

The Anti Trafficking Monitoring Group

Anti-Trafficking Monitoring Group (ATMG)

'Illegal Migration' Bill briefing – House of Lords Committee Stage

May-June 2023

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1. Summary

1. The Anti Trafficking Monitoring Group (ATMG) is a coalition established in 2009 to monitor the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). It comprises of seventeen leading UK-based anti-trafficking organisations: Anti-Slavery International, Ashiana Sheffield, Bawso, Children's Law Centre (CLC), East European Resource Centre (EERC), ECPAT UK, Flourish Northern Ireland, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Hope for Justice, JustRight Scotland, Kalayaan, Law Centre (NI), Scottish Refugee Council, TARA service, The Snowdrop Project, UNICEF UK.
2. The ATMG produced a [briefing](#)¹ in March 2023 for the House of Commons Committee stage explaining how the 'Illegal Migration' Bill is in breach of the European Convention Against Trafficking in Human Beings (ECAT) and other international treaties.
3. In this briefing, we have analysed the potential impacts that the Bill will have on individuals that fall within the criteria included in Clause 2 ('Duty to make arrangements for removal'). **From our analysis, it is quite clear that the Bill will dramatically increase the vulnerabilities of anyone affected by it, leading to their exploitation and re-trafficking and will empower traffickers by strengthening their hold on victims, while leaving them unpunished.**
4. Similar concerns on the Bill have recently been raised by the former Anti-Slavery Commissioners, who stated that the 'Illegal Migration' Bill is a gift to criminals and devastating to victims.²
5. The following are some of the ways this Bill will boost exploitation and re-trafficking:
 - It will exacerbate the hostile environment leaving individuals in vulnerable positions with no choice but to go underground and be subject to exploitation or to rely on their traffickers.
 - It will criminalise anyone that fits the four criteria in clause 2, including victims of trafficking and modern slavery, which will further erode trust in authorities and act as a deterrent from seeking help.
 - It will prevent individuals from accessing essential services such as physical and mental health support, education or other services aimed at favouring integration, which will have tremendous effect on people's wellbeing. This will create a fertile pool of vulnerable people that traffickers can easily tap into to expand their exploitation and trafficking rings.
 - It will foster an environment of impunity for people smugglers and traffickers while giving them more power and control over their victims.

¹ Anti-Trafficking Monitoring Group (ATMG) (2023), '*Illegal Migration' Bill briefing Committee Stage*. Available at: <https://www.antislavery.org/wp-content/uploads/2023/03/2023.03.27-ATMG-Illegal-Migration-Bill-Committee-Stage-briefing-final.pdf>

² National world (8 April 2023), '*Illegal Migration Bill a gift to criminals and devastating to victims*': *independent Anti-Slavery Commissioners*. Available at: <https://www.nationalworld.com/news/politics/illegal-migration-bill-gift-criminals-devastating-victims-independent-anti-slavery-commissioners-4097251?s=03>

- It will detain and threaten to remove individuals to their country of origin or a supposedly “safe” third country without carrying out an individual safeguarding and risk assessment, which will put them at a further risk of re-trafficking.
- It will exclude victims from identification and push them underground, preventing recovery and cooperation with authorities.
- It will dramatically increase the number of trafficked children by curtailing safeguarding measures and support.
- It will foster homelessness and destitution, which will make individuals more vulnerable to exploitation.

2. Introduction

6. This Bill seeks to deter individuals from coming to the UK by banning those who enter and arrive to the UK via irregular routes from claiming asylum, disqualifying them from the National Referral Mechanism (NRM) and the support it provides, increasing detention.³
7. The provisions in the Bill are deeply discriminatory as they will effectively impact on a large proportion of those who entered the UK after 7 March 2023, who will be excluded from every type of protection, support and settlement route for the mere fact that they entered the UK irregularly. This also applies to victims and survivors of trafficking and modern slavery, who were brought here irregularly as part of their trafficking experience. Contrary to its stated aim, the Bill won’t deter people from coming to the UK, but it will, instead, **create a large cohort of vulnerable individuals who will be more liable to be exploited and trafficked. They will be even less traceable by authorities as people will be forced to go underground.**
8. Furthermore, the Bill seeks to remove individuals to a third country, such as Rwanda, however this deal has perpetuated a narrative that pushes people into hiding, heightening their fear of authorities.⁴ **The criminalisation of victims and the lack of support from authorities have been used as successful tools by traffickers to coerce people and keep them in exploitation. If this Bill is enacted, the only option for those entering irregularly will be to stay in a situation of exploitation or to be detained by the state, which is no choice at all.**
9. ECPAT⁵ also identified the risk of exploitation that child victims of trafficking experience as part of hostile policies and recognised that *without the ability to regularise their status, these young people are often forced into situations of uncertainty and precariousness, and many go missing from the care system to avoid being returned, and can end up once again in exploitative situations.*⁶

³ Illegal Migration Bill (2023). Available at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0284/220284.pdf> – Clause 1(1)

⁴ The Times (11 May 2022), *Asylum seekers ‘in hiding to avoid Rwanda ruling’*. Available at: <https://www.thetimes.co.uk/article/asylum-seekers-in-hiding-to-avoid-rwanda-ruling-dss3bnjgr>

⁵ Every Child Protected Against Trafficking

⁶ ECPAT (11 May 2018), *Child victim of modern slavery also suffer under the UK’s hostile immigration regime*. Available at: <https://www.ecpat.org.uk/blog/child-victims-suffer-under-hostile-immigration>

10. In this respect, the UN Special Rapporteurs have recently raised concerns about the discriminatory treatment towards asylum seeking children which sees them placed in hotels outside of the child protection system, heightening their risk of re-trafficking.⁷
11. A report by Patricia Hynes analysing the interlinks between Asylum, Human Trafficking and modern slavery and the hostile immigration policies in the UK, suggests alternative policies to ensure that vulnerable individuals are protected from exploitation and trafficking. It states: “*listening to people within safe environments rather than an approach of disbelief, creation of space to allow trusting relationships to be developed within these systems, and attention paid to independent processes with reasonable timescales for status determination that do not render people vulnerable to exploitation or harm could be the first steps to achieve this.*”⁸

3. Criminalisation of victims threaten by detention and removal

3.1 Background

12. The criminalisation of victims and survivors because of systemic failures in their identification and correct application of non-punishment principle, is an ongoing issue. This has been massively exacerbated by the provisions introduced by the Nationality and Borders Act (NABA), specifically the public order disqualification and the redefinition of serious criminal included in the Section 63 NABA.⁹
13. This Bill seeks to worsen this provision even further by amending Section 63 to include the arrival of people in the UK through an irregular route as a threat to public order.¹⁰ This will allow the Home Secretary to disqualify victims from the recovery and reflection period, protection from removal and from being considered for leave to remain.¹¹ As analysed in our previous ATMG briefing, this is a clear breach of the non-punishment principle (Article 26 ECAT) and Articles 4 (Prohibition of slavery)¹² and 15 (Derogation in time of emergency)¹³ of the European Convention on Human Rights (ECHR). The protection from removal linked to the ‘Reflection and Recovery’ period, as well as the requirement to provide support all fall within the scope of Article 4 of the ECHR. No exceptions can be made to these requirements

⁷ The Guardian (11 April 2023), *UN Experts warn UK Government over trafficking risk faced by asylum seeker children*. Available at: <https://www.theguardian.com/uk-news/2023/apr/11/un-experts-warn-uk-government-over-trafficking-risk-faced-by-asylum-seeker-children?s=03>

⁸ Patricia Hynes (2022), *Exploring the Interface between Asylum, Human Trafficking and/or ‘Modern Slavery’ within a Hostile Environment in the UK*. Available at: [Social Sciences | Free Full-Text | Exploring the Interface between Asylum, Human Trafficking and/or ‘Modern Slavery’ within a Hostile Environment in the UK \(mdpi.com\)](https://www.mdpi.com/2227-7092/14/1/1)

⁹ Section 63 introduced the principle of disqualification from protection where a person is ‘A threat to public order’ or claimed to be a victim ‘in bad faith’. An individual will be considered a threat to public order if has committed a serious crime (someone that has been sentenced to 12 months or more).

