

Equalities, Human Rights and Civil Justice Committee

Asylum Seekers in Scotland inquiry

Supplementary evidence from Scottish Refugee Council – 24 August 2023

Dear EHRCJ committee,

Please find below and attached further supplementary evidence:

Letter from Scottish Refugee Council to Cabinet Secretary for Social Justice, Scottish Government relating to the Illegal Migration Act 2023

1. Please find attached this letter, which we suggest the committee may consider in its asylum inquiry, especially in terms of its recommendations on asylum, human trafficking and the need for a plan, plus in its scrutiny of work in Scotland also.

Legal opinion from Kay Springham KC on the Illegal Migration Act 2023 in Scotland, especially impacts on devolved competences and fundamental human rights: trafficking and lone children

2. Please find attached (a) this [Opinion](#), which was jointly commissioned by *Just Right Scotland, the Children and Young People Commissioner Scotland and Scottish Refugee Council* and (b) a [Summary analysis](#) of it prepared by the instructing organisations, with recommendations on the need for genuine collective action led by Scottish Ministers, especially the First Minister and the Cabinet Secretary for Social Justice; and (c) some related public coverage [here](#), [here](#) and [here](#). We urge the committee to draw on this Opinion and Summary analysis, especially when making recommendations on what can be done in Scotland, on trafficking, lone children and asylum.

“Hardening” Home office approach to asylum over summer 2023

3. Aside from the Illegal Migration Act 2023 getting Royal Assent on 20 July, and we reiterate that is the grimmest day in the UK refugee rights history, severing us from the life-saving Refugee Convention. There are two especially notable and worrying developments in asylum policy affecting Scotland since June that we want to bring to the Committee’s attention.

4. The first is that, sadly, there has been a faster acceleration in the Home office placing people seeking asylum, who are in Scotland, into institutional accommodation. This persists as being in ex-hotels, but increasingly in rural areas of the country also which with the “best will in the world” are just not set up to handle large increases of new arrivals at pace and certainly not when there is – as we emphasised to the committee – next to no funding to refugees, local communities or councils and health services, with millions in Scotland (and nearly £4billion UK-wide) going almost completely to private interests, such as the Home office accommodation contractors and those hotels and other private bodies they contract with. We attach a table with redacted information to protect the exact locations of these sites not least given the rise in far-right agitation and hate towards vulnerable people in these hotels over recent years and months - [here](#) and [here](#). This table details the current institutional accommodation in use as well as gives a sense of the many sites intended by the Home office to be opened across Scotland in the coming months and certainly before the end of October. More sites are likely after then.
5. The second development is as noted in the attached table, namely the requirement introduced on a UK-wide basis by the Home office that single adult asylum seekers are, unless exceptional reasons are deemed by the Home office to pertain, will effectively be required to share bedrooms with unrelated adults of the same sex. For us, this is a sickeningly impersonal, unethical and deeply harmful requirement, ordered of vulnerable asylum seekers under pain of them being likely rendered street homeless by the Home office, if they refuse. To be clear, the Home office wish to apply this requirement in full across all of its institutional (so-called) “contingency” accommodation where they deem it practically possible, by the end of September onwards, to both current and prospective institutional asylum accommodation across Scotland.

An extract from the Prime Minister’s [announcement](#) of this bedroom-sharing rule is here: “And while we’re bringing those sites online, we’re also making more efficient use of hotels. By asking people to share rooms [under pain of street homelessness], where it’s appropriate to do so we’ve found an additional 11,500 places which will save taxpayers an extra £250 million a year. And I say to those migrants [people applying for asylum protection] who are objecting: this is more than fair. If you’re coming here illegally, claiming sanctuary from death, torture, or persecution then you should be willing [shocking lack of empathy in words and deeds] to a share a taxpayer-funded hotel room in Central London. To reduce pressures on local communities, we’ll also house people on ships. The first will arrive in Portland [the public health risk and psychologically harmful “asylum barge”] Bibby Stockholm in the next fortnight.” (our insertions).

Recent Home office correspondence to relevant Scottish agencies uses more measured language to describe this inhumane bedroom sharing rule but the meaning is the same and included that the Home office would merely *inform* not consult with local authorities about the increase in capacity at each of the institutional “hotel” sites. The Home office “fait accompli” practice to councils

persists. We have since obtained written clarification from the Home office that no direct funding will be provided at all to local authorities, health services or local communities in the areas that have institutional asylum accommodation to which this bedroom-sharing rule will be applied. That means despite the asylum population being drastically increased in such sites within a matter of weeks/months, there is to be no funding to local actors as a consequence. This is short-sighted and extremely disrespectful conduct by the Home office. Left unchallenged or mitigated it will lead to widespread human and mental health trauma on refugees; a significant unmet need and pressures on frontline workers in the Home office system and those in local agencies; as well severe responsibility and cost shunting (again) from the Home office to local areas and communities. We remind the committee that such happens at a time when [£4billion](#) public monies were spent on asylum support and accommodation in 2022/2023, with nearly all of that going to private interests, including the accommodation contractors Mears, Serco, Clearsprings Ready Home or now Corporate Travel Management, recently commissioned by the Home office. This is a gross and dysfunctional distribution of public monies in plain sight.

