

Note on acutely vulnerable group of survivors of trafficked exploitation *and* refugee persecution in the UK and especially in Scotland, and the need for the Scottish Government to institute an “end to end” anti-trafficking protection system (a Scottish “competent authority”)

1. Scottish Refugee Council, with others inside and outside parliaments and across the UK, have the gravest concerns about the Nationality and Borders Bill (the Bill). It is a seismic and adverse change in UK refugee policy and law. It [severs](#) the UK state’s relationship with the Refugee Convention (the RC), substituting for it a [refugee punishment regime](#). It also [contorts](#) the UK’s other key protection system, trafficking and modern slavery, by [reinserting immigration considerations](#) where they have no place. Left unchallenged, this affects law in Scotland, reversing progress made over a decade to prevent trafficked exploitation, disrupt and prosecute those who perpetrate it, and to support survivors to recover. That journey started with a Private Members Bill; [here](#), with its proposals including rights to support, encompassing accommodation, to be set out in primary legislation for trafficking survivors. Those proposals were given direct effect to by the Scottish Government; [here](#).
2. We fear that this Bill [will fail trafficking survivors](#) and, perversely, assist those who exploit and persecute. Such is the irresponsibility in effectively [closing off](#) refugee protection for those seeking, necessarily through irregular means, safety in the UK or for those who are trafficked here or suffer exploitation after arrival. We have set these out these concerns frequently, since the policy framework for the Bill was introduced in March 2021 - the New Plan for Immigration; as outlined [here](#) and [here](#). And, when the Bill entered the UK Parliament in June 2021; [here](#) with 80+ charities as well as with Just Right Scotland; [here](#).
3. We therefore welcomed the [Scottish Parliament's strong majority vote against this Bill](#) including withholding legislative consent to provisions on age assessment and trafficking information requirements (“[trauma notices](#)”), imposed on exploitation survivors. Our briefing to inform that debate and vote is [here](#). We further welcomed the Scottish Government’s Legislative Consent Memorandum; [here](#), in relation to the Bill, reflecting as it did calls that we have made especially with Just Right Scotland, since last year; [here](#). We provided written evidence ([here: pp2-28 {pp2-6 for main briefing}](#)) and oral evidence ([here: pp2-21 {pp16-21 on the Bill}](#)) to the Social Justice and Social Security Committee to inform its consideration of the legislative consent issues raised by this proposed legislation, as well as wider Bill matters.
4. The main ask we have of Scottish Government, is to lead and implement a **Five-Point Plan** to prevent and mitigate as much as possible in devolved competence, against the worst effects of the Bill. That plan builds on the Scottish Government’s clear positions; [here](#) and [here](#).
5. This **Five-Point Plan (pp19-20)** should be led by Scottish Ministers, to protect people against the worst of this legislation. In summary, that plan is **(a)** for the Scottish Parliament to *reject the Bill and affirm clearly that consent is not given*, which has been achieved, as [here](#); **(b)** to institute via [s9\(8\)&\(9\)](#) regulations, a Scottish anti-trafficking identification responsibility (a Scottish “competent authority”) to complete an

“end-to-end” trafficking protection system, spanning: (i) initial identification, (ii) accommodation and support and, *critically*, (iii) decisions on survivor status - with such a Scottish “competent authority” able to recommend to the Home Secretary recognition of the need (or where applicable) the [entitlement](#) for leave to remain; **(c)** to *strengthen key devolved policies*, in light of this Bill, such as [New Scots refugee integration](#), [Ending destitution together](#) and [Violence against women and girls](#); **(d)** that *refugee and migrant inclusion* is part of what Scottish public authorities should pay due regard to in any Scottish Human Rights Act; and **(e)** that the Lord Advocate gives Instructions that *it is not in the public interest to prosecute persons for the Bill’s unlawful arrival offence*, when such are refugees or exploitation survivors. This Bill closes off asylum protection to all that it marks out as “Group 2 refugees”, based on how they got to the UK and not their actual protection needs. That drastically increases the vulnerability of refugees, including to traffickers. We need a Scottish “end to end” system to protect them.