¹⁰ Illegal Migration Bill - clause 27(9)

¹¹ Illegal Migration Bill - clause 21

¹² European Court of Human Rights (2022), *Guide on Article 4 of the European Convention on Human Rights*. Available at: [Guide on Article 4 - Prohibition of slavery and forced labour \(coe.int\)](https://www.echr.coe.int/documents/guide_art_4_eng.pdf)

¹³ European Court of Human Rights (2023), *Guide on Article 15 of the European Convention on Human Rights*. Available at: https://www.echr.coe.int/documents/guide_art_15_eng.pdf

because Article 4 is absolute and non-derogable under Article 15 of ECHR as held by the European Court of Human Rights in *CN v. the United Kingdom*.¹⁴

14. **The denial of support and identification together with the threat of indefinite detention and removal will play into the hand of traffickers, who have been using this narrative for years to control victims and prevent them from seeking support from authorities.**
15. The implementation of hostile immigration policies has been justified by an unevidenced and inflammatory rhetoric¹⁵ used by the Home Secretary, who described the arrivals of asylum seekers in the South coast as an “invasion.”¹⁶ The Home Secretary also suggested that individuals are ‘gaming’ the modern slavery system.¹⁷ The Director General for Statistics at the Office for Statistics Regulation sent a reprimand letter to the Home Office expressing concerns about the use of statistics and they reported that their office doesn't have any evidence to confirm these claims.¹⁸
16. Moreover, the Home Office has recently published the NRM statistics for the first quarter (January-March) of 2023,¹⁹ which show that referral into the NRM for people who arrive by small boats are the same as any other group claiming asylum.²⁰
17. The dehumanisation and criminalisation of the wider migrant community, perpetrated by the Bill, directly contradicts policies to promote community engagement and initiatives to ‘combat’ human trafficking where trust is an essential component.²¹ It has been shown that many victims and survivors are afraid to come forward for fear of being treated as immigration offenders or prosecuted for offences they have been forced to commit as part of their trafficking experience.²² This Bill will make this narrative true with the only option for those

¹⁴ European Court of Human Rights (13 November 2012) *CN v. United Kingdom*. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114518%22%5D%7D> – paragraph 65.

¹⁵ The Guardian (2 November 2022), ‘*Invasion of the UK? Experts dubious of Suella Braverman’s claim*’. Available at: <https://www.theguardian.com/uk-news/2022/nov/01/bravermans-invasion-claim-not-backed-by-facts-say-experts>

¹⁶ Aljazeera (1 November 2022), *UK Home Secretary slammed for asylum seeker ‘invasion’ remarks*. Available at: <https://www.aljazeera.com/news/2022/11/1/uk-home-secretary-slammed-for-asylum-seeker-invasion-remarks>

¹⁷ The Guardian (23 February 2023), *Suella’s Braverman’s claims modern slavery victims ‘gaming’ system questioned by Home Office’s own stats*. Available at: <https://www.independent.co.uk/news/uk/home-news/modern-slavery-migrants-home-office-b2287965.html>

¹⁸ Office for Statistics Regulator (2022) Letter to Home Office: Use of National Referral Mechanism statistics. Available at: [Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics \(statisticsauthority.gov.uk\)](https://www.statisticsauthority.gov.uk/letters-to-the-home-office/2022/01/20220114-use-of-national-referral-mechanism-statistics)

¹⁹ Home Office (4 May 2023), *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, January to March 2023*. Available at: [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, January to March 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114518/modern-slavery-nrm-statistics-uk-january-to-march-2023.pdf)

²⁰ The Independent (5 May 2023), *Suella Braverman’s claims modern slavery laws are being abused questioned by Home Office’s own report*. Available at: [Suella Braverman’s claims modern slavery laws being abused questioned by Home Office report | The Independent](https://www.independent.co.uk/news/uk/home-news/suella-braverman-claims-modern-slavery-laws-being-abused-questioned-by-home-office-report-b2287965.html)

²¹ Patricia Hynes (2009), *Contemporary Compulsory Dispersal and the Absence of Space for the Restoration of Trust*. *Journal of Refugee Studies* 22: 97–121 Available at: [Contemporary Compulsory Dispersal and the Absence of Space for the Restoration of Trust | Journal of Refugee Studies | Oxford Academic \(oup.com\)](https://academic.oup.com/jrj/advance-article-abstract/doi/10.1093/jrj/fzq001/5511111)

²² College of Policing, HMICFRS, IOPC (2021), *The hidden victims: Report on Hestia’s Super-complaint on the police response to victims of modern slavery*. Available at:

entering irregularly to stay in a situation of exploitation or to be detained by the state, which is no choice at all.

18. The lack of trust in authorities has been identified as one of the reasons why victims of trafficking and modern slavery don't share their trafficking experience and are pushed underground or criminalised due to lack of identification. **This Bill is a trafficker's dream as it will provide an actual piece of legislation that will be used by traffickers to confirm all the threats they have been using against victims for years.** This will result in a cohort of people kept in situations of exploitation by their traffickers, which will be invisible and unknown to authorities, creating a real humanitarian crisis in UK soil.
19. Very compelling evidence on the consequences of wrongly criminalising victims has been given by Operation Fort,²³ hailed as the largest case of modern slavery in Europe. This exposed that victims were recruited from outside prisons, which has been recognised as a vulnerability to be exploited.

Case Study 1

An EEA national victim came to the UK under false promise of work and a better life – he was exploited for around 6 months for labour and fraudulent activity. After exiting his exploitation, he found himself homeless. With the support of Hope for Justice (HfJ), he was subsequently entered into the NRM system and reported his case to the Police.

After around 45 days of staying at a safe house, he received a positive conclusive grounds decision, officially recognising him as a victim of human trafficking. After several months, the Home Office informed the safe house that they would not grant discretionary leave due to past criminal history. It was later decided to detain him and progress deportation.

Following a challenge from a public law solicitor, his detention was deemed unlawful, the deportation appeal allowed, and he was eventually released from a detention centre.

The victim stated he "felt hurt that he was detained after what had happened to him" and this experience further impacted on his psychological well-being. Added that he does not trust anyone, even people who are helping and supporting him – "it's hard to believe in what they are saying".

The victim subsequently gave evidence in Operation Fort and his exploiters have been successfully convicted, leading to the ongoing prosecution of a large criminal gang. Had he been deported it is highly likely he would have been lost to the prosecution case and there would have been risks from the wider criminal gang, as well as risks of re-exploitation due to the victim's significant vulnerabilities.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989185/hidden-victims-report-hestias-super-complaint-police-response-victims-modern-slavery.pdf

²³ Crown Prosecution service (25 June 2021), *Operation Fort: Three gang members convicted of human trafficking*. Available at: <https://www.cps.gov.uk/west-midlands/news/operation-fort-three-gang-members-convicted-human-trafficking>

If we applied the Illegal Migration Bill to this case, the victim might have not been able to exit his exploitation because of fear of authorities and so he would never have been identified or as soon as he would have been identified, he would have been subjected to detention and mandatory deportation. Consequently, as well as remaining trapped in exploitation, he would never have been able to engage in the criminal investigation or give evidence in court.

