

Written Evidence by Dr Jo Wilding and Dr Shahrzad Fouladvand (IMB0023)

Questions 8, 9 and 10: Detention provisions

1. The Bill creates new powers to detain people subject to the removal duty and their family members. Detention could be in any place the Secretary of State considers appropriate. There is **insufficient dedicated immigration detention capacity** for that number of people and it appears to be proposed that people will be detained in disused ferries and former barracks or air bases. Many of these are remote from any kind of support services. As with the processing centre at Manston, many of these places are wholly unsuitable for detaining people for any more than a few hours. In particular, they typically give rise to **serious public health concerns but may also give rise to breaches of Article 3 ECHR**.
2. The Bill proposes to **disapply existing statutory limitations on the duration of detention of pregnant women and families with children**, where they are detained under the new powers. This is subject only to the Secretary of State's own view of what is reasonable. This appears to take **no account of the best interests of children, as per s55 Borders, Citizenship and Immigration Act 2009 or the UN Convention on the Rights of the Child**.
3. There are **no proposed protections for people who have experienced torture or have been trafficked, or for those physically or mentally unfit for detention, or for young people whose age is disputed**. These factors could apply to anyone arriving; it will not be immediately clear who is a victim of torture or trafficking or has mental health problems. In those cases, there is an additional risk of breaches of **Article 3 ECHR**.
4. During the first 28 days of detention, the Bill proposes that people detained under these powers would be barred from applying to the Immigration Tribunal for immigration bail or applying for judicial review. This means there is **no oversight at all for these extremely wide-ranging powers of detention**, which are for wholly administrative purposes.
5. As well as being cruel and contrary to human rights, this is **economically unwise because detention is expensive**, unless it is to be in conditions which are unsafe and an egregious breach of human rights.

Questions 19: Access to legal advice

6. There would be some restrictions on removal if people have made an asylum or human rights claim, despite the automatic inadmissibility duty which means the claim won't be processed. The Bill would create new 'suspensive' rights of legal challenge, which will be the only ones that prevent removal, where there is a risk of 'serious irreversible harm'. Where the challenge is refused, the person would have six days to appeal to the Upper Tribunal.
7. It is **unclear what provisions will be made for access to legal advice for these challenges and appeals**. There is currently a large deficit in asylum legal advice in England and Wales, of at least 25,000 or 45% between new asylum applications made (by main applicants excluding dependants) and new legal aid files opened ([Wilding, 2022](#)).

8. There are **100 fewer offices holding contracts for immigration and asylum work in England and Wales (as of February 2023)** than was the case when the contracts were awarded in September 2018 (225, down from 325). There are 25 fewer than one year ago – offices are withdrawing at an average of around two per month. Numerous others are ‘dormant’ – continuing to hold a legal aid contract but not undertaking any legal aid work.
9. There is **a serious geographical shortage in most of the UK** (especially away from the traditional dispersal areas). There is now a need for legal advice in areas which have never previously encountered it, both because of contingency hotels, and because there are unaccompanied children and dispersal accommodation all over the UK. Often there is no access to legal advice at all within a wide radius. This includes large parts of Wales, the South West and the East of England. It also applies to most of Northern Ireland, and to all of Scotland outside Glasgow and the Central Belt.
10. Scotland and Northern Ireland have separate legal aid systems. **Northern Ireland has a particularly acute shortage of immigration and asylum legal aid representation**, with the number of asylum applicants increasing sharply since Brexit and only around 15 solicitors undertaking the work as part of their practices. There are no specialist teams doing asylum legal aid work in Northern Ireland.
11. The Bill seems likely to drive an increase in public law applications where people are denied rights of appeal or admission to the system, despite the attempt to exclude access to the courts. There is a serious shortage of public law provision in much of the UK outside London and Edinburgh. This means there are **serious risks that people will be denied access to legal advice to access even the limited protections that the Bill proposes**.

