

Taskforce for Survivors of Trafficking in Immigration Detention - Border Security, Asylum and Immigration - Public Bill Committee Submission

Feb 2025

Who we are: The Taskforce on Survivors of Trafficking in Immigration Detention (“[Detention Taskforce](#)”) is a group of 16 organisations working with, or for, victims of trafficking. The Taskforce works to ensure no victim of trafficking is detained under immigration powers.¹

Overview

1. The Border Security, Asylum and Immigration Bill, in its current form, risks harming victims and survivors of trafficking. The immigration provisions put forward in this Bill will further enable traffickers to drive people into and continue exploitation. Ultimately, the threat of immigration detention and removal (particularly without meaningful safeguards) stops survivors from escaping exploitation and reporting to the authorities.
2. Extensive research has shown that detention has a significant negative impact on survivors’ mental health and recovery.² Survivors of trafficking are frequently diagnosed with depression, post-traumatic stress disorder, anxiety, and suffer from self-harm and suicidal ideation. The appropriate treatment for these conditions, such as individual trauma-focused therapy, is rarely available in immigration detention. Even if such therapy was provided, it would not be effective in the harsh conditions of immigration detention as it requires the person to feel stable and safe to benefit from treatment (as per the NICE guidelines).³ This means people’s basic needs are not being met and their mental health is likely to deteriorate further. A litany of scandals, such as the abuses in Brook House, and the impacts of quasi-detention facilities like the Bibby Stockholm and Wethersfield (which are by no means exceptional in terms of their facts), have further demonstrated that they are both unsafe and inappropriate for vulnerable people.⁴
3. Despite the physical and psychological impacts, the number of survivors of trafficking being detained has increased dramatically in recent years. The number of referrals to the National Referral Mechanism from detention has increased from 501

¹ Members: Medical Justice (Chair); Focus on Labour Exploitation (FLEX) (coordinating organisation); Helen Bamber Foundation; Bail for Immigration Detainees; Anti-Slavery International; Duncan Lewis Solicitors – Public Law; Association of Visitors to Immigration Detainees (AVID); Jesuit Refugee Service UK; ECPAT UK; After Exploitation; Unseen UK; Detention Action; Anti-Trafficking and Labour Exploitation Unit (ATLEU); Latin American Women’s Rights Service (LAWRS); The Snowdrop Project; Hibiscus.

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<https://www.helenbamber.org/sites/default/files/2022-09/Impact%20of%20detention%20research%20summary%20Final.pdf>

³ <https://www.nice.org.uk/guidance/ng116/resources/posttraumatic-stress-disorder-pdf-6614160177861>.

⁴ See: <https://www.helenbamber.org/resources/reportsbriefings/asylum-accommodation-raf-wethersfield>; <https://www.helenbamber.org/resources/research/mass-containment-sites-people-seeking-asylum-must-be-abandoned>

referrals in 2017 to 2,384 in 2023 (with 3,063 referred from detention in 2022).⁵ From the experiences of frontline organisations in the Taskforce, it is highly likely that the actual number may be significantly higher as many survivors never disclose, or do not consent to being referred into the National Referral Mechanism.

4. As it stands, the Border Security, Asylum and Immigration Bill does not put in place constructive measures that move away from the current counterproductive immigration enforcement-centred approach. It fails to repeal provisions from existing legislation that flagrantly violate international law, and create real risks of harm for victims and survivors of trafficking as outlined below.
5. Beyond failing to repeal these deeply damaging provisions, the Bill also puts forward new provisions which are additionally concerning - such as the expansion of immigration offences and the Government's powers of detention. In a context where survivors of trafficking are already being punished for the acts of their abusers, these provisions will act to empower exploiters, and drive their victims underground or into active harm.
6. Retaining deeply harmful provisions and expanding detention powers, particularly while the recommendations of the Shaw Review and Brook House Inquiry have not been fully implemented, creates significant risks. This Bill should be taken as an opportunity to put forward positive changes that prevent the risks of harm in the first instance, rather than further entrenching the draconian provisions of the Illegal Migration Act and Nationality and Borders Act.

What does the Bill do?

Retention of harmful Illegal Migration Act 2023 provisions:

7. Clause 38 of the Bill sets out the repeal of certain provisions of the Illegal Migration Act 2023. While we welcome this repeal, a number of provisions are left in place despite their negative impacts and the violation of international obligations.
 - i) *Section 12*
8. Section 12 of the Illegal Migration Act enables the Government to determine the reasonableness of the length of all forms of immigration detention, overturning the common law *Hardial Singh* principle which sets out judicial oversight over the length of detention.⁶ Notably, the judicial scrutiny that arises from this principle acted to ensure the UK's compliance with Article 5 of the European Convention on Human Rights.⁷
9. Further, this provision allows the Government to continue detention after the reason for detention is no longer applicable (*i.e.*, awaiting examination, removal, or issuing a deportation order or decision within a reasonable period of time). Allowing detention to continue pending arrangements for release being made, risks prolonging the

⁵ FOI2024/00253

⁶ *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB).