3.2 Threat of removal (Clause 2-10)

3.2a Clause 2-10: Threat of removal to country of origin or a supposedly “safe” third country

20. The Bill will impose a duty on the Home Secretary to remove individuals (**Clause 2**) that came to the UK irregularly on or after 7 March 2023, with some exemptions set in **Clause 2(11)**. **This removal provision will create a detrimental effect on the identification of victims of trafficking and modern slavery and it will also push people underground to avoid removal, creating new potential victims. This provision fails to acknowledge that many victims have been deceived by traffickers including on how they enter the country, which is the usual modus operandi used by traffickers.**
21. **Clause 3** gives the power to remove unaccompanied children and poses a duty of removal once they turn 18. **This means that the Home Secretary will still be able to remove children at their discretion even when they are under 18. This Bill creates a situation of profound anxiety and instability for children knowing that they will be eventually removed and therefore unable to ever settle in the UK. This will push children underground and put them at further risk of exploitation and trafficking.**
22. People will be able to be removed regardless of the fact they claim asylum or are a victim or survivor of trafficking and modern slavery (**Clause 4(1)(a)-(c)**). **This will prevent the identification of possible victims by disqualifying them from the NRM or from being referred altogether. This is a derogation of protection and identification which is incompatible with the non-refoulement principle (Article 33 Refugee Convention) and Article 40 ECAT. It is also a breach of responsibilities to identify victims and protect them including but not limited to ECAT Articles 10 - 14 and Article 4 ECHR.**
23. **Clause 5-7** imposes a duty to make a removal as soon as possible (Clause 5) to the individual’s country of origin or to a purposely “safe” third country such as Rwanda. They also define what can be considered a safe country (Clause 6) and the process of removal, including the right to challenge it (Clause 7). **These removal provisions are not accompanied by any individual risk assessment and other safeguarding measures. Therefore, vulnerable people will be removed to their country of origin or designated third country without considering their individual needs and risks and therefore it will drive people into situations of danger, abuse and exploitation/re-trafficking. This is also incompatible with the Refugee Convention’s non-refoulement principle and the non-derogation principle contained in ECAT.**

24. **Clause 8** allows access to support for those awaiting removal who are not in detention to make sure they don't become destitute in line with Article 3 ECHR. **Individuals will be placed in unsuitable accommodations with limited support and no attention to specific needs, heightening their risk of exploitation and re-trafficking.**

3.2b Impact of removal clauses

25. The Government's plan to remove everyone that comes to the UK irregularly within the criteria set out in Clause 2 is not going to be a deterrent for those who seek protection or for traffickers bringing people to the UK for their financial gain. **It will, instead, push people underground for fear of being removed and it will exacerbate fear of authorities, which will prevent people from seeking help should they become victims of trafficking and exploitation.**
26. Furthermore, the Government failed to include any safeguarding provisions in the Bill in regard to conducting individual risk assessments before removing individuals to their country of origin or to a third country. This gap will put individuals at further risk of harm and re-trafficking.
27. A key finding from a University of Bedfordshire study found that Vietnamese males in their 30s to 40s were not being identified as having experienced trafficking either within the UK's criminal justice or immigration systems or upon their return to Vietnam.²⁴ Individuals that have participated in this research have moved through differing forms of exploitation before being arrested, detained, prosecuted, and deported and recounted how their choices were severely constrained by time spent in asylum processes and how the social stigma of having been in jail upon their return could be so strong that further onward migration, or experiencing 're-trafficking', was envisaged across a range of interviewees.²⁵
28. The choice of the Government's designated "safe" third countries raise major concerns over the safety of those who will be removed there. The Trafficking in Person report (TiP) places Rwanda in Tier 2 because the Rwandan government does not fully meet the Trafficking Victims Protection Act (TVPA) minimum standards. The report highlights that the government lacks a proactive standardised mechanism to adequately screen for potential trafficking victims among vulnerable populations and refer them to protective services. For example, it has been found that children in refugee camps are vulnerable to recruitment by armed groups operating in the Democratic Republic of Congo.²⁶

²⁴ University of Bedfordshire (2019), 'Vulnerability' to Human Trafficking: A study of Viet Nam, Albania, Nigeria and the UK. Available at: [literature-review-final.pdf \(beds.ac.uk\)](https://www.beds.ac.uk/literature-review-final.pdf)

²⁵ Patricia Hynes (2022), *Exploring the Interface between Asylum, Human Trafficking and/or 'Modern Slavery' within a Hostile Environment in the UK*. Available at: [Social Sciences | Free Full-Text | Exploring the Interface between Asylum, Human Trafficking and/or 'Modern Slavery' within a Hostile Environment in the UK \(mdpi.com\)](https://www.mdpi.com/2076-3413/12/1/1)

²⁶ United States Department (2023), *Trafficking in Person report, July 2022*. Available at: <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf>

29. Furthermore the 2022 Country Report on Human Rights Practices found significant human rights issues in Rwanda.²⁷ The own Home Office Country and information notes (CPIN) on Rwanda mentions the killing of refugees by the hand of the Rwandan government in 2018, following protests for their living conditions.²⁸
30. A report from the Anti-Slavery Commissioner and University of Nottingham has identified re-trafficking as a challenge when facilitating returns, specifically if they are not on a voluntary basis and when support is not offered.²⁹ There is consistent evidence on the risks posed by the deportation and removal for victims of trafficking without carrying out a risk assessment and on the regular failure of one being carried out once the individual arrives in the receiving country, resulting in most individuals experiencing re-trafficking.³⁰
31. Furthermore, the Bill will amend Section 63 of the Nationality and Borders Bill Act to include everyone that fits within Clause 2 of the Bill, hence allowing the Home Office not to make a conclusive ground decision on their NRM and therefore not carrying out a full identification process, which goes against Article 10 ECAT.³¹ The Home Secretary includes a provision stating that people will be removed to a supposedly “safe” third country for consideration of any asylum or humanitarian protection claim.³² Therefore seeking to derogate their identification and protection responsibilities to a third country. **There is no such thing as a “safe” country, especially for victims and survivors of trafficking and modern slavery.**
32. This, together with the criminalisation and detention on arrival will prevent disclosure and identification of victims. Therefore, even if there was a mechanism in place to carry out a risk assessment before removal, it will likely mean that authorities won’t be able to identify individual’s vulnerabilities, which in turn will result in a failure to implement appropriate safeguarding measures.
33. The Bill allows a suspensive claim to stop removal in the case the individual will face serious and irreversible harm (Clause 41). However, the definition of serious irreversible harm may be defined by the Secretary of State. On this point, the Home Secretary has tabled a new amendment ahead of the Bill’s third reading in the Commons defining what does and doesn’t constitute serious and irreversible harm.³³ This constitutes a very narrow definition and states that it will not include situations where medical treatment for specific conditions is not available.

²⁷ United States Department (2023), *2022 Country Reports on Human Rights Practices: Rwanda*. Available at: [Rwanda - United States Department of State](#)

²⁸ Home Office (2022), *Review of asylum processing. Rwanda: assessment*. Available at: [RWA CPIN Review of asylum processing - assessment \(publishing.service.gov.uk\)](#)- p 17, paragraph 2.15.5.

