

Briefing to MPs ahead of the Report Stage of the Illegal Migration Bill

April 2023

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Briefing for MPs ahead of Report Stage of the Illegal Migration Bill

As the Illegal Migration Bill enters Report Stage on Wednesday 26th April, the Children's Commissioner remains concerned about provisions in the Bill for children and young people. The Children's Commissioner for England has a statutory duty, as set out in the Children Act 2004, to promote and protect the rights of children all children, with particular regard to children living away from home or receiving social care services.

During Committee Stage the Children's Commissioner was glad to see so many members recognise the needs of children, whether unaccompanied or with their family. The Children's Commissioner welcomes the fact that members have laid amendments seeking to prevent children from being accommodated by the Home Office, removing children from the duty and power to be removed, to prevent their detention, and to improve protections for child victims of trafficking.

Since Committee Stage of the Bill the Children's Commissioner has sought further assurance from the Home Office about protecting children and young people

The Children's Commissioner is concerned about the safety of unaccompanied children who are housed in Home Office run accommodation while awaiting transfer to local authorities. These children should have looked after child status from the moment they arrive and should be in the care of local authorities.

The Bill has the potential to make it harder for local authorities to fulfil their duties in the Children Act 1989. 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.

The Children's Commissioner has written to the Home Secretary to ask for assurances that appropriate safeguarding practices are in place across the hotel provision to protect and support vulnerable unaccompanied children – and remains concerned about unaccompanied children's welfare when they are housed in the hotels.

To investigate these issues in greater detail the Children's Commissioner wrote to the Home Office on the 5th of April to request information about the treatment of children seeking asylum in the UK, using [Section 2F of the Children Act 2004](#). The Commissioner requested child level data on all unaccompanied children aged 17 years or younger seeking asylum in the UK, who have been accommodated by the Home Office in hotel accommodation for at least one night since July 2021. The full data request is published alongside this briefing.

The Home Office was given a deadline of the 17th of April to respond to the request and is yet to receive the data. The data requested was administrative data that should be routinely collected. Given the Home Office has yet to respond to the statutory data request, the Children's Commissioner is concerned that the data is not being systemically recorded. The Children's Commissioner wrote again to the Home Secretary to follow up on the request as a week has now passed since the statutory data request deadline.

As the Bill enters Report Stage, the Children's Commissioner has reiterated her priority areas for amendments.

Priority areas for amendments

1. The Home Office should not accommodate 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.

The Children's Commissioner welcomes Alison Thewliss MP's amendment proposing leaving out Clause 15 and Dame Diana Johnson MP's proposal to leave out Clause 16.

Questions 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?

2. There should be safe and legal routes for children seeking asylum.

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.

The Children's Commissioner welcomes Tim Loughton MP's amendment requiring the Home Secretary to outline which safe and legal routes are available within 6 months of the Bill being passed. Dame Diana Johnson MP's amendment excluding children from the annual cap on number of entrants is also welcomed.

Questions 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?

3. Children should be able to claim asylum.

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.

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 should also be removed from the duty to remove beyond their 18th Birthday.

The Children's Commissioner welcomes Alison Thewliss MP and Stella Creasy MP's amendments that would exempt children from the duty to remove in Clause 2. The office also welcomes Tim Loughton MP's amendment that removes unaccompanied children from the power to remove in Clause 3, and Dame Diana Johnson MP's amendment which would exempt unaccompanied children from the duty to remove when they turn 18.

The Children's Commissioner notes that the Government has laid amendment 174 which provides some further clarity on when the power to remove an unaccompanied child would be used. However, this amendment still leaves a significant grey area about 'other circumstances' in which children could be removed, or how it will be determined if it is safe for a child to return home.

Questions to raise:

- What are the 'other' circumstances in which the power to remove unaccompanied asylum-seeking children would be used, and how will it be determined if it is safe for a child to return?
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4. Children should be exempted from changes to detention.

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

The office welcomes Dame Diana Johnson MP's amendment to prevent immigration officer's detention powers being used on unaccompanied children, families with dependent children or pregnant women. The Children's Commissioner equally welcomes Tim Loughton MP's amendment seeking to ensure that unaccompanied children could only be detained in secure accommodation if they would be likely to abscond from other forms of accommodation, and if doing so would mean they were likely to suffer significant harm.

The Children's Commissioner notes Government amendment 134 which allows for the Home Secretary to make regulations specifying time limits on detention for unaccompanied children. It is not clear what these time limits would be, and there are no equivalent provisions for children with their families.

Questions to raise:

- How is the Home Secretary going to ensure that unaccompanied children and children with their families are detained for as short a period as possible?
- How many additional children does the Home Secretary believe will be detained as a result of these changes?

5. Child victims of modern slavery must receive support and protection.

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

Children and families who have been identified as victims 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.

The Children's Commissioner welcomes Theresa May MP and Sir Iain Duncan Smith MP's amendment to exempt people who have been unlawfully exploited in the UK from provisions in the Bill which would otherwise require their removal during the statutory recovery period (a minimum of 30 days)¹ and prohibit them being granted limited leave to remain.¹

The office welcomes Dame Diana Johnson MP's amendment proposing the Independent Child Trafficking Guardian are available to support every asylum seeker under the age of 18 in their interactions with immigration and asylum processes.