6. The vast majority of refugees, as the [RC recognises necessarily arrive unofficially to a territory](#). However, in one sweep, the Bill renders them “Group 2” refugees, routed into a likely [harmful, expensive and ineffective](#) *refugee punishment regime*. That regime is to comprise: (a) [criminalisation](#) of refugees or non-identified trafficked exploitation survivors, up to 4 years in prison; (b) persons temporarily [inadmissible \(pp10-11\)](#) to asylum pending, [ostensibly \(p11\)](#), removal; (c) put in an [accommodation holding centre \(pp2-5\)](#) or prison, separated from mainstream society, possibly indefinitely; (d) left there in the severest poverty of [£1aday](#); (e) with [little chance \(p20\)](#) of Refugee leave and or a route to settlement; and (f) if not removable they may get [temporary status \(p18\)](#) of up to 2 ½ years, but that may be subject to [NRPF](#). For “Group 2” [refugees also surviving trafficking \(pp27-28\)](#), they also face ["trauma notices" \(pp2-6\)](#), under pain of damage to credibility. All this fate awaits Afghan, Syrian, Ukrainian and, indeed all seeking asylum who, necessarily, arrive in the UK irregularly. Indeed, in our experience, *some of this regime is [already here](#)*.

7. The rest of this note returns to focus on one of the most vulnerable of groups in society, namely those *that have fled overlapping refugee persecution and trafficked exploitation*, and who seek safety in the asylum *and* trafficking protection systems. The Bill carries particularly severe risks for such persons. Left unchallenged, this Bill will re-traumatise this already acutely vulnerable group. Drawing on new Home Office and Scottish Government data, this note first details the extent of this deeply vulnerable group. Second, it notes the patterns in [refugee](#) and [trafficking](#) survivor procedures with, especially, delayed decisions increasing in recent years rendering higher volumes of deeply vulnerable people in “limbo” predicaments including even when their trafficking survivor status had been confirmed. As the High Court in [KTT](#) decided and upheld by the Court of Appeal (see at para. 5{b}), such persons with asylum applications outstanding which included risks of re-trafficking should have been granted leave to remain, rather than stuck in asylum “limbo”. Third, in narrowing these two asylum and trafficking protection routes, the Bill leaves thousands of this acutely vulnerable group at risk, including in Scotland.

8. Table 1 immediately below uses unpublished Home Office FOI data, amalgamating three FOIs datasets spanning 6years3months, of persons in the trafficking National Referral Mechanism (the NRM) who had also applied for asylum in the UK. The total period is 1 January 2015 to 31 March 2021. In covering a significant length of time, it *gives a sense of the numbers in this acutely vulnerable group, who stand to be so adversely affected by the restrictions in asylum and trafficking protection routes, as a result of the Bill*. It also breakdowns how many of those referred into the Home Office NRM were confirmed as trafficking survivors and, separately, how many were recognised as refugees, in the UK and Scotland, respectively. Many of the recent applications, in the past few years, remain outstanding, often mired in Home Office delays.

Table 1: Persons entering the Home Office NRM and the asylum procedure from 1 January 2015 to 31 March 2021, by UK and Scotland

| Period = 6years3months | NRM + asylum (UK) | Confirmed survivors | % | Recognised as refugees | % | NRM + asylum (Scotland) <i>(as part of UK totals)</i> | Confirmed survivors | % | Recognised as refugees | % |
|---------------------------|-------------------------|------------------------|-----|---------------------------|-----|---|------------------------|-----|---------------------------|-----|
| 1/1/2015 to 31/12/2017 | 7,524 | 3,281 | 44% | 3,237 | 43% | 295 | 130 | 44% | 130 | 44% |
| 1/1/2018 to 30/6/2020 | 11,187 | 1,266 | 11% | 2,220 | 20% | 585 | 110 | 19% | 112 | 19% |
| 1/7/2020 to 31/3/2021 | 3,386 | 32 | 1% | 1,185 | 35% | 174 | 5 | 3% | 32 | 18% |
| Totals | = 22,097 | = 4,579 | 21% | = 6,642 | 30% | = 1,054 | = 245 | 23% | = 274 | 26% |

