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## BRIEFING ON CLAUSES 13-17, 19-26, AND 43-45 OF THE BORDER SECURITY, IMMIGRATION, AND ASYLUM BILL

This briefing considers the clauses in the Border Security, Asylum, and Immigration Bill ('the Bill') that seek to introduce offences and powers that mirror those applied in the terrorism context, and those relating to the prevention of serious crime. These are clauses 13-17, 19-26, and 43-45. This briefing makes recommendations for MPs in advance of the Bill's second reading on Monday 10 February. **As currently constituted, the provisions do not contain robust enough safeguards to protect people who are not engaged in organised immigration crime from being prosecuted as such.**

### Recommendations:

- Clause 15 should be amended to include, at minimum, mobile phones, SIM cards, data packs, and power banks. Liberty encourages engagement with people with lived experience of the asylum system and civil society organisations to identify additional necessary articles.
- Clauses 13 and 14 should be amended to remove the reverse burdens of proof in each clause.
- Clause 16(6) should be amended to provide a defence for people travelling in a group on the basis of close family ties or in situations of mutual assistance.
- Clause 20 should be scrutinised during Second Reading to illustrate how it will not lead to blanket phone seizure from all new irregular arrivals, given officers will reasonably suspect that all arrivals will have information stored on their mobile phones related to how their unlawful immigration was assisted.
- Clause 43(3-4) should be amended to remove the reverse burdens of proof in both subsections.
- Clause 44(3-5) should be removed such that amending the list of relevant articles in clause 44 requires primary legislation.

## CLAUSES 13-17

1. **Clauses 13-17 would create new preparatory offences for the organised immigration crime (OIC) context. While preparatory offences are well-established in terrorism legislation, they pose a heightened risk of disproportionality in the OIC context in part because – unlike in terrorist acts – smuggling involves a smuggler and their client who is seeking protection.** The safeguards in Clauses 13 – 16 are not yet robust enough to protect against the undue potential criminalisation of thousands of people seeking protection.
2. **While the exceptions listed in Clause 15 are welcome, they do not include key articles commonly possessed, supplied, and received by people seeking protection who are not engaged in OIC.** Clause 15 should be amended to include, at minimum, mobile phones, SIM cards, data packs, and power banks. Otherwise, Clauses 13 and 14 risk unintentionally exposing people who are not engaged in OIC to prosecution and imprisonment of up to 14 years. This includes UK citizens and lawful residents who travel to mainland Europe to provide articles (such as a mobile phone) to support the safety and survival of family members and loved ones who intend to seek protection in the UK. It also could include those who top up their loved ones' mobile data packs to enable them to continue communicating with them and to access humanitarian assistance, including to make a distress call while at sea or in a lorry container.

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3. **The risk of criminalisation and imprisonment of people who are not engaged in OIC is exacerbated by the reverse evidential burden of proof included in Clauses 13 and 14.** It may be challenging in practice for a defendant to evidence that, for instance, they provided a family member or loved one with a mobile phone to support their ability to remain safe while living in makeshift tent camps, rather than to communicate with people smugglers.
4. **The provision for defences in Clause 16(6-8) is welcome, however subsection 6 does not protect groups who are not engaged in OIC from prosecution.** For example, if a mother and child are travelling together one of them may take a screenshot on their phone of a weather report that records the anticipated height of waves in the Channel. They use this to help them to decide whether they feel it is safe enough to attempt a journey to the UK by small boat that evening. In this case, they would not have a defence under Clause 16(6), and would be at risk of prosecution and imprisonment of up to 5 years. Were the mother or child travelling alone, however, they would have a defence under Clause 16(6). Clause 16(6) should be amended to protect people from prosecution who support one another due to close family ties or in situations of mutual assistance, in alignment with the aims of the Bill and with how organised criminal groups are constituted in the UN Convention Against Transnational Organised Crime.<sup>1</sup>

