



Immigration Control (Gross Human Rights Abuses) Bill [HL] (HL Bill 17 of 2017–19)

Summary

The [Immigration Control \(Gross Human Rights Abuses\) Bill \[HL\]](#) is a private member's bill introduced by Baroness Kennedy of the Shaws (Labour). The Bill received its first reading in the House of Lords on 28 June 2017, and is scheduled to receive its second reading on 15 December 2017. The Bill would enable the refusal of entry or leave to remain in the UK to a non-UK or non-EEA national who is “known to be, or to have been, involved in gross human rights abuses”.

Clause 1 would allow the Secretary of State or an immigration officer, in respect of non-UK or non-EEA nationals who may have committed human rights abuses, to:

- (a) refuse entry clearance or leave to enter the United Kingdom;
- (b) refuse leave to enter in relation to a person in possession of an entry clearance;
- (c) cancel leave to enter or remain which is in force while the person is at port or outside the United Kingdom;
- (d) vary the conditions of leave to enter or remain; or
- (e) curtail leave to enter or remain.

Clause 1(2) defines conduct constituting a gross human rights abuse as that in which “the three conditions referred to in section 241A of the Proceeds of Crime Act 2002 (gross human rights abuse or violation) are met”. Clause 2 would make consequential amendments to the Immigration Act 1971. Finally, clause 3 would apply the Bill's territorial extent to the whole of the United Kingdom.

Context and Background

Clause 1(2) of the Bill defines conduct constituting a human rights abuse as that in which “the three conditions referred to in section 241A of the Proceeds of Crime Act 2002 (gross human rights abuse or violation) are met”. Section 241 of the Proceeds of Crime Act relates to the civil recovery of property and assets, and defines “unlawful conduct” under the Act as criminal activity that occurred in either the UK or in other countries and territories. The definition of “unlawful conduct” was expanded by section 13 of the Criminal Finances Act 2017, which inserted into the Proceeds of Crime Act the following section covering human rights abuses:

241A Gross human rights abuse or violation

- (1) Conduct constitutes the commission of a gross human rights abuse or violation if each of the following three conditions is met.

- (2) The first condition is that:
 - (a) the conduct constitutes the torture of a person who has sought
 - (i) to expose illegal activity carried out by a public official or a person acting in an official capacity, or
 - (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms, or
 - (b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.
- (3) The second condition is that the conduct is carried out in consequence of that person having sought to do anything falling within subsection (2)(a)(i) or (ii).
- (4) The third condition is that the conduct is carried out:
 - (a) by a public official, or a person acting in an official capacity, in the performance or purported performance of his or her official duties, or
 - (b) by a person not falling within paragraph (a) at the instigation or with the consent or acquiescence
 - (i) of a public official, or
 - (ii) of a person acting in an official capacity, who in instigating the conduct, or in consenting to or acquiescing in it, is acting in the performance or purported performance of his or her official duties.¹

The inclusion of section 241A was a result of the tabling of an amendment by a cross-party group of MPs during the Criminal Finances Bill's passage through the House of Commons. The Government tabled a similar amendment and these were debated together at report stage in the House of Commons on 21 February 2017.² The amendment was referred to as the 'Magnitsky Amendment', after the Russian lawyer Sergei Magnitsky who died in a Moscow prison in 2009.³ He had uncovered an alleged \$230 million (US dollar) theft from the state budget by Russian tax officials. In 2012, the US Congress passed the 'Magnitsky Act' which allowed the US Government to impose visa bans and asset freezes on individuals connected with the case. In April 2013, Ian Austin (Labour MP for Dudley North) tabled a written question in the House of Commons asking the Government how many of the alleged perpetrators named in the US Magnitsky Act had been granted UK entry visas. The then Minister of State for Security and Immigration, James Brokenshire, replied:

The UK has a long-established practice of not routinely commenting on the details of individual immigration cases [...] Wherever we have evidence that individuals were involved in the Magnitsky case that evidence is taken very carefully into account in considering visa applications.⁴

There has subsequently been a number of questions in Parliament from MPs of various parties asking the Government what action it was taking to impose not only asset freezes in light of the Magnitsky case, but reforms to the immigration rules.⁵ In response to the most recent of such questions, Ben Wallace, Minister of State for Security, reiterated the Government's position that it believed the current immigration rules provided adequate scope to deny entry to perpetrators of human rights abuses:

We can confirm that foreign nationals requiring leave to enter the UK must meet the requirements of the Immigration Rules in the category of entry sought and that, by their own actions, must not have brought themselves within scope of the general grounds for refusal in the Immigration Rules. Evidence that an individual has been involved in organised crime or human rights abuses would be taken into account when a visa application is considered. Individuals will be denied entry to the UK where there is evidence to show that their presence would not be considered conducive to the public good.⁶

Current Immigration Rules

Part 9 of the Home Office [Immigration Rules](#) sets out the general grounds for refusal of entry clearance or leave to enter or remain in the UK.⁷ Part 9, paragraph 320(2) states that entry should be refused to a person who is the subject of a deportation order or has been convicted of an offence for which they have been sentenced to a period of imprisonment. The Rules also make provision for refusing entry to a person on grounds of their conduct, character and associations. For example, paragraph 320(6) states that entry is to be refused if the Secretary of State “has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good”.⁸ Similar powers are provided to immigration officials in paragraph 320(19), which states that entry is to be refused if:

The immigration officer deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person’s conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter.⁹

The Home Office guidance to immigration officials, [General Grounds for Refusal](#) (10 April 2017), in relation to paragraph 320(19), stipulates that entry should be refused if a person is suspected of crimes against humanity:

If it is conducive to the public good not to admit a person to the UK because of their character, conduct or associations you must consider refusing entry or leave to remain. Refusal of entry clearance, leave to enter and leave to remain is mandatory where [...] a person is suspected of war crimes or crimes against humanity.¹⁰

Further Information

- House of Lords Library, [Criminal Finances Bill: Briefing for Lords Stages](#), 3 March 2017

¹ Criminal Finances Act 2017, s 13.

² [HC Hansard, 21 February 2017, cols 873–978](#).

³ House of Lords Library, [Criminal Finances Bill: Briefing for Lords Stages](#), 3 March 2017, p 10.

⁴ House of Commons, [‘Written Question: Visas: Russia’](#), 6 May 2016, 35845.

⁵ See House of Commons: [‘Written Question: Sergei Magnitsky’](#), 10 May 2016, 36044; [‘Written Question: Sergei Magnitsky’](#), 2 June 2016, 37317; [Oral Question on ‘Russian Federation’](#), HC Hansard, 18 October 2016, col 653.

⁶ House of Commons, [‘Written Question: Immigration Controls: Russia’](#), 8 December 2016, 55739.

⁷ Home Office, [Immigration Rules, Part 9: Grounds for Refusal](#), 10 August 2017. Similar provisions are contained in [Appendix V](#) with regard to refusing entry to ‘visitors’, defined as “a person who is coming to the UK, usually for up to six months, for a temporary purpose, for example as a tourist, to visit friends or family or to carry out a business activity”.

⁸ *ibid*, para 320(6).

⁹ *ibid*, para 320(19).

¹⁰ Home Office, [General Grounds for Refusal](#), 10 April 2017, p 102.

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