



Scottish Government Debate: Illegal Migration Bill

Scottish Parliamentary Briefing

April 2023

Amnesty International UK welcomes the Scottish Government's motion and is profoundly concerned at the UK Government's immigration bill published on 7 March 2023. This proposed legislation is yet another huge step towards the UK completely abandoning its responsibilities under international law to respect and protect the universality of human rights. If passed, this Bill would destroy the post-World War II legacy that the UK was so vitally engaged in constructing. The Bill must be dropped in its entirety because if passed, it will among other things:

- Place the UK as firmly outside international law, putting us in contradiction to the 1950 European Convention on Human Rights (the European Convention) and radically extending the conflict with the 1950 Convention relating to the Status of Refugees (the Refugee Convention).
- Create a Charter for human exploitation, placing many of the most marginalised people firmly in the hands of human traffickers, modern day slavers and other abusers.
- Further stir-up division and hate against some of the most marginalised in our society, building on the inhumane and dangerous rhetoric used in the press and by parliamentarians.
- Despite the UK Government's assertion that the Bill will not require legislative consent from the Scottish Parliament the Bill appears to reach into devolved areas of competence, most notably around child protection and anti-trafficking legislation. **We are clear that the Scottish Government and public bodies should not be compelled by this Bill to act contrary to their duties under the Human Rights Act and ECHR.** Amnesty joined 100 organisations as a signatory to [this](#) joint statement outlining what we must do together in Scotland to stop this Bill.

The Human Cost of an Inhumane Bill

The Prime Minister's stated aim is to stop people from crossing the Channel in small boats however, it is far from limited to this ambition. Its cruel and punitive measures are directed towards every person who arrives at or enters the UK on or after 7 March 2023 and does not have but requires permission under rules made by the Home Secretary. This includes people who have a visa but whom the Home Secretary decides have obtained it by deception – for example, they persuaded her to give them a visa to visit or study but she concludes their true purpose is to seek asylum. The sole exception is the refugee who travels directly from the country in which they are at risk of

persecution. Those affected have no opportunity to have their claim to stay in the UK considered. They are to be detained indefinitely for the purpose of expelling them either to their own country or a “safe third country” if the former is not possible. If that expulsion is not possible, they are to remain in limbo forever. The Government will thereby solve the problem it has created of ever-increasing asylum backlogs merely by excluding people from the asylum system. The human costs inflicted upon people trapped in this limbo and the financial costs of maintaining it will, however, remain.

Victims of human trafficking/modern slavery are people controlled by violent criminal gangs and other extremely abusive people. People who are trafficked are moved across borders under someone else’s control for the purpose of exploiting them for such things as forced sex or labour and organ transplantation. The UK is obligated to protect people from this exploitation, including by providing safety in this country rather than returning someone to a situation in which they are likely to be exploited all over again. The Bill provides a ban on providing that protection. Clause 23 modifies Holyrood’s Human Trafficking and Exploitation (Scotland) Act to remove the powers and duties of Scottish Ministers to provide support and assistance to survivors of trafficking, with very limited exceptions.

Survivors of torture and traumatic journeys – refugees, victims of human trafficking and many other people who make journeys controlled by smuggling gangs have endured the gravest human rights abuses in their home country and on their journeys, as well as conditions of profound deprivation and fear before their arrival. People who have endured these abuses and conditions are often physically and psychologically fragile. The UK is obligated to treat them with dignity. The Bill bars that by requiring the Home Secretary to disregard their personal circumstances and vulnerabilities in simply attempting to expel them.

Survivors of domestic violence or domestic slavery have been controlled by their abusers. Some of these people are trafficked to the UK. While some survivors of domestic violence or domestic slavery are permitted entry to the UK, in which case they would not normally fall within the reach of this Bill, some survivors do not have permission and so are within its reach. Moreover, if the Home Secretary decides that the reason why a survivor was granted a visa (for example, to join their partner or work as a domestic servant) was not the true purpose of that person’s coming to the UK, the Bill will apply to them. The Bill exacerbates the power of domestic abusers because it hugely escalates the risk to their victims of seeking help with the authorities.

Other people compelled to seek entry without permission – these may include people who seek work or reunion with family members but are excluded by the Home Secretary’s rules. Those rules maintain a longstanding bias in favour of privilege – largely based on country of nationality and socio-economic status. Whatever view is taken on the propriety of this bias, it must be recognised that it imposes profound disadvantage upon the people whose need to migrate and vulnerability in doing so is generally the greatest. The Bill simply sets out to permanently bar any consideration of their true circumstances and require their expulsion by whatever means regardless of the human impact of that.

Secondly, there are the family members of the people just described – particularly partners, children, parents of children and dependent adult relatives - who have not necessarily arrived or entered without permission on or after 7 March 2023. While the Bill's extension to family members is restricted to those who are now without permission, this includes people put in that situation by a decision to withdraw their permission or refuse to extend it. However, the most shocking aspect of this is the inclusion of British people born in this country without citizenship immediately at their birth but whose connection has been so firmly established that Parliament has identified them as British with statutory entitlement to that citizenship. The Bill seeks to permanently strip these people of their citizenship rights – established by such events as their having grown up in the UK for at least 10 years or their other parent having become a British citizen – for something done by someone before they were even born.

