of clause 57 to be sufficient. *The House may wish to seek further information from the Government as to why a retrospective provision is necessary in this instance and, where no***

8 [Border Security, Asylum and Immigration Bill](#), clause 41

9 [European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)], para 127

10 Constitution Committee, [Legislative standards of the Constitution Committee: 2017–2024](#) (6 May 2025), paras 77 and 78

11 [European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)], para 127

12 *Ibid.*, para 188

13 *Ibid.*, para 192

14 *Ibid.*

further justification is available, the retrospective application of this clause should be removed.

Powers of search, seizure and access to information

20. Clause 25 provides that the Secretary of State may extend the powers, in Part 1 of the Bill, of search, seizure and to access information (including the ability to use reasonable force in relation to the exercise of those powers) to “other persons”, as may be specified by the Secretary of State in regulations.¹⁵
21. The regulations made under this power are subject to the negative procedure, which the Government considers sufficient given that “[a]ny regulations made would not create any new powers but would extend the cohort of people who can use them”.¹⁶ In addition, clause 25(3) specifies that “the regulations must contain such safeguards relating to the designation as the Secretary of State considers appropriate”.¹⁷ We have previously raised concerns about the extension to persons who are not recognised legal officials of powers which might be used to interfere with individual liberty.¹⁸
22. **Given the potential invasiveness of the powers that may be allocated to “other persons” under clause 25, the negative procedure provides inadequate parliamentary oversight. The House should consider whether regulations made under clause 25 should be subject to greater parliamentary scrutiny than currently envisaged.**
23. *The intended safeguards relating to the designation of “other persons” should be set out on the face of the Bill rather than left to the discretion of the Secretary of State.*

Power to impose conditions on those with limited leave to enter or remain in the UK

24. Clause 43 amends the Immigration Act 1971 to add a number of conditions to the list of those which might be imposed on adults who have limited leave to enter or to remain in the UK, including, for example, electronic monitoring, requirements to remain in a particular area, and prohibitions on being in a particular area. The provision also allows for the imposition of “such other conditions as the Secretary of State thinks fit”.¹⁹ In the context of a provision which otherwise stipulates the type of conditions which might be imposed, this latter power is notably broad.
25. The Government has suggested that the power in clause 43 will be used only in relation to individuals posing a serious threat. The Minister for Border Security and Asylum, Dame Angela Eagle MP, said during the Bill’s passage through the House of Commons that: “The powers will be used only in cases involving conduct such as war crimes, crimes against humanity, extremism or serious crime, or where the person poses a threat to national security or public safety”.²⁰ However, the Bill itself does not limit the scope of the power in this way.

¹⁵ [Border Security, Asylum and Immigration Bill](#), clause 25

¹⁶ [Delegated Powers Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)], para 18

¹⁷ [Border Security, Asylum and Immigration Bill](#), clause 43

¹⁸ Constitution Committee, *Ivory Bill*, (12th Report, Session 2017–19, HL Paper 178)

¹⁹ [Border Security, Asylum and Immigration Bill](#), clause 43

²⁰ Public Bill Committee on the Border Security, Asylum and Immigration Bill, 13 March 2025, [col 268](#)

26. **We draw the attention of the House to the broad and subjective power in clause 43. We recommend narrowing the power to impose “such other conditions as the Secretary of State thinks fit” and that safeguards on the use of the power should be included on the face of the Bill.**

Timeframes for determination of appeals

27. Clauses 46 and 47 of the Bill amend the Nationality, Asylum and Immigration Act 2002 in relation to asylum appeals brought by persons who are receiving accommodation support and by non-detained persons who have been convicted of an offence and are subject to a deportation order.²¹ Both clauses introduce a “targeted statutory timeframe” of 24 weeks within which the relevant tribunal must, “unless it is not reasonably practicable to do so”, have determined and given notice to the parties of the outcome of the appeal.²²
28. Current estimates show that the relevant appeals process takes an average of 50 weeks.²³ The Government has suggested that the Ministry of Justice and HM Courts and Tribunals Service are working to increase the “speed and efficiency” of immigration appeals while “continuing to guarantee access to justice”²⁴ but concedes that, due to the volume of appeals subject to the new timeline, “there may also be an impact on the remaining cases that are not prioritised by these clauses.”²⁵
29. **We note that there is currently a significant outstanding caseload of asylum appeals in the First-tier Tribunal (Immigration and Asylum). We are concerned about whether this statutory timeframe is implementable in current circumstances and of the potential detrimental impact on asylum cases which are not subject to this target.**
30. **The Government should provide further information about the potential impact this target will have on court backlogs and how it will be achieved. The Government should also provide an assessment as to the impact this target will have on the processing of those cases not subject to the proposed statutory timeframe.**

21 [Border Security, Asylum and Immigration Bill](#), clauses 46 and 47

22 [Explanatory Notes to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25) – EN], paras 351 and 356

23 HC Deb, 12 May 2025, [Col 97](#) [Commons Chamber]

24 *Ibid.*

25 [Second Supplementary European Convention on Human Rights Memorandum to the Border Security, Asylum and Immigration Bill](#) [HL Bill 101 (2024–25)], para 6

APPENDIX 1: INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the Border Security, Asylum and Immigration Bill, Members and Legal Advisers declared no interests.