

Briefing for Peers on the Illegal Migration Bill

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Impact of the Illegal Migration Bill on Children

As the Illegal Migration Bill enters the House of Lords, the Children's Commissioner remains concerned about provisions in the Bill for children and young people. The Children's Commissioner 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.

This briefing sets out the Children's Commissioner's concerns about the overarching impact of the Bill on children, and specific areas where changes are needed. The Children's Commissioner for England has a responsibility for reserved matters across the UK and consults regularly with the Children's Commissioners for Scotland, Northern Ireland and Wales. The respective offices have worked together since the Illegal Migration Bill has been introduced to make sure children who arrived in the UK - unaccompanied or with their families - have their rights upheld and their voices heard.

During Committee Stage in the Commons the Children's Commissioner was glad to see so many MPs recognise the needs of children, whether unaccompanied or with their family. The Children's Commissioner notes that the Government has amended the Bill in response to some of the concerns raised, and has committed to further work.

However, the Bill still has the potential to significantly undermine efforts to safeguard children who have arrived in this country, including those who have been trafficked or exploited. Although it does not make any changes to local authority duties under the Children Act, or to Home Office's own safeguarding duties under the Borders, Citizenship and Immigration Act 2009, it will in practice make it far harder to make sure that those children are appropriately cared for and kept safe. Children's rights are universal. They apply to all without exception, and regardless of their immigration status. The UK Government must not remove rights protections from children and families in vulnerable circumstances. The enactment of this Bill would place the UK in clear breach of its international law obligations under a range of children's rights treaties, including the UN Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR), and the Convention and Protocol Relating to the Status of Refugees (the Refugee Convention 1951).

Who are the children the Bill will affect?

This Bill will affect children arriving ‘irregularly’ in the UK, whether alone or with their families. The vast majority will be denied the opportunity to make any claim for asylum. While some unaccompanied children will be allowed to remain in the UK until they turn 18, there will be a power to remove them which is poorly defined, and the rest will be removed when they turn 18. The Home Office for the first time will have the power to accommodate unaccompanied children, when legislation – the Children Act 1989 – is clear that these children should be in the care of Local Authorities. The Children Act 1989 applies predominantly to England and Wales, with parallel legislation applying in Scotland (Children (Scotland) Act 1995) and Northern Ireland (The Children (Northern Ireland) Order 1995).

In England in March 2022, there were 5,570 children who were unaccompanied asylum-seeking children (UASC); this group represented about 7% of all Looked After Children in 2022.¹

Some of these children have made the journey on their own. Others have become separated from their families on the journey. Since July 2021, the Home Office has been accommodating some of these children in hotels while they wait for a local authority to care for them. While public bodies’ statutory and children’s rights duties still apply during this period, we are concerned that in practice there is no one who is taking responsibility for their care or access to necessary services. The accommodation they are in is neither a children’s home nor regulated by Ofsted or any other body.

On a Children’s Commissioner visit to a hotel in March 2023, all the children except for one were under 16, and all came from countries known widely to be unsafe: Afghanistan, Syria, Eritrea and Iran. All children are vulnerable, but these children’s vulnerability is compounded by their lack of spoken or written English, their lack of familial or other support network in the UK, and their lack of knowledge of their rights.

¹ DfE, *Children looked after in England including adoptions, 2022*, [Link](#). Accessed on 18/11/22.

On visits the Children's Commissioner has spoken to children in this situation. One child said "it was not a choice" which country he came to, but, it was instead up to the smuggler. One tearful child was extremely distressed because he thought his whole family may have been murdered – he was the only one to escape. He had no way of contacting them. He did not have anyone in the accommodation who spoke his language and he was lonely.

General questions to raise about the impact of the Bill on children:

- 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?

Priority areas for amendments

1. Children should be able to claim asylum.

The most fundamental change required to the Bill is that children – whether accompanied or unaccompanied – should be excluded from the provisions in Clause 4 which would render their claims to asylum inadmissible. Children and their families should be excluded from the duty to remove in Clause 2. In Clause 3, there should be no power to remove unaccompanied children. The Government has amended Clause 3 seeking to clarify the power to remove unaccompanied children, but this change does not go far enough. The power could still be used to remove children in 'other circumstances' which are not detailed.

The duty to remove should not apply to those who arrived here as unaccompanied children. If a child arrives in this country, lives with carers, forms relationships, attends education and builds a life here for many years, they should not suddenly be removed at 18. This duty will make it incredibly hard to

safeguard unaccompanied children, as they will likely go missing rather than be deported, leaving them very vulnerable to exploitation.

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?**

2. 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.

Since 2021, the Home Office has been accommodating these children in hotels on an 'emergency' basis. 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. They must have access to legal aid, advocacy, education, and healthcare, in foster homes or children's homes.

Under s17 of the Children Act 1989 (and under s22 of the Child (Scotland) Act 1995 and s18 of the Children (NI) Order 1995), local authorities have a duty to safeguard and promote the welfare of any child in their area. They equally have duties to investigate any child suffering significant harm and to provide them with accommodation if the criteria for doing so are met. However, The Children's Commissioner believes that these duties are not currently being met for children living in the hotels.

This Bill runs the risk of formalising and exacerbating a situation where children who have come to this country alone, fleeing abuse or persecution, are treated differently to other children in the UK who are in need of care and accommodation.

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 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 Home Office was given a deadline of the 17th April to respond to the request but the Commissioner 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.

