



Border Security, Immigration and Asylum Bill

House of Commons' Second Reading Briefing: Monday 10th February 2025

- 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 (Clause 37).¹ 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 legislation from the statute book.²
- 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 repeal of the IMA.
- We are also 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 unlawfully detained.
- PLP recommends Parliament uses this opportunity to repeal the Illegal Migration Act in full and remove the retrospective effect of Clause 41. While this briefing will focus on Part II of the Bill, we echo concerns that the new criminal offences in Parts I and III should not be used to criminalise refugees.

Retaining concerning parts of the Illegal Migration Act

While PLP strongly supports the repeal of the Safety of Rwanda Act and most of the Illegal Migration Act, we are concerned by three aspects of the IMA being retained by the Government.

1. Weakened judicial scrutiny of immigration detention

Section 12 of the IMA weakens the so-called "*Hardial Singh*" principles from a 1984 judicial case which states that it is for a Court to objectively determine for itself the reasonableness of immigration detention. Section 12 tries to reverse this, making immigration detention

¹ Public Law Project is an independent national legal charity consisting of researchers, lawyers, trainers and public law policy experts. The aim of all of our work is to make sure that state decision-making is fair and lawful and that each person can hold the state to account.

² [PLP client will not be removed to Rwanda](#)



based on the whim of the Home Secretary. Retaining section 12 hands arbitrary power to the Government and weakens the fundamental constitutional function of judges to protect people from unreasonable detention.

2. Removing protections for victims of modern slavery

The Bill also retains Section 29 of the IMA. This provision disapplies certain legal protections for victims of modern slavery who are convicted of offences in the UK and for victims who are liable to be deported from the UK. Specifically, section 29 removes a victim's right to a "recovery period" of 30 days where they are given time to recover in the immediate aftermath of their exploitation (sections 61 and 65 of the Nationality and Borders Act 2022).

This is extremely concerning, as it is well-established that victims of modern slavery may commit offences due to pressure and coercion from their traffickers, who often use threats and fear of violence as a means of control. Article 13 of the European Convention on Action Against Trafficking, of which the UK is a signatory, grants victims a right to the "recovery period", even if they commit offences under coercion.³

As a 2023 Home Affairs Select Committee report found, despite a legal defence existing, victims of modern slavery continue to be wrongly prosecuted for criminal acts.⁴ Therefore, there is a real risk that section 29 will enable victims of modern slavery to be removed from the UK in violation of international law. This carries the risk that they will be re-trafficked in their home countries and face retribution by traffickers.⁵

The Prime Minister has previously stated, "*We will approach the [migration] issue with humanity and with a profound respect for international law.*"⁶ 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.*"⁷ Retaining section 29 of the IMA satisfies neither the letter nor the spirit of these statements.

PLP urges MPs to repeal this provision to ensure protection for victims of modern slavery and to enable the UK regain international standing on human rights compliance.

3. Inadmissibility of asylum and human rights claims

This Bill also retains Section 59 of the IMA which makes asylum and human rights claims from a range of countries inadmissible, barring "exceptional circumstances". These

³ [Guidance Note \(Article 13 of the Council of Europe Convention](#)

⁴ [Home Affairs Committee Report December 2023](#), para.166.

⁵ [Guidance Note GRETA \(2020\)](#)

⁶ [Britain's Keir Starmer vows: I'll never leave ECHR – POLITICO](#)

⁷ [Attorney General's 2024 Bingham Lecture on the rule of law](#)



countries include Albania, India, and Georgia. Section 59, therefore, creates a general rule that these claims will not normally be considered on their own facts, even if the claim could have been successful.

Charities such as Rainbow Migration have consistently highlighted safety concerns in India and Georgia, particularly in relation to minority communities such as LGBTQIA+ people.⁸ Declaring Georgia and India as generally safe also contradicts the Home Office's own recent decisions to grant asylum claims from both countries.⁹ 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*".¹⁰ The Home Office itself has produced several Country Profile Information Notes (CPINs) in relation to Albania, highlighting real risks in relation to human trafficking, gender violence, blood feuds, and LGBTQIA+ persecution.¹¹

Upcoming PLP research alongside MiCLU and Shpresa Programme highlights the lived experience of Albanian asylum seekers in the UK. This includes Hasan and Gezim, male victims of modern slavery, who, if returned to Albania, face the strong risk of being found, re-trafficked, and physically harmed by their traffickers.

New powers of executive detention which operate retrospectively

Finally, PLP is concerned that Clause 41 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 retrospective effect so that it operates as though it was always in force. Combined with the retention of section 12 of the IMA, new Clause 41 means that the power of immigration detention comes into effect earlier, operates retrospectively, with less power for the courts to scrutinise unreasonable detention.

The House of Lords Constitution Committee has consistently decried the “unacceptability of retrospective legislation other than in very exceptional circumstances”.¹² The Government has not provided a sufficient evidence-based justification for a retrospective power of detention. 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 clause 41 be removed from the Bill.**

⁸ [Joint Briefing on Draft Nationality, Immigration and Asylum Act 2002 \(Rainbow Migration, ILPA\)](#)

⁹ [House of Lords Secondary Legislation Scrutiny Committee 4th Report of Session 2023–24 para. 12.](#)

¹⁰ [Migrant and Refugee Children's Legal Unit "Is Albania a safe country?"](#).

¹¹ [Government Guidance: Country policy and information note: human trafficking, Albania, July 2024](#)

¹² [House of Lords Select Committee on the Constitution 11th Report of Session 2021–22, para. 22.](#)