

Illegal Migration Bill 2023 – House of Lords Committee Stage

Survivors of Trafficking and Modern Slavery in Detention Amendment

The Illegal Migration Bill as a whole is entirely unworkable and cruel. Far from its stated aim of "breaking the business model of the people smugglers", it will instead deny refugees and survivors of trafficking the opportunity to seek protection and rebuild their lives in safety and will result in an increased number of survivors of trafficking being detained for an indefinite period.

Clause 2 of the Bill places a new duty on the Home Secretary to take steps to remove anyone who entered the UK by means the Home Office deems irregular on or after 7 March 2023; did not travel directly from a country in which their life and liberty was threatened for a Refugee Convention reason; and requires leave to remain in the UK but do not have it.

The above criteria will capture a large proportion of survivors of modern slavery and trafficking, who frequently arrive 'irregularly' - not just those arriving on small boats - as a core aspect of human trafficking is the movement of people; the use of threat, force or fraud and the abuse of vulnerability to do so. Furthermore, others will continue to travel to seek safety and may be trafficked during or following their journey.

Clauses 10 and 11 of the Bill dramatically increase the Government's powers to detain people and under **Clause 13** they can be detained with no recourse to immigration bail or judicial review for 28 days. **Clause 12** replaces the principle that it is for the courts to decide what is a 'reasonable' period of detention and transfers this power to the Home Secretary to decide.

Clause 21 removes almost all protections and support for survivors of trafficking who are subject to removal under Clause 2 and directs that there is no obligation to grant such potential victims leave to remain; and they can be removed from the UK during their reflection and recovery period and before they receive a conclusive grounds decision. This echoes provisions in the Nationality and Borders Act¹ for potential victims of modern slavery and human trafficking that excluded victims of trafficking from protections on public order grounds. Since the Act's commencement vulnerable victims of criminal exploitation, who have been given a reasonable grounds decision - meaning the Home Office has identified that as likely being victims - have been retroactively disqualified and removed from the NRM and placed into immigration detention. The expansion of this within the Illegal Migration Bill will punish victims for their own exploitation and for simply crossing a border "irregularly".

These clauses will lead to an increased number of survivors of trafficking being kept in immigration detention, in an already problematic and stretched detention estate, for an indefinite period of time with inadequate support.

¹ See section 63 of the Nationality and Borders Act. The application of Public Order Disqualifications has been widely criticised on the basis that they do not abide by the non-punishment principle within the Council of Europe Convention on Action Against Trafficking in Human Being (ECAT), which states that a victim of trafficking should not be punished for crimes committed under their exploitation.

A recent report by the Helen Bamber Foundation² has shown how the current system is already failing survivors of trafficking in detention. The number of trafficking survivors held in immigration detention each year tripled from 500 in 2017³ to over 1,600 in 2021.⁴ Over 90% of cases are eventually confirmed to be victims of trafficking (with a second stage ‘conclusive grounds’ decision from the National Referral Mechanism). However, even when identified as possible victims of trafficking (with a positive first stage ‘reasonable grounds’ decision), people are not being released and are instead detained while waiting for a final decision in their case, when the average time for making these decisions is a staggering 18 months.⁵ Neither are survivors of trafficking automatically released when they get a positive conclusive grounds decision.

This will only get exponentially worse if the Bill is implemented in its current form.

Immigration detention is an unacceptable environment for survivors of trafficking, who are particularly vulnerable to harm in detention. A high proportion of immigration detainees are diagnosed with depression, post-traumatic stress disorder (PTSD) and anxiety, and a significant number experience suicidal ideation with the risk of self-harm. Research⁶ shows that people who have experienced trauma are at greater risk of developing mental health problems while in detention. Clinical assessments of Helen Bamber Foundation clients who had been detained detail the high risk of self harm, suicide, nightmares and mental health deterioration, and that victims are left too scared to seek support for fear of being detained again.

“Her detention has made her convinced that she will be detained again and deported and has left her with suicidal thoughts”

A person’s recovery needs simply can not be met when they are in continuous distress, particularly for those with the threat of removal to an unfamiliar third country. It is not possible for a person to receive appropriate therapeutic support in detention primarily because it is not available but even if it were a person is unlikely to be considered to be in a stable enough situation to engage with it.

Immigration detention not only increases the risk of re-traumatisation and negative long-term physical and mental health outcomes; it can also prevent victims from being identified and from receiving the support they need and to which they are entitled. This can in turn affect their willingness and ability to engage in legal processes, such as supporting criminal investigations and prosecutions of their traffickers. It can leave them at risk of being re-trafficked or exploited further. Immigration detention itself can be used as a threat by exploiters to prevent survivors from approaching authorities for support or assistance - the Illegal Migration Bill will make this threat, not just a reality, but law.