9. Returning to the call for Scottish Government, as part of the recommended **Five-Point Plan**. And, in particular the call to institute a Scottish “end to end” anti-trafficking protection system. In Table 2 immediately below *we highlight the extensive placement of trafficking survivors in Scotland, into Home Office asylum accommodation*. We estimate that approximately 99% of trafficking survivors entitled to ss9-10 Human Trafficking and Exploitation (Scotland) Act 2015 since 1 April 2016 who also applied for asylum, have been mainly or only housed in asylum accommodation. We also understand that financial provision, after the up-to 90days support expires under [Scottish trafficking regulations](#) and if the person is (one of many) awaiting a final conclusive grounds decision from the NRM, then unless a needs assessment determines otherwise, they will *only* get asylum support. That means £39.68 per week if in self-catering asylum housing or £8 per week if in institutional “ex-hotel” accommodation; despite being in scope of Scottish trafficking support entitlements under ss9-10. This table draws upon a [Scottish Government response to a PQ](#) and [referrals to Police Scotland](#) data in the Home Office NRM. The Bill threatens [inappropriate institutional accommodation](#) as the norm for “Group 2” refugees, and that may well include this trafficking/asylum group in Scotland. We fear that neither

the asylum procedure nor appropriate asylum accommodation, will be an option for this acutely vulnerable group, if the Bill passes. We think that strengthens our call for the Scottish Government to institute an “end to end” anti-trafficking protection system, via s9(8)&(9) regulations.

Table 2: Persons entitled to ss9-10 of Human Trafficking and Exploitation (Scotland) Act 2015 and in Home Office asylum accommodation

| Year | Persons entitled to ss9-10 Scottish trafficking support, <i>but</i> in Home Office asylum accommodation | Persons <i>initially</i> in ss9-10 Scottish trafficking support before <i>being moved to</i> Home Office asylum accommodation ¹ | Persons in Home Office NRM where Scotland is location of exploitation (“ <i>Scottish trafficking cohort</i> ”) ² | Persons in trafficking/asylum group <i>as proportion of overall</i> “ <i>Scottish trafficking cohort</i> ”, in Home Office NRM |
|------------------------|---|--|---|--|
| 2016/2017 | 123 | 34 | 150 | 82% |
| 2017/2018 | 138 | 23 | 207 | 67% |
| 2018/2019 | 181 | 40 | 228 | 79% |
| 2019/2020 | 333 | 81 | 512 | 65% |
| 2020/2021 | 297 | 37 | 387 | 77% |
| 2021/2022 ³ | 314 | 63 | 419 | 75% |
| | Total = 1,386 | | Total = 1,903 | Total % = 73% |

10. These figures indicate that the *vast majority (1,386 or 73%) of all trafficking survivors (1,903) in Scotland since 1 April 2016 to 31 December 2021 are also seeking refugee protection*. Furthermore, it seems likely that *nearly all* of this trafficking/asylum group are in *Home Office asylum accommodation* under s95 Immigration and Asylum Act 1999, and *not in Scottish Government-funded housing* pursuant to the trafficking support entitlements under ss9-10 Human Trafficking and Exploitation (Scotland) Act 2015. We base that on the fact that there were 1,386 persons entitled to ss-9-10 Scottish trafficking support but who were actually in Home Office asylum accommodation. That 1,386 number approximates to the Table 1 estimate of the “*Scottish*” trafficking/asylum group of 1,054 (to 31 March 2021) + 314 (1 April to 31 December 2021) = 1,368. Given the Bill will weaken access to protection for most refugees and many trafficking survivors, there is a clear case for a Scottish “*end-to-end*” anti-trafficking protection system, as in devolved competences, to be there to help the many this Bill will leave behind.

Graham O’Neill, Policy Manager, Scottish Refugee Council, April 2022

¹ These numbers in this column are *part of* the total in the preceding column *not* additional or separate to it.

² Calendar years: 2016, 2017, 2018, 2019, 2020, 2021 at End of year summaries, published in March of following year, as at [here](#).

³ Period: 1 April to 31 December 2021.