⁷ *Saadi v United Kingdom* (application no. 13229/03, 29 January 2008); *JN v United Kingdom* (application no 37289/12, 19 May 2016).

detention of vulnerable people who require care, support or have specific needs in relation to their accommodation, in particular..

10. The Home Affairs Committee, the Joint Committee on Human Rights, the Joint Inquiry by the APPGs on Migration and Refugees, as well as civil society organisations and the Brook House Inquiry have all called for the introduction of a statutory 28-day maximum, cumulative time limit for immigration detention in order to safeguard fundamental rights.⁸ This time limit should be accompanied by judicial oversight of the decision to detain and ongoing detention. This recommendation recognises the well understood psychological impact of immigration detention on the wellbeing victims and survivors of trafficking.
11. Immigration detention of people seeking asylum or with unsettled immigration status is for administrative purposes and cannot lawfully form part of any criminal sentence or be used as a deterrent. The decision to detain is made administratively by Home Office caseworkers without judicial authorisation. It is an exceptional and draconian power. Subject to limited exceptions (for children and pregnant women), there is no fixed time limit on immigration detention in the UK.
12. Beyond the impacts of detention on the wellbeing of survivors of trafficking, it also hinders people's ability to come forward and disclose their trafficking experience. Those detained under immigration powers face additional barriers to accessing legal assistance, as their access to information on their entitlements and avenues for compensation is mainly dependent on their identification by the Home Office, the body responsible for enforcing immigration policy. UK Visas & Immigration (UKVI), part of the Home Office, is the only National Referral Mechanism first responder with unrestricted access to Immigration Removal Centres (IRC), and therefore the main government agency responsible for providing potential victims with information on relevant judicial and administrative proceedings while in immigration detention.⁹ Despite this vital role, UKVI staff are only required to complete two e-learning courses on modern slavery; a 60 minute course on modern slavery for non-Border Force staff and a 30 minute training on the NRM process. Despite the existence of the Detained Duty Advice Scheme, very many people remain unrepresented.¹⁰
13. While there is a real problem of survivors of trafficking who have been formally identified being detained, many survivors in immigration detention may never be identified because the detention setting militates against them being able to disclose, with survivors expected to disclose their experiences to a Home Office official, who they likely see as the person (or representative of the system) responsible for their continued detention. This will be extremely difficult for them for

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https://assets.publishing.service.gov.uk/media/650964c8a41cc300145613a5/11199-HHG-BHI-Vol2_Brook_House_Inquiry_Vol_II-ACCESSIBLE.pdf, p.69;
<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>;
<https://publications.parliament.uk/pa/it201719/itselect/itrights/1484/1484.pdf>;
<https://detentioninquiry.wordpress.com/wp-content/uploads/2015/03/immigration-detention-inquiry-report.pdf>.

⁹ Detention Taskforce members see poor quality negative reasonable grounds decisions due to insufficient information provided in limited referrals. The newly introduced 30 day limit for reconsideration requests results in survivors losing the opportunity to challenge these poor quality decisions due to the time limit.

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https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file_asset/file/1318/240801_IRC_LAS_FINAL.pdf.

a range of reasons including but not limited to “distrust, shame, fear of stigmatisation, and threats from traffickers who may still be controlling them, as recognised in the Modern Slavery Statutory Guidance.

14. There is a real risk therefore that those who are not identified, or do not come forward, as well as a proportion of those who are identified, will be removed or in most cases eventually released without appropriate support, which will in turn increase their risk of being re-trafficked or exploited further. If a survivor is not identified their traffickers cannot be investigated, which in turn results in the criminals responsible not being detected or prosecuted for their crimes.
15. The Adults at Risk in immigration detention statutory guidance was introduced in 2016 following an independent review carried out by Stephen Shaw, which identified a systematic overreliance on immigration detention, too many vulnerable people being detained for too long, inadequate healthcare provisions and a failure of existing safeguards. The guidance was ostensibly intended to reduce the detention of vulnerable people, but there is good evidence that it has increased it. The policy operates by weighing evidence of vulnerability against immigration factors in deciding whether to continue detention, and in practice, immigration factors are normally prioritised. Prior to 2021, survivors of trafficking with a positive Reasonable Grounds decision were not considered under the Adults at Risk policy. Instead, policy stated that they should be released unless there was a ‘public order’ reason to continue detention. Even under this framework, Taskforce members supported individuals who remained detained following positive reasonable grounds decisions.¹¹ Nonetheless, detention was not as significant an issue for the anti-trafficking sector, as it was standard practice that once a person who was detained was referred into the National Referral Mechanism and received a positive reasonable grounds decision they would usually be released. Their detention could only be continued in exceptional circumstances, and though there were too many instances of trafficking survivors being kept in detention, this was not usual practice or policy while they were going through the system.
16. However, in 2021, the Home Office brought survivors of trafficking fully under the Adults at Risk in Immigration Detention policy (AAR), so that survivors of trafficking would routinely be subject to continued detention if the risk to them in detention was ‘balanced’ by immigration control factors. Unfortunately, we are now seeing an increasingly immigration enforcement-centred rather than survivor-centred approach to detaining survivors of trafficking enshrined in formal policy, particularly with further entrenchment of the AAR policy with subsequent policy changes.

