

British Red Cross response to the Welsh Government's Legislative Consent Memorandum: Illegal Migration Bill May 2023

Background

The British Red Cross welcomes the opportunity to provide evidence to assist the Senedd's consideration of the Welsh Government's Legislative Consent Memorandum on the UK Government's Illegal Migration Bill. The British Red Cross is particularly concerned about the impact this Bill may have on unaccompanied children and victims of human trafficking where there are existing protections in devolved structures. When considering the matter of legislative competence, the British Red Cross encourages the Senedd to also consider what alternative routes may be available to mitigate risks and uphold protections for those affected by this legislation.

About the British Red Cross

We are part of the world's largest humanitarian network, the International Red Cross and Red Crescent Movement, which has 17 million volunteers across 192 countries. The British Red Cross helps people in crisis, whoever and wherever they are. We are part of a global voluntary network, responding to conflicts, natural disasters, and individual emergencies. We help vulnerable people prepare for, withstand, and recover from emergencies in their own communities.

In Wales, we provide a range of services across emergency response, health and social care and refugee support. We are the largest independent provider of refugee and asylum support in the UK and in 2022 our Refugee Services team in Wales helped 1,533 people. Our work includes supporting resettlement, destitution support, casework, advocacy, and peer led programs as well as international family tracing, family reunion and integration work. This sits alongside work in other nations of the UK where we work within a variety of frameworks and protection mechanisms.

Introduction

The British Red Cross is deeply concerned that the Illegal Migration Bill would punish people seeking safety simply for the way they arrive, when for the very large majority it is not possible to claim asylum in any other way. If successful, the Bill would prevent most people fleeing war

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and persecution from claiming asylum in the UK, including when they are from places where nearly everyone is recognised by the Home Office as being a refugee, such as Afghanistan, Syria, and Eritrea.¹

However, it will not stop people coming here. That is because policies of deterrence in destination countries are rarely effective – not least because people on the move often do not know about them. The Home Office’s own research² shows that people seeking asylum have limited to no knowledge of migration policies, and usually come because they have no choice where they end up, or because of family or cultural ties and sometimes because of the language. We believe this legislation would be devastating for the men, women, and children searching for safety in the UK.

At the same time, the Bill could prevent survivors of modern slavery from receiving any support simply because of how they arrived in the UK, including people who have been trafficked here. **Crucially, it would create enabling powers to disapply devolved legislation concerning trafficking and modern slavery.** It undermines the UK’s world-leading Modern Slavery Act 2015 and is likely to increase the risk of re-exploitation as fewer people will seek support.

Summary

The Bill proposes automatic 28 days of detention for anyone entering the UK without a legitimate visa, with no right for bail or appeal, and opens the possibility of indefinite detention. Each year the British Red Cross helps more than 30,000 refugees and people seeking asylum in the UK and many more displaced people around the world. We see the devastating impact that living in detention has on people’s physical and mental health, the emotional strain of being separated from family and the consequences for people living in destitution, including heightened risks of exploitation, and not being able to afford even the most basic of things, like food, shoes or toiletries.³ Besides being unworkable, the Bill risks worsening all of these experiences.

This legislation comes at a time of wider policy change in the migration space, including the full dispersal of people seeking asylum to every local authority in the UK and a move to institutional forms of accommodation for those in the asylum system, including barges and

¹ In the year ending March 2023, the grant rate an initial decision for Afghans was 98%, Syrians 99% and Eritreans 99%. Home Office (2023). Asylum applications, initial decisions and resettlement year ending March 2023. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

² Home Office (2020). Sovereign Borders: International Asylum Comparisons Report. Section 1: Drivers and impact on asylum migration journeys. Available at: <https://freemovement.org.uk/wp-content/uploads/2022/11/Annex-A-Sovereign-Borders-International-Asylum-Comparisons-Report-Section-1-Drivers-and-impact-on-asylum-migration-journeys.pdf>

³ See: British Red Cross (2018) Never truly free: the humanitarian impact of the UK immigration detention system.

British Red Cross: How will we survive? Exploring destitution in the UK asylum system.

British Red Cross: and UNHCR (2022): At risk: exploitation and the UK asylum system

All available here: <https://www.redcross.org.uk/about-us/what-we-do/research-publications>.

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military bases. We have previously raised concerns with the use of Penally Barracks in Pembrokeshire and are concerned by the use of further inappropriate accommodation where people's needs aren't met⁴. Protections for those in the system living in House in Multiple Occupancy properties have been removed under UK legislation in England⁵ and may be removed for those in Wales in the future too.

