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By e-mail: [add e-mail]

14 July 2021

Portland House  
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Dear [first name]

## Request that you vote against the Nationality and Borders Bill at its 2<sup>nd</sup> reading

On 30 April, Scottish Refugee Council alongside 86 representatives of Scottish civil society and faith and belief communities wrote to the Prime Minister, Home Secretary and Secretary of State for Scotland to express our gravest concerns and collective opposition to proposals in the UK Government's New Plan for Immigration (the New Plan)<sup>1</sup>. These concerns extended to the manner of the public consultation on this New Plan. Despite all that, we submitted a response in good faith<sup>2</sup>.

However, rather than consider and discuss the responses, or publish any analysis of the consultation, the Home Secretary has proceeded straight to the Nationality and Borders Bill, introduced into the UK Parliament on 6 July. This Bill largely seeks to enact the New Plan. This is insensitive, rushed and low-quality policymaking, and is deeply problematic given that Bill seeks to effectively end the right to seek asylum in the UK. Indeed, there is an ongoing judicial review case<sup>3</sup> arguing the lawfulness of the consultation process.

### Bill severs link to Refugee Convention, instituting a refugee punishment regime

The Bill casts the UK and those seeking refugee protection, adrift from international law. It will leave refugees in grave peril, render the UK more isolated from other countries and will be a stain on the UK's international reputation. The Bill does so by severing the link with the life-saving Refugee Convention, and in its 70<sup>th</sup> anniversary. The Bill institutes what amounts to a *refugee punishment regime*. It contorts the principle of refugee protection that was created by the Convention, after the Holocaust and to which the UK was central to developing.

Put simply this is an anti-refugee Bill. It contravenes the Refugee Convention itself and the European Convention on Human Rights. It vandalises the UK's international reputation and may undermine the devolution settlement itself. Most importantly, it ignores the reality of why people have to flee and seek safety. From that wilful ignorance lies the Bill's severest risk of harm to refugees seeking our protection in the UK.

We urge you to vote against this Bill at its 2<sup>nd</sup> Reading next week.

<sup>1</sup> [A letter from Scotland to the Prime Minister on the New Plan for Immigration - Scottish Refugee Council](#)

<sup>2</sup> [New Plan for Immigration: our response - Scottish Refugee Council](#)

<sup>3</sup> [Challenge to the Home Office's new plan for immigration \(duncanlewis.co.uk\)](#)

#### Building a better future with refugees in Scotland

email [info@scottishrefugeecouncil.org.uk](mailto:info@scottishrefugeecouncil.org.uk) website [www.scottishrefugeecouncil.org.uk](http://www.scottishrefugeecouncil.org.uk)

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## **Bill systemically discriminates against refugees, ending the right to seek asylum**

There are many proposals of concern. These include provisions on (a) a very problematic split standard of proof in asylum cases<sup>4</sup> (b) evidence notices and damage to claimant's credibility, across protection and trafficking/slavery claims<sup>5</sup>; (c) fast-track detained appeals<sup>6</sup>; and (d) changes in trafficking/slavery identification thresholds<sup>7</sup>.

However, we pinpoint three sets of provisions below, as they are pivotal and severe on refugee rights and safety. Together, we regard them as instituting via this Bill, the said *refugee punishment regime* that will increase risks and we fear, even deaths, of those seeking protection in the UK. And, if people get to the UK, the regime systemically separates them from mainstream society. The tragic irony is all this is unlikely to meet the Home Secretary's ostensible objective of a faster, more efficient protection system and her goal to tackle human smuggling.