ii) Section 29

17. Section 29 of the Illegal Migration Act’s extension of the Public Order Disqualification (introduced in the Nationality and Borders Act 2022), acts to disqualify victims and survivors of modern slavery from protection and support, unless there are ‘compelling circumstances’, where they are a non-British national who has previously

¹¹ See for example:

<https://www.jrsuk.net/wp-content/uploads/2019/06/Topical-Briefing-Survivors-of-Trafficking-in-Immigration-Detention-June-2019.pdf>.

been sentenced to a period of imprisonment of any duration, with no threshold on the seriousness of the offence beyond this.

18. This provision falls foul of the non-punishment principle set out in the European Convention on Action Against Trafficking (ECAT), as well as Articles 3, 10(2), and 16, and Articles 3, 4, and 14 of the European Convention on Human Rights.
19. As set out in ECAT, potential victims of trafficking cannot be removed before the identification process is completed, with no public order disqualification for this provision. They may not be denied any assistance they are entitled to during that time, as per Article 12(1) and (2). Section 29 is clearly incompatible with this protection.
20. We endorse the position outlined in the Anti Trafficking Monitoring Group's submission to the Public Bill Committee which demonstrates the real world consequences of section 63 of NABA (which is extended by section 29 of the IMA), and highlights that:

Many survivors of modern slavery have already been disqualified under section 63 NABA. The NRM official statistics report that between Q1 2023 and Q3 2024, Competent Authorities confirmed 502 disqualification requests. Of these, 494 were disqualifications made on public order grounds and 8 were disqualifications made on bad faith grounds.¹² These individuals have therefore been barred from accessing support and full identification, de facto denying them access to a conclusive determination of victims status.¹³

21. In their scrutiny of the Illegal Migration Bill, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) highlighted that the grounds for the public order disqualification regarding the 30-day recovery and reflection period '*should always be interpreted on a case-by-case basis*' and '*are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period*'. In order to avoid harm to survivors of trafficking, and to meet our international commitments, section 29 should be repealed.

iii) Section 59

22. The Bill retains the deeply worrying section 59 of the Illegal Migration Act 2023, which renders asylum and human rights claims of nationals from a number of countries inadmissible, despite the Government's own concerns about the risks of harm regarding trafficking in the countries on this list.¹⁴ This provision is an egregious assault on the fundamental principles of the rule of law.

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<https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-july-to-september-2024/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2024-july-to-september>.

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<https://www.antislavery.org/wp-content/uploads/2024/12/GRETA-4th-round-evaluation-joint-submission-2024.pdf>

¹⁴ *TD and AD (Trafficked women) (CG)* [2016] UKUT 92.

23. The “safe” state list set out within the Act fails to allow for individualised assessment (where the narrow list of exceptional circumstances does not apply) when someone is at risk due as a result of being a member of a certain group or where they face particular persecution. This near-blanket ban on considering the merits of a claim, and deference to a static list of countries perceived as safe, paves the way for human rights violations.
24. In this sense, section 59 targets individuals on the basis of their nationality while deeming human rights claims in relation to their entry or removal from the UK admissible. Given the potential for human rights abuses arising from this provision, the lack of a right to appeal is of significant concern.
25. The trafficking experience of survivors, and risk of being re-trafficked if returned to their country of origin, can form part or all of the grounds for their asylum claim. It is through these systems that survivors will be able to access any form of support, assistance and protection. There is no published data on how many people seeking asylum are survivors of trafficking nor on how many are in both the asylum system and NRM, though Helen Bamber Foundation previously found that 93% of their clients who are survivors of trafficking are in both systems.¹⁵
26. The Detention Taskforce has previously highlighted its concern regarding the increase in hostile rhetoric against and disproportionate targeting of the Albanian community in the UK.¹⁶ Even in recent figures, Albanian asylum applicants still have high rates of having been trafficked.¹⁷ It is crucial that their applications for asylum and human rights claims are properly considered.
27. Section 59 acts to further entrench the immigration enforcement centred approach in the UK, disempowers individuals from challenging their detention and removal, and further drives people underground by creating a culture of fear and hostility in targeted communities who are led to believe that the Government will not listen to their very real concerns.

