

**Mandates of 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**

Ref.: OL GBR 8/2025

(Please use this reference in your reply)

19 June 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the human rights of migrants and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 58/14, 52/20 and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Border Security, Asylum and Immigration Bill (herein 'the Bill'), passed by the House of Commons on 12 May 2025 and currently before the House of Lords. The Bill proposes expanded enforcement powers, including increased surveillance, search and data access targeting migrants and asylum seekers, alongside broader criminalisation of irregular entry. The Bill ostensibly aims to enhance border security and disrupt organised immigration crime, in particular by addressing small boat crossings, reforming the asylum system and restoring public confidence in the UK's immigration system.

We recognise the vital efforts of your Excellency's Government to prevent and combat transnational organised crime and ultimately reduce exploitation and abuse of migrants and refugees. However, we are concerned that the Bill transposes certain measures originally adopted to counter terrorism to the very different context of regulating organised immigration crime. Measures designed for the exceptional threat of terrorism are ill-suited to migration control. Applying them to the immigration field would signify a troubling shift from a protection-based to a security-based approach to addressing irregular migration, stigmatizing vulnerable people seeking protection as potential security threats, and risking the normalisation of extraordinary counter-terrorism powers beyond their intended purpose. Notably, key safeguards that exist in parallel counter-terrorism legislation are absent from this Bill, resulting in overly broad offences that could criminalise conduct far beyond assisting in organised immigration crime, and as such go beyond the policy intentions of the Bill.

We are concerned that the broad scope of these new proposed powers, coupled with limited judicial oversight, risks undermining protections under international human rights and refugee law. In particular, the Bill risks incompatibility with the right to privacy under article 17 of the 1966 International Covenant on Civil and Political Rights (ICCPR), ratified by the UK on 20 May 1976, and article 8 of the 1950 European Convention on Human Rights (ECHR), the principle of legality under article 15 of the ICCPR, freedom from arbitrary arrest and detention under article 9 of the ICCPR, the right to seek and enjoy asylum under international refugee law, and the 2000 Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 Convention against Transnational Organised Crime, ratified by the UK on 9 February 2006. We recommend review and reconsideration of the relevant parts of the Bill to

ensure compatibility with the UK's international human rights obligations.

For the purposes of this letter, we confine our concerns to clauses 13-17 and 19-26 of the Bill, all modelled on counter-terrorism laws. Clauses 13-17 would create new criminal offences of supplying or handling items to be used in connection with illegal immigration, and of collecting information to be used for arranging an unauthorised journey to the UK. Clauses 19-26 grant immigration officers and police constables, with appropriate authorisation, powers to search individuals who have entered the UK unlawfully. These searches target electronic devices suspected to contain information related to immigration offences, such as facilitating unlawful entry. The clauses also permit the seizure and retention of such devices and the extraction and use of stored data for investigative purposes. We note, however, that there may also be concerns about other provisions, including the inadmissibility of asylum and human rights claims by people of certain nationalities and the retention of certain provisions of the Illegal Migration Act 2023.

At the outset we emphasize that UK criminal law already provides extensive powers to investigate and prosecute individuals suspected of serious offences, including trafficking, organised crime, and terrorism. It is therefore unclear what additional objective would be achieved by incorporating counter-terrorism-style powers into immigration and asylum law. In addition, we note that the treatment of migrants, refugees, asylum seekers, and potential victims of trafficking or torture is already governed by a robust framework of international and domestic law, including the 1951 Refugee Convention, ICCPR, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ECHR. These instruments make appropriate accommodations for security concerns.

*Clauses 13-17: Offences relating to articles or information for use in immigration crime*

*Preparatory offences*

Clauses 13-17 introduce wide-ranging criminal offences with extraterritorial application, which concern making preparations for an unauthorised and dangerous journey to the UK. These include “supplying articles for use in immigration crime” (clause 13) and “handling articles for use in immigration crime” (clause 16). “Articles” are defined in clause 15 as “any thing or substance” other than a narrow list of items which are limited to things such as food, drink, medicine, clothing, bedding or temporary shelters, or items designed to preserve the life of a person in distress at sea. “Information” is defined as “information of a kind likely to be useful to a person organising or preparing for a relevant journey or part of such a journey” (clause 16).

We are concerned that clauses 13-17 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. Firstly, while we welcome the exceptions listed in clause 15, we note they do not include some articles commonly possessed, supplied or received by people seeking protection who are not engaged in organised immigration crime, such as mobile phones, SIM cards, data packs, and power banks. If clause 15 is not amended to include (at a minimum) such items, clauses 13 and 14 risk

unintentionally exposing people who are not engaged in people smuggling to prosecution and imprisonment of up to 14 years.