We hope that this is all helpful to the committee. If you have any queries or need further information or clarification, please just let us know.

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20 July 2023

Dear Cabinet Secretary,

Scotland plan to prevent and mitigate the worst in the imminent Illegal Migration Act 2023 (“the Refugee and Trafficking Protection Ban Act”)

I welcome your leadership in hosting the summit on the UK Government’s Illegal Migration Act 2023 (“the 2023 Act”). We were pleased to be part of the summit. I know we share a disgust of this legislation. It is cruel, unworkable and wholly unnecessary. It violates fundamental human rights against refugee persecution and trafficked exploitation, in a callous effort to sever the UK from life-saving international law. It is yet another intrusion into settled devolved competences, upending our trafficking statute and our looked after children and protection legislation and system.

Neither does the 2023 Act spare one single person seeking asylum or in slavery or both. Instead some of the most vulnerable people in the country are to be immediately and permanently denied help and rendered subject to the 2023 Act’s duty to remove, never to escape. That duty is the rotten core of a sickening law. So, through the 2023 Act there is to be no more asylum or trafficking protection. Instead detention, forced removal, destitution, exploitation or death in despair. That is the intent and effect of the 2023 Act if left unchallenged. Its targets include “New Scots” and slavery victims. It is existential and grim.

We must work together to do all we can to prevent and minimise the worst of the 2023 Act. We are a refugee rights charity. We exist for the people this legislation seeks to extinguish. However, we also work with trafficking survivors, many of whom as you know are also refugees. But more than anything we are a human rights defender that works with people in all their individuality, talents and vulnerabilities. It is that humanity, what makes each one of us unique, that this 2023 Act seeks to emasculate.

Very simply, that is why we must do everything - genuinely everything - within our devolved law, policy, practices and as humanitarians committed to social justice, to challenge, prevent and mitigate this dreadful legislation. Whilst we hope it is a short-term nightmare that will not survive the next UK General Election, the truth is we cannot rely on that. The full brutal effects will be felt by people needing safety, from today when the Act gets its Royal Assent. As we said at the summit and in the Scottish Parliament also ([please read here](#)), and it is blindingly obvious anyway there is now an urgency to act.

Building a better future with refugees in Scotland

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We stand ready to work with you, in an intensification of practical work against this legislation. As our government, we respect the responsibilities, powers and duties and resources that you possess. We equally recognise that the Scottish Government alongside so many of us, have been placed into an invidious ethical and legal predicament by the 2023 Act. However, we do not think any of us need to remain in that place. Rather, we think a Scottish Government plan to prevent and mitigate the worst of this law is feasible, necessary and will demonstrate what Scotland stands for: as a responsible human rights respecting country determined to help those in need. To do that, the plan must combine infrastructure actions with measures that demonstrate how practically we will help. In that spirit, we recommend a Scotland plan, led by you, comprising at least the following:

1. A radical Scottish Humanitarian strategy, led by you with Cabinet-level accountability and reporting to the Scottish Parliament on an annual basis. This strategy should operate on a “Protect not Penalise” principle thereby rejecting the systemic punishment meted out to refugees and trafficking survivors in the 2023 Act. It must be cross-government and require the participation of key public bodies. It needs to be well-resourced from core government budgets. Most of all it must make practical differences to vulnerable migrant life in Scotland. It must be part of their lives, not distant from them. It should not “reinvent the wheel” so encompass existing key policy, notably on New Scots Refugee Integration, Human Trafficking and Exploitation and Ending Destitution Together. It needs to connect strongly with other policy, such as anti-poverty and mental health, but also break new ground into our serious and organised crime threat assessments. However, the reason we need this radical new approach is precisely that none of these policies in themselves are capable of adequately responding to the grim existential and severe harms stemming from the 2023 Act. Those policies were written for a different time. It is the extreme inhumanity of the new law that entails radical humanitarianism. This is no time to rely on old policy. This is a different time.
2. That the future Scottish Human Rights Bill includes a Scottish Government commitment to include refugees and trafficking survivors in the positive obligations on Scottish public authorities. And, that any such duties are paid due regard to and fulfilled in accordance with the protected characteristics in Equalities legislation and international human rights law. It is imperative that we require and guide our public bodies to discharge their public functions and responsibilities in a manner that reaches out to, values and helps those that this cruel 2023 Act seek to cut off, devalue and inflict harm upon. We need to restore human rights as far as is possible through our future human rights legislation, in our devolved public services.
3. As an immediate priority within a radical Scottish humanitarian approach, the plan must institute a set of Protect not Penalise mitigations to protect those who necessarily arrive irregularly in Scotland, either seeking safety as refugees or who need to be recognised and helped as survivors of trafficked exploitation. In particular, that means the following actions:
 - First, a Scottish firewall between those arriving irregularly and the Home Office, at least temporarily until such persons receive a Scottish human rights package of “breathing space” devolved support. This should comprise safe reception accommodation (drawing on the Ukraine practice in reception facilities) plus healthcare, receipt of independent legal advice from an immigration solicitor and