Health needs of asylum seeking children

Children seeking asylum have very high levels of health needs. [RESPOND](#), an outreach health service run by University College London Hospitals NHS Foundation Trust, identified physical health needs in 88% of unaccompanied children in local authority care, mental health needs in 51%, evidence of torture in 37%, infection in 44% (12% with multiple infections), dental pain in 32% and vision difficulties in 22%. High-quality and intensive healthcare support is vital for this group of children, and further demonstrates why unstable hotel accommodation is not appropriate.

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?

3. 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 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 notes Clause 59 on reporting on safe and legal routes, which acknowledges the importance of ensuring these are in place. However, the Commissioner's position is that safe and legal routes must be agreed in parallel to the passage of the Bill, and that children must be excluded from the cap on numbers.

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?

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. The Bill would remove the current time limits for how long children can be detained (24 hours if they are unaccompanied, or 72 hours if they are with their families), and would mean that they can be detained wherever the Home Secretary deems appropriate.

The Commissioner is deeply concerned about children being detained for significant periods of time, and their safety in these settings. Article 37 of the UNCRC is clear that children must be detained for as short a time as possible, and must be treated with respect and care.

The Government has amended Clause 10 allowing for the Home Secretary to make regulations specifying time limits on detention for unaccompanied children. However, it is not clear what these time limits would be, and there are no equivalent provisions for children with their families. It is unclear where children would be detained, or how these places would be regulated and inspected.

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?
- What settings could children be detained in, how would they be regulated, and who would inspect them?

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

The Children's Commissioner and her team have met children who have been trafficked to this country – children who had no say in which country they were coming to, and who are victims of criminal gangs. As the case studies below demonstrate, these children are in need of care and support, not further punishment because of the acts of their adult exploiters. The Children Act and accompanying guidance is clear that children who are the victims of trafficking should be entitled to protection and care.

In Scotland, the relevant legislation is the Human Trafficking and Exploitation (Scotland) Act 2015, which sets out duties on public bodies to protect and support child victims of trafficking and exploitation. In Northern Ireland the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 sets out similar.

At the very least, children and their families who have been a victim of trafficking or modern slavery must be allowed to make a claim to asylum. 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).

Clauses 21 to 24 should be amended to ensure that disapplication of the Modern Slavery Act protections and support would not apply to children and their parents, across all countries in the United Kingdom. Children and families who have been identified as victims of trafficking or modern slavery must still be able to access support through the National Referral Mechanism (NRM), and to be able to access the reflection and recovery period. This is the period of time granted to victims to allow them to escape the influence of their traffickers, and decide whether to work with law enforcement.

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

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?

Case studies from Children's Commissioner's Help at Hand team about child victims of Modern Slavery

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 Clause 56 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

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

duress, giving the implications of not consenting. It is unacceptable that they should then be treated as an adult. This amendment directly contradicts the Science Advisory Committee's recommendation which outlines that UCSA should have 'information explaining the risks and benefits of biological evaluation in a format that allows the person undergoing the process to give informed consent and no automatic assumptions or consequences should result from refusal to consent'.³

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?

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1127181/14.169_HO_AE_SAC_report_V6_FINAL_WEB.pdf

- 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.

Case studies from Children's Commissioner's Help at Hand team about age dispute

Alemu arrived from Ethiopia via Calais by boat. He came with friends he made on the way from the same part of Ethiopia. He arrived in Europe via Ukraine, but when the war started he travelled from there to France on foot and by train. He doesn't know what's happened to the rest of his family. He arrived in the UK without his belongings and a passport as he lost them when he fled Ukraine.

Alemu's age is disputed and so he has struggled to get access to education and medical treatment. When he first arrived, he spent four months in different hotels. As his age dispute still isn't resolved he is living in a residence with 500 others, all of whom are adults except one child there with family. He says he isn't comfortable in the accommodation because he is surrounded by other adults, who smoke and drink a lot.

Additional implications for Bill for asylum seeking children in devolved areas

Through consultation with the Children's Commissioners for Scotland, Wales, and Northern Ireland it is clear that this Bill will negatively impact directly on refugee and asylum-seeking children in devolved jurisdictions of Scotland, Wales and Northern Ireland and on the powers and duties of the devolved governments, local authorities, and other public bodies under devolved legislation. Unaccompanied asylum-seeking children are in an especially vulnerable situation, and it is concerning that the Bill gives the UK Government the power to disapply existing statutory duties in Scotland, Wales and Northern Ireland owed to unaccompanied asylum-seeking children under the Children (Scotland) Act 1995, The Children (NI) Order 1995, and the Rights of Children and Young Persons (Wales) Measure (2011) which places a duty for Welsh Ministers to pay 'due regard' to children's human rights under the UNCRC. These duties include local authority duties to provide children in need with support and accommodation, irrespective of their immigration status. It also conflicts directly with the Welsh Government's Nation of Sanctuary commitments as set out in the *Nation of Sanctuary – Refugee and Asylum Seeker Plan* (2019).

Human trafficking and exploitation are matters which are devolved to the Scottish Parliament, and the NI Executive. However, the Bill would give the UK Government the power to disapply existing legislation in Scotland (Human Trafficking and Exploitation (Scotland) Act 2015) and in Northern Ireland (Human Trafficking and Exploitation Act (NI) 2015) which sets out duties relating to support and protection for child victims of trafficking and exploitation. Children who have been trafficked are entitled to protection and support to aid recovery. Removing those who arrive in the UK through irregular means from the scope of these protections will condemn thousands of children to criminal exploitation and will play directly into the hands of serious organised crime gangs. It violates the State's obligations under both the European Convention on Human Rights (ECHR) and the UNCRC.



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