

## **Briefing – Scottish Parliament Debate on the Illegal Migration Bill (Motion S6M-08680)**

**25 April 2023**



---

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights. The Commissioner is fully independent of the Scottish Government.

---

We welcome the Scottish Government's motion on the UK Government's Illegal Migration Bill. The Bill represents a direct assault on the concept of universality of human rights and the rule of law. It is a clear breach of the UK's obligations under a broad range of human rights treaties, including the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (UNCRC), the Refugee Convention 1951, and the Council of Europe's Convention on Action against Trafficking in Human Beings.

The UK Government's Bill is based on assertions about "abuse" of the refugee and asylum system that the Home Secretary has repeatedly failed to evidence, and which are directly contradicted by the Home Office's own data and research. It indulges and legitimises false and dangerous rhetoric about refugees and asylum seekers, emboldening far right extremist groups and placing children and families at risk of harm.

It fails to address genuine issues within the asylum system including the ever-growing asylum backlog and increasing use of long-term hotel accommodation. The lack of safe and legal routes has resulted in refugees and asylum-seekers being forced into dangerous crossings and into the hands of criminal gangs. These issues have largely been created by the UK Government itself, and now the Home Secretary seeks to blame and punish children and families in vulnerable circumstances.

Children seeking refugee status must receive appropriate protection and humanitarian assistance, under Article 22 of the UNCRC. The UNCRC also requires the UK to ensure that children are protected from exploitation and abuse, and afforded support for recovery. Instead, the Bill effectively extinguishes the right to claim asylum for those who have arrived in the UK irregularly, without any

consideration of their individual circumstances.<sup>1</sup> Children and their families will be exposed to the threat of or actual removal to their home country or to a 'safe' third country, thereby exposing them to further risk of harm or persecution.<sup>2</sup> In the Council of Europe's Commissioner for Human Rights [view](#), this would "[...] add to the already significant regression of the protection of the human rights of refugees, asylum seekers and migrants [...] and in the process, it would also provide an incentive to other states, in Europe and beyond, to follow the UK's lead in evading and abdicating its responsibilities to people in need of protection".

The Home Office's history of neglect renders it an unfit parent for vulnerable children. Nevertheless, the Bill grants the Home Secretary sweeping powers to accommodate unaccompanied asylum-seeking children.<sup>3</sup> We are concerned that the Bill gives the Home Secretary the power to disapply existing statutory duties in Scotland owed to unaccompanied asylum-seeking children under the Children (Scotland) Act 1995.<sup>4</sup> These include local authority duties to provide children in need with support and accommodation, irrespective of their immigration status.<sup>5</sup>

The Bill excludes people arriving irregularly from modern slavery and trafficking protections and support.<sup>6</sup> It gives the Home Secretary the power to extend these provisions to Scotland, thereby disapplying duties created by Scottish Parliament legislation to provide support and assistance by way of accommodation, medical treatment, legal advice and counselling to victims of trafficking.<sup>7</sup> This would put Scottish public authorities in an impossible situation where the Bill would compel them to act incompatibly with Article 4 of the ECHR, which places a positive obligation on States to establish mechanisms to identify and protect victims of trafficking.

There is absolutely no evidence to support the UK Government's justification that these provisions are necessary to stop the so-called "abuse" of the modern slavery system. Instead, removing those who arrive in the UK through irregular means from the scope of trafficking protections will condemn thousands of children to criminal exploitation and abuse. It will undermine the work of national and transnational law enforcement agencies, and play directly into the hands of serious organised crime gangs.

The Bill will also reverse the years of progress in reducing the number of children in immigration detention in Scotland, undermining the work by civil society organisations and previous Children's Commissioners. Deprivation of liberty can have a life-long negative impact on children's physical and mental health, and on their development, even when they are detained for a short period of time or with their families. The UN Committee on the Rights of the Child has made it [very clear](#)

---

<sup>1</sup> Clause 4, [Bill 284 2022-23](#) (as amended in Committee)

<sup>2</sup> Clause 2

<sup>3</sup> Clauses 15 to 18

<sup>4</sup> Clause 19

<sup>5</sup> Sections 22, 23A and 25 of the Children (Scotland) Act 1995

<sup>6</sup> Clause 21

<sup>7</sup> Clause 23. See Human Trafficking and Exploitation (Scotland) Act 2015

that the detention of children because of their or their parents' immigration status constitutes a violation of children's rights.

We call on the Scottish Parliament as a human rights guarantor to commit to denying legislative consent for the aspects of this Bill that bear on devolved matters when a Legislative Consent Motion is laid before the Parliament.

However, this alone is not sufficient. It is incumbent on the Scottish Government, and on Scottish public authorities, to act in compliance with their own human rights duties to mitigate wherever possible the harms caused by this Bill. We seek a firm commitment from the Scottish Government that it will do so to the maximum extent permitted by devolved powers. Ministers should seek legal advice as a matter of urgency, and even where the Bill seeks to extinguish supports in law, Scottish Government and local authorities should consider whether they can continue to be provided as a matter of policy and practice. In particular:

- The Scottish Government must ensure that in the absence of NRM referrals, child victims of trafficking will be identified and supported, and that they will not be subject to arrest, detention, charge or prosecution for any offence committed in the course of, or as a consequence of being exploited. We support the Scottish Refugee Council's call to establish an anti-trafficking identification and decisions body, relying on regulation making power under section 9(8) of the Human Trafficking and Exploitation (Scotland) Act 2015.
- Ministers must ensure that the Scottish guardianship service remains in place for all unaccompanied asylum-seeking children and is sufficiently resourced to manage the anticipated higher number of children who will be sent to Scotland.
- Scottish Government and local authorities should consider how planning legislation, guidance and powers can be used to prevent detention of children in Scotland.
- In the context of the cost of living crisis and inadequate Home Office support, Scottish Government must consider what additional supports (e.g. free bus travel) could be made available to refugee and asylum seeking children and their families. While we recognise high level policy commitments from Scottish Government and local authorities to support families and children subject to NRPF conditions, the implementation gap must be tackled.
- Local authorities should commit to only use the Home Office Age Assessment panel where absolutely required by law to do so. Age assessment should, so far as legally permissible continue to be conducted in a human rights-compliant way by Scottish local authorities. In particular, local authorities must refuse, wherever possible, to accept the use of any medical age assessments of child refugees, which [breach children's rights](#) and are not consistent with professional and scientific ethics.
- Scottish Government must commit to bring back the UNCRC (Incorporation) Bill as a matter of urgency. We call on the Government to expedite the consultation for their forthcoming Human Rights Bill and ensure that it addresses the question of how, in light of the UK Government's Bill,

protections for civil and political rights in Scotland can be strengthened within devolved competence.

For further information, please contact Cameron-Wong McDermott, Policy Officer at [Cameron-wong.mcdermott@cypcs.org.uk](mailto:Cameron-wong.mcdermott@cypcs.org.uk).