²⁹ Anti-slavery Commissioner and University of Nottingham Rights Lab (2021), *Re-Trafficking: The current State of play*. Available at: <https://www.antislaverycommissioner.co.uk/media/1705/iasc-and-rights-lab-re-trafficking-report-november-2021.pdf>

³⁰ International organisation for Migration (2010), *The causes and consequences of re-trafficking: Evidence from the IOM Human-Trafficking database*. Available at: https://publications.iom.int/system/files/pdf/causes_of_retrafficking.pdf

³¹ Identification of the victims

³² Illegal Migration Bill Explanatory notes (2023). Available at: [3354 \(parliament.uk\)](#) - paragraph 16, p7-8

³³ Illegal Migration Bill, As Amended (Amendment Paper)(21 April 2023). Available at: https://publications.parliament.uk/pa/bills/cbill/58-03/0284/amend/illegal_migration_rep_rm_0421.pdf - Gov NC17

34. We already have evidence from the offshore processing model used by the Australian Government that this is a very dangerous and inhumane policy, which involves clear human rights breaches.³⁴ Experts and human rights organisations have raised concerns that the offshore processing model may be creating conditions that increase the likelihood of exploitation and abuse, including modern slavery.³⁵ It has also been acknowledged that this policy is a human rights disaster, a clear violation of international obligations and did not achieve its aim of deterring people from arriving in Australia by boat.³⁶
35. **The ATMG recognises that there is no formal mechanism that allows the complete disqualification of victims from the entire identification process and ECAT does not allow for the derogation of victims' identification and support.³⁷ As such, we fully reject the plan to remove victims and survivors as well as any individual that this Bill makes liable to removal to any supposedly "safe" third country. People should be given support and protection in the UK in line with domestic and international obligations.**

3.3 Detention and Bail (Clauses 10-14)

3.3a Clause 10-14: Power to detain indefinitely

36. The Bill introduces new powers to detain (**Clause 10**) anyone that is liable to be removed according to the criteria set out in Clause 2. This includes families with children, pregnant women and unaccompanied children and the location where individuals will be detained, will be at discretion of the Secretary of State. **This will create a significant cohort of vulnerable men, children and women detained in unsuitable conditions, which will have significant repercussions on their physical and mental health as well as on their ability to be identified as victims of trafficking and modern slavery and to access legal advice and specialist support.**
37. **Clauses 11 and 12** make provisions, which overturn the role of the Court's in the oversight of statutory immigration detention powers, providing more discretion to the Home Secretary to decide conditions and times of individuals' release from detention. Including strong limitations to releasing individuals on Bail in the first 28 days of detention. **This means that individuals will be liable to be detained for an indefinite period of time at discretion of the Secretary of State, limiting their access to support, therefore preventing identification.**
38. **Clause 13** disapplies the Home Secretary's duty to consult with the Independent Family Returns Panel, whose role is to make sure appropriate risk assessment and safeguarding measures are put in place when children within a family are in detention or liable to be

³⁴ Human Rights Council (2015), *Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment and punishment, Juan E. Mendez*. Available at: <https://static.guim.co.uk/ni/1425873116713/Mendez-report.pdf>

³⁵ Refugee Council of Australia and Amnesty International (2018), *Until when? The forgotten man in Manus Islands*. Available at: [Until When? The forgotten men of Manus Island \(refugeecouncil.org.au\)](http://www.refugeecouncil.org.au/Until-When-The-forgotten-men-of-Manus-Island)

³⁶ The Guardian (22 March 2021), *As UK considers offshore asylum plan, why Australia's system was a dangerous failure*. Available at: <https://www.theguardian.com/australia-news/2021/mar/22/as-uk-considers-offshore-asylum-plan-why-australias-system-was-a-dangerous-failure>

³⁷ Article 40 ECAT

removed. **The Bill will remove crucial safeguarding measures, which will put children and their families at high risk of abuse and exploitation.**

3.3b Impact of detention clauses

39. By detaining individuals liable to be removed, the Bill will prevent people from being identified as possible victims of trafficking and modern slavery and will exacerbate individual's vulnerabilities that can lead to trafficking and exploitation after their release.
40. Although the Bill includes a very narrow provision that will prevent survivors from being disqualified from support if they cooperate with authorities (Clause 2(11)), this will clearly benefit a very small number of people if individuals are immediately detained on arrival under the threat of being removed.
41. The lack of support and stability in individuals' life has been evidenced to lead to the lack of identification of possible victims of trafficking and modern slavery.³⁸ There are several pieces of research which evidence that detention is not an appropriate environment for victims of trafficking and modern slavery due to the negative impact it has on recovery needs,³⁹ disclosures and identification.⁴⁰
42. In 2021, the Home Office brought survivors of trafficking under the scope of the 'Adults at Risk' (AAR) policy.⁴¹ This meant a change in policy whereby the fact of being considered a potential or confirmed victim of trafficking and modern slavery is only an indicator that someone is an adult at risk who is more vulnerable to suffering harm in detention, rather than being suitable to detention only in exceptional cases.
43. A report⁴² from a number of leading organisations in the detention sector found that because of this change in policy more victims are kept in detention due to the higher evidential requirements to demonstrate the harm detention is causing them. This report also found that individuals' immigration and criminal offending history, which could be linked to their trafficking experience, is more likely to be weighed up in favour of their

³⁸ Patricia Hynes (2022), *Exploring the Interface between Asylum, Human Trafficking and/or 'Modern Slavery' within a Hostile Environment in the UK*. Available at: [Social Sciences | Free Full-Text | Exploring the Interface between Asylum, Human Trafficking and/or 'Modern Slavery' within a Hostile Environment in the UK \(mdpi.com\)](#)

³⁹ Bail for Immigration Detainees (BID) (2021), *Briefing on the detention of trafficking survivors*. Available at: <https://www.biduk.org/articles/855-bid-briefing-on-detention-of-trafficking-survivors>

⁴⁰ Detention Action (2017), *Trafficked into detention: How victims of trafficking are missed in detention*. Available at: <https://detentionaction.org.uk/wp-content/uploads/2018/08/Trafficked-into-detention-How-victims-of-trafficking-are-missed-in-detention.pdf>

⁴¹ Home Office (2021), *Draft revised guidance on adults at risk in immigration detention*. Available at: <https://www.gov.uk/government/publications/draft-revised-guidance-on-adults-at-risk-in-immigration-detention-february-2021>

⁴² Helen Bamber Foundation, Anti-Trafficking and Labour Exploitation Unit (ATLEU), Focus on Labour Exploitation (FLEX), Medical Justice (2022), *Abuse by the system: Survivors of Trafficking in Immigration detention*. Available at: <https://www.helenbamber.org/resources/reportsbriefings/abuse-system-survivors-trafficking-immigration-detention>

continued detention rather than understood in the context of the exploitation they have suffered.⁴³

44. It will be very difficult for victims to demonstrate the impact detention is having on them or will preclude them from disclosing their trafficking experience due to the lack of support and legal advice within detention,⁴⁴ which is an ongoing issue.
45. Despite the wealth of evidence in the context of interlinks between failures in identification, criminalisation of victims and re-trafficking, this Bill seeks to detain individuals indefinitely. In clear breach of the ECAT principles, which states that the identification, recovery and support of victims should be prioritised,⁴⁵ this Bill will only act to punish individuals and does not factor in how the above scenario will feed into the trafficker's narrative that is used to keep people in exploitation.
46. Considering that victims' first interaction with authorities in the UK will lead to their detention, people will see what they have been told by traffickers materialise and will lose their trust in authorities to support and keep them safe. This will leave victims and survivors with no choice but to come back to their traffickers or be trapped in exploitation once they are released on bail or removed.
47. A report from the United Nations High Commissioner for Refugees (UNHCR) and British Red Cross highlighted episodes involving people seeking asylum going missing from accommodations provided by the Home Office and after release from detention. Specific concerns were raised about the number of Vietnamese nationals being re-trafficked upon release from detention, which is the result of the lack of safeguarding measures prior, after and upon release.⁴⁶
48. Some of our ATMG members that directly support victims of modern slavery have experienced how criminalisation is an identified vulnerability to exploitation, which has been used time and time again as a tool to coerce and control people. For example, HfJ reported that in their many years of work they witnessed that genuine victims with pre-existing vulnerabilities including previous (often minor) offending behaviour are actively targeted by exploiters on recruitment.
49. As stated by Helen Bamber Foundation in their written evidence on the Nationality and Borders Bill to the Committee stated that in their experience 'one of the most effective ways to keep victims in fear is to force them to commit crimes, so they will be criminalised if they come forward to the authorities.'⁴⁷

