



Alison Johnstone MSP
Presiding Officer
Scottish Parliament
EH99 1SP

10th July 2023

Dear Presiding Officer,

We are writing regarding the UK Government's Illegal Migration Bill. The UK Bill represents one of the most inhumane pieces of legislation ever introduced in the UK and will enact an effective ban on seeking asylum. It is widely opposed by campaigners, civil society and the devolved parliaments. If passed, it will 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; reach into devolved areas of law without the consent of the Scottish Parliament; and fundamentally impact the constitutional arrangement by risking preventing devolved governments from complying with international human rights obligations. We welcome recent amendments to the Bill in the House of Lords. Much uncertainty remains however regarding the final version as the House of Commons will likely have the opportunity to reverse these amendments.

As you will be aware, on Tuesday June 27th the Scottish Parliament debated a motion on the Bill. The Minister for Equalities stated the Scottish Government had prepared a legislative consent memorandum under rule 9B of the Scottish Parliament's standing orders (which has not been published) however, that your assessment concluded it did not meet the Rule 9B criteria and therefore was not permitted to be lodged.

The Scottish Government motion debated on June 27th correctly set out that the UK Bill will amend the Human Trafficking and Exploitation (Scotland) Act 2015, therefore restricting the powers of Scottish Ministers to support victims of human trafficking and reaching into devolved competence, and was supported by a large majority of MSPs.

The Children and Young People's Commissioner Scotland, JustRight Scotland, and the Scottish Refugee Council instructed a legal opinion from Kay Springham KC assessing the impact of the Bill in devolved areas. In summary, Ms. Springham argued that the Bill makes direct and serious intrusions into devolved powers exercised by Scottish Ministers and Scottish public authorities by ending Scottish Ministers powers to support survivors of trafficking in Scotland, and creating new powers for the Home Office to accommodate children in Scotland. In relation to Clauses 19 and 23 of the Bill, Ms. Springham is clear in her assessment that:

“Counsel has no doubt that the Scottish Parliament should have been asked to consider passing a legislative consent motion.”

Clause 19 of the Bill gives the Home Office the power to make regulations to directly accommodate unaccompanied migrant children in Scotland. Clause 23 proposes to disapply the duties and powers Scottish Ministers have under the Human Trafficking and Exploitation (Scotland) Act 2015 to provide support and assistance to adult victims of trafficking who meet the Bill’s Clause 2 removal criteria, subject to one very limited exception. In relation to Clause 23 Ms. Springham is unequivocal that: “it would be hard to think of a clearer example” of legislation relating to devolved matters.

We have no doubt that the Illegal Migration Bill makes serious intrusions into areas of devolved competence, and the Scottish Parliament should have the opportunity to consider a LCM. Indeed the Welsh Government lodged legislative consent memoranda to clauses 3 (unaccompanied children), 19 and 20 (transfer and accommodation of children), and 55 and 56 (age assessments) of the Bill and when given the opportunity to vote the Senedd refused consent. In 2022, the Scottish Parliament was given the opportunity to vote on a legislative consent motion for the Nationality and Borders Act which, similarly to the Illegal Migration Bill, primarily relates to the reserved matter of immigration but reached into areas of devolved competence including child protection and modern slavery.

We are therefore writing to you to request as full an explanation as possible for your decision to refuse parliamentary time for a legislative consent vote in the Scottish Parliament. The human rights impact of this Bill, if enacted, will be felt acutely by people in Scotland. As we call on the Scottish Government to do more to develop a mitigation plan, it is vital that there is no confusion regarding the legal implications of this Bill for Scottish Ministers and public bodies in Scotland, and transparency in relation to the legislative process.

We enclose a summary of Kay Springham KC’s legal opinion.

Yours sincerely,

Emma Hutton, CEO, JustRight Scotland
Gary Christie, Head of Policy, Communications and Communities, Scottish Refugee Council
Lucy Miller, Senior Policy Officer, Human Rights Consortium Scotland
Naomi McAuliffe, Programme Director, Scotland, Amnesty International UK

CC: Clare Adamson MSP, Convener, Constitution, Europe, External Affairs and Culture Committee

Kaukab Stewart MSP, Convener, Equalities, Human Rights and Civil Justice Committee

Maggie Chapman MSP, Deputy Convener, Equalities, Human Rights and Civil Justice Committee