access to trusted charities for advocacy support. Without that firewall, then as soon as someone touches the Home Office under the 2023 Act, they are in the duty to remove regime. That is the reality. We should be clear that means refugees and slavery survivors e.g. of the 3,792 people held in Police Scotland cells under immigration legislation from April 2017 to May 2023, around two-thirds were from the highest refugee recognition and trafficking source countries.

- Second, that the Lord Advocate exercises a presumption that is not in the public interest to (a) prosecute persons for unlawful arrival who arrive irregularly, typically necessarily as they are either trafficked into the country or as a symptom of there being no safe and legal routes to seek asylum in the UK. Relatedly, (b) that the Lord Advocate fulfils her Instructions on the non-punishment of trafficking survivors, given the extreme vulnerability that such survivors of forced criminality are in. That is aggravated by deeper injustice, if these Instructions are not fulfilled consistently, that ensues as a result of the removal of trafficking support entitlements via the 2023 Act. Those survivors now desperately need the earliest possible fulfilment of these Instructions.
 - Third, that Scotland takes clear action to maintain and safeguard access for all trafficking survivors in the country, irrespective of nationality, to existing rights to support and assistance in the Human Trafficking and Exploitation (Scotland) Act 2015. Or if that is deemed impossible, that a robust and equivalent form of support and assistance is swiftly instituted, in order that no survivors fall through the cracks into organised crime exploitation. Relatedly, we remain firmly committed to Scottish government completing the job started with the 2015 Act. That means creating a new human rights trafficking survivor identification and decisions agency, which is not moored to or an imitation of a discredited delay-ridden Home Office National Referral Mechanism (the NRM). But that confidently applies best practice on working with survivors of abuse and serious crime, which is what trafficked exploitation is. We are open to the exact route chosen to get to this new identification and decisions agency. We recognise the challenge posed to Scottish regulations to that end through the 2023 Act. We are equally mindful that Scottish Ministers are in an invidious position. However, staying compliant with Articles 4 & 14 of the European Convention on Human Rights generates a powerful legal imperative to institute our own identification and decisions agency, completing an “end to end” trafficking process. Referral into the NRM is referral into the duty to remove. That is simply intolerable.
4. Children are not spared from the severe measure in the 2023 Act. We reject completely the principle in the 2023 Act that the Home Secretary should be the corporate parent for unaccompanied children and young people. This is a direct intrusion into child protection law and protection system, including our devolved competence and legislation. Children are children and should never be immigration detainees or left in destitution or rendered to exploitation. Unacceptably the 2023 Act if left unchallenged or not mitigated, consigns accompanied and unaccompanied children and young people to these three intolerable states. We support all the recommendations that the Children and Young People Commissioner Scotland shared with you. In particular those on (a) maintaining the integrity of the Looked after children system and that our local authorities resist the 2023 Act and maintain best interests practice for children in their care; (b) similarly resisting the dreadful Age assessment regime set out in the Nationality and Borders Act 2022 and this 2023 Act; and (c) that anti-trafficking protections, including non-

punishment obligations, are maintained and enhanced in respect of children and young people. We concur with all that they state on the need for effective human rights practice also to combat poverty, destitution and No recourse to public funds. All assault children and the 2023 Act will compound matters. Basically, for children and young people especially, we must act fiercely against this inhumane 2023 Act.

