

# Briefing to *MPs* on Illegal Migration Bill

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March 2023

# Children's Commissioner briefing on the Illegal Migration Bill

The Children's Commissioner for England has a statutory duty to promote and protect the rights of children in England. This includes those children who have arrived in the country fleeing war and persecution, who are often the victims of trafficking and exploitation. The Illegal Migration Bill will have a profound impact on the rights of these children.

Ahead of its Second Reading today (March 13<sup>th</sup>), this briefing sets out some of the Children's Commissioner's key concerns with the Bill itself, and the process of its introduction.

The Children's Commissioner's priorities are:

- That the Bill does not undermine children's rights as set out in the Children Act 1989. Children must continue to be allowed to claim asylum, however they have arrived here, and cannot be excluded from powers to remove them from the country without their claim being heard, whether they are alone or with their families (Clause 2, Clause 3(2) and Clause 4 (2)).
- There must be sufficient, safe and legal routes for children arriving, alone or with their families, in their home country. They should be excluded from the annual cap on number of entrants via safe and legal routes (Clause 51).
- The Home Office must no longer accommodate children directly and should use this Bill as a moment to end the practice of using hotels. As set out in the Children Act, these children should be looked after by local authorities from the day they arrive in this country, regardless of route (Clause 15).
- The Children's Commissioner believes that all children, accompanied or with their families, should be exempted from the changes to detention rules (Clause 11). It must not be made possible to detain children for indefinite periods.
- Too many children are going missing from Home Office accommodation. The Bill must not exacerbate the risks of children going missing and make them more vulnerable to abduction

and exploitation. Children who are victims, or whose parents are victims, of modern slavery must still be allowed to access support through the National Referral Mechanism (Clause 21 to 24). This must go hand-in-hand with exempting them from restrictions on claiming asylum and powers to deport them.

## **The Bill process**

Alongside the provisions within the Bill, the Children's Commissioner is dissatisfied with the process by which it has been introduced. This Bill has been introduced without any pre-legislative scrutiny. This means that a Bill which will have significant and wide-ranging impacts on children's rights has been introduced without any consultation with the Children's Commissioner, who is appointed to promote and protect children's rights. I have written to the Home Secretary to set out my concerns, and the letter is available [here](#).

There has been no publication of a Child Rights Impact Assessment, and it is unclear if one has been undertaken. One should urgently be completed and published.

The Bill as it stands leaves profound areas of uncertainty – for example, as to what form the accommodation provided to children by the Home Office will take – making proper scrutiny deeply challenging. With the Bill being committed to Committee of the whole House, there will be less space for close scrutiny of the Bill.

## **Denial of children's right to asylum, and deportation of children**

The Children's Commissioner's team recently met a boy who believes that his family have been killed in Iran, and who was brought to the UK by people smugglers. He had no idea which country he was coming to, and no choice in the matter.

The Bill sets out that children like this boy who arrive in this country irregularly, whether alone or with their families, will essentially be denied the right to claim asylum in this country.

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These are children who are fleeing persecution, who are then further exploited and abused by people smugglers. Any child arriving in the UK after these experiences must first and foremost be viewed as vulnerable, and in need of love and care. Many of these children will have been trafficked here against their will and must not be held accountable for the crimes of their adult exploiters.

The Children's Commissioner welcomes the fact that there have been schemes set up to support some children – for example, Ukrainian children – to flee war. However, it remains the case that there are other children who have no similar way to find safe haven in the UK, including those facing persecution in Iran, for example. It is the Children's Commissioner's desire that no children should be arriving in the UK through dangerous, irregular means. To achieve this goal in a way that respects children's rights, it is necessary for there to be safe and legal mechanisms for them to arrive.

The children to whom the right to claim asylum will be denied will include those who have been trafficked here. These are some of the most vulnerable children in the country – who are then forced to work as modern-day slaves, often being sexually exploited. The Bill sets out that children arriving irregularly will no longer be able to claim protection even if they have been trafficked, with no say in how they arrived in the country.

The Children's Commissioner is also deeply concerned that children with their families will be included within the 'duty to remove' and that the Home Secretary will also have powers to remove unaccompanied children. The explanatory notes set out that this power to remove children will only be used in exceptional circumstances, but there is no detail of this in the Bill itself.

### **Children's Commissioner's position:**

The Children's Commissioner is clear that children should continue to be allowed to claim asylum, however they have arrived here, and that they should be excluded from powers to remove them from the country without their claim being heard (Clause 2, Clause 3(2) and Clause 4 (2)).

There must be sufficient safe and legal routes for children arriving, so they should be excluded from the annual cap on number of entrants via safe and legal routes (Clause 51).