We are further concerned that the “suspicion” threshold in clauses 13 and 14 is a much lower threshold than what is ordinarily applied in criminal offences. Although these clauses are modelled on sections 2 and 5 of the Terrorism Act 2006, the terrorism offences impose higher standards of intent or recklessness, thereby limiting overreach and misuse. In contrast, clause 13 of the Bill is engaged where an individual merely *suspects* an item may be used in irregular arrival or facilitation thereof, while clause 14 criminalises suspicion of such use across past, present or future contexts. The proposed offences risk criminalising people who the Bill did not intend to criminalise, namely those who did not intend to commit a crime or cause harm.

### *Information offence*

Clause 16 of the Bill introduces a new offence targeting the collection of information intended for use in organised immigration crime, specifically, the act of gathering, recording, or possessing information that could assist in facilitating unlawful entry into the UK or related immigration offences. We are concerned that this offence is exceptionally broad and captures such a wide range of activities that it risks unjustly and disproportionately criminalising people not engaged in unlawful immigration crime, as well as being so uncertain and unforeseeable in its operation that it risks infringing the principle of legality under article 15 of the ICCPR. We are also concerned at the low and uncertain threshold (“reasonable suspicion”) for this offence.

We note that this clause mirrors the section 58 offence in the Terrorism Act 2000 and introduces an element from section 57 of the same Act. These sections are broadly defined and as such, they 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. We are concerned that clause 16, although modelled on sections 57 and 58, does not contain comparable safeguards.

It is welcome that the Bill provides some safeguards to exclude certain innocent conduct from liability, for example, clauses 13, 14 and 16 protecting humanitarian workers; and the defences to the “information” offence at clause 16, including for journalism, academic research, rescue, medical care or emergency response. However, we note that there is no corresponding defence for a person who is being smuggled to the UK who assists a fellow migrant along the way (for example, family members or asylum seekers offering each other mutual support). The defences may not be sufficiently comprehensive, could be interpreted unduly narrowly by the courts, and shift the burden from the authorities to vulnerable migrants.

We are concerned that the clause 16 offence is not limited to conduct for financial benefit and would thus have a wider scope than similar offences contained in the Smuggling Protocol or the UN Transnational Organized Crime Convention. This would thus have the unintended effect of penalizing persons exercising their fundamental human right to seek and enjoy asylum under international law. Article 6 of the Protocol stipulates that, in order to be the subject of criminal conduct, that conduct should be “committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit”. Article 5 of the Smuggling Protocol provides that

“Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the *object* of conduct set forth in article 6 of this Protocol” (emphasis added). This includes asylum-seekers and refugees who resort to the services of smugglers to access safety and seek international protection.

We stress that the prevention, investigation and prosecution of the crime of people smuggling should not affect the rights, obligations and responsibility of States and individuals under, inter alia, the 1951 Refugee Convention, ratified by the UK on 11 March 1954 and as provided for in article 19 of the Smuggling Protocol.

### Clauses 19 – 26: Search and Seizure Powers

The Bill creates broad and invasive search, seizure and retention powers and powers to access, copy and use information contained on electronic devices (e.g. phones and laptops) without a warrant, which can be applied to a person who arrives irregularly and has not yet been granted permission to enter or remain in the UK (clauses 19-21). These powers would be exercisable by an immigration officer or a police constable, and could be extended to other persons by regulations (clause 25). They permit a person to be searched once their outer coat, jacket, or glove is removed and their mouth can be searched. Premises as well as a vehicle or container may also be searched (clause 20(4)-(6)).

These powers are exercisable where there are “reasonable grounds to suspect” that a “relevant article” “appears” to store some electronic information that relates or “may relate” to the (future or past) commission of a facilitation offence (clause 20).<sup>1</sup> Any information retained may be used for preventing, detecting, investigating or prosecuting facilitation offences (clause 23(1)(c)). The property can be retained for as long as “considered necessary” to assess, examine, or copy information or use in proceedings for an offence, before being returned or disposed of, with potential onward disclosure to other agencies.