⁴³ Ibid

⁴⁴ Bail for Immigration Detainees (BID)(2021), *Lack of legal advice for immigration detainees held in prison ruled unlawful*. Available at: <https://www.biduk.org/articles/800-lack-of-legal-aid-advice-for-immigration-detainees-held-in-prisons-ruled-unlawful>

⁴⁵ Articles 10, 12 and 13 ECAT

⁴⁶ UNHCR and British Red Cross (2022), *At Risk: exploitation and the UK asylum system*. Available at: <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/at-risk-exploitation-and-the-uk-asylum-system>

⁴⁷ Helen Bamber foundation (2021), *Written evidence to the Committee on the Nationality and Borders Bill*. Available at: <https://committees.parliament.uk/writtenevidence/39353/pdf/>

50. Furthermore, the above risk will not only affect those who have already been trafficked, but everyone that comes in contact with the criminal system as highlighted in the previous section. This Bill will exacerbate vulnerabilities that lead people to be exploited and prevents them from seeking support.

Case study 2

Sam arrived in the UK aged 16 under the control of his traffickers, having been exploited in various countries and brought to the UK under the promise of a 'better life' for Sam and his family. Sam was detained on arrival and claimed asylum the next day but was put into an immigration detention centre.

He remained in detention for two weeks before being released without any support and, almost immediately after his release, he was recaptured by his original traffickers. He was then re-trafficked into cannabis production and forced to live in a locked warehouse. He remained there for two years under constant control and enduring violence from his traffickers. Sam was then arrested, tried and convicted for cannabis production and sentenced to 20 months imprisonment.

Trafficking indicators had not been acted upon by the immigration authorities nor by the criminal justice system before his case went to court. Having served his criminal sentence, Sam was transferred, once again, to immigration detention where his mental health deteriorated to the point that he was placed on ACDT ('suicide watch') following a suicide attempt.

The Home Office was informed that there were indicators to suggest he was a victim of trafficking. However, removal directions remained set and it was only when an emergency judicial review challenge was made by his lawyer that his removal was prevented. Eventually, after being prompted by his legal representatives, the Home Office referred Sam into the UK National Referral Mechanism (NRM). He received a positive reasonable grounds decision and was released the following day. Sam subsequently received a positive conclusive grounds decision, and was eventually granted refugee status.

*Sam was recently awarded substantial damages following a claim for false imprisonment, which included medico-legal evidence on the impact the detention had had on Sam. **Sam's initial experience of detention is a prime example of why vulnerable victims of trafficking have difficulties trusting authorities, when he was released without support and was placed in the hands of his traffickers again. This reinforced his belief that he had little option but to remain with the traffickers as the only alternative was immigration detention.***

4. Roll back in the protection of unaccompanied children

4.1 Background

51. The UK Government continues to repeal crucial safeguarding measures developed over the years for the protection and support of unaccompanied children seeking asylum. These frameworks and principles have been introduced into primary and secondary legislation in line with international⁴⁸ and domestic obligations.⁴⁹ The Home Office's own strategy recognises the heightened vulnerability of unaccompanied children, who can be at particular risk of going missing due to trafficking and exploitation.⁵⁰

52. Despite the above, unaccompanied children have seen a consistent roll back in support and are facing the consequences of hostile policies, which will be exacerbated by the introduction of the 'Illegal Migration' Bill. Some of the issues faced by unaccompanied children are:

- living in unsuitable, unsafe and unregulated accommodations, which results in many children going missing and trafficked.
- an increase in the number of age assessments and children wrongfully treated as adults⁵¹, which results in the dispersal of children in adult accommodations with grave consequences on their mental and physical health, development and immigration status.
- inconsistent and inappropriate statutory support has exacerbated mental health issues which often leads children to self-harm and in some occasions to take their own lives.⁵²
- a lack of a consistent and efficient approach to children going missing and of cooperation between police and different local authorities, hindering efforts to rescue them from exploitative situations.

53. For a wider analysis of the impact of the 'Illegal Migration' Bill on all children, the Refugee and Migrant Children's Consortium has developed a number of [briefings](#),⁵³ which analyse this issue more in depth.

⁴⁸ United Nations Convention on the Right of the Child (UNCRC) (1989). Available at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁴⁹ Children Act 1989. Available at: <https://www.legislation.gov.uk/ukpga/1989/41/contents>

⁵⁰ Home Office (November 2017), 'Safeguarding Strategy: unaccompanied asylum seeking and refugee children' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656425/UASC_Safeguarding_Strategy_2017.pdf - p. 17.

⁵¹ Helen Bamber Foundation, Asylum Aid and Humans for Rights Network (2023), Disbelieved and denied: Children seeking asylum wrongly treated as adults by the Home Office. Available at: <https://www.helenbamber.org/resources/reportsbriefings/disbelieved-and-denied-children-seeking-asylum-wrongly-treated-adults>

⁵² The Independent (6 April 2019), *Unaccompanied children driven to suicide due to 'gaps in support' from UK, charities warn*. Available at: [Hundreds of UK asylum seeker children wrongly treated as adults, report shows | Immigration and asylum | The Guardian](https://www.independent.co.uk/news/immigration/hundreds-of-uk-asylum-seeker-children-wrongly-treated-as-adults-report-shows-immigration-and-asylum-the-guardian-b1181111.html)

⁵³ Refugee and Migrant Children's Consortium (2023), 'Illegal Migration' Bill briefings. Available at: <https://refugeechildrensconsortium.org.uk/briefings-on-the-illegal-migration-bill/>

4.2 Unaccompanied children (Clauses 15-20 and 55-56)

4.2a Clauses 15-20 and 55-56: Increased risk of exploitation and trafficking for children

54. **Clauses 15-16 and 20** will afford the Home Office power to accommodate unaccompanied children indefinitely (Clause 15) and to transfer them to and from the Local Authority care (Clause 16) as well as facilitating transfer between local authorities (Clause 20). **In line with the Children’s Act 1989, the responsibility for the care of unaccompanied children should be under the Department of Education and not under the Home Office. This means that children should be looked after by a social worker within specific safeguarding frameworks. Failures in appropriately supporting children are already leading to many going missing and being trafficked.**
55. **Clauses 17-18** impose a duty on Local Authorities to share information about children (Clause 17) and make provisions to ensure compliance with these requests (Clause 18).
56. **Clause 19** allows the Secretary of State to make regulations which apply to Wales, Scotland and Northern Ireland, encroaching on these devolved nations’ authority. **This provision also removes powers from Scotland and Northern Ireland to support victims of human trafficking and modern slavery.**
57. **Clause 55** provides that if a decision regarding the age of a person (who meets the four conditions of Clause 2) is made under Sections 50 or 51 of the Nationality and Borders Act 2022, the person cannot appeal the decision. Even if an individual applies for judicial review, this won’t prevent the Home Office from removing them while this is pending. This decision can only be quashed by the Court if it was wrong in law. **This means that potential children will be detained and removed while there is no certainty around their age, limiting their ability to challenge this decision as they won’t be able to access legal advice and support on their situation. This raises major child protection and safeguarding concerns.**
58. **Clause 56** gives power to the Home Secretary to make regulations about the implication on an individual’s age that doesn’t consent to the use of scientific methods as part of their age assessment. **This is a very concerning provision, which is based on a presumption of disbelief for the mere refusal of engaging with a scientific method and may result in the automatic treatment of an individual as an adult.**

4.2b Impact of the Bill on unaccompanied children

59. The Bill creates conditions that put children at high risk of trafficking, re-trafficking and exploitation as it fosters an environment of unsafety and uncertainty removing the prospect to settle in the UK in the longer term. These are not only the consequences of the above clauses, but they need to be analysed together with all the other provisions included in the Bill, which applies to all children that fit the criteria in Clause 2.
60. One of the Bill’s provisions for unaccompanied children, exempts them from the duty of removal, but nonetheless gives a duty to the Secretary of State to remove them when they turn 18 and the power to do so before then (Clause 3).