### **Concern (1) Wide-spread penalisation of persons seeking refugee protection**

*Clause 34: "Article 31(1) [Refugee Convention], Immunity from Penalties"*

This is the "gateway" provision in the asylum part of the Bill. If passed it enables the "differential treatment" refugee schema at Clause 10. Clause 34 does that by replacing the non-penalisation cornerstone of the Refugee Convention at Article 31(1), with this current UK government's narrow "interpretation" of that non-penalisation protection. The intention behind Article 31(1) was to recognise that the refugee predicament, which is persons fleeing persecution, human rights abuses and war, simply do not have access to authorised exit from their home country or lawful entry into States where they seek protection. That recognition of the reality of refugee flight, led to the Refugee Convention stipulation that refugees who do arrive irregularly *should not be subject to penalties including but not limited to criminal prosecution, simply due to how they arrived in the UK*. Clause 34, far from merely "interpreting" the non-penalisation protection, actually contorts it, by limiting it in such a way to enable not prevent the penalisation of refugees arriving irregularly. This has been upheld in the UK courts, notably in *R v Uxbridge Magistrates Court (ex parte Adimi)* [1999] Imm AR 560, which recognised that a refugee is not required to claim protection in the first safe country they enter, and hence cannot be penalised if they enter the UK by irregular means, due to having passed via such States. This Clause threatens to change all that. The UK Government are therefore betraying therefore the intent of the drafters, wilfully ignoring the reality of refugee flight, and deliberately seeking, in our analysis, a dreadful and wide-ranging penalisation of refugees.

### **Concern (2) "Two-tier" refugee classes, with systemic restriction and penalties**

*Clause 10: "Differential treatment of refugees";*

*Clause 11: "Accommodation for asylum seekers etc."; and*

*Clauses 13, 14 and 15: "Inadmissibility of asylum claims, and basis for support"*

Clause 10 of the Bill relies on Clause 34. It sets out the scheme for differential treatment and penalisation for refugees based on how they arrived in the UK. This clause groups refugees into two classes, along different and lesser entitlements and support for refugees categorised as in the Bill's "Group 2". That inferior status is on those who arrived through irregular means and who are declared as inadmissible to the UK asylum procedure. The restrictions placed on "Group 2" refugees are not limited within the Bill. The Home Secretary would have broad powers to treat people differently, including potentially in restricting such persons' entitlement to

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<sup>4</sup> Clause 29 of the Bill

<sup>5</sup> Clauses 16, 17, 23, 46 and 47 of the Bill

<sup>6</sup> Clause 24 of the Bill

<sup>7</sup> Clause 48 of the Bill

matters currently within Scottish devolved competences, such as health, education, housing or recent rights to vote in Scottish local and parliamentary elections. This Bill gives the power to the Secretary of State to undermine Scotland's internationally recognised New Scots: Refugee Integration Strategy. Examples of such differences and restrictions include "Group 2" refugees being consigned to (a) holding "reception" centres<sup>8</sup> possibly barracks, (b) limited financial support at no more than given to those refused asylum<sup>9</sup>; (c) constant fear of removal<sup>10</sup>; (d) restrictions on length and nature of any limited leave, and little hope of settlement<sup>11</sup>; (e) subject to No Recourse to Public Funds<sup>12</sup>; and (f) extension of such restrictions to family members and reunion<sup>13</sup>. This is plainly a "*differential penalisation regime*" against refugees. It is antithetical to the Refugee Convention's equanimity to those arriving irregularly. If passed, these clauses systemically discriminate against refugees, due only to how they fled and arrived in the UK. In effect, it requires decision makers, via inadmissibility rules in particular, to set aside Convention grounds, at least temporarily and leaving people in legal limbo. This new scheme is punishing people for being refugees.

### **Concern (3) Criminalise irregular entry of persons seeking refugee protection**

*Clause 37: "Illegal entry and similar offences"; and*

*Clause 38: "Assisting unlawful immigration or asylum seeker"*

Clauses 37 is a new criminal offence that can apply to persons arriving or entering the UK irregularly and therefore including those who are actually seeking refugee protection and safety in the UK. In detail, those knowingly arriving without entry clearance or entering the UK without permission, are in the scope of this offence. The sentences are severe: up to 12 months on summary conviction, or up to 4 years on indictment. Criminal convictions have direct and adverse impacts on access to future protection rights including against removals from the UK and returns. It remains to be seen the extent to which these offences will be pursued and prosecuted and how the Courts will consider them. The legislative intent is clear and the scope of the offence includes those arriving by irregular means such as persons seeking refugee protection, are vulnerable to the most serious penalisation of criminal convictions and imprisonment. The removal of the "for gain" requirement within the "assisting unlawful immigration" offence and increased sentence, from a maximum of 14 years to life. The upshot is that those refugees arriving irregularly seeking protection, are at acute risk of criminal penalties. In addition, even non-asylum humanitarian services – such as RNLI – could be at risk of being prosecuted for "assisting unlawful immigration", which would be absurd. Such uncertainty should be clarified urgently. This wider acute risk of criminal convictions completes this new "*differential penalisation regime*" against refugees, that is being instituted by this Bill.

