

**Written evidence submitted by the Scottish Refugee Council (supplementary submission) (BSAIB31)**

**Public Bill Committee - Border Security, Asylum and Immigration Bill**

1. As Scotland's national refugee charity, Scottish Refugee Council has 40 years' experience of providing information, advice and advocacy services to refugees and asylum seekers and supporting refugee integration in all its aspects. We work within increasingly complex and interconnected settings impacting refugees living in Scotland. We bring a unique contribution to national and UK refugee support.
2. We have a focus on responsive, consistent and holistic support to refugees, whatever their legal status or origin: Since 1985 we have supported more than 30,000 refugees arriving and living in Scotland, providing a comprehensive and unique range of services to refugees independently, directly and in partnership with other agencies across the country. These include Crisis Humanitarian programmes, Family Reunion, Refugee Integration and Employment Services, Asylum Support Services.
3. We provide national leadership, collaboration and capacity building with and for organisations working with refugees in Scotland, so that they can effectively represent their communities and connect with others. We are a co-lead on Scotland's New Scots: Refugee Integration Strategy and coordinate the New Scots Connect platform, supporting a network of over 180 refugee-led and refugee-assisting organisations across Scotland. We lead on co-ordination of services and activities at a local level and support practitioners, decision makers and refugee leaders at local, regional and national levels to deliver and inform the Delivery Plan of the New Scots Refugee Integration Strategy and its vision for a welcoming National leadership, collaboration and capacity building with and for organisations working with refugees in Scotland, so that they can effectively represent their communities and connect with others.
4. We have refugees at the heart of what we do. People with lived experience have a place in our Board of Trustees, Senior Management Team, staff and volunteers, and inform all of our work. Our Afghan Citizens Information Service, was staffed only by people with lived service, helping more than 350 people who fled the Taliban regime. We delivered the New Scots Leadership programme, where 60 people from refugee backgrounds were supported to share their stories with the media.
5. In collaboration with Scottish Government and COSLA we are strategic partners in the New Scots Refugee Integration Strategy, a framework that sets out how Scotland should support people seeking protection. It sets out how we can provide the best support to help people make progress with the things that matter to them.

6. It is the position of Scottish Refugee Council that the asylum system is broken and can't be fixed by yet another migration bill. People seeking protection face a convoluted, often arbitrary, system which is founded on institutional hostility.

## **Overview of the Bill**

7. We welcome the Bill's repeal of the Safety of Rwanda (Asylum and Immigration) Act 2024 and parts of the Illegal Migration Act 2023 (IMA), particularly:
  - The duty to remove asylum seekers to other countries.
  - Home Office responsibility for accommodating separated children - children will be under the care of local authorities again.
  - Provisions on age assessments - these "scientific" tests (such as bone and teeth X-Rays) to determine age were invasive and discredited by organisations such as the British Dental Association as "pseudoscience".
8. While the bill repeals parts of the Illegal Migration Act 2023 and the Safety of Rwanda Act 2024, we think the bill could have gone further to protect people seeking protection.
9. Rhetoric around the bill underlines the UK Government's commitment to "smashing the gangs" However, the introduction of new criminal offenses could potentially be applied to refugees rather than the targeted smugglers and traffickers. These new offenses could result in the prosecution of many refugees, including those fleeing conflict.
10. The bill treats asylum and human rights claims from certain countries as automatically inadmissible, potentially undermining the UK Government's commitment to human rights protection and the rule of law.
11. The lack of safe and legal routes for asylum seekers is a significant missed opportunity in the bill. The most effective way to stop small boat crossings would be to provide safe pathways to refugee status. It is unlikely the existing measures will significantly reduce dangerous crossings.
12. We are also concerned that the bill continues to label vulnerable people as criminals for exercising their existing right to claim asylum. We would rather see significant efforts to move towards a more compassionate and effective asylum system.
13. There are many third sector organisations with significant expertise in these areas, and so Scottish Refugee Council's written evidence is centred around the main issues we perceive to impact the people using our services. We focus on issues around citizenship, human trafficking protections, and integration.

