



UK Mission
Geneva

UK Mission Geneva
PO Box 6
Avenue Louis Casar 58
1216 Cointrin GE

Tel: 022 918 2453
Fax: 022 918 2333

Note Verbal No. 243

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its response to communication OL GBR 8 2025, further to the letter dated 19 June 2025 from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to privacy.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 27 August 2025

Special Procedures Branch
Office of the High Commissioner for Human Rights



UK Mission Geneva

United Kingdom of Great Britain and Northern Ireland

Response to Special Procedures communication OL GBR 08/2025 of 19 June 2025 sent by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to privacy.

Thank you for your letter of 19 June 2025.

Border Security, Asylum and Immigration Bill

The Border Security, Asylum and Immigration Bill (“the Bill”) is a key part of the UK Government’s approach to strengthening border security. This includes to disrupt organised immigration crime that is behind dangerous crossings, putting lives at risk for profit.

The Bill establishes the architecture and provides the tools, powers and offences to transform the cross-system response to the threats against UK border security and strengthen the operation of the border security, asylum and immigration systems. The Bill creates new powers to strengthen law enforcement’s ability to identify, disrupt and prevent serious and organised crime, including organised immigration crime, through new criminal offences and expanded data-sharing capabilities.

These new, transformative measures provide law enforcement agencies working across the border security system with stronger powers to pursue, disrupt and deter organised immigration crime, including people smugglers. The measures allow law enforcement to arrest someone at a much earlier stage than now, meaning quicker and more effective interventions. Data-sharing capabilities will be expanded to assist in developing the intelligence picture, which will enhance the ability to act by identifying threats, including national security and threat to life. New powers to search and seize electronic devices will enhance the intelligence picture to go after organised criminal gangs. The UK Government also remains fully focused on delivering long-term credible policies to restore order to the asylum and immigration system and the Bill contains provisions to do just that.

Across the world, migration is increasing as individuals seek to escape war, poverty or natural disasters. Whilst migration is a truly global issue, an increasing number of people are using dangerous routes to access mainland Europe, some of whom then continue to the United Kingdom. 27,997 individuals have crossed the Channel by small boat so far from 1 January 2025 up to 21 August 2025. In the year ending March 2025, there were 38,023 small boat arrivals, accounting for 86% of total detected irregular arrivals.

The International Organisation for Migration estimates that at least 78 migrants died whilst attempting to cross the Channel in 2024. 2024 saw more deaths in the Channel than ever before – that is why it is more critical than ever that the UK Government seeks robust, innovative methods to tackle the issue. The UK Government has a responsibility to ensure our borders are secure and our laws are enforced, and a moral duty to prevent further tragedies.

The UK Government is determined to tackle this issue and to secure the UK border, whilst building a modern, effective and properly functioning immigration and asylum system which

will protect those fleeing from danger whilst promptly processing and returning those with no right to remain. The UK Government believes that a step change in the scale of the response to these cross-system threats is needed urgently: the response needs to get ahead of the evolving, inter-connected threats faced. Providing law enforcement with the tools to disrupt organised immigration crime and targeting the root of the problem is a key priority for this Bill.

Detailed response to your Joint Communication

1. Overview

- 1.1. Your Joint Communication raises concerns that the approach taken in the Bill would represent a “troubling shift from a protection-based to a security-based approach to addressing irregular migration”. The context set out above shows the sad reality of continued dangerous crossings, which result in serious harm and fatalities. The measures in the Bill are targeting serious criminality, not individuals seeking protection, and are designed to disrupt the criminal enterprise of dangerous crossings, to protect individuals from harm.
- 1.2. While inspiration has been taken from the effects of counter-terrorism powers, the new powers are not a direct replica of terrorism legislation. They are tailored to the criminality they seek to disrupt, and focus on achieving a similar impact, namely to act earlier and faster to identify, disrupt and dismantle criminal smuggling gangs. While the measures in this Bill contribute to a protection-based approach through reducing harm, they should not be seen in isolation. The UK has a long history of providing protection to those who need it, to which this Government remains committed. This Bill sits alongside the structures in place to provide that protection, which are not diluted by the Bill.
- 1.3. Your Joint Communication also raises concerns that the provisions of the Bill have limited judicial oversight and risk undermining protections under international human rights and refugee law. The view of the UK Government is that the provisions in the Bill, if enacted, have sufficient safeguards and are consistent with the UK’s international obligations.
- 1.4. The Bill cannot be viewed in isolation from the legal system in which it sits. The UK legal system has a number of structural safeguards which are relevant to how the Bill, should it become law, will operate. We set out some examples below.