Questions 12 and 13: Modern Slavery

12. This submission is focused on the **Modern Slavery provision in Clauses 21 to 24 of the Illegal Immigration Bill** concerning 1) a reflection period, and 2) reasonable decision under the Prohibition of Slavery (Article 4) of the ECHR and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).
13. **A reflection period is to give people a chance to overcome their fear/trauma and decide whether to co-operate.** The provisions in clauses 21 to 24 will deny protection to the rights of victims of Modern Slavery and exclude them from a minimum 30 days recovery and reflection period which is **incompatible with and in breach of Articles 10 and 13 of the ECAT and Article 4 of the ECHR**. These provisions, instead of focusing on the human rights of victims of trafficking will apply ‘the public order disqualification’ to all illegal entrants. Their emphasis is on a punitive tool and the only exception to that is cooperating with law enforcement agencies in the investigation or prosecution of modern slavery offences.
14. The UK recognises that slavery, servitude and forced or compulsory labour are prohibited by Article 4 of the ECHR. Since ECAT came into force in April 2009, the UK is obliged under Article 10 to identify and help victims of modern slavery. Article 10(2) further stipulates measures to protect the rights of victims without discrimination and obliges the UK as a state party to ensure that ‘a victim of trafficking in human being shall not be removed from its territory until the identification process as a victim of an offence has been completed by the competent authorities and shall likewise ensure that that person receives the assistance’. Under Article 13 of the Trafficking Convention, a ‘recovery and reflection period of at least

30 days' should be provided to victims. This Article explicitly states that 'any expulsion order against him or her' should not be enforced during the recovery period and the UK 'shall authorise the persons concerned to stay in [its] territory' unless the Competent Authority is satisfied that 'victim status is being claimed improperly'.

15. **The reference to co-operation which is “reasonable in the circumstances” gives the Home Office a very wide discretion to decide what is “reasonable”.** Since Clause 21 of the Illegal Immigration Bill only applies where the competent authority has made a 'reasonable grounds' decision in the migrant's favour, they are obviously not cases where the competent authority has found the claim to be improper. As GRETA, the Council of Europe's expert group on trafficking, points out, 'traffickers often take away victims' travel and identity documents, as a way of exerting pressure, or give them false documents' ([GRETA, 2023](#)). To treat people in this position as illegal migrants who are therefore 'improper' victims of trafficking defeats the object of the Anti-Trafficking Convention.
16. According to the official figures of the National Referral Mechanism (NRM) of the Home Office in 2022, there were 16,938 potential victims of modern slavery referred to the NRM ([NRM, 2022](#)). In 2021, the NRM received 12,727 referrals of potential victims of modern slavery ([NRM, 2022](#)). These figures show the increase of identified potential victims of modern slavery and human trafficking. The Single Competent Authority (SCA) or Immigration Enforcement Competent Authority (IECA) receive all NRM referrals to make an initial 'Reasonable Grounds' (RG) decision on whether someone is a victim of modern slavery. This will give the potential victims 30 days of the Recovery Period to receive the support they need arising from their exploitation. Soon after the RG, a 'Conclusive Grounds' decision should be made based on 'the balance of probabilities' by the relevant competent authority that there are sufficient grounds to decide that the individual being considered is a victim of modern slavery. According to the official figures, the competent authorities issued the highest number of reasonable and conclusive grounds decisions in 2022, with almost 17,000 reasonable grounds and just over 6,000 conclusive grounds decisions made ([NRM, 2022](#)).
17. The Reasonable Grounds Decisions should be made within 5 working days of referral and soon after that the relevant Competent Authority should make a Conclusive Grounds decision. However, as was mentioned by Dame Sara Thornton the former UK Independent Anti-Slavery Commissioner **the waiting time for decisions under the NRM in England and Wales especially remains a significant concern.** In 2019, for example, victims waited 452 days before receiving a 'conclusive grounds' decision.
18. The proposed 'radical' and 'ambitious' provisions in clauses 21 to 24 of the Bill can also suggest that the current process of the NRM for the identification of victims of modern slavery is systematically failing. Under the new modern slavery clauses, a positive grounds decision made by the Competent Authority can be disregarded to remove the potential victim unless and only if 'the person is cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation'.