Briefing for the Second Reading of the Illegal Migration Bill (the "Refugee Ban Bill")

Key message

> This bill is morally repugnant, practically unworkable and likely to be counter-productive. It will have severe impacts on women, men and children seeking safety, from refugee persecution or trafficked exploitation. It will grant unwarranted and unaccountable power to the Home Secretary and enable huge public monies to be lost to private sector profits in detention. The bill reflects an isolationist mind-set towards international responsibilities and law and a persistent disrespect for devolved and local governance and the communities they serve. This legislation is just not needed. We desperately need a compassionate alternative.

Dehumanising legislation

1. The Illegal Migration Bill is more than anything else, about dehumanisation. It is one of the most authoritarian, callous and ruthless laws proposed in the UK parliament. It requires from arrival the detention and then in effect, dehumanising treatment of women, men and children who seek or need safety and to rebuild their lives in this country. Be that as they fled persecution in their home country, or have or are suffering exploitation, or both. This dehumanisation comprises (a) complete denial of any meaningful consideration of individual needs or of their protection application; (b) automatic and permanent inadmissibility status in the UK; (c) left under threat of, or actual forcible removal; (d) consigned to the severest poverty and (e) left in institutional or detention accommodation, far from communities.

Alternative of safe travel scheme, good asylum and trafficking systems; not this "Refugee Ban Bill"

2. This dehumanisation stems from first, that the bill abolishes the right to seek asylum or have trafficking support and protection, for all those who arrive irregularly. Such unofficial arrival that is necessary and solely due to the UK government stubbornly refusing to create safe travel arrangements, leaves people to acute risk and tragically some lose their lives, at sea or in the back of lorries or in other unsafe conditions. Safe routes would drastically weaken the demand for and control by smugglers and traffickers, which they exert over desperate people. Safe travel routes are a practical solution. That they do not exist is the shameful choice of this UK government. Rather than legislate again, UK Ministers should be investing in a high-quality asylum system at home and with the EU, agree safe travel arrangements.

Refugee Ban Bill is a betrayal of the profound origins of the right to asylum and Refugee Convention

3. We should remember that the right to seek asylum and the Refugee Convention itself both flowed from the international community's resolve for an international human rights law system, in response to the Holocaust perpetrated before and during the Second World War. It was Winston Churchill, as then Prime Minister in 1954 who led the ratification of the Refugee Convention in the UK. It is unconscionable that such an effective and life-saving law, which has endured for generations, and is a cornerstone of the international community response to the Holocaust itself, is to be junked by a short-term Prime Minister and Home

Secretary. We invite them to reflect on what they are doing. This is not in our name. Indeed, as the UN Refugee Agency said of the grave implication of this bill for the right to asylum:

> "The legislation, if passed, would amount to an asylum ban – extinguishing the right to seek refugee protection in the United Kingdom for those who arrive irregularly, no matter how genuine and compelling their claim may be, and with no consideration of their individual circumstances. … The effect of the bill … would be to deny protection to many asylum-seekers in need of safety and protection, and even deny them the opportunity to put forward their case. (Our emphasis)

Refugee Ban Bill betrays survivors of trafficking and slavery and helps organised crime exploitation

4. The bill will not only remove, from those arriving irregularly, that right to make an asylum application and have it considered and determined. It will also remove eligibility for such survivors of trafficking or modern slavery to any support rights to safety, assistance and recovery or protection from removal or the prospect of temporary leave to remain. The bill rides a proverbial and "dangerous coach and horses" through trafficking legislation and support rights in, respectively Scotland, Northern Ireland and England & Wales. Worse still, it removes itself from the positive interpretative duty at s3 Human Rights Act 1998. It is also being applied retrospectively, from 7 March 2023. This is already traumatising refugees and trafficking survivors, and perversely deepening the control that exploiters hold over them. Given this retrospective effect, we urge strategic legal action now to safeguard rights of survivors, including testing the disapplication of trafficking victim rights at cl.21-24 of the bill.

The rotten core of the Refugee Ban Bill: the impersonal and brutal "duty to remove" scheme

5. In place of these established protection rights and systems, for refugees and trafficking survivors, the bill institutes a new all-encompassing duty on the Home Secretary to make arrangements to remove all persons deemed to meet the four conditions at cl.2. That effectively renders each person entering or arriving irregularly in the UK, as a "removable person", to be denied rights to protection and subject to a grim existence most likely segregated from mainstream life, or forcibly removed elsewhere. There are limited exceptions to this duty to remove. Even where they exist, such as an unaccompanied child, the force of it will come at 18, and a lone child may be removed before then by the Home Secretary via statutory powers. If a person is considered in scope of the duty to remove in cl.2 of the bill, then the Home Secretary is required – and has no effective discretion to do otherwise – to render that person permanently inadmissible to asylum and ineligible for the trafficking support rights and protections from expulsion, as described above.