## **The right to citizenship should be reinstated, and be placed on a statutory footing as a new clause in the Border Security, Asylum and Immigration Bill**

14. On February 10, 2025, the Home Office published significant changes to the good character requirement guidance for British citizenship applications. The updated policy states that individuals applying for citizenship from February 10, 2025, who previously entered the UK illegally or arrived without valid entry clearance or electronic travel authorization via a dangerous journey, will typically be refused citizenship, regardless of the time elapsed since their entry.
15. This marks a substantial shift from the previous guidance, which generally considered illegal entry as grounds for refusal only if it occurred within the past ten years. The new policy defines a "dangerous journey" as including, but not limited to, travel by small boat or concealed in a vehicle. The change sets a precedent that mode of entry is a determinant of whether a person seeking protection is of good character.
16. The changes were implemented without prior consultation or any parliamentary scrutiny. This abrupt policy shift is likely to have a significant impact on people who have entered the UK through irregular routes, potentially barring them from obtaining British citizenship regardless of the length of time they've been in the UK. The majority of refugees come to the UK through irregular routes as there are only limited and restrictive safe routes established. This will potentially disenfranchise a large group of people seeking safety to integrate and be part of our society.
17. The denial of citizenship to refugees or stateless persons due to mode of entry raises concerns about potential breaches of Article 31 of the 1951 Refugee Convention. Article 31 prohibits people seeking protection from being penalised for illegal entry, provided they present themselves to authorities without delay and show good cause for their actions. We are concerned that the existence of this policy may deter individuals from applying for citizenship, due to prohibitively expensive application fees.
18. We are concerned that denying citizenship based on irregular entry contradicts the Refugee Convention's principles by imposing penalties that hinder refugees' integration and long-term protection. It is our strong recommendation that this change be scrapped and the right to naturalisation be placed into statute in the course of this bill process.

**We strongly recommend the repeal of all the modern slavery provisions in both the Illegal Migration Act 2023 and the Nationality and Borders Act 2022. The Bill should target the perpetrators, not the victims, of criminal exploitation.**

19. Section 29 of the new bill broadens the application of section 63 of the Nationality and Borders Act, pertaining to disqualifying factors for modern

slavery protections. This section obliges the UK Government to withhold modern slavery protections from individuals deemed a threat to public order.

20. There are significant concerns about the protection of vulnerable individuals who have been victims of exploitation. There is a real risk that survivors of trafficking may be denied the protections they are entitled to, solely based on past criminal convictions. The bill fails to recognise the complex circumstances surrounding human trafficking and exploitation, where victims are often coerced into criminal activities.
21. This provision of the bill potentially conflicts with Article 4 of the European Convention on Human Rights (ECHR), which prohibits slavery and forced labour. By denying protections to trafficking survivors based on criminal history, the UK may be failing to fulfil its obligations under international human rights law to identify and support victims of modern slavery.
22. In October 2024, Home Office minister Phillips stated, "For too long, modern slavery survivors and the harrowing experiences they have lived through have not been given the attention and support they deserve. This is going to change." We do not believe this bill delivers the changes the minister stated she would like to see.

**Failing to repeal the parts of IMA and NABA which deal with trafficking offences is a gift to traffickers and double punishment for those disqualified from protection.**

23. Under the provisions of the bill, victims of trafficking and modern slavery previously convicted of a crime and imprisoned, are disqualified from protection, denied a recovery period and limited leave to remain in the UK, and may be removed, unless there are 'compelling circumstances',
24. This double punishment disproportionately impacts survivors who were forced to commit crimes as part of their exploitation and who have received convictions.
25. IMA was a gift to traffickers - people who were victims would not engage with authorities at all because of the risk of being removed to Rwanda. Where there is a hangover in this piecemeal legislation of punishing victims of trafficking, the result will be a chilling effect - people simply will not engage with authorities.
26. This undermines the UK Government's stated aims of 'smashing the gangs' by effectively freezing out the people you would need to be witnesses to prosecute traffickers.