We are concerned that the proposed powers raise significant concerns regarding the right to privacy under article 17 of the ICCPR and article 8 of the ECHR. The broad definition of “relevant articles”, the low and uncertain standard that an article “appears” to store information that “may” concern an offence, and the absence of judicial oversight at the point of search allow for intrusive and potentially indiscriminate access to highly sensitive personal data – such as medical information, legal communications, and family correspondence – without sufficient legal safeguards or demonstrating the necessity or proportionality of the interference. We are concerned that clauses 19(2-4) and 20(1) could potentially be applied to every person who arrives by “small boat” with an electronic device, given the assumed connection to people smuggling, effectively leading to an indiscriminate “blanket policy” of searches and seizures.<sup>2</sup> Officers would also inevitably have difficulty in distinguishing relevant from irrelevant information contained on electronic devices, likely resulting in unnecessary and disproportionate data intrusions. The risk of disproportionate interference with digital privacy is

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<sup>1</sup> Facilitation offences are under section 25 and 25A of the Immigration Act 1971.

<sup>2</sup> Clause 19(2-3) defines a relevant person in such a way as to include anyone who has arrived by small boat, clause 19(4) provides for a very broad definition of a relevant article, and clause 20(1) provides the power to search a relevant person for a relevant article if they have reasonable grounds to suspect that the relevant person is in possession of a relevant article.

especially acute for migrants, refugees, and asylum seekers, many of whom are in vulnerable positions, including survivors of trafficking and conflict.

In the ECHR Memorandum attached to the Bill, your Excellency's Government states that these powers are compatible with article 8 of the Human Rights Act.<sup>3</sup> One safeguard will be that the "Home Office will issue non-statutory guidance about the use of the powers and training which will be required for authorised officers exercising those powers".<sup>4</sup> However, as this guidance is not subject to Parliamentary scrutiny during the passage of the Bill, the precise manner in which the Home Office intends to exercise these broad and intrusive powers remains uncertain. The legislative powers themselves should be defined with sufficient specificity to avoid uncertainty and overbreadth.

We note also that in 2022, the High Court held that the Home Office's previous policy of blanket seizure and search of migrants' phones was unlawful, violating both article 8 of the ECHR and UK data protection law.<sup>5</sup> While your Excellency's Government now claims that these new powers are more limited, the absence of binding statutory safeguards, judicial authorisation requirements, or publicly available, prospective guidance undermines that assurance and fails to prevent similar rights violations from recurring.

Moreover, granting such sweeping powers may deter individuals from seeking assistance, communicating with support networks, or preserving critical information for legal proceedings. The creation of a large, government-controlled repository of personal data poses long-term risks, including potential misuse, data leaks, and unjust profiling. Any expansion of state surveillance powers must meet the principles of legality, necessity, and proportionality to justify restrictions on the right to privacy. As currently drafted, these provisions fall short of those standards and risk normalising invasive practices under the guise of border control.

In summary, as your Excellency's Government considers the Bill, we urge careful reflection on the legal implications of adopting a counter-terrorism framework in the immigration context. Expanding criminalisation, surveillance, and state intrusion into the lives of vulnerable migrants will neither address the root causes of displacement nor deter irregular migration. Instead, it risks further harm, deepening reliance on smugglers and exacerbating vulnerabilities. The extension of counter-terror powers to non-terrorism matters sets an inappropriate and dangerous precedent of prosecuting and punishing individuals in need of protection in a manner that could contravene international law and undermine the UK's commitment to human rights and international protection.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

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<sup>3</sup> UK Government, 'Border Security, Immigration and Asylum Bill: European Convention on Human Rights Memorandum', 2025, para. 71.

<sup>4</sup> *Ibid.*, para. 72.

<sup>5</sup> *R (HM) v SSHD* [2022] EWHC 695 (Admin).

1. Please provide any additional information and/or comment(s) you may have on the above.
2. Please provide information in detail on how the preparatory offences in clauses 13-17 of the Bill will be reviewed and redrafted to ensure that they are consistent with the principle of legality under international human rights law and the Smuggling Protocol, do not incriminate innocent migrants, and do not result in arbitrary arrest and detention.
3. Please explain how the search and seizure powers in clauses 19-26 of the Bill will be reviewed and redrafted to ensure that they are consistent with the right to privacy under international human rights law.
4. Please indicate whether the authorities will review and reconsider any proposals to transpose exceptional counter-terrorism laws to other contexts, including immigration and organised crime.

We stand ready to provide your Excellency's Government with any technical advice it may require in ensuring that its legislation is fully compliant with international human rights standards and international humanitarian law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Gehad Madi

Special Rapporteur on the human rights of migrants

Ana Brian Nougrères

Special Rapporteur on the right to privacy