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BRIEFING ON THE ILLEGAL MIGRATION BILL FOR SECOND READING IN THE HOUSE OF COMMONS

March 2023

The Illegal Migration Bill is an assault on human rights that will put people's lives at risk and allow the Government to abuse rights with impunity.

The Bill will:

- 1. Violate the human rights of people most in need of safety and protection**
- 2. Grant vast powers to the Secretary of State to make laws with minimal parliamentary scrutiny**
- 3. Allow the Government to commit such human rights abuses with impunity and deprive people of access to justice**

We urge all Parliamentarians to reject this legislation in its entirety.

1. THE BILL WILL VIOLATE THE HUMAN RIGHTS OF PEOPLE MOST IN NEED OF SAFETY AND PROTECTION

- 1.1 This Bill is incompatible with international and domestic human rights laws. In preventing people who enter the UK without entry clearance from seeking asylum, applying for leave as a victim of trafficking or making any other kind of immigration application, and creating a duty on the Secretary of State to remove them, the Bill risks fundamentally undermining the rights of those most in need of safety and protection. The Home Secretary acknowledges on the Bill's first page that the Government cannot guarantee its compatibility with our Human Rights Act 1998 and the European Convention on Human Rights (ECHR) – a clear signal that this Bill departs from even the baseline protections offered through international law.
- 1.2 Infringing on the right to seek asylum is a violation of the UN Refugee Convention. The Bill will also breach the European Convention on Human Rights by stripping an entire group of people of their most fundamental rights, including protection from torture (Article 3 ECHR) and slavery (Article 4 ECHR), right to liberty (Article 5 ECHR), and right to effective remedy (Article 13 ECHR). It will create a discriminatory two-tiered system of human rights protection based solely on how people have entered the UK.
- 1.3 The Bill will likely violate Article 4 which prohibits slavery and servitude (including trafficking) by disqualifying potential victims of slavery or human trafficking from support and protection from removal (clauses 21-24). The Bill explicitly disqualifies potential victims of slavery or human trafficking from support under the Modern Slavery Act 2015. The Government's own ECHR memorandum identifies these clauses as the most legally contentious.
- 1.4 The Bill will likely further violate people's right to liberty under Article 5. The Bill confers wide new powers of detention to immigration officers (clause 11) and grant the Secretary of State the power to detain people in any place they consider appropriate and determine the length of time. Our immigration detention system already infringes on people's right to liberty, dignity and fair treatment and should not be expanded further.
- 1.5 The Bill also breaches fundamental rights of access to justice by severely limiting the ability for people to challenge their detention (clause 13) and appeal deportation decisions (clauses 40-41). The Bill only allows appeals on the grounds that either removal to that country would amount to "serious and irreversible harm" (clause 40) or that the conditions for removal had not been met (clause 41), without defining the "harm" threshold, and a decision to refuse an appeal is final (clause 48).

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- 1.6 Knowing these risks of rights violations, the Bill then aims to prevent the European Court of Human Rights (ECtHR) from acting to protect people through interim measures¹. Clause 49(1) of the Bill gives the Secretary of State the power “to make provision about interim measures indicated by the ECtHR as they relate to the removal of persons from the United Kingdom under this Act.” There is no indication about what these ‘provisions’ might be, meaning that MPs cannot scrutinise them.
- 1.7 This Bill will, in short, put the lives of people at risk of extreme harm, without the ability to seek or receive protection of their most basic human rights.

2. THE BILL WILL GRANT VAST POWERS TO THE SECRETARY OF STATE TO MAKE LAWS WITHOUT PARLIAMENTARY SCRUTINY

- 2.1 This Bill hands a great deal of power to the Secretary of State to make laws that may breach our international obligations, circumventing parliamentary scrutiny to do so.
- 2.2 Among the many delegated powers in the Bill is clause 25, which empowers the Secretary of State to suspend or revive the powers in clauses 21-24 to disqualify potential victims of slavery and trafficking from the support and protection from removal to which they should be entitled.
- 2.3 Four clauses are identified as ‘placeholder’ or ‘marker’ clauses, included with the expectation that they will be replaced via Government amendment during the passage of the Bill. Among these is clause 38, which allows the Secretary of State to define “serious and irreversible harm” for the purposes of this Bill.
- 2.4 That such vast powers and important provisions are left to the whims of a Secretary of State, with minimal ability for Parliament to properly scrutinise these provisions, is a dangerous lurch further towards “government by Diktat²” that should alarm all Parliamentarians.

3. THE BILL WILL ALLOW THE GOVERNMENT TO COMMIT HUMAN RIGHTS ABUSES WITH IMPUNITY AND DEPRIVE PEOPLE OF ACCESS TO JUSTICE

- 3.1 Not only will this Bill risk violating human rights laws whilst eroding parliamentary scrutiny, it also takes away vital tools to challenge injustice. This is only the latest example of the Government’s systematic dismantling of the ways ordinary people can hold it to account. This Bill primarily aims to do so by exempting its provisions from Section 3 of the Human Rights Act (HRA), which requires courts and public authorities to interpret legislation compatibly with human rights. Clause 1(5) of the Bill means that courts and public authorities will no longer be required to interpret the Bill itself, nor consequent secondary legislation, compatibly with human rights.
- 3.2 In addition to severely restricting the ability to appeal to the Immigration and Asylum Tribunal against deportation decisions, the Bill also limits the ability to challenge decisions of the Tribunal in the High Court, often the last safeguard against a breach of fundamental rights. The Bill also prevents individuals from challenging their detention in the first 28 days, handing the Secretary of State almost total impunity to detain people for up to a month.
- 3.3 By limiting the ability to challenge rights violations in our courts, this Bill will leave victims of human rights abuse with no choice but to go to the ECtHR for life-saving protections. The Bill will ultimately set the UK on a collision course with the ECHR and ECtHR.

The Illegal Migration Bill is a dangerous document. Cruel and callous, it attempts to stem migration by placing this country outside of the world it inhabits – one that in the wake of World War II agreed upon certain minimum standards and principles to adhere to for the good of us all. Disapplying human rights, openly breaching the

¹ Interim measures are orders issued by the ECtHR “on an exceptional basis, when applicants would otherwise face a real risk of serious and irreversible harm”

² Delegated Powers and Regulatory Reform Committee, Democracy Denied? The urgent need to rebalance power between Parliament and the Executive, House of Lords, 24 November 2021, <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/106/106.pdf>; Secondary Legislation Scrutiny Committee, Government by Diktat: A call to return power to Parliament, 24 November 2021, <https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/105/105.pdf>.

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ECHR, undermining the Refugee Convention, ignoring the European Court, denying access to justice, eroding parliamentary sovereignty, and making victims of slavery and human trafficking the enemy amounts to a matter of great shame. The Government should never have brought this Bill forward. Parliamentarians should let it go no further.

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