Prosecutorial independence

- 1.5. In the UK, decisions on investigation and prosecution are taken by independent law enforcement agencies and individual prosecutors. For example, the Crown Prosecution Service prosecutes offences in England and Wales. Section 10 of the Prosecution of Offences Act 1985 requires the Director of Public Prosecutions to issue [a Code for Crown Prosecutors \(the Code\)](#) giving guidance on general principles to be applied by them.
- 1.6. Under the Code, prosecutors must “*be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.*” (para 4.6).

1.7. If the case meets the evidential stage, the prosecutor must then consider whether a prosecution is required in the public interest. “A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.” (para 4.10). Prosecutors are then directed to consider a number of factors relevant to the public interest, such as the seriousness of the offence, the level of culpability of the suspect, and the proportionality of a prosecution. The situation and vulnerability of migrants will be very relevant as to whether it is in the public interest to prosecute.

1.8. Specific [guidance](#) has been given to prosecutors about immigration offences. Relevant extracts include:

“When reviewing immigration offences, prosecutors should consider whether there is clear evidence of a credible common law defence of duress or duress of circumstances.”

And

“When applicable, prosecutors should consider the following statutory defences:

Section 31 of the Immigration and Asylum Act 1999 – whether the immigration offence was committed as a necessary part of a refugee’s journey to the UK.

Section 2 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – ‘reasonable excuse’ for failing to have an immigration document at a leave or asylum interview.

Section 45 of the Modern Slavery Act (MSA) 2015 – whether an offender may have been forced, coerced or deceived into committing an offence who might be a victim of modern slavery.

Sections 25BA and 25BB of the Immigration Act 1971, as introduced by the Nationality and Borders Act 2022, where there is rescue at sea or where individuals may be stowaways.”

1.9. Therefore, in considering the evidence, prosecutors are particularly required to consider whether a defendant has a defence.

1.10. In relation to the public interest test, the guidance makes clear that the status of an individual as a refugee is highly relevant. It specifically directs prosecutors to consider the Refugee Convention even where a statutory defence is not available.

The Human Rights Act 1998

1.11. Section 3 of the Human Rights Act 1998 (“the HRA”) requires UK Courts to interpret legislation in accordance with the European Convention on Human Rights (“the ECHR”). Section 6 of the HRA mandates that it is unlawful for public authorities to act in a manner which is incompatible with an ECHR right.

Data protection legislation

1.12. The UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 provide a comprehensive data protection code for the UK. The independent Information Commissioner’s Office upholds this legislation.