A Charter for Modern Slavery - The people caught by this Bill, long disadvantaged by the Home Secretary's rules, are in future to be compelled to live in the shadows of society because this Bill is to effectively jettison even the capacity of the Home Office to treat them with any respect or care. It is remarkable that the governing party that had sought acclaim as latter-day Abolitionists has less than a decade after passing the Modern Slavery Act 2015 reduced itself to stripping people of vital legal protections and thus risks their further exploitation – not merely on journeys to the UK but throughout this country too.

Human Rights Compatibility

If passed the Bill would break the UK's obligations under both domestic and international law – obligations the UK has freely undertaken as a signatory to both the European Convention and the Refugee Convention. The UK has a duty to uphold the universality of human rights. By barring large groups of people – including refugees – from their fundamental rights, the UK Government is intentionally destroying the very treaties the UK played a pivotal role in drafting decades ago. Not only is this damaging for some of the most marginalised people impacted by this legislation, but it also sends a dangerous signal internationally – making the UK a beacon for abuse rather than respect for human rights and fundamental freedoms.

The Bill contains an extraordinary provision to disapply to the Bill and any subordinate legislation made under it section 3 of the Human Rights Act 1998, which requires judges to interpret legislation in line with the European Convention on Human Rights. The Home Secretary not only knows that what she is doing is against human rights standards; the Bill is deliberately changing the law so those standards cannot be applied by UK courts. This, accompanied by recent statements from the Prime Minister, suggest this Bill may be intended as a vehicle to create direct conflict with the Strasbourg Court, and ultimately lead to us leaving the European Convention all together. Whether that is the intention or not, that conflict is likely to be the inevitable result of this Bill. It will force people to turn to that court because the Government will, with the sanction of Parliament, have silenced or excluded our own courts. And since it will also prevent the Home Secretary – even if she were minded to do otherwise – from fulfilling her human

rights duties by properly and fully considering people's real and individual circumstances, it will be bound to lead to conflict between the Government and the court. In anticipation of that, the Bill includes power for the Home Secretary to interfere with our legal system's respect for the Strasbourg Court's rulings to prevent human rights violations while full consideration is being given by the court. This is intended to free the Home Secretary to expel people before any judicial determination of the legality of that expulsion is made. The Bill then presents Parliament with a crucial decision. Will it allow governments, now and in the future, to suspend major elements of the country's previously universal human rights protection system when they are targeting a politically unpopular and marginalised group of people? And will it allow governments to drag the country to the precipice of withdrawal from the international human rights protection system in the process?

Devolution

The UK Government has stated that the Bill relates only to reserved areas of power and does not require legislative consent from devolved parliaments. Human rights organisations in Scotland disagree and have called for the Scottish Government to lodge its own motion asking the Scottish Parliament to reject the Bill and refuse legislative consent.

Modern slavery and human trafficking, and the treatment of unaccompanied children seeking asylum are the clearest areas in which the Bill interferes with duties of Scottish ministers and public bodies. The UK is obligated to protect people from this exploitation, including by providing safety in this country rather than returning someone to a situation in which they are likely to be exploited all over again. The Bill provides a ban on providing that protection. Clause 23 modifies Holyrood's Human Trafficking and Exploitation (Scotland) Act to remove the powers and duties of Scottish Ministers to provide support and assistance to survivors of trafficking, with very limited exceptions. In practice this means that the Scottish Government will be blocked from supporting people who have escaped violent criminal gangs, and survived torture and traumatic journeys to come to Scotland. Instead those people may find themselves detained or deported by the Home Office.

The Bill also cuts across the child protection responsibilities of Scottish councils towards unaccompanied children, giving powers to the Home Secretary to accommodate unaccompanied children, and to direct local authorities to look after or to cease looking after a child, giving five working days' notice. Clauses 16-20 introduce a high risk that children may be removed from settled accommodation provided by local authorities in Scotland to institutional accommodation at very short notice - an outcome which is entirely unacceptable by human rights standards. It is an especially terrifying prospect given the knowledge that hundreds of children in the care of the Home Office have disappeared. Clause 19 empowers the Home Secretary to extend provisions to all nations in the United Kingdom, this includes the power to repeal or amend Holyrood legislation.

The Bill is also firmly at odds with the direction of travel in Scotland to strengthen human rights protections, including the incorporation of the Convention on the Rights

of the Child, and the Scottish Government's proposed Human Rights Bill, which will incorporate further UN treaties. Despite the UK Government's assessment that there is no requirement for legislative consent from Holyrood, there is no question that the Bill impacts on devolved areas and we welcome the Scottish Government's work to examine how it relates to the legislative consent process.

Amnesty in Scotland has joined the Scottish Refugee Council, JustRight Scotland and 100 organisations calling on MPs to reject the Bill and in Scotland for the Government to:

- Bring a motion for debate to (a) withhold legislative consent for the Bill, (b) reject the Bill as a whole, and (c) outline a plan to protect refugees and trafficking survivors;
- To take all possible legal steps to ensure that Scotland complies with its obligations to protect victims of trafficking in Scotland, including legislation and litigation;
- To try to ensure that lone migrant children are not detained in Scotland, are cared for in accordance with Scots child law, with full access to their independent guardianship service entitlement and other related rights; and
- To reaffirm our commitments in Scotland to the universality of human rights, including compliance with the Refugee Convention and the European Convention on Human Rights, as well as concluding the incorporation of the UN Convention on the Rights of the Child and introduction of a new Scottish Human Rights Bill.