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**The Anti Trafficking
Monitoring Group**

Secure reporting- key to safety, justice, and public order

The need to amend 'Nationality and Borders Bill Clause 39: Immigration Offences and Penalties' to allow for secure reporting.

Clause 39 creates several new criminal offences including knowingly arriving in the UK without a visa or valid entry clearance and entering without leave or in breach of the immigration rules. This would have a significant impact, including for asylum seekers, people who have been trafficked and victims of abuse. The maximum penalty for these new offences is increased: entering without leave or arriving without a valid entry clearance or electronic travel authorisation, or overstaying, is increased from 6 months to 4 years.ⁱ Criminalising people in this way is dangerous and unconscionable. It also creates a vulnerability and plays into the hands of exploiters and perpetrators of abuse as people are unable to report crime without significant personal risk. Secure reporting is vital to mitigate this.

Clause 39 breaches the Refugee Convention by criminalising asylum seekers, including victims of trafficking and abuse. As it is not possible to apply for entry clearance for the purpose of claiming asylum and victims of trafficking are at the mercy of their traffickers, and the lack of safe legal routes, the new offence “requires the impossible”ⁱⁱ of this group. They not only face trafficking and abuse but also subsequent criminalisation.

This in turn places a duty on police to arrest and prosecute anyone who has entered or remained in the UK without a visa or valid immigration status. This will deter victims and witnesses of crime from approaching the police due to fears of the repercussions for anyone with insecure or uncertain immigration status. This will undermine the police's ability to do their job of protecting victims and bringing perpetrators to justice. It will also enable perpetrators or exploiters to take advantage of the additional barriers to secure reporting and target and maintain control of people and to operate with impunity.ⁱⁱⁱ Fear of prosecution will further prevent those with insecure immigration status from reporting crime, whether as a witness or victim.

Peers have rightly been explicit about their concerns regarding Part 5 of the Nationality and Borders Bill which deals with identification and support for victims of slavery. Peers have been clear that Part 5 does not belong in an immigration bill and to include it muddles the issues of identifying and supporting victims of crime with immigration. A lack of secure reporting similarly muddles these issues and allows immigration matters to interfere with and undermine reporting of crime. While we oppose all of clause 39, this briefing focuses on amendment 58A which will mitigate this issue.

The problems

There are many problems with Clause 39.

By creating new criminal offences, Clause 39 would require police officers to arrest and investigate anyone suspected of these new offences related to immigration status. This might include individuals identified for instance in a nail bar, brothel, or drug farm. As noted above, the maximum sentences are increased and severe, and would trigger automatic deportation.



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The individuals worst affected will not be criminals at all; Clause 39 will affect vulnerable individuals and victims who could assist the police with investigations of the real criminals. They are victims, not perpetrators, in need of support, care and safety, and perpetrators will use the threat of Immigration Enforcement to increase their power and control.

Fear of immediate arrest for those who have entered or remain in breach of the new offences in Clause 39 will prevent vulnerable victims of crime from coming forward to seek support or report crimes to which they have been the victims of and/or witnesses. This will allow the perpetrators of crime off the hook while forcing vulnerable people to stay in dangerous and exploitative situations. Research from the Latin American Woman Rights Service shows that victims of violence against women and girls (VAWG) with insecure immigration status are unlikely to approach the police because they believe that the police will prioritise their lack of legal status instead of being protected as victims of serious crimes.^{iv}

Secure reporting for victims of crime:

Protecting victims and enabling the police to investigate the facilitators of trafficking and the perpetrators of abuse and exploitation must be prioritised over compelling the police to carry out the role of Immigration Enforcement. This was highlighted in the 2018 Super Complaint by Southall Black Sisters and Liberty on data sharing between the Police and the Home Office. The findings of the super complaint concluded that data sharing arrangements are significantly harming not only victims of crime but also the public interest, as crimes are not reported and therefore remain unpunished:

The UK aspires to be a humane, liberal democracy where the criminal justice system does not punish people for being victims but recognises and protects them. Government policy is clear that victims of crime should be treated without discrimination. [...] harm is currently being caused to the public interest and that this needs to be addressed.”