Questions to raise:

- If a child has been a victim of trafficking, with no say in which country they travelled to, will the Home Secretary ensure that they are able to access protection and support?
- 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?

¹ Following a positive Reasonable Grounds (RG) decision potential victims of modern slavery are provided with a recovery and reflection period ("recovery period") of a minimum of 30 days.

Case studies from Children's Commissioner's Help at Hand team which outline vital role that the NRM plays for child victims for exploitation

Tan is a 15-year-old Vietnamese boy who was trafficked to the UK for child labour. He was discovered during a police raid and referred to the NRM. Tan was placed in local authority care and given support as a looked after child.

He was initially placed in a children's home but then moved on to a foster family, where he was able to settle well. While the Help at Hand team were involved, Tan had a positive 'Reasonable Grounds' decision for trafficking and was waiting for the conclusive grounds' decision.

His English was very limited, but he was being supported with his health, education and general wellbeing. His social work team also offered support with finding his family in Vietnam via the Red Cross. Help at Hand was involved because Tan was initially concerned about leaving his children's home, where he was comfortable. The team supported Tan to access independent advocacy so he could express his views about this, but he ultimately accepted the decision to move and was happy with his new carers.

Albin is a 16 year old, Albanian national, who only came to the UK in September via boat. He was trafficked for gang and drug exploitation. When he arrived it was clear to both the Border Force and the police that he was very young, malnourished and had significant learning difficulties (even the interpreter at court stated he was not even able to understand his own language).

When he was signposted to Help at Hand, an NRM, Independent Child Trafficking Guardian, a Foreign National Offender and Refugee Council referral had all been completed from the staff at the secure unit where he was housed. Every professional he engaged with said he lacked social skills and social responses for a child of his age.

Without the NRM decision (he received a Reasonable Grounds Decision) he would have not been processed through the immigration/asylum route as quickly and he would have not received the adequate support to meet his needs. Upon receiving the positive decision for the NRM, the social care team worked to transfer him to a suitable placement.

6. Independent Family Review Panel should not be disapplied.

The Independent Family Review Panel (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. The Children's Commissioner notes that Government amendment 84 also disapplies the requirement to consult the IFRP in the removal of unaccompanied children.

Questions to raise:

- How is the Government going to ensure that there is appropriate scrutiny of the plans for the removal of a child?

7. Age assessments must be conducted sensitively.

As set out in the children's fact sheet that accompanies the Bill, the Home Office is setting up its National Age Assessment Board (the NAAB). The Children's Commissioner understands the importance of age assessment of children to be conducted accurately and appropriately.²

However, the Children's Commissioner is concerned about the independence and impartiality of the NAAB as well as the introduction of scientific methods. Conducting a holistic age assessment is a sensitive process and should be conducted independently from the Home Office and by experienced social workers with knowledge of the age assessment process.

The Children's Commissioner notes with concern Government amendment NC25 which sets out that if a child does not consent to scientific methods being used, they will be treated as an adult. If an unaccompanied child is not looked after, and so has no legal guardian, and does not have the capacity to consent (because they are not Gillick competent) it is unclear who would be able to do so on their behalf. It is also unclear how it will be possible to ensure that a child will be able to genuinely consent, free from duress, giving the implications of not consenting. It is unacceptable that they should then be treated as an adult.

Where a child's age is disputed the Children's Commissioner is clear that those awaiting resolution should be treated as vulnerable children first and foremost. Children should be swiftly transferred to local authorities where they can receive care and support.

Questions to raise:

- How is the Home Office going to ensure that the NAAB recruits social workers with the experience and expertise in conducting age assessments?
- How is the Home Office going to ensure that impartiality is maintained throughout the age assessment process?
- In regard to the introduction of scientific methods for age assessment, will the Home Office publish an overview of the evidence base it is drawing on to ensure that the assessments are appropriate?
- How will it be determined if a child has the capacity to consent to scientific methods of age assessment, and what will happen for children who do not have such capacity?
- How is the stipulation that anyone not consenting to scientific methods of assessment will be treated as an adult compatible with seeking genuine consent?
- For children whose age is in dispute, what government body will be responsible for ensuring that they are able to access medical treatment given that they would not have looked after status?

Suggestions for general interventions on safeguarding of children in relation to the Bill:

How will the Home Secretary ensure that local authorities are able to fulfil their duties under the Children Act 1989 towards children arriving in UK given the substantial additional practical challenges to protecting children that this Bill will introduce?

How will the Home Secretary ensure that she meets her duty to safeguard and promote the welfare of children as set out in Section 55 of the Borders, Citizenship and Immigration Act 2009?

References

¹ Home Office, 2022, Nationality and Borders Bill: abuse of modern slavery protections factsheet, [link](#). Accessed on 24/04/23.

² Home Office, 2023, Illegal Migration Bill: Children's Factsheet, [link](#). Accessed on 05/04/23



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