Clause 41

28. Clause 41 establishes retrospective statutory powers of detention while the Secretary of State considers whether to make a deportation order. This provides for ability to *retrospectively* make detention lawful where the person is liable to deportation on the ground that is considered as conducive to the public good at a time at a time when they did not have notice of an appealable immigration decision, because they had not yet made a human rights or protection claim.

¹⁵ <https://labourexploitation.org/app/uploads/2023/05/Joint-Briefing-Illegal-Migration-Bill.pdf>, p.37.

¹⁶ <https://labourexploitation.org/app/uploads/2024/07/Detention-Taskforce-IECA-briefing-2.pdf>.

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<https://gardencourtchambers.co.uk/wp-content/uploads/old/trafficking-and-organised-crime-in-albania-claudia-neale-and-micah-anne-neale.pdf>.

29. As such, Clause 41 is an outright assault on the rule of law, that would provide a fig leaf to ostensibly legitimise the unlawful deprivation of liberty, in contravention of Article 5 of the European Convention on Human Rights.
30. The retrospective nature of this power is of real concern to the rule of law. Legal certainty requires that individuals know what their rights are and how they can be enforced. As stated by Lord Bingham, the first principle of the rule of law is that the law should be ‘accessible and, so far as possible, intelligible, clear and predictable’. This is especially important when the UK’s international legal obligations and fundamental human rights are at stake
31. Clause 41 should be scrapped.

Positive Recommendations

Beyond scrapping the provisions outlined above, the Detention Taskforce calls on the Government to put forward a number of positive measures that move away from the counterproductivity of the current approach.

i) Repeal of harmful provisions

32. All modern slavery related provisions in both the Illegal Migration Act and Nationality and Borders Act should be repealed. The Border Security, Asylum and Immigration Bill should repeal the Illegal Migration Act 2023 and the Nationality and Borders Act 2022 (with the exception of sections 1 to 9 (containing nationality law provisions) and 66 and 67 (bringing advice in relation to referrals as a potential victim of modern slavery in scope of legal aid).

ii) 28-day time limit on detention and automatic judicial oversight

33. As an interim protection, the Government should introduce a strict time-limit of no more than 28 days in immigration detention. This should be accompanied by judicial oversight of the decision to detain and ongoing detention.

iii) Adults at Risk policy

34. The Government should abolish the three Adults At Risk policy levels of risk, and instead, it should revert to its previous policy focusing on risk of harm, with detention of survivors of trafficking permitted only “in very exceptional circumstances”. The Home Office should consult with a wide range of stakeholders, including people with lived experience. A self-declaration of vulnerability should trigger a duty of inquiry into the asserted vulnerability.
35. Everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain, including provision to challenge decisions that there are exceptional circumstances to detain victims of trafficking.
36. Detention gatekeepers should have access to all documents and files including past immigration and previous NRM referrals, of anyone being considered for detention,

and there should be a strong presumption against detention for individuals who present trafficking indicators. The detention gatekeeper intake pro-forma should include a question on indicators of human trafficking as well as relevant questions on medical history. In addition, lack of disclosure in an induction interview should not be held against someone if they disclose later, in recognition that induction interviews are likely not a safe space for a person to speak about their exploitation.

iv) *Implementation of the existing expert recommendations*

37. The Government should implement the recommendations contained in Stephen Shaw's 2016 Review into the Welfare in Detention of Vulnerable Persons, as well as the Brook House Inquiry.

v) *A survivor wellbeing-centred approach*

38. Anyone who receives a positive reasonable grounds decision from within detention should be immediately released into appropriate and secure accommodation so that they can progress with the reflection and recovery to which they are entitled. In the longer term, plans to expand the use of detention should be abandoned and a viable alternative to detention service should be provided, similar to that piloted by the King's Arms Project.¹⁸

39. In order to help survivors of trafficking rebuild their lives, access justice and to break the cycle of trafficking, victims and survivors of trafficking who receive a positive conclusive grounds decision, should receive a renewable residence permit, together with access to specialist support services, with a route to settlement.

vi) *Secure reporting procedures and pathways*

40. Ensure secure reporting mechanisms and a separation of powers so that labour and law enforcement authorities do not share migration status with immigration enforcement, recognising that people with insecure and temporary immigration statuses are often reluctant to report abuse due to fear of facing immigration consequences.

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<https://kingsarmsproject.org/research-demonstrates-pilot-service-is-a-cost-effective-and-humane-alternative-to-detention/>.