### **Key questions:**

- In what circumstances would the power to remove unaccompanied asylum-seeking children be used, and what regulations will govern its use?
- How will those children who have been trafficked here be identified and protected?

### **Detention of children**

The Bill as it is drafted is likely to significantly increase the detention of children. The Children's Commissioner has been concerned about children being detained at both the Kent Intake Unit and in the Manston detention centre, and the conditions they are kept in. The Children's Commissioner regularly visits children in all forms of detention – secure children's homes, young offenders' institutes, and mental health settings. She has a statutory duty to promote and protect the rights of children living away from home, and is also part of the National Preventative Mechanism. This is the body designated by Government to ensure that the UK is abiding by the Optional Protocol on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is not clear from the Bill where children will be detained, and how these places will be inspected to ensure that children are safe.

### **Children's Commissioner's position:**

The Children's Commissioner believes that all children, accompanied or with their families, should be exempted from the changes to detention rules (Clause 11).

### **Key questions:**

- How many more children are likely to be detained as a result of this Bill?
  - Where will these children be detained, what regulations will those settings abide by, and who will monitor them?
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## **Home Office accommodation for children**

The Children Act 1989 is the legislation that sets out how children in England should be supported and protected from harm. It is clear that any child who has no parents or carers to look after them should be cared for by local authorities. However, this Bill sets out that instead the Home Office will provide accommodation for these children, and then be able to direct local authorities to receive children into care, and return children from their care to Home Office accommodation. Since 2021 the Home Office has been accommodating these children in hotels. From several visits to these hotels, the Children's Commissioner is unconvinced the Home Office has been able to adequately care for children in this manner. These children should have looked after status from the moment they arrive and be in the care of local authorities. They must have access to legal aid, advocacy, education and care, in foster homes or children's homes. This Bill formalises a situation where children who have come to this country alone, fleeing abuse or persecution, are treated differently to children living who here are experiencing abuse. This is unacceptable. A child is a child, no matter their country of origin.

It is unclear from this Bill what the Home Office accommodation for these children will be, what standards it will have to meet, who will inspect it or how long children will spend in it. The Bill is extremely unclear about what provisions will be made in this accommodation to ensure that children are safe.

### **Children's Commissioner's position:**

The Children's Commissioner believes that the Home Office must not accommodate children directly and should use this Bill as a moment to end the practice of using hotels. As set out in the Children Act, these children should be looked after by local authorities (Clause 15).

As long as hotels are still in use, it is essential that children within them have access to legal support and advocacy. The Children's Commissioner wants to see every child in the hotels, as they are now, having access to an Independent Child Trafficking Guardian. Additionally, the Children's Commissioner's team should be adequately resourced to visit all children in hotels regularly and provide advocacy to them.

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## Key questions:

- Will this Home Office accommodation be regulated, and if so how? What will the standards be, and who will inspect them?
- How will the Home Office powers to accommodate children and to direct a local authority to return a child from care be compatible with the Children Act?
- Will the Secretary of State have powers to direct children to be looked after, or returned from care, by authorities in Scotland, Northern Ireland and Wales?
- Will children be detained in this accommodation?
- What package of care will children receive?
- What access to legal advice and advocacy will children in these settings receive?

## Increased risk of exploitation

Children who have arrived in this country irregularly have already faced the most difficult circumstances – war or persecution in their home country, and very often exploitation and abuse on their journeys here. As we have seen, many children then go missing once they arrive here, often as traffickers and abusers abduct them to continue their exploitation.

This Bill sets out that even children who are allowed to stay will be removed once they turn 18. The Children's Commissioner is deeply concerned that this will mean that children who fear being returned to their home country will be much more likely to go missing and be drawn into abuse and exploitation. Foster carers, children home staff and local authorities will be faced with impossible challenges as children are told by abusers that the only way to avoid deportation is to go missing. Without the right to claim asylum, these children will then live in a legal limbo, with no incentive to turn to services for help.

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The Bill sets out that children who are themselves victims of modern slavery, or the children of victims of modern slavery, will no longer be able to access any of the existing protections for victims identified through the National Referral Mechanism. These victims will be incentivised to avoid seeking support and help, out of fear of deportation.

The Children Act 1989 sets out clear duties to protect children from harm and safeguard them from exploitation. It is unclear how the provisions in this Bill will support local authorities to fulfil these duties.

### **Children's Commissioner position:**

Children who are victims, or the children of victims, of modern slavery must still be allowed to access support through the National Referral Mechanism (Clause 21 to 24). This must go hand in hand with exempting them from restrictions on claiming asylum and powers to deport them.

### **Key questions:**

- What will the Home Office do to address concerns that these measures will dramatically increase children's vulnerability to exploitation?
- How will the Bill be compatible with local authorities' duties to protect children from harm under the Children Act?





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