“That is why we are recommending a review of the law and policy in this area, to provide clarity to police on their priorities. We also recommend establishing safe reporting pathways, informed by the realities of victims’ experiences, that reflect existing laws on everyone’s right to data protection”^v

The Immigration Enforcement Victims Protocol

The Government’s review, published in December 2021, in response to the findings of the Super Complaint is deeply disappointing.^{vi} Rather than accepting the findings, it rejects calls for secure reporting and proposes an Immigration Enforcement Victims Protocol. It claims that this will prevent Immigration Enforcement action against victims whilst criminal investigations and proceedings are ongoing, and while victims are being supported. It does not address the need for victims or witnesses to feel safe to report, nor concerns of people who may be concerned that they will not be considered victims, nor data sharing without consent prior to or following this.



The Immigration Enforcement Victims Protocol does not respond to the need for secure reporting, nor does it enable the secure reporting of crime. It has been rejected by organisations supporting migrant victims and witnesses of crime who have been clear that this approach will not provide victims with confidence to report a crime.^{vii} The Immigration Enforcement Victims Protocol instead maintains the practice of data sharing, leaving victims and witnesses with insecure or uncertain immigration status fearful of reporting a crime or seeking assistance from authorities.

Clause 39, if enacted, will mean that police officers would be required to investigate and/or arrest individuals suspected of the new offences. This rides roughshod over the Super Complaint findings and recommendations, Association of Chief Police Officers' guidance^{viii} and known best practice in safeguarding and victim support which is clear that, in order that victims of or witnesses to crime are not deterred from approaching the police, there should not be automatic data sharing between the police and the Home Office.

The solution:

We call on the Government to explain how they will safeguard victims of crime and ensure the police and other relevant authorities are able to build the trust of communities given the creation of new criminal offences in clause 39 and concerns regarding the Immigration Enforcement Victims Protocol. We request that the amendment below be moved to enable victims and witnesses of crime to report crimes to the police and other relevant authorities without fear of criminalisation or immigration repercussions.

Amendment 58A

After clause 39, insert the following new Clause—

Secure reporting for victims of crime

1. The Secretary of State must, in regulations, make provisions for the prohibition of automatic sharing of personal data of a victim or witness of crime for immigration purposes.
- (2) In Section 20 of the Immigration Act 1999 after subsection (2B) insert -
“(2C) This section does not apply to information held about a person as a result of the person reporting criminal behaviour which they are a victim of or a witness to.”

Member's explanatory statement

This new Clause would prevent immigration data being shared about a victim or witness of crime who reports an offence. This is to ensure victims are able to approach the authorities for assistance without fear of immigration repercussions as a result of that contact or resultant data sharing with immigration enforcement.

ⁱ <https://bills.parliament.uk/publications/44460/documents/1174>

ⁱⁱ Bingham Centre for the Rule of Law Nationality and Borders Bill Part 2 - Rule of Law Monitoring, p.16.

ⁱⁱⁱ <https://bills.parliament.uk/publications/44307/documents/1132>

^{iv} <https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-full-version-updated.pdf>



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^v <https://www.gov.uk/government/publications/police-data-sharing-for-immigration-purposes-a-super-complaint>

^{vi} Home Office and Police data sharing arrangements on migrant victims and witnesses of crime with insecure immigration status, 2021.

^{vii} See 'Joint response to the "Home Office and Police data-sharing arrangements on migrant victims and witnesses of crime with insecure immigration status"' February 2022 https://lawrs.org.uk/wp-content/uploads/2022/02/Joint-Response-to-Home-Office-Review_-data-sharing.pdf

^{viii} <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/vulnerable-adults/>