6. It is immaterial in the duty to remove scheme, whether that person is a woman, man, child, old or young, or LGBTI or not. It does not matter if someone is a refugee fleeing, for example, religious persecution from the Taliban in Afghanistan, or gender-based abuse from the Iranian regime or escaping human rights violations in Russia for protesting on Putin's illegal invasion of Ukraine. It is irrelevant, if a person has been trafficked into commercial sexual exploitation, or forced to commit criminal acts of drug production, or subject to labour exploitation. None of that matters in this bill through its impersonal and brutal duty

to remove arrangements. In casting aside the rights and safety of such vulnerable people, this bill is a truly shocking and wilfully harmful act of legislative fiat. At its rotten heart, this dehumanising approach substitutes its deeply impersonal duty to remove scheme - which requires the Home Secretary never to see the "face behind the case" - for the life-saving and person-centred laws of the Refugee Convention, the Convention against Trafficking and the European Convention on Human Rights (ECHR). This bill will do much harm and cost lives.

Drastic increase in use of detention for refugees, trafficking survivors, children, families and more

7. The bill also requires far more use of detention, in particular of those under its duty to remove arrangements. Cl. 11 confers wide new powers of detention to immigration officers, who will be able to detain a person they suspect meets the conditions for being removable, as well as having a power to detain their family members. Detention may be in any place that the Home Secretary considers appropriate – the Explanatory Notes state this may include pre-departure accommodation, a removal centre, or a short-term holding facility, such as Manston processing centre. However, it may be in other sites, such as in asylum ships for example. The length of time persons may be detained under the powers in the Bill is such period as, in the opinion of the Home Secretary, is reasonably necessary to enable a decision to be made, removal action to be carried out, or examination to be conducted. The bill gives at cl.13 the Home Secretary a new power to determine what is a reasonable timeframe for detention and limits people's ability to challenge that and apply for bail. No bail application is permitted until after 28days detention. That latter requirement will "bake in" drastic increases in the immigration detention estate, to the severe detriment of many detainees and exorbitant costs to the Exchequer. The centrality of detention to the bill and, especially those tens of thousands who will be subject to its duty to remove regime - including children, pregnant women and families - not only contradicts UK government past promises to reduce the detention estate, it will have devastating human consequences.

Intrusion into devolved government law and competence: human trafficking

8. The sweeping and ruthless changes to fundamental rights made by this bill, extend also to how it inserts the Home Secretary into matters of devolved and local government competences. As described above, the bill cuts straight into trafficking legislation and support and protection entitlements. This includes into not only statute in Northern Ireland but the Human Trafficking and Exploitation (Scotland) Act 2015. We have had approaching a decade of human trafficking or modern slavery legislation in three jurisdictions comprising the UK, in this area. These reflected a recognition, itself flowing from international law in this field, that trafficking and slavery are matters of crime and human rights abuse first with immigration strictly an ancillary issue and only then applying for some survivors; in particular ideally so to facilitate leave to remain to enable recovery; albeit very few are granted leave.

9. This bill makes an unwarranted and we suspect, unlawful intrusion into that settled position in international law as incorporated into domestic statute across the UK. In particular, we regard the "threat to public order" reasoning asserted by the UK government to justify its disapplication via cl.21-24, of trafficking support and protection rights, as flawed and unlikely to be compliant with Article4 ECHR. That is important, as if we are correct then we

further urge the Scottish government - and of course the UK parliament - to take urgent steps to safeguard the three trafficking laws in different parts of the UK and the survivor support rights therein. Specifically on Scotland, we think this bill makes it imperative that Scottish Ministers regulate to institute their own identification and survivor decision procedure, which applies to all survivors in Scotland and wraps around the right to support in the 2015 Act. We urge the Scottish government to act now to safeguard survivors. That will better protect them from this bill and help ensure Scottish public authorities comply with Article4. We urge the UK parliament to act also to protect its Modern Slavery Act 2015.

Intrusion into devolved and local government law and competence: unaccompanied children

10. Another sweeping change threatened by this bill is into the devolved and local authority competences over looked after children within their jurisdictions. And, in particular, the deeply inappropriate intrusion by the Home Secretary to supplant the care and support responsibilities that councils have as corporate parents to unaccompanied refugee children. Cls.14 to 20 are a child protection abomination. The Home Secretary is granting herself broad powers in the area of child protection encroaching on areas clearly devolved to the Scottish parliament and local authorities across the UK. Scotland's last care review, culminated in The Promise. The essence of which is love is the foundation of the care system. In Clause 19 the Home Secretary grants herself power to remove children from a loving care system, taking them into a callously neglectful Home office regime instead. The Home Secretary's record on caring for children has already resulted in the disappearance of over 200 children, most of whom are highly likely to have fallen prey to serious organised crime networks. We fear that this bill will increase the vulnerability of children, particularly those here alone, and perversely therefore increase organised crime exploitation of them.

11. As with the bill rendering refugees and trafficking survivors invisible, reducing them to mere persons subject to its impersonal duty to remove regime, the inhumanity of this bill is equally clearest in how it mistreats children. It is littered with new lows, the combined effect will be that any child who arrives irregularly, in need of protection, will never know safety and stability. Instead, they will endure yet more suffering in the form of legal, psychological and economic limbo as a result of being excluded from the asylum process, rendered permanently inadmissible to the UK as well as being written out of trafficking protections. All of that is regardless of the merits of their case and of having no alternative but to arrive in the UK through unofficial means. And, most of all it neglects they are a child. The detention of children, accompanied and unaccompanied, will rear its ugly head again as official UK government policy. In grim summary, as with everyone else at the sharp end of this utterly shameful bill, children seeking safety will be denied it and the chance for joy in their lives again. As we said throughout, the UK government should reflect on all this and scrap this bill.

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