



Briefing for the Asylum inquiry ran by the Equalities, Human Rights and Civil Justice committee on the Illegal Migration Bill and what Scotland must do now

This bill is morally repugnant, practically unworkable and as with immigration deterrence policy and legislation, it is again very likely to fail on its own terms. In the meanwhile, though, it exerts severe harm on women, men and children seeking safety, from refugee persecution or trafficked exploitation. It will grant unwarranted and unaccountable power to the Home Secretary and enable huge public monies to be lost to private profits in detention and institutional accommodation. It will drive unprecedented levels of migrant destitution and exploitation. The bill reflects an isolationist mind-set to international responsibilities and law, and a systemic disrespect for devolved and local governance and the communities they serve. This legislation is just not needed. We desperately need a compassionate alternative at the UK level. However, in Scotland we cannot merely by-stand. **Straightforwardly, we now need the First Minister to own this issue and lead his government to institute a radical humanitarian cross-government policy that protects the vulnerable people – refugees and trafficking survivors – who otherwise will be left crushed by this legislation.** Consigned to detention, destitution, organised crime exploitation, severe trauma and deaths in despair.

Dehumanising legislation

1. The Illegal Migration Bill is more than anything else, about [dehumanisation](#). It is one of the most authoritarian, callous and ruthless laws ever proposed in the UK parliament. It requires from point of irregular arrival the detention and then in effect, the dehumanising treatment of women, men and children who seek or need safety and to rebuild their lives in this country. Be that if they fled persecution in their home country, or have or are suffering exploitation, or both. The need of desperate people to arrive by irregular means, often exploited by organised crime, is a symptom of the UK government refusing to put in place a safe travel route, or [humanitarian visa](#) outside the UK. As they have with Ukrainian refugees. This dehumanisation comprises (a) complete denial of any meaningful consideration of individual needs or of their asylum application; (b) automatic and permanent inadmissibility status in the UK; (c) left under threat of or actual forcible removal; (d) consigned to grinding poverty and (e) left in institutional or detention accommodation, far from communities.

Alternative of safe travel scheme, good asylum and trafficking systems; not this “Refugee Ban Bill”

2. This dehumanisation stems from first, that the bill abolishes the right to seek asylum or have trafficking support and protection, for all those who arrive irregularly. Such unofficial arrival is necessarily and solely due to the UK government stubbornly refusing to create safe travel arrangements, abandoning people to acute risk and tragically some lose their lives, at sea or in the back of lorries or in other unsafe conditions. Safe routes would drastically weaken the demand for and control by smugglers and traffickers, which they exert over desperate people. Safe travel routes are not a panacea, but in the best “real world” spirit of refugee



protection, they are a practical solution. That they do not exist is the shameful decision of this UK government. Rather than legislate yet again, UK Ministers should invest in a high-quality [asylum system \(pp2-11\)](#) at home whilst with the EU, agree safe travel arrangements.

Refugee Ban Bill betrays the profound origins of the right to asylum and the Refugee Convention

3. We should remember that the right to seek asylum and the Refugee Convention itself both flowed from the [international community's resolve](#) for an international human rights law system, in response to the Holocaust perpetrated before and during the Second World War. It was [Winston Churchill](#), as then Prime Minister in 1954 who led the ratification of the Refugee Convention in the UK. It is unconscionable that such an effective and life-saving law, which has endured for generations, and is a cornerstone of the international community response to the Holocaust itself, is to be junked by a short-term Prime Minister and Home Secretary. We invite them to reflect on what they are doing. This is not in our name as reflected by the 100+ strong civic society coalition against it, [Scotland against the Refugee Ban Bill](#). As the [UN Refugee Agency](#) said this bill effectively abolishes the right to asylum:

“The legislation, if passed, would amount to an asylum ban – extinguishing the right to seek refugee protection in the United Kingdom for those who arrive irregularly, no matter how genuine and compelling their claim may be, and with no consideration of their individual circumstances. ... The effect of the bill ... would be to deny protection to many asylum-seekers in need of safety and protection, and even deny them the opportunity to put forward their case. (Our emphasis)

Refugee Ban Bill betrays survivors of trafficking and slavery and helps organised crime exploitation