61. The practice of granting unaccompanied children limited leave to remain until they turn 18 had already been used decades ago. This created fear of removal and pushed children to go underground and missing, compounded by an extreme risk of exploitation, self-harm and suicide.⁵⁴
62. If the Bill had to be enacted, we would expect such instances to be replicated. These children will live in fear of their removal, unable to plan for their future or to benefit from education, therefore will become an easy target for exploiters.
63. The lack of stable futures in children has already been identified as one of the main vulnerabilities to trafficking and exploitation. Participatory research conducted in partnership with ECPAT UK has highlighted some of the issues encountered by children and what a stable future means to them. Having their best interest and ideas taken into consideration together with a chance to develop their lives and contribute to society were some of the most important factors identified to ensure their safety.⁵⁵
64. This Bill, however, will very harmfully foster an environment of mistrust on children by introducing new provisions in respect of age assessments. When a child's age is disputed, this already creates a feeling of being disbelieved and automatically impacts on their trust in authorities and professionals' network, often, leading to them going missing.⁵⁶
65. In addition, children who have been trafficked will have endured difficult experiences that impact on their ability to participate in the age assessment fully and openly. In many cases, they would have been forced to learn a story by traffickers in case they are questioned.⁵⁷
66. An ECPAT report stresses the importance of building a culture of trust and ensuring that on their first encounter with statutory services, all trafficked, unaccompanied and separated children must be treated with respect and their accounts given credence.⁵⁸
67. Furthermore, whilst unaccompanied children remain in the UK are not exempted from being detained or from being placed in unsuitable accommodations as the Home Office will avail itself of the power to accommodate and to remove them from the care of Local Authorities (Clause 15). This provision is incompatible with the child's best interest principle, which should be at the forefront of every Government policy in line with the duties and obligations set out in the Children's Act 1989 and the United Nations Convention on the Rights of the

⁵⁴ Joint Committee on Human Rights (2013) Human Rights of unaccompanied migrant children. Available at: <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>

⁵⁵ Helena Kennedy Centre for International Justice (Sheffield Hallam University), the University of Bedfordshire's Institute of Applied Social Research, ECPAT UK (2022), *Creating Stable futures: Human Trafficking, Participation and Outcomes for children*. Available at: <https://www.ecpat.org.uk/creating-stable-futures-final-report-human-trafficking-participation-and-outcomes-for-children>

⁵⁶ ECPAT UK and Missing People (2016), *Heading back to harm*. Available at: https://www.missingpeople.org.uk/wp-content/uploads/2020/10/HBTH_Report2016_Final_web_version-1.pdf

⁵⁷ The Age Assessment Task and Finish Group (2015), *Age Assessment Guidance*. Available at: https://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf

⁵⁸ ECPAT UK and Missing People (2022), *When harm remains*. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=bb993f93-9445-4f75-bc1e-d051d76ab668>

Child. The responsibility for safeguarding and supporting children should be under the Department of Education⁵⁹ rather than the Home Office.

68. This is likely to further extend the chilling practice of placing children in hotels. We are already experiencing the consequences of this child protection failure, which has resulted in an increase in the number of children going missing from hotels⁶⁰ and kept in exploitation.⁶¹
69. **The use of hotels and unregulated accommodations should be terminated altogether because they are unsuitable and deeply unsafe to house vulnerable individuals, especially children.** This is compounded by the lack of safeguarding measures to maintain their anonymity. Hotels accommodating people seeking asylum are well known in the communities as demonstrated by the regular protests happening outside some of these hotels as well as irresponsible MPs⁶² and local and national newspapers disclosing their location and therefore facilitating their access to traffickers.
70. Multiple reports from ECPAT UK⁶³ have highlighted how the lack of consistency and specialist support in accommodation settings has led to children going missing, many never to be found or to experience multiple episodes of trafficking and exploitation.

5. Exclusion from specialist support will create a humanitarian crisis

5.1 Background

71. The Bill disqualifies victims from the recovery and reflection period (clause 21), which is primarily aimed at allowing victims and survivors to recover and escape the influence of

⁵⁹ Joint Committee on Human Rights (2013) *Human Rights of unaccompanied migrant children*. Available at: <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>

⁶⁰ The Guardian (24 January 2023), *UK Minister admits 200 asylum-seeking children have gone missing*. Available at: <https://www.theguardian.com/uk-news/2023/jan/23/uk-minister-admits-200-asylum-seekingchildren-missing-home-office>

⁶¹ The Guardian (18th February 2023), *Revealed: UK's missing child refugees put to work for Manchester gangs*. Available at: <https://www.theguardian.com/uk-news/2023/feb/18/uk-missing-child-refugees-put-to-workmanchester-gans>

⁶² The Independent (1 November 2022), *Tory MP names hotel where asylum seekers will stay 48 hours after firebomb attack*. Available at: <https://www.independent.co.uk/news/uk/politics/jonathan-gullis-tory-mphotel-asylum-seekers-b2215096.htm>

⁶³ ECPAT UK reports:

- ECPAT UK (2004), *Cause for concern? London social services and child trafficking*. Available at: https://www.antislavery.org/wp-content/uploads/2017/01/cause_for_concern.pdf
- ECPAT UK (2007), *Missing out: A Study of child trafficking in the North-West, North-East and West Midlands*. Available at: <https://www.ecpat.org.uk/missing-out-a-study-of-child-trafficking-in-the-north-west-north-east-and-west-midlands>
- ECPAT UK (2011), *On the Safe side: Principles for the safe accommodation of child victims of trafficking*. Available at: <https://www.ecpat.org.uk/one-the-safe-side-principles-for-the-safe-accommodation-of-child-victims-of-trafficking>
- ECPAT UK and Missing People (2018), *Still in Harm's Way: An update report on trafficked and unaccompanied children going missing from care in the UK*. Available at: <https://www.ecpat.org.uk/still-in-harms-way>.

traffickers.⁶⁴ At the same time, it excludes individuals from settling in the UK and therefore accessing education and employment services as well as limiting access to other essential services such as physical and mental health services. This will aggravate vulnerabilities that increase the risk of exploitation and re-trafficking.

72. As we will explain in the next sections, this may create a humanitarian crisis in UK soil because people won't be able to access support necessary to their physical and emotional wellbeing and it will create or exacerbate mental health issues.
73. **Above all, we are concerned that if this Bill is enacted, it will create a profound humanitarian crisis as a result of increasing destitution and homelessness as well as creating a cohort of vulnerable people affected by physical and mental health issues that will be increasingly subject to abuse, exploitation and re-trafficking. This Bill will create the perfect environment to expand traffickers' power, while allowing them to act unpunished.**

5.2 Modern Slavery (Clauses 21-28)

5.2a Clauses 21-28: Disqualification from support and identification will result in further trafficking and exploitation

74. **Clauses 21 and 27-28** will apply the public order disqualification to potential victims of trafficking and modern slavery (clause 21), which will be considered a threat to public order and therefore liable to disqualification from support and deportation. This provision allows an exemption for those who cooperate with a public authority if *the Secretary of State considers it necessary for that person to be present in the UK to provide that cooperation* (Clauses 21(3)(a)-(b)). The Government sets a very high bar in this regard as Clause 21(5) states that the Secretary of State must assume that it is not necessary for a person to be in the UK in order to cooperate with an investigation and/or prosecution unless there are 'compelling circumstances'. **The criminalisation of victims, as seen in the previous section, will prevent victims' identification and hinder their trust in authorities. People won't be able to support investigations, which will result in the failure to prosecute traffickers. Victims and survivors will also be excluded from accessing remedies, including compensation.**
75. **Clauses 22-24** disqualifies victims from the recovery and reflection period and from the entire NRM process, including in Scotland (**Clause 23**) and Northern Ireland (**Clause 24**).
76. **Clauses 25-26** makes provision for the suspensions of the above measure within 2 years from commencement (Clause 25), but they can be revived by regulations by the Home Secretary (Clause 26).