² Helen Bamber Foundation, Medical Justice, ATLEU and Focus on Labour Exploitation, [Abuse by the System: Survivors of trafficking in immigration detention](#) October, 2022

³ Figure provided by the government in [debate on the Nationality and Borders Bill](#) in Parliament

⁴ Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities who were referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.

⁵ [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022 - GOV.UK](#)

⁶ [The impact of immigration detention on mental health - research summary | Helen Bamber](#) September 2022

Survivors of trafficking should not be detained. Instead, they should be provided with the support to which they are entitled under international and domestic law in the community, including safe accommodation, psychological assistance and legal information and support. This is crucial to enable them to recover and rebuild their lives.

CASE STUDY: SAM

Sam is a Vietnamese survivor of trafficking who arrived in the UK under the control of his traffickers, having been exploited in various countries. Sam was detained on arrival and claimed asylum the next day. 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 were 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 again by his legal representatives, the Home Office referred Sam into the UK National Referral Mechanism (NRM) which provides identification, protection and support for victims of trafficking. He received a positive reasonable grounds (preliminary identification) decision and was released the following day. He was granted a 'recovery and reflection' period before finally receiving a positive conclusive grounds (final identification) decision, and was eventually granted refugee status.

The amendment below which enable victims of trafficking who have received a positive reasonable grounds decision to be immediately released from immigration detention, unless there are very exceptional circumstances. They should be released to appropriate accommodation where they can progress with the reflection and recovery period to which they are entitled.

Amendment

To move the following Clause-

“Restriction on detention of potential victims of slavery or human trafficking

(1) In this section, “relevant person” means a person-

- (a) in respect of whom a competent authority has made a positive reasonable grounds decision;*
- (b) to whom subsection (2), (3) or (4) applies; and*
- (c) to whom subsection (5) does not apply.*

(2) This subsection applies where since the decision mentioned in subsection (1)(a)-

- (a) a competent authority has not made either-*
 - (i) a negative conclusive grounds decision in respect of the person, or*
 - (ii) a determination that section 63(2) of the Nationality and Borders Act 2022 (disqualification from protection) applies to the person, or*
- (b) a competent authority has made such a decision or determination as is mentioned in paragraph (a)(i) or (ii), but the person has made an application for judicial review of that decision or determination which has not been finally determined.*

(3) This subsection applies if the person may not be removed from the United Kingdom under this Act by virtue of section 46(1).

(4) This subsection applies if-

- (a) the person has made a protection or human rights claim which has neither been decided nor declared inadmissible; or*
- (b) an appeal by the person under section 82 of the Nationality, Immigration and Asylum Act 2002 could be brought or is pending, ignoring any possibility of an appeal out of time with permission.*

(5) This subsection applies if a competent authority has determined that subsection (2) of section 63 of the Nationality and Borders Act 2022 applies to the person on the grounds listed in subsection (3)(a), (c), (d), (e) or (i) of that section (terrorism, national security etc).

(6) A relevant person may not be detained under a relevant detention power unless there are very exceptional circumstances that justify their detention.

(7) In this section-

“competent authority” has the same meaning as in section 21(11);

“negative conclusive grounds decision” means a decision by a competent authority that the person is not a victim of slavery or human trafficking;

“pending”, in relation to an appeal, has the same meaning as in section 104 of the Nationality, Immigration and Asylum Act 2002;

“positive reasonable grounds decision” has the same meaning as in section 21(1)(b);

“relevant detention power” means a power to detain under:

- (a) paragraph 16(2), (2C) or (2D) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),*

*(b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),
(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or
(d) section 36(1) of the UK Borders Act 2007 (detention pending deportation)."*

Clause 12, page 22, line 9, at end insert-

"(4A) Sub-paragraphs (2) and (3) do not apply so far as the decision involves or gives rise to any question whether section [Restriction on detention of potential victims of slavery or human trafficking] applies to the person."

Explanation

This amendment provides that a potential victim of slavery or human trafficking who has received a positive reasonable grounds decision from a competent authority cannot be detained during certain periods, unless there are very exceptional circumstances that justify detention. Those periods are:

- While they have not yet received a negative conclusive grounds decision or a decision disqualifying them from protection on grounds of public order or bad faith;
- While they have received such a decision, but have brought a judicial review challenge to it which is outstanding;
- While they have an outstanding suspensive claim or appeal under the Bill;
- While they have an outstanding protection or human rights claim or appeal.

The prohibition on detention does not apply if they have been disqualified from protection on certain grounds relating to involvement in terrorism or risks to national security.

This amendment also creates an exception to the general exclusion of judicial oversight during the first 28 days of detention, so that a potential victim of slavery or human trafficking who claims that their detention is unlawful under this amendment can bring a claim for judicial review.

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