4. The bill will not only remove, from those arriving irregularly, that right to make an asylum application and have it considered and determined. It will also remove eligibility for such survivors of trafficking or modern slavery to any support rights to safety, assistance and recovery or protection from removal or the prospect of temporary leave to remain. The bill rides a proverbial and “dangerous coach and horses” through trafficking legislation and support rights in, respectively Scotland, Northern Ireland and England & Wales. Worse still, it removes itself from the positive interpretative duty at s3 Human Rights Act 1998. The trafficking provisions are the main reason that the UK government were unable to declare the Bill as likely compatible with the European Convention of Human Rights (ECHR). The proposed legislation is also, in a novel step, applied retrospectively, from 7 March 2023.
5. So, this is already traumatising refugees and trafficking survivors and perversely, is deepening the control that exploiters hold over them. The denial of support that ensues, indeed is required by the Home secretary in this bill, of trafficking survivors will not only be a boon to organised crime exploiters, it will also drastically reduce any chance that survivors can be witnesses in prosecutions against traffickers. Given this retrospective effect of the bill, we urge strategic legal action now to safeguard rights of survivors, including testing the disapplication of trafficking victim rights at cl.21-24 of the bill. There is no evidence for this



shocking removal of life-saving trafficking rights, as only [6,210](#) (or 7%) of the 83,236 “small boat” arrivals from 2018-2022 were referred into the Home office National referral mechanism (NRM), with this 6,210 also accounting for a mere 15% of the 41,740 non-UK persons referred into the NRM in that same 5 year period. Most are [recognised](#) as survivors. No one is “gaming” the UK trafficking system. There is [no evidence](#) and therefore [weak legal basis \(42-28\)](#) for the UK government’s arbitrary and brutal removal of trafficking protections. We should remember it is survivors who [suffer](#) e.g. the woman raped in sexual exploitation.

6. We regard the trafficking provisions in this bill as very likely incompatible with the clear positive anti-trafficking obligations on the UK state and relevant public bodies flowing from [Article 4](#) ECHR as well as [Article 12](#) Council of Europe Trafficking Convention. The scope of these duties will include Scottish ministers, [Police Scotland](#) and the [Lord Advocate](#). As such, they have been placed in an invidious and likely unlawful position by this bill. We urge that Scottish ministers lead by acting to maintain compliance with these international legal duties, failing that they will be dragged into the Home secretary’s quagmire of illegality created by this bill’s trafficking provisions. In particular, we need Scottish ministers to complete the anti-trafficking job started with the Human Trafficking and Exploitation (Scotland) Act 2015 (the 2015 Act), by using its section 9(8) regulation power to institute an anti-trafficking identification and decisions body. That agency would replace the Home office [delay-riven \(3.2\) NRM](#). This will not only complete an “end-to-end” Scottish anti-trafficking protection process. It provides [an accessible and lawful route for all survivors of trafficking in Scotland](#), including those arriving irregularly, to still get access to their rights of support in the 2015 Act. 93% of the [2,400](#) survivors in Scotland since 2016 were non-UK nationals, and 68% were refugees too. The blunt truth is these survivors will de facto be abandoned unless Scottish ministers act to protect them. Doing so [also ensures compliance with Article 4 and Article 12](#), so getting Scottish ministers out of that quagmire of illegality.

The rotten core of the Refugee Ban Bill: the impersonal and brutal “duty to remove” scheme

7. In place of these established protection rights and systems, for refugees and trafficking survivors, the bill institutes a new all-encompassing duty on the Home Secretary to make arrangements to remove all persons deemed to meet the four conditions at cl.2. That effectively renders each person entering or arriving irregularly in the UK, as a “removable person”, to be denied rights to protection and subject to a grim existence most likely segregated from mainstream life, or forcibly removed elsewhere. There are extremely limited exceptions to this duty to remove. Even where they exist, such as an unaccompanied child, the force of it comes at 18, and a lone child may be removed before then by the Home Secretary via statutory powers. If a person is considered in scope of the duty to remove in cl.2 of the bill, then the Home Secretary is required – [and has no effective discretion to do otherwise](#) – to render that person permanently inadmissible to asylum as well as ineligible for the trafficking support rights and protections from expulsion, as described above.