1.13. Against this backdrop we comment specifically on the clauses to which you refer in your Joint Communication.

2. Clauses 13 – 17: Offences relating to articles or information for use in immigration crime

Preparatory offences

- 2.1. Your points relating to clauses 13 to 15 are noted. In summary, the policy aim is to target and disrupt the supply chains used by organised crime gangs and not to target individual migrants.
- 2.2. These new offences criminalise the supply, offer to supply, and other acts in relation to, any articles the defendant knows, or suspects are to be used in connection with an offence under section 24 (illegal entry and similar offences) or 25 (assisting unlawful immigration to a member state or the United Kingdom) of the Immigration Act 1971 (“the IA 1971”).
- 2.3. The defendant will have a defence where they can show a reasonable excuse for their action. A reasonable excuse under clauses 13 and 14 includes (but is not limited to) cases where: (a) their action was for the purposes of carrying out a rescue of a person from danger or serious harm; or (b) they were acting on behalf of an organisation which (i) aims to assist asylum-seekers, and (ii) does not charge for its services.
- 2.4. You say that you are concerned that these clauses would “*criminalise actions that go beyond merely assisting organized immigration crime, and contain insufficient safeguards to prevent the prosecution of people other than those they are designed to target, thus undermining the policy intentions of the Bill*”. However, it is clear, even from the wording of clauses 13 and 14, that the target is those who supply and handle articles for criminal purposes, not ordinary asylum seekers.
- 2.5. Clause 13(1) provides that

“(1) A person (“P”) commits an offence if—

- (a) P supplies or offers to supply a relevant article to another person, and*
- (b) at the time P does so, P knows or suspects that the relevant article is to be used by any person in connection with an offence under section 24 or 25 of the Immigration Act 1971 (illegal entry etc and assisting unlawful immigration).”*

- 2.6. And clause 14(1) and (2) provide that:

“(1) A person (“P”) commits an offence if, in the circumstances mentioned in subsection (2)—

- (a) P receives or arranges to receive a relevant article from another person,*
- (b) P removes or disposes of a relevant article for the benefit of another person, or*
- (c) P assists another person to remove or dispose of a relevant article.*

(2) Those circumstances are where, at the time P does the act mentioned in subsection (1), P knows or suspects that the relevant article has been, is being, or is to be used by P or any other person in connection with an offence under section 24 or 25 of the Immigration Act 1971.”

- 2.7. Therefore, to be guilty of the offence the defendant must:

- 2.7.1. have supplied, offered, or handled from another person the relevant article; and
- 2.7.2. know or suspect that it will be used in connection with the relevant immigration offences.

- 2.8. This is a *subjective* test and therefore evidence of that person's state of mind will be required. To be clear, it is insufficient that a person merely possesses an article. There must be the element of supply etc. with the requisite subjective mental element.
- 2.9. You refer to the "*exceptions*" in clause 15. In fact, clause 15 merely defines what is meant by "*relevant article*". It does not set out a defence. Clause 13 contains a defence in 13(2) and 13(3). A defendant has a defence if they can show that they had a reasonable excuse for their actions. 13(3) specifies that a reasonable excuse includes rescuing persons from danger or serious harm and providing charitable assistance to asylum seekers. Those reasonable excuses are non-exclusive. This defence is replicated for the offence in clause 14.
- 2.10. You suggest that the list of items excluded from the meaning of "*relevant article*" in clause 15 should include mobile phones, SIM cards, data packs and power banks. We disagree. These are items which indeed have a legitimate use, but (as with most other items used by people smugglers) may well be used as part of the logistical support needed for this type of organised crime and therefore need to be within the scope of the offence. We emphasise that some element of supply etc. along with the requisite mental element is required before these offences are engaged.
- 2.11. We note the comparison that you make to the Terrorism Act 2006. Section 2 relates to the dissemination of terrorist publications. It will be readily apparent from the nature of such publications that those publications either promote terrorism or can be useful in the commission or preparation of such acts. Therefore, intent or recklessness may more readily be inferred. Section 5 of the Terrorism Act 2006 criminalises preparation of terrorist acts. It does not specify what those acts are, so it could cover a range of activities including remote minor acts to acts which fall just short of full-scale involvement. The penalty is a life sentence. It is therefore right that the offence requires intent (and not just recklessness).
- 2.12. The offences in clauses 13 and 14 are very specific. The suspicion threshold was chosen because proof of knowledge or intention is too high a hurdle for prosecuting criminal gangs who may be acting at some physical distance from, and some time in advance of, any migrant's eventual entry to the UK and who expertly conceal their involvement in that person's journey. We emphasise that it does remain a subjective test.

