

Illegal Migration Bill – Priorities for Amendment Drafting

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Children's Commissioner's Priorities for Amendment Drafting – Illegal Migration Bill

The previous briefing that the Children's Commissioner's office shared set out in detail the Children's Commissioner's main concerns about the Illegal Migration Bill.

Ahead of the Committee Stage next week, this document provides an overview of the amendments and some clarifications that the Children's Commissioner would like to see reflected in the Bill. The document also includes some suggested questions for members to raise during the Committee Stage debate.

Safeguarding and protection of children

It must be made clear that Local Authorities will retain all their duties under the Children Act towards every child, regardless of their legal status, whether they are accompanied or unaccompanied, or where they are residing.

It is entirely unclear how these powers would sit alongside Local Authorities duties under s17 of the Children Act 1989 to safeguard any child in their area and take them into their care under s20 if the criteria for doing so are met. The Bill has the potential to make it harder for Local Authorities to fulfil their duties in the Children Act 1989 in relation to ensuring stability for children as their cooperate parent and to protect and support child victims of trafficking and exploitation.

Likewise, Working Together to Safeguard Children 2018 clearly details the Home Secretary's duty to safeguard and promote the welfare of children in relation to asylum and nationality issues, as set out in the Borders, Citizenship and Immigration Act 2009. This Bill must clarify how those duties will be fulfilled for all children.

Question to raise:

Could the Home Secretary clarify how Local Authorities will be able to fulfil their duties under the Children Act 1989 and confirm that all children arriving in the country alone or with their families will receive parity of protection?

Will the Home Office be introducing new guidance to outline how the department will uphold their safeguarding duties to children as set out in Working Together to Safeguard Children 2018 and the Borders, Citizenship and Immigration Act 2009?

Safe and legal routes

In order to ensure that safe and legal routes are provided prior to the passage of this Bill, an amendment should be made to ensure that additional safe and legal routes – Clause 51 – are agreed before the Bill passes. Children should be excluded from the cap on those coming by safe and legal routes.

Question to raise:

It is essential that there are safe and legal routes for unaccompanied children and children with their families who are fleeing war to come to the UK. How is the Government going to ensure that there are safe and legal routes for children and families?

Inadmissibility of asylum claims

Children – whether accompanied or unaccompanied – must be excluded from the provisions in Clause 4 which would render their claims to asylum inadmissible, whether on the basis of a protection claim or human rights claim. This would also need to ensure that families would not be separated, so parents would need to be able to make the same claim.

Duty to remove.

Children and their families should be excluded from the duty to remove in Clause 2. In Clause 3, unaccompanied children should be removed from the power to remove, and also be removed from the duty to remove beyond their 18th Birthday.

Question to raise:

In what circumstances would the power to remove unaccompanied asylum-seeking children be used?

Home Office accommodation for children

The Home Office should not be provided with the legal power to accommodate children – Clause 15 – or to direct a looked after child to be returned to Home Office Accommodation – Clause 16.

Question to raise:

The Bill is unclear on what the state of the accommodation will be for children while awaiting transfer to local authority care or removal from the country. What regulations will be in place for Home Office provided accommodation? If the accommodation is regulated which body will inspect them?

How will decisions be made about which children will be housed in Home Office run accommodation while awaiting transfer versus being directly transferred to local authority care?

Detention of children

Unaccompanied children and children with their families must be exempt from the changes to detention rules in Clause 11.

Modern slavery – protection from exploitation

At the very least, children and their families must be allowed to make a claim to asylum if they have been a victim of trafficking or modern slavery so this would require an amendment to Clause 4, and for these children and families to be exempted from the power and duty to remove (Clause 2 and 3).

Moreover, Clause 22 should be amended to ensure that disapplication of the Modern Slavery Act protections would not apply to children and parents.

Children and families who have been identified as victim of trafficking or modern slavery should be exempted from the disapplication of being able to access support through the National Referral Mechanism (NRM) in Scotland and Northern Ireland.

Finally, every unaccompanied asylum-seeking child should be assigned Independent Child Trafficking Guardian to support them through their asylum process.

Question to raise:

In regard to unaccompanied children who have been victims of trafficking or modern slavery, could the Home Secretary clarify that children would not be removed to a country where they could be at risk of further exploitation even if it is listed as safe?

Disapplication of the Independent Family Review Panel

The IFRP plays a vital role in safeguarding families and children from harm, while awaiting removal and by ensuring that they are returned to a country that is safe and can meet their needs. Clause 14 which aims to disapply the Home Secretary's duty to consult the IFRP must be removed from the Bill.



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