These changes are taking place alongside the UK's response to Ukraine. In Wales, the Welsh Government has supported a safe route to protection for displaced people from Ukraine through its Super Sponsorship Scheme and there are opportunities to expand the protection and sanctuary to other refugees and people seeking asylum.

The British Red Cross wants to see a fairer, more compassionate, and effective asylum system.

To achieve this, we believe that the focus of governments across the UK should be to:

- Uphold the principle of being able to claim asylum by ensuring all claims are considered, no matter someone's mode of arrival.
- Ensure more people fleeing war and persecution can reach the UK safely without risking their lives and falling into the hands of smugglers.
- Prioritise a more efficient decision-making process so people's claims are determined quickly and correctly.
- Ensure refugees and people seeking asylum are better supported once they are in the UK so they engage effectively with the process and for those that stay, can integrate and contribute.

Concerns

While the UK asylum system is reserved, there are opportunities for devolved governments to intervene and provide support to displaced people. This includes through integration and access to public services but crucially by creating protections for victims of trafficking and unaccompanied children.

While we accept that the Welsh Government has limited powers in some areas, there is still scope for it to act. The Welsh Government should maximise its legislative competencies as part of protecting trafficking survivors and unaccompanied children. This could be through the establishment of a trafficking survivor identification and decision agency to complete an

⁴ British Red Cross, Far from a home: why asylum support accommodation needs reform (2021) available here: <https://www.redcross.org.uk/about-us/what-we-do/research-publications>.

⁵ <https://homeofficemedia.blog.gov.uk/2023/04/03/accommodation-sites-factsheet-april-2023/>

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anti-trafficking process. The Welsh Government should also safeguard all available legal measures to ensure non-discrimination for unaccompanied children arriving in Wales.

Unaccompanied children

We are concerned about how this Bill would impact unaccompanied asylum-seeking children. The Immigration Act 2014 put a limit on the detention of unaccompanied asylum-seeking children of 24 hours in a short-term holding facility. This Bill removes this provision, giving the Secretary of State the power to detain a person of any age as she considers appropriate. Unaccompanied children are also subject to removal when they turn 18 and the bill opens up the possibility of returning a child before they turn 18, however this is not a duty.

Welsh Government statistics show that there are 110 unaccompanied children in Wales who are looked after by local authorities⁶. This figure may be much larger as many unaccompanied children are often not identified as such due to issues surrounding the effectiveness of age assessments. There has been a significant rise in the number of age disputes as a result of contested age assessments. These disputes have nearly quadrupled between 2019 and 2023, from 798 to 2999 respectively⁷. From the cases that were resolved, 61% of those assessed were found to be children⁸. This is extremely concerning as failure to identify unaccompanied children places them at considerable risk, such as being housed with adults or even placed in immigration detention. The Bill increases the risks of detention due to the aforementioned duties to detain and to remove from the UK.

If a child does remain in the UK, under the provisions in the Bill and the duty placed under Clause 4(2), they will be removed once they reach 18. The impacts of these provisions are significant, placing children beyond the protections afforded in Welsh legislation, notably the Social Services and Wellbeing (Wales) Act 2014⁹ and international law under Article 8 of the European Convention on Human Rights and provisions of the UN Convention on the Rights of the Child. Alongside other areas of devolved competence, this goes against the intentions of the Wellbeing of Future Generations Act 2015 (Wales), where children face detention, the removal of protections and will be barred from becoming citizens and face return.

The Bill gives power to the Secretary of State in Clause 15 to provide or arrange for the provision of accommodation and support for unaccompanied children in England, as

⁶ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/unaccompaniedasylumseekingchildrenbeinglookedafteratthe31march-by-localauthority>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1156821/age-disputes-datasets-mar-2023.xlsx

⁸ As above.

⁹ Section 110 of the Social Services and Wellbeing (Wales) Act 2014 recognises the need of young people leaving care for continued support and contact.

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opposed to local authorities. Clause 19 allows the Secretary of State to make regulations enabling Clause 15 to apply in Wales without conferring powers on Welsh Ministers. This would place extremely vulnerable and likely already traumatised children beyond the protection of local authorities.

Children who arrive seeking asylum but without a legitimate visa to enter the UK will have no possibility of having their asylum claim considered, which will automatically be declared 'inadmissible' under Clause 4. This is despite unaccompanied asylum-seeking children having an asylum grant rate of over 80% at initial decision in the year ending March 2023.¹⁰ This will also apply to children who are victims of human trafficking and slavery who have been exploited, including those exploited in the UK.