Information offence

- 2.13. The policy aim of the offence in clause 16 is to allow law enforcement agencies to act early in combatting the preparation of organised immigration crime. It criminalises the collection, recording, possession, or accessing of information likely to be useful to a person organising, preparing for or undertaking a journey involving the unlawful transportation of one or more individuals into the UK.
- 2.14. The defendant will have a defence where they can show that the information was only for their own journey or that they had a reasonable excuse for their action. As you identify, the reasonable excuse defence includes exceptions for journalism, academic research, rescue, medical care and emergency response. Again, we would emphasise that these defences are not exhaustive.
- 2.15. We consider that given the nature of the offence, a threshold of reasonable suspicion is appropriate. The offence is aimed at people smugglers and not at individual migrants as information collected for a migrant's own journey is outside the scope of the offence. As with the threshold for the supply and handling offences

it is necessary because of the need to act against smugglers who will be operating at some distance from a migrant's arrival into the UK.

- 2.16. "*Reasonable suspicion*" is the same threshold as for the offences in sections 57 and 58 of the Terrorism Act 2000. We note that you say that those offences "*contain key scrutiny processes and appropriate safeguards to minimise the risk of criminalising people not engaged in terrorist acts and to mitigate the risk of unintended consequences*". In fact, section 57 does not have a "*reasonable excuse*" defence. Instead, a person must show that "*his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism*". The section 57 and section 58 offences contain no more safeguards than the offence in clause 16.
- 2.17. Indeed, clause 16 goes further in providing a defence tailored to the circumstances of the offence that the information was only for the migrant's own journey.
- 2.18. In relation to those assisting fellow migrants, as explained above, individuals do have a defence that they had a reasonable excuse for their actions and whilst it is a decision for individual prosecutors, it is not likely to be in the public interest to prosecute migrants who are merely giving a helping hand to fellow migrants.
- 2.19. Referring back to the supply and handling offences, a comprehensive and carefully considered list of necessities has been excluded from the meaning of "*relevant article*". That expression needs to be widely drawn because most items used by people smugglers also have a legitimate use and widening the list further would undermine the purpose of the offence.
- 2.20. Those who arrive in the UK and claim refugee status are not and should not be exempt from facing responsibility for their actions when they take part in organised criminal activity. We have known individuals who arrive in the UK claiming refugee status who have become involved in people smuggling. Providing a wide defence of the type described in your letter would create a loophole to allow activity to be carried on which aids the people smugglers. It would also incentivise people smugglers into forcing innocent migrants to conduct criminal activities on their behalf.
- 2.21. Turning to financial benefit, the fundamental objective of these offences is to disrupt people smuggling gangs and thereby protect migrants. Paragraph 1 of Article 6 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime requires each State Party to adopt legislative measures that may be necessary to criminalise the smuggling of migrants "*when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit*".
- 2.22. Clearly the concept of a direct or indirect financial or other material benefit is very wide. We consider that this could include incentives provided by people smugglers to migrants.
- 2.23. But more fundamentally, Article 6 imposes a *duty* on States to criminalise people smuggling and its associated activities. It does not purport to limit the discretion of States in determining what other activity can be criminalised or to require States to include a particular defence to an offence. Specifically, it does not say that criminal liability must not be imposed on any individual in the absence of a direct or indirect financial or other material benefit if the State considers this to be necessary. It says that criminal liability *should* be imposed *at least* in such circumstances.
- 2.24. Furthermore, paragraph 4 of Article 6 makes clear that measures can be taken against a person whose actions are an offence under domestic law.