⁶⁴ European Convention Against Trafficking in Human Beings Explanatory Report (ECATER) (2005) Available at: <https://rm.coe.int/16800d3812> - paragraph 173

5.2b Impact of the modern slavery and other relevant clauses

5.2b(1) Homelessness and destitution

77. The Bill does not clarify if victims of trafficking and modern slavery will be provided with any accommodation arrangements specific to their needs, which together with the lack of an impact assessment suggests that the Government will fail to implement any safeguarding support towards them. The ECHR Memorandum confirms that even those individuals that have not claimed asylum, will be entitled to housing and subsistence support through immigration bail provisions and local authority support for children.⁶⁵
78. There have been reports of individuals being exploited following refusal of asylum support or whilst being transported to those accommodations.⁶⁶ This is a reminder that exploitation and trafficking can happen at any time and in any place when vulnerable people are not provided specialist support.
79. Therefore, this provision is not sufficient to guarantee individuals' safety and it won't meet their basic needs. An additional issue is that individuals might be unwilling to access this support due to the threat of further detention and removal.
80. This will push people underground living in precarious conditions and having to rely on support from the community or extended family. However, because these people will never be allowed to settle in the UK and to work, it will lead them to destitution and therefore it would make this situation unsustainable for them and for those who may try to support them. This means that people will live a life in permanent limbo, where they rely on informal support networks, which is a precarious and inconsistent source of support and denies individuals control over their life.⁶⁷
81. There is a wealth of evidence around the interlinks between trafficking, exploitation and homelessness. A research conducted by Crisis found that people that were sofa surfing or sleeping rough were more vulnerable to being coerced into exploitation and once this was ongoing, two thirds of victims were living in accommodations provided by or linked to their exploiters.⁶⁸ Therefore it is quite clear that homelessness can be a condition that exacerbates vulnerability to be trafficked and exploited, but can then also be used as a means of control over victims.
82. In relation to victims of trafficking and modern slavery, Article 12(1)(a) ECAT, which states that accommodation provided to victims must be appropriate and secure. The Explanatory

⁶⁵ Illegal Migration Bill European Convention on Human Rights Memorandum (2023). Available at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/ECHR%20memo%20Illegal%20Migration%20Bill%20FINAL.pdf> - paragraph 30

⁶⁶ UNHCR and British Red Cross (2022), *At Risk: exploitation and the UK asylum system*. Available at: <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/at-risk-exploitation-and-the-uk-asylum-system>

⁶⁷ British Red Cross (2017), *Can't stay can't go*. Available at: <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/cant-stay-cant-go-webready.pdf>

⁶⁸ Crisis (2021), *No way out and no way home*. Available at: <https://www.crisis.org.uk/media/245122/no-way-out-and-no-way-home-final-designed.pdf>

Report to Convention of Europe on Action Against Trafficking in Human Beings (ECATER)⁶⁹ states that appropriate and secure should be understood in relation to what is necessary to 'assist victims in their physical, psychological and social recovery'. What is appropriate and secure will therefore differ depending on the multiple needs of individual victims.⁷⁰

83. Everyone affected by the Bill and especially survivors of trafficking and modern slavery won't be given the opportunity to live in a safe environment and to access services to support their recovery, contrary to the legal requirements on "safe" accommodation. The lack of stability and support has been repeatedly highlighted as a push factor for exploitation and re-trafficking.⁷¹
84. The sense of hopelessness generated by the Bill and the lack of support from authorities together with a precarious living situation, will massively increase people's risk of destitution and homelessness. **People will be left without an alternative for survival but to depend on precarious and exploitative jobs that they can't escape. Once people go underground, it will be more difficult for them to escape their exploiters' control and for authorities to find them and dismantle those criminal groups.**
85. Destitution and homelessness also have profound links with physical and mental health issues which can result in a public health crisis. A recent briefing from leading medical and humanitarian organisations on the 'Illegal Migration' Bill analysed the possible health implications on those affected by the Bill.⁷²

Case study 3

Jonas was unemployed and sleeping rough. He was approached by someone who offered him work and brought him to the UK, where he was forced to work in factories and people's homes for no pay. Jonas was also sexually exploited and forced to steal and was beaten when he tried to refuse. Subsequently, a homeless charity helped Jonas access support via the NRM. He received a positive conclusive grounds decision and later gave evidence against his traffickers who were convicted and sentenced.

This case study highlights how homelessness and different coercive and abusive measures used by traffickers heighten risk of exploitation and re-trafficking. The 'Illegal Migration' Bill will exacerbate these situations, which compounded by the fear of authorities, will prevent people from coming forward and therefore hinder cooperation with authorities.

⁶⁹ Explanatory Report to Convention of Europe on Action Against Trafficking in Human Beings (ECATER)(2005). Available at: <https://rm.coe.int/16800d3812>

⁷⁰ ECATER - paragraph 154

⁷¹ United Nations Office on Drugs and Crime (2008), *An Introduction to Human Trafficking: Vulnerability, Impact and Action*. Available at: https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf

⁷² Coalition briefing (April 2022), *The medical consequences of the 'Illegal Migration Bill'*. Available at: http://www.doctorsoftheworld.org.uk/wp-content/uploads/2023/04/Illegal-Immigration-Bill-Briefing_FINAL.pdf

5.2b(2) Preventing access to basic services such as physical and mental health support

86. People who have experienced significant trauma in their lives, whether they are claiming asylum or are victims of trafficking and modern slavery, need time and opportunity to rebuild their lives and develop resilience. Evidence suggests that an individual's historic and current level of vulnerability were raised as factors that may facilitate re-trafficking. An example of these vulnerabilities are: issues with alcohol and drugs and in some cases addiction issues, mental health problems, learning difficulties, a history of abuse, experiences of bereavement, having a low education level or experiencing language barriers, being fearful for family members and fearing direct retribution from traffickers.⁷³
87. As the Bill pushes people into destitution and homelessness, it will also prevent individuals from accessing physical and mental health services as well as other integration services (education, upskilling and legal advice). This will have tremendous implications on the capacity of people to recover from their previous experiences, physically and mentally, exacerbating some precedent issues and creating new ones.
88. Poor mental health can lead to secondary issues such as isolation, substance misuse as well as reduced decision-making capacity or understanding and increased dependence on others, which may in turn increase vulnerability to trafficking.⁷⁴
- 89. People experiencing mental health difficulties may seek or become dependent on others who can offer them emotional or practical support. This is a common technique used by traffickers and exploiters to recruit, coerce and keep people in exploitation. This also prevents people from disclosing that they are being abused or exploited or from identifying as a victim.**⁷⁵
90. Even those who will be able to access accommodation provided by the Home Office, will probably experience limited access to health and mental health services as this already happens in the current system.⁷⁶ In addition, people won't have access to other services such as education, employment opportunities, volunteering etc, which will profoundly affect their mental health and prevent them from building a stable future.
91. Furthermore, a significant number of health professionals in the UK, have raised concerns about the catastrophic consequences of removing vulnerable individuals to Rwanda and the impact this will have on their mental health and recovery. In a letter to the Prime Minister,