**The threshold changes for the burden of proof as set out in NABA created significant barriers to victims of trafficking to accessing support, and these will continue to impact victims.**

27. Prior to NABA, a Reasonable Grounds decision required a belief that a person "may be" a victim of trafficking or modern slavery, often described as a "suspect but cannot prove" standard. Under the new rules, decision-makers must determine that there are reasonable grounds to believe the person "is" a victim, which requires stronger evidence at the initial stage of identification.
28. Potential victims must now present supporting evidence at the point of identification and referral to the National Referral Mechanism (NRM). This includes documentation such as travel records, police reports, or professional assessments to corroborate their claims. This change places a significant burden on victims, who often lack such evidence due to the nature of their exploitation.
29. These stricter requirements have led to a noticeable decrease in positive RG decisions, particularly for foreign nationals and individuals in immigration detention, as many victims struggle to meet the new threshold. Legal organisations in Scotland are now routinely submitting judicial reviews on their negative RG decisions, whereas this was a rare occurrence pre-NABA.
30. Retention of this section is a potential violation of Article 4 ECHR and the Coe Trafficking convention - it fundamentally fails victims. Failure to repeal this legislation provides impetus for traffickers to target individuals with past convictions, knowing their victims will be disqualified from protection, and this is borne out in NRM data.
31. Analysis conducted in 2024 clearly demonstrates that, of the 338 people disqualified (including 40 children), 70% of all disqualified individuals were acknowledged as having an element of criminal exploitation in their case (73% of adult cases and 65% of child cases), compared to an average of 44% of NRM referrals with an element of criminal exploitation from 2020 and 2023.

**Retaining these parts of the Bill will potentially undermine the Scottish Government's positive obligations to identify victims of trafficking under the Human Trafficking Act (Scotland) 2015**

32. It's important to note that while immigration policy is reserved, the implementation of human trafficking measures in Scotland is devolved. These changes could potentially conflict with the principles and provisions of the Human Trafficking and Exploitation (Scotland) Act 2015 in several ways.
33. The Scottish Act places a duty on Scottish Ministers to secure immediate support and recovery services for victims of human trafficking and exploitation. The changes in the Illegal Migration Act could make it more difficult for some potential victims to access these services if they are subject to removal.

34. The Act aims to make it easier to prosecute traffickers. However, if potential victims are removed from the UK more quickly, it could hinder investigations and prosecutions that rely on victim testimony.

35. The Act includes measures to prevent trafficking. The new UK-wide legislation could potentially undermine these efforts by creating additional barriers for victims to come forward and seek help.

**This Bill is a missed opportunity to provide a meaningful UK-wide integration strategy, in line with the New Scots integration strategy, with the principle of integration from day one of arrival.**

36. True, meaningful, just and rights-based integration needs investment. We have learnt this from UK's response to Ukraine. There are clear health, social and economic benefits to early integration efforts.

37. Many of the relevant policy levers and funding sources that support refugees rest with the UK Government. The previous UK Government was explicit in seeking to create a 'hostile environment' for people seeking asylum. It helped to manufacture the perception of a 'refugee crisis' within sections of the media, it pursued policies that contravene international law, and it sought to water down the UK's commitments to humanitarian protection.

38. Asylum support continues to be a punitive system of low levels of financial support without the ability to access paid work for months and years on end and increasingly resorted to accommodating people in hotels and accommodation centres leading to crisis levels of mental health and enduring poverty. This situation has been exacerbated by current trends in inflation and the cost of living.

39. The UK's asylum system has not fundamentally changed in decades. A patchwork of legislation from consecutive governments has failed the individuals and communities engaging with the system. People seeking protection have been demonised and used to further anti-immigration political agendas.

40. It's time for a new, principles-based approach. In line with the New Scots Integration Strategy, the founding principle of the UK asylum system should be changed to integration from the day of arrival, rather than integration from the point of refugee status granted.

41. The UK Government should adopt a model of integration from day one of arrival using the framework below. Policies relating to people seeking protection should make progress towards meet the following tests:

- Provide the best opportunities for integration at the earliest possible time when compared to counterfactual policies.
- Acknowledge the barriers to integration that people seeking protection may encounter.

- Be in the best interests of the individuals and families seeking protection, and the communities they live in.
- Align with international obligations and takes steps towards aligning with international trends.

42. Applying this framework to asylum accommodation, people seeking protection have the right to live in housing that is clean, safe, and meets their needs. Accommodation should be community based, with good access to basic, vital services such as health and social care, legal representation, places of worship, shops, and education.

43. Allowing people seeking protection the right to work would also remove the 'cliff-edge' effect of the removal of asylum support once a decision has been granted, mitigating a lot of the risk to individuals associated with this period, and alleviating pressures on local government.

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