8. It is immaterial in the duty to remove scheme, whether that person is a woman, man, child, old or young, or LGBTI or not. It does not matter if someone is a refugee fleeing, for example, religious persecution from the Taliban in Afghanistan, or gender-based abuse from the Iranian regime or escaping human rights violations in Russia for protesting on Putin's illegal invasion of Ukraine. It is irrelevant, if a person has been trafficked into commercial sexual exploitation, or forced to commit criminal acts of drug production, or be subject to labour exploitation. None of that matters in this bill through its impersonal and brutal duty to remove arrangements. In casting aside the rights and safety of such vulnerable people, this bill is a truly shocking and wilfully harmful act of legislative fiat. At its rotten heart, this dehumanising approach substitutes its deeply impersonal duty to remove scheme - which requires the Home Secretary never to see the "[face behind the case](#)" - for the life-saving and person-centred laws of the Refugee Convention, the Council of Europe Convention against Trafficking and the ECHR. This bill will do harm, but will not deter arrivals and will cost lives.

Drastic increase in use of detention for refugees, trafficking survivors, children, families and more

9. The bill also requires far more use of detention, in particular of those under its duty to remove arrangements. Cl. 11 confers wide new powers of detention to immigration officers, who will be able to detain a person they suspect meets the conditions for being removable, as well as having a power to detain their family members. Detention may be in any place that the Home Secretary considers appropriate – the Explanatory Notes state this may include pre-departure accommodation, a removal centre, or a short-term holding facility, such as [Manston processing centre](#). However, it may be in other sites, such as in asylum barges or ships. The length of time persons may be detained under the powers in the Bill is such period as, in the opinion of the Home Secretary, is reasonably necessary to enable a decision to be made, removal action to be carried out, or examination to be conducted. The bill gives at cl.13 the Home Secretary a new power to determine what is a reasonable timeframe for detention and limits people's ability to challenge that and apply for bail. No bail application is permitted until after 28 days detention. That latter requirement will "bake in" drastic increases in the immigration detention estate, to the severe detriment of many detainees and exorbitant costs to the Exchequer. The centrality of detention to the bill and, especially those tens of thousands who will be subject to its duty to remove regime - including children, pregnant women and families - not only contradicts UK government [past promises](#) to reduce the detention estate, it will have devastating human consequences. Sadly, as we have witnessed in ever-institutionalising asylum accommodation where there has been a [grim](#) and accelerating [loss of life](#) – with many suspected or confirmed suicides – we foresee there will be similar loss of life and deaths in despair in detention and vessels.

Intrusion into devolved government law and competence: human trafficking

10. The sweeping and ruthless changes to fundamental rights made by this bill, extend also to how it inserts the Home Secretary into matters of devolved and local government competences. As described above, the bill cuts as with the [Nationality and Borders Act 2022](#)



(the 2022 Act) straight into trafficking legislation and support and protection entitlements but this time, in an all-encompassing manner on the support rights in the 2015 Act. We have had approaching a decade of human trafficking or modern slavery legislation in three jurisdictions comprising the UK, in this area. These reflected a recognition, itself flowing from international law in this field, that trafficking and slavery are matters of crime and human rights abuse first with immigration strictly an ancillary issue and only then applying for some survivors; in particular ideally so to facilitate leave to remain to enable recovery; albeit [very few](#) are granted leave.

11. This bill makes an unwarranted and we suspect, unlawful intrusion into that settled position in international law as incorporated into domestic statute across the UK. In particular, we regard the ["threat to public order"](#) reasoning asserted by the UK government to justify its disapplication via cl.21-24, of trafficking support and protection rights, as deeply flawed and very unlikely to be compliant with Article4 ECHR. That is important, as if we are correct then there is a fragile or simply no legal basis for this shocking removal of these rights. We urge the Scottish government - and of course the UK parliament – to commit, publicly to take urgent steps to safeguard the three trafficking laws in different parts of the UK and the survivor support rights therein. Specifically on Scotland, we think this bill makes it imperative that Scottish Ministers regulate to institute their own identification and survivor decision procedure, which applies to all survivors in Scotland and wraps around the right to support in the 2015 Act. We urge the Scottish government to act now to safeguard survivors. That will protect them from this bill and massively help ensure Scottish public authorities comply with Article4. We urge the UK parliament to act also to protect its Modern Slavery Act 2015. The truth is that inaction by Scottish ministers almost certainly renders them and other Scottish public bodies, in said quagmire of illegality. We hope that they will take steps now.