## CLAUSES 19-26

5. **Every individual who newly arrives via irregular routes would be subject to the powers of search, seizure, retention, access, and copy of electronic devices proposed in Clauses 19-26 regardless of whether they have engaged in or planned to engage in organised immigration crime (OIC).** This is because their mobile phones may contain evidence related to how they were smuggled to the UK and as such would be considered a relevant article.
6. **If the power is applied to all irregular arrivals, it may be a disproportionate interference with Article 8 rights (the right to private and family life) and the Data Protection Act 2018 because arrivals' phones will contain personal data and private correspondence, and seizing their phones will remove their ability to communicate with their families and loved ones** (not least to indicate to them that they are not in danger and have arrived safely in the UK). Government has assessed this to be compatible with Article 8 in large part because "officers will only be seizing phones where there is a reasonable suspicion that a relevant person is in possession of a relevant article" or an article which appears to an officer to contain information relating to an act of people smuggling.<sup>2</sup> Government states that, due to this specificity, the power will not be implemented as a blanket policy. However, it is reasonable to suspect that every migrant who arrives in the UK by boat or lorry has been smuggled, and as such their phones are likely to contain e.g., correspondence with their people smuggler. It is unclear how the new power would not be applied as a blanket policy to all new arrivals given the way Clauses 19 and 20 are currently constituted. Government's assertion that this power would not be applied as a blanket policy should be scrutinised.

## CLAUSES 43-45

7. **The way that Clause 43(4) constitutes 'possession' is extremely broad and contains a reverse evidential burden of proof. Clause 44(3-5) would introduce a Henry VIII power allowing the Secretary of State to, by regulation, amend the list of objects whose possession becomes an offence.**

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<sup>1</sup> See, e.g., Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions; Addendum: Interpretative notes for the official record (travaux préparatoires) of the negotiations for the United Nations Convention against Transnational Organized Crime and the Protocols thereto', [UN doc A/55/383/Add.1](#) (3 Nov 2000) (Interpretative Notes), para 88.

<sup>2</sup> UK Government (2025) '[Border Security, Immigration and Asylum Bill: European Convention on Human Rights Memorandum](#)' para. 71.

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8. **In the context of cross-border Channel crossing, given that people who have been smuggled arrive in the UK in or near articles used for assisting unlawful immigration (a dinghy, motor, etc), Clause 43(4) and Clause 44(3-5) would together create acute future risk of criminalising every person who arrives by small boat under this offence.** If the list of relevant articles is expanded to include articles commonly used in the serious offence of assisting unlawful immigration, people who are being smuggled would be at high risk of criminalisation under these provisions despite not being engaged in the serious offence of assisting unlawful immigration themselves. They would be unable to make use of the defence provided for by Clause 43(3) as they would likely know that the article in question was being used for smuggling (such as a boat motor). Further, the reverse evidential burden of proof provided for by Clause 43(4) means it would be, in practice, challenging if not impossible to provide sufficient evidence to raise the fact that they were not in control of the relevant articles. As Clause 43 is constituted, people who arrive by small boat would very likely be considered in possession of the small boat and associated articles.
9. **Outside of this context, the constitution of ‘possession’ and the Henry VIII power would also pose a significant civil liberties risk for UK citizens and residents as the list of serious offences spans far beyond assisting unlawful immigration, and as such the potential articles that could be added by regulation to Clause 44 are numerous.** While the list of relevant articles are, at the moment, tightly defined, these clauses are constituted in a way that renders them extremely malleable. To mitigate the significant risk of unintended consequences arising from Clauses 43-45, Clause 43 should be amended to remove the reverse evidential burdens of proof in both subsections 3 and 4. Further, Clause 44(3-5) should be removed, such that amending the list of relevant articles in Clause 44 requires primary legislation.

## RECOMMENDATIONS

1. Liberty recommends that:
  - a. Clause 15 be amended to include, at minimum, mobile phones, SIM cards, data packs, and power banks. Liberty encourages engagement with people with lived experience of the asylum system and civil society organisations to identify additional necessary articles.
  - b. Clauses 13 and 14 be amended to remove the reverse evidential burdens of proof in each clause.
  - c. Clause 16(6) be amended to provide a defence for people travelling in a group on the basis of close family ties or in situations of mutual assistance.
  - d. Clause 20 be scrutinised during Second Reading to illustrate how it will not lead to blanket phone seizure from all new irregular arrivals, given officers will reasonably suspect that all arrivals will have information stored on their mobile phones related to how their unlawful immigration was assisted.
  - e. Clause 43(3-4) be amended to remove the reverse evidential burdens of proof in both subsections.
  - f. Clause 44(3-5) be removed such that amending the list of relevant articles in clause 44 requires primary legislation.

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