Consistent with the "child first, migrant second" perspective set out in *Child First, Migrant Second: Ensuring that Every Child Matters*¹¹, organisations such as the Anti-Trafficking Monitoring Group have proposed a focus on child protection, with unaccompanied children to be placed in the children protection system's multi-agency safeguarding hubs for a determination of their trafficking status and the local authority child protection systems for care and protection issues¹². This approach would mean that the immediate needs and safety of a child would be the primary concern, placing concerns around migration and border security as secondary. Others have added to this concept, suggesting that "any reforms should ensure that government departments with responsibility for children lead on the issue."¹³

-We encourage the Welsh Government to consider new practice models which prioritise the care and protection of children such as placing unaccompanied children in the child protection system to support their wider needs, as well as adults too.

Recommendation: The Welsh Government should seek to explore what opportunities may exist to uphold and enhance protections for unaccompanied children arriving in Wales, mitigating negative impacts of this Bill.

Victims of trafficking

¹⁰ Home Office (2023). Asylum applications, initial decisions and resettlement year ending March 2023. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>

¹¹ Crawley, H. (2006) *Child First, Migrant Second: Ensuring that Every Child Matters* London, Immigration Law Practitioners' Association Policy Paper

¹² ATMG - Anti-Trafficking Monitoring Group (2014) *Proposal for a Revised National Referral Mechanism (NRM) for Children* London, Anti-Trafficking Monitoring Group Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=9c439adf-97ef-45f8-ad4fc73752f2676d>

¹³ Sereni, A. and Baker, C. (2018) *Before the Harm is Done: Examining the UK's Response to the Prevention of Human Trafficking* London, Anti-Trafficking Monitoring Group

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In 2022, over 16,938 people were referred to the UK's National Referral Mechanism as potential survivors of trafficking. 88% received positive reasonable grounds decisions. 89% of just over 6,000 conclusive grounds decisions made in 2022 were positive, confirming that people were survivors of modern slavery.¹⁴ ¹⁵ Under the provisions of the Bill, when a survivor of modern slavery who arrived in the UK without permission consents to enter the NRM and receives a positive reasonable grounds decision, their claim will not be considered, and they will not be provided with support. Instead, they will be detained and removed. We know through our work supporting survivors of trafficking, people need immediate access to support, including a safe house, washing facilities, rest and advice after leaving exploitation. Detention is a wholly inappropriate setting for someone in need of support as a result of their exploitation.

There may be avenues for protections to be granted under existing Welsh legislation, which are worthy of consideration. We would support a commitment to protection frameworks which exist in devolved legislation, designed to support and protect adults and children living in Wales.

Recommendation: The Welsh Government should pilot devolved decision-making around trafficking status to explore ways to increase protections for migrant victims of modern slavery and trafficking in Wales¹⁶.

Recommendations

We would encourage the Senedd and Welsh Government to:

- Protect victims of trafficking and those in the asylum system, including children, by safeguarding all available legal measures to ensure non-discrimination for children arriving in Wales and by instructing Welsh agencies, such as social work services, to identify and support those in need of protection.
- Use mechanisms such as the pilot of devolved decision-making power¹⁷ around trafficking status to explore ways to increase protections for migrants arriving in Wales.

¹⁴ Once referred to the NRM, individuals receive decisions on two grounds: reasonable grounds, and conclusive grounds. A positive reasonable grounds decision means the decision-maker believes, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery (human trafficking or slavery, servitude, or forced or compulsory labour). A positive conclusive grounds decision indicates that there is sufficient information to consider the individual is a victim of modern slavery.

¹⁵ Home Office (2023). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, year ending 2022. Available at: <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december2022/irregular-migration-to-the-uk-year-ending-december-2022>

¹⁶ [Piloting devolving decision-making for child victims of modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/piloting-devolving-decision-making-for-child-victims-of-modern-slavery)

¹⁷ [Piloting devolving decision-making for child victims of modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/piloting-devolving-decision-making-for-child-victims-of-modern-slavery)

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- Commit to models which prioritise the care and protection of children such as placing unaccompanied children in the child protection system to support their wider needs in line with a “child first, migrant second” approach.
- Enhance the monitoring, inspection, regulation, and enforcement of the asylum system within Wales, especially the use of accommodation. These should be underpinned by comprehensive, cross-government strategies that respond to the increasing vulnerabilities and needs of vulnerable groups seeking protections.
- Consider how to offer the same level of protections for all refugees, people seeking asylum and reunited families, learning from the Ukrainian Super Sponsorship Scheme.
- Work alongside the UK Government to increase safe, regular routes to the UK for those in need of asylum.

Further information

We are keen to continue to support the Welsh Government and Senedd on the impacts of the Illegal Migration Bill and wider policies relating to refugees and people seeking asylum. We would be happy to answer any questions or provide further information in a follow up meeting or in writing.