Intrusion into devolved and local government law and competence: unaccompanied children

12. Another sweeping change threatened by this bill is into the devolved and local authority competences over looked after children within their jurisdictions. And, in particular, the deeply inappropriate intrusion by the Home Secretary to supplant the care and support responsibilities that councils have as corporate parents to unaccompanied refugee children. [Cls.14 to 20 are a child protection abomination](#). The Home Secretary is granting herself broad powers in the area of child protection encroaching on areas clearly devolved to the Scottish parliament and local authorities across the UK. Scotland's last care review, culminated in [The Promise](#). The essence of which is love is the foundation of the care system. In Clause 19 the Home Secretary grants herself power to remove children from a loving care system, taking them into a callously neglectful Home office regime instead. The Home Secretary's record on caring for children has already resulted in the [disappearance of over 200 children](#), most of whom are highly likely to have fallen prey to serious organised crime networks. [Experts](#) fear this bill will increase the vulnerability of children, particularly those here alone, and perversely therefore increase organised crime exploitation of them.



13. As with the bill rendering refugees and trafficking survivors invisible, reducing them to mere persons subject to its impersonal duty to remove regime, the inhumanity of this bill is equally clearest in how it mistreats children. It is littered with new lows, the combined effect will be that any child who arrives irregularly, in need of protection, will never know safety and stability. Instead, they will endure yet more suffering in the form of legal, psychological and economic limbo as a result of being excluded from the asylum process, rendered permanently inadmissible to the UK as well as being written out of trafficking protections. All of that is regardless of the merits of their case and of having no alternative but to arrive in the UK through unofficial means. And, most of all it neglects they are a child. The detention of children, accompanied and unaccompanied, will rear its ugly head again as official UK government policy. In grim summary, as with everyone else at the sharp end of this utterly shameful bill, children seeking safety will be denied it and the chance for joy in their lives again. The UK government should reflect and scrap this bill. That is unlikely. Scottish ministers and relevant Scottish public authorities - notably councils and Police Scotland - must also, as with the trafficking provisions, take urgent steps to prevent as far as possible within devolved competence, this discriminatory adverse treatment of lone children.

What Scotland must do now, especially the Scottish parliament and Scottish government

14. The existential, grim change exerted by this bill is to try and close down two key protection systems – asylum and trafficking – in the UK, for some of the most vulnerable people in the world who arrive here, typically and necessarily via irregular and deeply unsafe routes.
15. Scotland, and in particular the First Minister and Scottish government, are uniquely well-placed to respond in the radically humanitarian way that this existential challenge requires. In particular, we urge the following steps to be taken and led swiftly in and from Scotland:
- (a) Reject politically the Illegal Migration Bill in its entirety, and refuse legislative consent to those provisions that clearly intrude and alter and contort Scottish parliament competences, namely relating to human trafficking and unaccompanied children.
 - (b) Maximise existing legislative competences as part of protecting trafficking survivors and unaccompanied children, as described in this briefing, notably through (i) a trafficking survivor identification and decision agency to complete an “end to end” anti-trafficking process; (ii) relatedly, that Scottish ministers institute a Scottish “firewall” between people arriving “irregularly” here and the Home office, at least until such persons receive a human rights package of devolved support comprising safe reception accommodation and basic health-care, receipt of independent legal advice from a solicitor and access to a trusted charity for advocacy support; and (iii) all available legal measures to ensure non-discrimination for unaccompanied children arriving here, within our looked after children law and system. These measures are necessary to maintain our compliance with our ECHR obligations, notably Article 4 against slavery and trafficking.



- (c) Institute a new and radical Scottish Humanitarian strategy, led by the First Minister with Cabinet-level responsibility for the strategy, and which should operate on a “Protect not Penalise” principle thereby rejecting the systemic punishment meted out to refugees and trafficking survivors through this bill, and its 2022 Act predecessor. A Scottish Humanitarian strategy must be cross-government, include key public bodies and be well-resourced capable of making practical differences to vulnerable migrant lives in Scotland. It must also include or connect with existing key policy, notably (i) New Scots Refugee Integration, (ii) Human trafficking and Exploitation, (iii) Ending Destitution, (iv) Anti-poverty and Social Security, (v) Mental Health and relate to (vi) the forthcoming Scottish Human Rights Bill. It is the extreme inhumanity of this bill that mandates this radical humanitarianism. This no time for Scotland to by-stand amidst human carnage.

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