- 2.25. Migrants do not become liable to criminal prosecution merely because they are the object of the conduct in Article 6 (per Article 5). They must take active steps to become criminalised, and the State has to prove such activity.
- 2.26. Turning to your observations about the principle of legality under Article 15 of the 1966 International Covenant on Civil and Political Rights (“the ICCPR”), we consider that clause 16 is consistent with this principle. Article 15 of the ICCPR is almost identical to the wording of Article 7 of the ECHR. So the case law relevant to Article 7 ECHR is relevant.
- 2.27. The first point of course is that neither the offence nor the penalty are retrospective.
- 2.28. As to clarity and foreseeability, the European Court of Human Rights has recognised that:
- “the wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague”*
- (see **Kokkinakis v. Greece**, 25 May 1993, Series A no. 260-A, at para 40, in the context of Article 9, and confirmed by **Liivik v. Estonia**, no. 12157/05, 25 June 2009 in the context of Article 7 at para 94).
- 2.29. There is nothing overly vague about clause 16. The wording and concepts comply with the European Court of Human Rights’ standards of clarity and foreseeability: an individual can know from the wording of clause 16 which acts constitute the criminal offence. Clause 16 is thus consistent with the principle of legality.
- 2.30. Moreover, the European Court of Human Rights has confirmed that the requirement that an offence be clearly defined in law *“is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, what acts and omissions will make him liable”* (see **Kokkinakis** at para 52, in the context of Article 7).
- 2.31. In the circumstances, it is not necessary to amend clauses 13-17 of the Bill. The provisions in the Bill, if they become law, are consistent with the UK’s international obligations.

3. Clauses 19 – 26: Search and Seizure Powers

- 3.1. Clauses 19 to 26 provide Immigration and Police Officers, and (following an amend to the Bill in the House of Lords) the National Crime Agency (NCA) (together “authorised officers”) with new powers to search for, seize, retain, and extract data from electronic devices. The powers apply in relation to migrants who enter or arrive irregularly and are based on reasonable grounds to suspect that a device contains information relating to the commission (past or future) of facilitation offences under sections 25 or 25A of the IA 1971. The policy aim of the measure is to provide law enforcement with the information required to target those committing organised immigration crime.
- 3.2. We respectfully disagree with the view that the measure is in breach of privacy rights under Article 17 of the ICCPR and Article 8 of the ECHR. The following should reassure you that the powers are not broad and invasive, of low and uncertain standards, or absent of judicial oversight.
- 3.3. Firstly, the measure pursues a pressing social need and the legitimate aim of the prevention of disorder or crime and the protection of the rights and freedoms of others. Those who cross the Channel irregularly are facilitated in doing so by members of organised criminal groups. In crossing the Channel, whether by small boat or clandestinely, they endanger not only their own lives but also the lives of

those who are forced to rescue them from highly dangerous situations. There have been numerous deaths of both adults and children crossing the Channel, and an increase in the number of people crossing in this way. Gathering information from electronic devices will allow law enforcement to better understand travel routes, and international and domestic facilitation networks, to disrupt their activity. It may also allow law enforcement to identify UK based subjects facilitating organised immigration crime with a view to prosecuting and disrupting financial networks.

