



Press release

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Scottish Government must show 'real leadership' to stop UK Government's attack on human rights

Human rights organisations have called on the Scottish Government and public bodies to use their powers and fulfil their human rights obligations to mitigate rights violations in proposed UK Government legislation.

Kay Springham KC assessed the controversial Illegal Migration Bill, currently making its way through the Westminster Parliament, for the Children and Young People's Commissioner Scotland, human rights organisation JustRight Scotland, and the Scottish Refugee Council.

Her Opinion found that the Scottish Government, local authorities, and other public bodies can, and in some cases must, use their powers and exercise their duties to soften or overcome the impact of the Bill in areas of devolved powers in Scotland. Left unchallenged, the Bill will leave over years thousands of refugees and trafficking survivors completely bereft, detained, destitute or exploited by organised crime.

According to the Opinion, the Bill encroaches on devolved areas of law without the consent of the Scottish Parliament. It finds that there is a real prospect of legal challenge to aspects of the legislation because they may breach the human rights of trafficking victims and unaccompanied children and young people, many of whom need refugee protection.

A summary of the Legal Opinion is being published ahead of a Scottish Government-led summit on the Illegal Migration Bill (21/06/2023). It will be attended by bodies like

Cosla, Police Scotland and the Crown Office as well representatives from the voluntary sector.

Nick Hobbs, Acting Children's and Young People's Commissioner Scotland, said: "The Illegal Migration Bill summit is a chance for the Scottish Government to show real leadership and for Ministers and Scottish public bodies to make concrete commitments to mitigate the worst attacks on children's rights that are in this Bill. The Legal Opinion sets out some areas in which that needs to happen urgently. There are others we will be raising on the day on issues such as age assessment. We must not see the opportunity this Summit represents wasted. By the end of it, we need a clear plan of action.

"Human rights are universal – they apply to all without exception. Refugee and asylum-seeking children have the same human rights as all other children in Scotland. But the UK Government's Illegal Migration Bill will create a two-tier approach which seeks to deny them access to protection and support under the Scottish trafficking, welfare and child protection systems. It must be resisted by the Scottish Government and public bodies to the fullest extent the law permits."

Jen Ang, Director of Development and Policy at JustRight Scotland, said: "We have already heard about how the Illegal Migration Bill will make it impossible for people to seek safety in the UK and how it will cut off protections for vulnerable people, including victims of trafficking and children who have fled war and abuse, and are arriving in Scotland alone.

"This Legal Opinion confirms that the Bill does so by cutting across areas of law devolved to Scottish Ministers and Scottish public authorities – putting them at immediate risk of breaching international human rights law if they fail to act to stem the significant harms threatened by the Bill. We are urgently pressing for Scottish Ministers, public authorities and civil society to identify and commit to concrete actions to challenge and mitigate the most harmful impacts of the Bill."

Sabir Zazai, Chief Executive of Scottish Refugee Council, said:

“In Scotland we have an ethical duty to challenge and mitigate the Illegal Migration Bill. This legislation closes the door to safety that so desperately needed by people seeking asylum, irrespective of where they fled, be that Afghanistan, Iran, Sudan and other wars, oppressive regimes and human rights abuses.

“Expert opinion makes it clear that Scottish public authorities have a legal obligation under European human rights law to maintain trafficking survivor protection that the Bill otherwise strips away. We must also protect unaccompanied children.

“We call on Scottish Ministers to lead by taking practical and swift action against this unworkable legislation. We must protect not penalise those who have come here seeking sanctuary or who are trapped in exploitation, and uphold our legal and moral obligations.”

Ends.

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- Summary of the Legal Opinion is attached.
- The Children and Young People's Commissioner Scotland's remit is to promote and safeguard the rights of children and young people, with particular emphasis on the rights set out in the United Nations Convention on the Rights of the Child. They monitor the law, policy and practice for effectiveness in relation to the rights of children and young people and promote best practice by service providers working with children. www.cypcs.org.uk.
- JustRight Scotland uses the law to defend and extend people's rights. We are an independent charity founded by human rights lawyers, working in partnership with like-minded organisations who share our vision of a fairer and more equal Scotland: <https://www.justrightscotland.org.uk>.
- Scottish Refugee Council is an independent charity dedicated to supporting people seeking refugee protection in Scotland. We provide advice, support and a listening ear to people fleeing violence, persecution and war. We campaign for a fairer and more humane asylum system in the UK. www.scottishrefugeecouncil.org.uk