5. Infrastructure actions. In order for any Scotland plan against the worst harms of the 2023 Act to be sustainable, care must be taken to design an architecture that can lessen harm for not only those directly affected by this legislation but also those frontline workers trying to help and implement the plan itself. We recognise that you carry experience and expertise in what kinds of infrastructure is needed. As a national refugee rights charity, with services and communities experiences over decades at the front line, we flag up the following as critical.
 - First, that trauma informed and skilled training and ongoing support is designed into the plan, including interventions such as ASSIST training. Capacity means real people, and they only remain capable if they are given the professional support to offer their best in extremely challenging situations. Trauma support must be at the heart of the plan.
 - Second, is that resources be intelligently deployed to where they can make the best impacts. We anticipate that will often mean the refugee and trafficking third sector as low accessibility and high-assistance charities. More fundamentally, we think best use of resources happens in public and third sector collaborations – such as the human rights “breathing space” provision cited above – and that is never more needed than in mitigating the worst harms of the 2023 Act. We know that there is no panacea here, we are realistic, but effective mitigation is aided by collaboration.
 - Third, is national data-gathering, analysis and measurement, again best achieved by collaboration, which relentlessly and proactively monitors the population affected, so we can track what happens to them in Scotland, what interventions work and what do not and change accordingly. We think there is a need to develop and agree a rapid research programme, to assist in developing this national data part of any plan.
 - Fourth, is a theme throughout and that is financial resources. We strongly recommend that any plan or radical humanitarian strategy is designed swiftly including as preventative spend, so to capture those comparisons between the plan crisis prevention benefits as what may happen if it were not there at all. Without such a plan and an explicit preventative spend measure, we will not identify and learn how it reduces, for example, costly health crisis intervention, or areas rendered unsafe via organised crime.
 - Fifth, any effective plan should make best use of national guidance and regulatory bodies. We recommend a suite of statutory guidance that covers how the various protection populations resident in Scotland should be treated by public authorities or those exercising functions on behalf of public bodies. In particular this guidance should cover ongoing Scottish legal obligations to families and individuals subject to (a) a No Recourse to Public Funds condition,

- (b) unaccompanied children and young people seeking asylum and/or surviving trafficked exploitation and who also be undergoing an age assessment; and (c) the plan should reflect an assessment of the role that existing inspectorates or regulators in Scotland, may fairly play in monitoring what is happening to the vulnerable migrant populations here most severely affected by the 2023 Act.

I hope all of these suggestions are helpful to you. We do fully recognise the unfair and invidious position you and so many others have been placed in, as a result of the 2023 Act. I reiterate that we stand ready to work with you and others. Equally, we think that the very extremity of the 2023 Act means that we in response must be radical in our social justice humanitarianism. If we are then we are confident that together we can prevent and mitigate against this dreadful law.

Yours sincerely

Sabir Zazai
Chief Executive

Copied to:

Humza Yousaf MSP, First Minister of Scotland

Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs

Emma Roddick MSP, Minister for Equalities, Migration and Refugees

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Home Office institutional asylum accommodation in Scotland

In use

No	Institutional ex-hotel accommodation	Local authority	Cohort	Current capacity	Capacity (with uplift)	Bedroom sharing total
1.	Redacted	Aberdeen City	Singles	114	107	211
2.	Redacted	Moray	Singles	51	35	86
3.	Redacted	Renfrewshire	Singles	174	0	N/A
4.	Redacted	Inverclyde	Singles	69	65	134
5.	Redacted	Falkirk	Singles	53	41	94
6.	Redacted	Glasgow City	Mixed	145	0	N/A
7.	Redacted	Glasgow City	Mixed	211		400
8.	Redacted	Renfrewshire	Singles	51	42	93
9.	Redacted	Edinburgh City	Singles	46	46	92
10.	Redacted	Perth & Kinross	Singles	81	73	154
11.	Redacted	Perth & Kinross	Singles	54	42	96
12.	Redacted	South Lanarkshire	Singles	65	65	130
13.	Redacted	Aberdeen City	Singles	165	181	346
14.	Redacted	Aberdeen City	Singles	173	173	346
15.	Redacted	Aberdeen City	Singles	45	36	81
				Total = 1,497		Total = 2,263

Future use

We understand that the Home office plans to procure and open at least nine more institutional accommodations sites in Scotland by the end of October this year. These are five ex-hotels, three ex-care homes and one ex-student accommodation. They span nine local authority areas and if they all proceed and are opened it will mean that the Home office will be running at least twenty-four institutional accommodation sites for people seeking asylum protection in seventeen Scottish local authorities. We expect that the current institutional accommodation capacity of 1,497 will be increased to not only the 2,263 if the bedroom-sharing requirements are applied as the Home office intend, at the sites operational now. But this number will, if the nine planned sites are opened, then we estimate approximately 3,000-4,000 people will be placed on a no-choice basis into institutional accommodation by the end of October 2023. We further anticipate that the Home office will then relentlessly pursue more such sites across Scotland including attempts again at barges.

Scottish Refugee Council

August 2023