

Illegal Migration Bill – Briefing on Children

24th March 2023

Outline of the key provisions within the bill

The Illegal Migration Bill seeks to make asylum applications made people who arrive irregularly into the UK **permanently inadmissible**, including those made by both accompanied and separated children.¹ Any claim that is declared inadmissible cannot subsequently be considered within the UK's asylum process.²

The Bill also places a duty on the Home Secretary to arrange for the **removal of anyone arriving irregularly**,³ and while there is an exception for separated children, she **retains the power to remove them which becomes a duty when a child turns 18**.⁴ There are extensive powers to **detain people, including children, with no time limits** applying⁵ and with applications for bail not possible for the first 28 days.

Impact on children

Clause 14 disapplies the safeguard duty to consult the Independent Family Returns Panel when a child is going to be removed or detained.

Clauses 15-20 deal with issues relating to the right of separated children. Significantly, these provisions are likely to undermine the key principles of the child protection framework, by giving the Home Secretary the power to provide accommodation and other forms of support to separated children under the 'looked after' provisions, which are explicitly reserved to local authorities,⁶ as well as the power to terminate a child's 'looked after' status when they are in care of a local authority. **For the past 18 months, the Home Office has been providing accommodation to vulnerable children and 200 of these children went missing from the Home Office care, yet to be found. The provision of accommodation and support to children sits outside of the Home Office's competence and knowledge base.**⁷

- **Clause 15** - Confers a power on the Home Secretary to directly provide accommodation to children or to ask a third party to do so (without any limit for the period a child can spend in Home Office accommodation). For example, the Home Secretary will be able to open reception centres for separated children and keep this group of children outside of the scope of the 1989 Act and in contravention of well-established principles that should apply to all children in the UK.
- **Clause 16** - Creates a transfer system of separated children from the Home Office into a local authority in England and vice versa within 5 working days.

¹ Clause 4(2) <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/220262.pdf>

² Clause 4(3) *Ibid.*

³ Clause 2 *Ibid.*

⁴ Clause 3(2) *Ibid.*

⁵ Clauses 11, 12 and 13 *Ibid.*

⁶ Section 20 and Section 21 of the Children's Act 1989: <https://www.legislation.gov.uk/ukpga/1989/41/contents>

⁷ Confirmed in the judgment by *R (Medway Council) v Secretary of State for the Home Department* [2023] EWHC 377 (Admin) at [39].

- **Clause 17** - Imposes a duty on local authorities to provide information to the Home Secretary about children in their care and in the format requested by the Home Secretary. Such duty might lead to abuse of children's right to privacy and is likely to expand hostile environment into the childcare provisions, destroying the trust that social workers build with children.
- **Clause 18** - Provides for an enforcement mechanism to ensure compliance by local authorities with information requests made by the Home Secretary.
- **Clause 19** - Creates a broad delegated power for the Home Secretary to extend the provisions in Clauses 15-18 to Wales, Scotland and Northern Ireland. Such steps might significantly interfere with powers which are devolved.
- **Clause 20** - Amends section 69 of the Immigration Act 2016 to facilitate the transfer of responsibility for caring for separated children who will be subject to a new inadmissibility regime from one local authority to another.

Key principles on children

- The right to protection from persecution, discrimination and violence is a cornerstone of our international and domestic laws, including the UN Convention on the Rights of the Child. We are deeply concerned that provisions in the bill will significantly undermine these principles.
- Significantly, provisions are likely to **undermine the key principles of the child protection framework, including the UN Convention on the Rights of the Child and the 1989 Children's Act** by giving the Home Secretary the power to provide accommodation and other forms of support to separated children **According to the Refugee Council's impact assessment,⁸ between 13,089 and 14,935 unaccompanied children and between 26,483 and 30,218 children with family members will have their asylum claims deemed inadmissible.** It is difficult to see how the Home Secretary can fulfil her duties to promote and safeguard children in the context of such draconian rules being introduced.
- In total, between £10.1bn and £11bn will have been spent on detaining and accommodating people impacted by the bill.⁹

For any further information, please contact:

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⁸ <https://www.refugeecouncil.org.uk/information/resources/illegal-migration-bill-impact-assessment/>

⁹ *Ibid*