⁷³ Anti-slavery Commissioner and University of Nottingham Rights Lab (2021). *Re-Trafficking: The current state of play*. Available at: https://www.antislaverycommissioner.co.uk/media/1705/iasc-and-rights-lab-re-trafficking-report_november-2021.pdf

⁷⁴ Cambridge University Press (2018), *Mental health and human trafficking: responding to survivors' needs*. Available at: <https://www.cambridge.org/core/journals/bjpsych-international/article/mental-health-and-human-trafficking-responding-to-survivors-needs/0CA66B867F0A21397722816D80E1779B>

⁷⁵ Safer Devon Partnership Preventing Exploitation Toolkit. Available at: <https://www.preventingexploitationtoolkit.org.uk/home/what-is-exploitation/what-is-vulnerability/mental-health-difficulties/>

⁷⁶ Equality and Human Right Commission (2018) *The Lived Experiences of access to healthcare for people seeking and refused asylum*. Available at: <https://www.equalityhumanrights.com/sites/default/files/research-report-122-people-seeking-asylum-access-to-healthcare-lived-experiences.pdf>

they highlight how this plan has triggered fear, confusion and uncertainty about men, women and children's safety. It has led to a recognised risk of self-harm and suicide, and undermined resilience to the psychological effects of trauma.⁷⁷

6. Impact on Scotland's support to victims and survivors of modern slavery

92. The Bill with clauses 19 and 23 together with subsequent Regulations implemented by the Home Secretary will encroach on Scotland's devolved matters and constrain the ability of local authorities in Scotland to fulfil their current legislative duties. This will dramatically affect the devolved child protection functions of local authorities contained within the 1995 Act.
93. This includes the local authority's duty to accommodate an unaccompanied child.⁷⁸ As seen in the previous section, the consequences of failing to appropriately support unaccompanied children are devastating. By providing the Secretary of State with the powers to remove children from Local Authority care, these provisions will create a discriminatory system where children in Scotland receive inadequate care and safeguarding from their local authorities due to their immigration status. This will place children in precarious and unsafe situations, heightening their risk of abuse, exploitation and re-trafficking.
94. Clause 23 of the Illegal Migration Bill has the effect of amending the 2015 Act by stripping away the duties and powers Scottish Ministers have under sections 9 and 10 to provide support and assistance to victims of trafficking who meet the Clause 2 removal criteria.
95. The Explanatory Notes accompanying the Bill suggests that the Bill does not legislate on matters within devolved competences.⁷⁹ However, legislating on the duties and powers for Scottish Ministers to provide assistance and support to victims of trafficking in Scotland is clearly legislating on a matter within the devolved competence of the Scottish Parliament.
96. Clause 23 raises significant and unprecedented constitutional questions. It prohibits the Scottish Government from supporting a large category of migrant victims of trafficking, in a manner that would be unlawful for non-migrant victims. The provision and support for victims is a positive obligation under Article 4 ECHR and Article 12 ECAT. In particular, non-discrimination in the provision of support is guaranteed by Article 3 ECAT and Article 14 ECHR.
97. All the above will undermine the efforts of the Scottish Government to tackle human trafficking in the areas of identifying human traffickers, bringing perpetrators to justice, disrupting criminal activity, and tackling the circumstances which foster human trafficking in Scotland. These key areas rely on the engagement of victims with service providers and law

⁷⁷ Letter signed by more than 840 UK-based healthcare professionals (20 April 2023), *Open letter from health professionals in the UK on the health consequences of the forced expulsion to Rwanda policy*. Available at: [Open letter from health professionals in the UK on the health consequences of the forced expulsion to Rwanda policy | MSF UK](#)

⁷⁸ Children (Scotland) Act 1995, s 25(1)

⁷⁹ Illegal Migration Bill Explanatory notes - pp 43 - 44

enforcement authorities. **For a Bill that purports to combat organised crime, its provisions on trafficking and modern slavery do the opposite.**

7. Empowering exploiters and creating an environment for impunity

98. As analysed over the course of this briefing, **the Bill will create a favourable ground for traffickers to operate unpunished while strengthening their control and power over vulnerable individuals.** The criminalisation and withdrawal of support for anyone affected by the Bill will prevent people from being identified as victims of trafficking and modern slavery and will push people into trafficking and exploitation.
99. Those who have already experienced trafficking and exploitation, even if identified, will be disqualified from the recovery and reflection period, which is essential for accessing support, but it is also necessary to allow victims and survivors to make an informed decision about their cooperation in a trafficking investigation.
100. As explained by ECATER in relation to the aim of the recovery and reflection period: “The other purpose of this period is to allow victims to come to a decision on co-operating with the competent authorities. The period is likely to make the victim a better witness: statements from victims wishing to give evidence to the authorities may well be unreliable if they are still in a state of shock from their ordeal. Such a decision requires that the victim no longer be under the traffickers’ influence.”⁸⁰
100. It has been shown time and time again that the quality of evidence and cooperation in investigation depends on the support offered to victims and survivors. The majority of modern slavery cases were recently closed without a suspect being identified with reported ‘evidential difficulties victim does not support action’.⁸¹
101. Therefore, **all the provisions in the Bill that seek to penalise individuals and disqualify them from support, will result in the Government failure to gather crucial information that can bring to the prosecution of traffickers and the disruption of organised crime.**

8. Conclusion

102. **The ‘Illegal Migration’ Bill is a gift to people smugglers and traffickers,** who will have a larger cohort of vulnerable people available to use for their financial gains with little or no attention from authorities. Individuals will be forced to go underground to avoid being detected by authorities due to the fear of being detained and removed from the UK. These individuals without any other support or prospect to work and regularise their status, will become destitute and homeless with no other choice but to accept or remain in jobs in exploitative situations or will be coerced into criminal activities.

⁸⁰ ECATER paragraph 174

⁸¹ National World (16 March 2023), *Modern Slavery: people traffickers ‘emboldened’ as charges brought in fewer than one in 50 cases.* Available at: [Charges brought in under 1 in 50 modern slavery cases | NationalWorld](#)

103. Victims of trafficking and modern slavery will be trapped/stuck in exploitation with no possibility of escaping or asking for help from authorities because this will result in their criminalisation and possible removal. The above threat, which is one of the common ways people are coerced and kept in exploitation will be put in writing through this Bill, so traffickers can demonstrate the validity of their threats and demonstrate that there is no other choice but to work for them.

104. The Government should implement the following recommendations:

- Scrap the 'Illegal Migration' Bill in its entirety.
- Develop a new Government strategy to prevent and tackle human trafficking and modern slavery informed by those with lived experience.
- Increase support for victims and survivors and take a human rights-based approach⁸², which empowers survivors to engage with criminal investigations.
- Ensure that those who receive a positive Conclusive Ground decision receive ongoing advocacy and support, including a minimum of 12 months support and access to regularised immigration status with access to settlement routes.
- Ensure that victims have early access to legal aid and pre-NRM support to inform consent to a referral.
- Approach the fight to trafficking and modern slavery from a safeguarding perspective rather than an immigration one.
- Create more opportunities and more meaningful mechanisms to engage and consult with the wider migration and modern slavery sector and above all with experts by experience.

⁸² HfJ as with many organisations take a human rights-based approach and survivor justice approach (in respect of what justice means to the survivor). With the Independent Modern Slavery Advocacy model, whilst focus is not on increasing engagement, this approach indirectly increases engagement with criminal investigations. 73% of the clients HfJ works with wanted to provide evidence in investigations and give evidence in court if required to do so. Of those called to give evidence, 100% attended court and of these cases the majority resulted in a successful prosecution of traffickers.