- 3.4. The measure is in accordance with the law. The powers are deliberately defined, applying only where there is reasonable suspicion that a device contains information relevant to facilitation offences under the Immigration Act 1971. “*Relevant article*” is not a broad definition. It is purposefully narrow, with a focus on sections 25 and 25A of the IA 1971. “*Appears*” and “*may*” reflect the reality that an authorised officer cannot know for certain what information is on a device, prior to access (clause 19(4)). Authorised officers will not be acting with unfettered discretion. The law will be applied on a case-by-case basis, bound by a series of safeguards as set out below. This contrasts entirely with *R (HM) v SSHD* [2022] EWHC 695 (Admin) where unlawful “blanket policies” were used to seize mobile phones from migrants.
- 3.5. For search powers to be in accordance with the law they must have a basis in domestic law but also contain sufficient safeguards to prevent arbitrary interference.¹ The following extensive list of safeguards applies: (i) the powers are limited to authorised officers and any persons specified in regulations; (ii) the powers must only be used once per entry, to prevent individuals from being subject to repeated searches (clause 20(2)); (iii) the NCA and police require authorisation from seniors (for example, clause 20(7) and (8)); (iv) authorised officers will be issued with non-statutory guidance alongside mandatory training; (v) the Criminal Justice and Police Act 2001 (“the CJPA”) will apply, which is an established process for seizure and retention and the protection of legally privileged material (clause 24); (vi) the powers are subject to judicial review and individuals who have had items seized under sections 50 or 51 of the CJPA may make an application to the courts for return of the property seized (section 59 of the CJPA); (vii) intimate searches are prohibited (clause 20(3)); (viii) the device must only be held for as long as necessary unless there is a duty/discretion to pass on (clauses 21(6) and 22); and (ix) the Home Office has systems in place which are data protection compliant and authorised officers must act in compliance with the UK GDPR and Data Protection Act 2018.
- 3.6. These measures are proportionate. The powers are discretionary and limited in scope. Authorised officers must act in a way which is compatible with the ECHR, under section 6 of the HRA. This means they will assess necessity and proportionality of using the powers in each case. This will include assessing whether less intrusive methods of obtaining the information they suspect is contained within the item sought are available.
- 3.7. We disagree with the suggestion that data obtained from the electronic devices may be misused or subject to increased risks of data leaks. Data obtained from electronic devices is processed under well-established legal frameworks, including the Data Protection Act 2018 and the UK GDPR, with operational practices aligned to Home Office standards for secure handling and retention. These same systems and policies will be adhered to so as to ensure that data is retained lawfully and securely. The Home Office actively consulted with the UK’s data protection independent supervisory authority (the Information Commissioner’s Office) when designing the

¹ See *Gillan and Quinton v. the United Kingdom*, no. 4158/05, ECHR 2010 (extracts); *Beghal v. the United Kingdom*, no. 4755/16, 28 February 2019; and *R (on the application of Roberts) v Metropolitan Police Commissioner* [2015] UKSC 79.

powers, and their views are reflected in the drafting. The Home Office will continue to proactively consult with the Information Commissioner's Office on implementation guidance.

- 3.8. You have commented that officers will have difficulty distinguishing between relevant and irrelevant information, which is likely to result in unnecessary and disproportionate intrusions. We can reassure you that officers regularly have to make similar considerations to exercise existing powers in legislation and are practised in doing so. [Indeed, human rights and data protection legislation requires all public authorities to only process personal data where this is necessary and proportionate for a specified purpose.] In practice, before any device is accessed, officers record why device data is necessary and proportionate, and whether less intrusive steps would suffice. If access is still required, the extraction is scoped to what is relevant to facilitation offences. The extracted material is then examined against the stated indicators, with legal professional privilege and vulnerability safeguards applied, and, only data which is relevant (relates to facilitation offences) can be copied and retained (see clause 23(1)(b)).
- 3.9. Regarding your point on profiling, the powers will be applied in accordance with the provisions of the legislation and not based on factors such as race, nationality or ethnicity. We recognise that individuals from certain groups may be indirectly disproportionately affected due to the current demographics of irregular migration routes and facilitation networks. However, given the importance of the aim of the measure, any interference will be (as explained above) proportionate and justified.
- 3.10. In the circumstances, we do not consider it necessary to amend clauses 19-26 of the Bill and remain satisfied that they fully comply with our international obligations, to which the UK remains committed.

Conclusion

- 4.1. The UK Government welcomes the engagement of the UN Special Rapporteurs with this Bill, which is important legislation to enhance the UK's ability to deal with complex challenges posed by organised immigration crime and wider border security threats, and values the reflections shared.
- 4.2. It is hoped that this reply provides further detail on the intent and design of the measures, and reassurance of the Government's steadfast commitment to upholding our commitments to ensure those requiring protection can access it. As noted above, this new legislation must be considered alongside the existing structures and legislation in place to do so.
- 4.3. The Bill continues its consideration and scrutiny by UK Parliament. Subject to Parliamentary approval, these measures will enhance the UK's system-wide response to border security, including to tackle the organised immigration crime that facilitates dangerous crossings to the UK, putting lives at risk for profit.