



LEGAL

Border Security, Asylum & Immigration Bill | Policy Brief



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1. The Border Security, Asylum, and Immigration Bill¹, introduced in Parliament on 30th January, aims to enhance national security, tighten control over irregular migration, and reform the asylum process. However, several provisions within the Bill, including Clauses 13-16, 20-23, 31, 34-35, and 46-50, raise significant concerns for British Muslims and marginalised communities, as they risk exacerbating Islamophobia and unfairly targeting individuals associated with migration and asylum-seeking. While these provisions are designed to strengthen national security and manage migration more effectively, the broad scope of the powers could lead to the criminalisation of innocent individuals, particularly asylum seekers, under vague or undefined criteria. The expansion of powers related to surveillance, pre-crime policing, and sentencing could disproportionately affect Muslim communities, particularly those seeking asylum. These measures may institutionalise profiling and punitive practices, deepening the vulnerability of already marginalised populations.

The following clauses within the bill have far-reaching implications:

2. **Criminalisation of Provision of Certain Items and Assistance (Clauses 13-16):** Clauses 13, 14, and 15 criminalise the provision of certain items or assistance if there is knowledge or suspicion; they might be used in connection with immigration offences. While NGOs may be exempt if they provide services free of charge, the burden of proof rests on individuals and organisations to demonstrate a 'reasonable excuse'². This legal standard risks the prosecution of humanitarian workers, charities, and volunteers, potentially deterring essential aid efforts—particularly for asylum seekers, including those from Muslim-majority countries. Clause 16 further expands liability to those indirectly assisting migrants, creating a chilling effect on support networks. This measure fosters suspicion toward Muslim communities and asylum seekers, reinforcing harmful stereotypes and potentially violating ECHR Article 8 (Right to Respect for Private and Family Life)³ and ICCPR Article 17 (Protection of Privacy)⁴.

3. **Surveillance and Search Powers (Clauses 20, 21, 23):** Clauses 20 and 23 expand immigration officers' powers to stop and search individuals, vehicles, and premises without a warrant, lowering the threshold for searches and reducing legal safeguards. Clause 21 grants officers the authority to seize and retain electronic devices. As these new powers of arrest, entry, and search are not currently covered by the Equality Act 2010's non-discrimination protections⁵, they create a legal gap that could lead to unchecked targeting. At borders, these provisions mirror the profiling practices of Schedule 7, where Muslims are already disproportionately subjected to arbitrary searches and data seizures⁶. By lowering search thresholds and granting sweeping authority to seize personal devices, these measures reinforce discriminatory policing patterns and institutionalise Islamophobic practices. Without clear oversight and legal safeguards, they risk violating fundamental rights, including ECHR Article 5 (Right to Liberty and Security)⁷, Article 8 (Right to Respect for Private and Family Life), and ICCPR Article 9 (Right to Liberty)⁸, further entrenching systemic discrimination.

¹ Parliament.uk. (2024). Border Security, Asylum and Immigration Bill publications - Parliamentary Bills - UK Parliament. [online] Available at: <https://bills.parliament.uk/bills/3929/publications>.

² Ibid.

³ Council of Europe (1950). Article 8, European Convention on Human Rights. [online] European Convention on Human Rights. Council of Europe. Available at: https://www.echr.coe.int/documents/d/echr/Convention_ENG.

⁴ United Nations (1966). International Covenant on Civil and Political Rights. [online] OHCHR. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁵ UK Government (2010). Equality Act 2010. [online] Legislation.gov.uk. Available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

⁶ Choudhury, T. and Fenwick, H. (2011) *Vol Research report 72, The impact of counter-terrorism measures on Muslim communities*. publication. Equality and Human Rights Commission; Qurashi, F. (2018). *The Prevent strategy and the UK 'war on terror': embedding infrastructures of surveillance in Muslim communities*.

⁷ Council of Europe (1950). European Convention on Human Rights. [online] European Convention on Human Rights. Council of Europe. Available at: https://www.echr.coe.int/documents/d/echr/Convention_ENG.

⁸ United Nations (1966). International Covenant on Civil and Political Rights. [online] OHCHR. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

4. Data Sharing and Privacy Concerns (Clauses 31, 34, 35): Clause 31 permits the sharing of personal information between agencies for immigration and law enforcement purposes, raising concerns about data misuse and profiling. Clauses 34 and 35 mandate the collection, retention, and indefinite sharing of biometric data, disproportionately impacting asylum seekers from Muslim-majority countries. By allowing broad inter-agency data-sharing without sufficient oversight, these provisions heighten the risk of privacy violations and discriminatory surveillance. The lack of clear safeguards increases the potential for misuse, undermining data protection rights. These measures may also breach ECHR Article 8 (Right to Respect for Private and Family Life), GDPR protections on data use¹⁰, and ICCPR Article 17 (Protection of Privacy).