### **The Bill is bad law: failing on own terms, but hurting many and costing fortune**

The tragic irony of this Bill's aggressive stripping back of the UK's refugee protection responsibilities is that it will not work on its own terms. But it will ensue vast suffering in the process of men, women and children seeking help and safety. Far from increasing fairness and efficacy in the system, it will do the opposite: the thousands already being declared inadmissible will, in the absence of returns and readmission agreements, merely add to the 109,000 asylum cases backlog<sup>14</sup>. The associated support costs increase, make this bad legislation for the Exchequer but good for the commercial companies profiting from the higher numbers in its

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<sup>8</sup> Clause 11 of the Bill

<sup>9</sup> Clause 15 of the Bill

<sup>10</sup> Clauses 14 and 26 of the Bill

<sup>11</sup> Clause 10(5) of the Bill

<sup>12</sup> Ibid

<sup>13</sup> Clause 10(6) of the Bill

<sup>14</sup> [Thousands seeking asylum face cruel wait of years for asylum decision - fresh research shows - Refugee Council](#)

accommodation with holding centres a boon driving economics of scale. All this from the public purse.

Given the absence of returns or readmissions deals and, thankfully, any practical offshore arrangements, it is difficult to see how this new regime will enable more removals. And, it will not deter those seeking protection, precisely as the evidence<sup>15</sup> is clear: the reduction of rights and wider hostile environment policies in destination States do not lead to less new arrivals, to those countries. That reconfirms the primacy of *push* factors of persecution and abuses in forced displacement and the paucity of evidence behind the so-called *pull* factors, in refugee flight predicament and decisions on futures. As a consequence, the Bill will not deter irregular entry. On the contrary, it will increase precariousness and risk for desperate people, with tragic consequences. The Bill's new refugee penalisation regime is a grim gift to those orchestrating human smuggling and trafficking networks.

Finally, we fear the institutional violence of this new penalisation scheme, will senselessly increase precariousness and hence destitution and exploitation of those in the UK who actually have strong protection claims. As in asylum support and accommodation policy now, responsibilities and costs for helping those in crisis will be borne not by Ministers or commercial contractor bosses, but by over-stretched local authorities, health services and charities. Furthermore, this Bill will extend this ongoing hostile environment practice of responsibility-shunting, now as a matter of policy, onto the Scottish criminal justice system also. That may entail an exponential, prohibitively expensive, and wrong-headed rise in criminal prosecutions and imprisonment of vulnerable people, arriving in the UK necessarily irregularly, simply in hope of safety and refugee protection. The absurdity of expensive criminalisation action against people from what are recognised as troubled States, such as Yemen, Libya, Syria, Afghanistan and Iran, speaks to the absurd consequences of this Bill.

This bill commits to nothing on refugee resettlement as well as reducing rights to family reunion, a route most often used by women and children. There are no substantive measures either on welcoming or protecting unaccompanied refugee children. In summary, far from instituting any safe and legal routes, the effect of this Bill's proposals in terms of refugees and those exploited, is to boost unsafe and irregular routes and those that run these. This is deeply irresponsible legislation.

The Bill does not they reflect the opinion of the people of Scotland. Recent polling shows that 74% of people in Scotland believe it is important to make refugees welcome here. Never was this clearer than at the Kenmure Street protests earlier this year, where crowds of people gathered and told the Home Office loud and clear that refugees are welcome here in Scotland. We hope this letter assists you in the 2<sup>nd</sup> Reading of this Bill.

We urge you to vote against this anti-refugee bill.

Yours sincerely,



Sabir Zazai  
**Chief Executive**

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<sup>15</sup> [Deciding Where to go: Policies, People and Perceptions Shaping Destination Preferences - Crawley - 2019 - International Migration - Wiley Online Library](#)