5. Serious Crime Prevention Orders (Clauses 46-50): Clauses 46 and 47 introduce Serious Crime Prevention Orders (SCPOs) for individuals suspected of serious immigration crimes, blurring the lines between immigration control and counterterrorism. Clauses 49 and 50 lowers the burden of proof for imposing SCPOs and allow interim orders without full judicial review, enabling rapid enforcement and undermining due process. By applying counterterrorism measures to immigration offences, these provisions risk conflating migrants with security threats, fostering suspicion toward Muslim communities and asylum seekers⁴. This association perpetuates harmful stereotypes and legitimises discriminatory enforcement. These measures may violate ECHR Article 8 (Right to Respect for Private and Family Life), Article 9 (Freedom of Thought, Conscience, and Religion), and ICCPR Article 17 (Protection of Privacy).

6. RECOMMENDATIONS

7. Mlegal recommends the following:

8. Repeal the Illegal Migration Act 2023 (Clause 38):

a. **Clause 38** be amended to repeal the Illegal Migration Act 2023¹¹ in its entirety, eliminating provisions that criminalise asylum seekers, particularly those from Muslim majority countries, and help address systemic discrimination.

9. Maintain Clear Distinctions Between Counterterrorism and Immigration Enforcement (Clause 46, 49 and 50):

a. **Clause 46** be amended to ensure clear distinctions are maintained between counterterrorism measures and immigration enforcement to avoid the conflation of immigration offenses with national security threats.

b. **Clause 49/50** be reviewed to ensure that interim orders are only issued after rigorous judicial review and that the burden of proof is clear and fair, preventing arbitrary imposition of Serious Crime Prevention Orders (SCPOs) on vulnerable populations, especially Muslim communities.

10. Introduce Safeguards Against Racial or Religious Profiling (Clauses 20, 21 and 23):

a. **Clauses 20, 21 and 23** be amended to include explicit safeguards against racial and religious profiling, ensuring that Muslims and other marginalised communities are not disproportionately targeted by immigration officers conducting stop-and-search, seizure of devices, or other investigative powers.

¹⁰ European Union (2016). EUR-Lex - 02016R0679-20160504 - EN - EUR-Lex. [online] Europa.eu. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0679-20160504&qid=1532348683434>.

¹¹ Legislation.gov.uk (2023). Illegal Migration Act 2023. [online] Legislation.gov.uk. Available at: <https://www.legislation.gov.uk/ukpga/2023/37/contents>.

11. Data Protection and Limits on Biometric Data Collection (Clauses 34, 35 and 51):

- a. Clauses 34 and 35 be amended to ensure biometric data collection and retention comply with GDPR and international human rights standards, including restrictions on data-sharing to prevent profiling of individuals based on race, religion, or immigration status.
- b. Clause 31 be amended to introduce oversight measures to ensure data-sharing between agencies does not result in discrimination or unlawful surveillance of Muslim communities.

12. Establish Safe and Legal Routes for Asylum Seekers (Clause 13-16):

- a. The government should create or expand safe and legal pathways for asylum seekers to ensure access to protection without resorting to dangerous and irregular routes. This would reduce the criminalisation of vulnerable groups, particularly individuals from Muslim-majority countries.

13. Protect Humanitarian Aid Workers from Criminal Liability (Clauses 13-14):

- a. Amend Clauses 13 and 14 to ensure that NGOs, charities, and individuals providing essential aid cannot be criminalised or placed under legal scrutiny for humanitarian work. The law should not create barriers to life-saving assistance due to fear of prosecution.
- b. Clarify Legal Protections: Introduce clear legal protections so that humanitarian actors do not bear the burden of proving their actions were lawful. The government should establish transparent guidelines distinguishing legitimate humanitarian work from unlawful facilitation of immigration offenses.

14. Safeguards Against Arbitrary SCPOs (Clause 49):

- a. Clause 49 be amended to ensure that Serious Crime Prevention Orders (SCPOs) are not imposed arbitrarily on asylum seekers or individuals from marginalised communities, particularly Muslim communities.
- b. Clear criteria should be established for the imposition of SCPOs, with judicial oversight to ensure that they are only applied when there is strong evidence, preventing unjust restrictions on individuals based on ethnicity or immigration status.

15. Amendment to the Equality Act 2010:

- a. As the Bill introduces new powers of arrest, entry, and search, an amendment to the Equality Act 2010 should explicitly state that these new powers are subject to the same anti-discrimination protections as those outlined in sections 28A to 28K of the Immigration Act 1971¹² [see Equality Act Sch 3 para 17(6)]. This amendment is necessary to ensure that these new powers are not exempt from the Equality Act's safeguards against discrimination based on nationality, ethnicity, or national origins.

About Mlegal

Mlegal is a UK-based non-profit organisation dedicated to protecting and advancing the rights of Muslim and marginalised communities. Through legal policy and advocacy, Mlegal works to address systemic issues of discrimination, ensure access to justice, and promote civil liberties for all. We are committed to advancing human rights, particularly the rights to free expression, assembly, and privacy.

¹² Legislation.gov.uk. (2011). Immigration Act 1971. [online] Available at: <https://www.legislation.gov.uk/ukpga/1971/77/contents>.

