

Illegal Migration Bill – Briefing on Children for the House of Lords

7th June 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 applying**⁵ 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 rights of separated children who are in need. 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 the care of a local authority. **For almost two years now, the Home Office has been providing accommodation to vulnerable children, and 200 of these children went missing from the Home Office care, with 186 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 five 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 a child'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.

Moreover, the Government introduced clauses that deal with situation where **a child's age is disputed**, i.e. when the Home Office does not believe they are under 18 years old. The new Clauses 55 and 56 allow for the detention of children for the purpose of age assessments and pave the way for the use of scientific methods to confirm age. These provisions are deeply concerning and run contrary to the wealth of evidence that has been collated over the years by experts in relation to the age assessment process, including a recent report commissioned by the Home Office, which confirmed that scientific methods provide an age range rather than a precise age.⁸

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, like 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,⁹ 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 safeguard and promote the welfare of children, i.e. s55 Borders, Citizenship and Immigration Act 2009 duty in the context of such draconian and regressive rules being introduced.
- In total, between £10.1bn and £11bn will have been spent on detaining and accommodating people impacted by the Bill.¹⁰

Amendments

The following amendments seek to introduce safeguards and compliance with the provisions of the Children Act 1989:

★ Amendment 81, sponsored by Bishop of Durham

Clause 16, page 23, line 32, at end insert —

“(4A) But the Secretary of State may not make a decision under subsection (4) unless to do so is necessary to

⁸ Interim Age Estimation Science Advisory Committee, [Biological methods to assess unaccompanied asylum-seeking children's age](#).

⁹ <https://www.refugeecouncil.org.uk/information/resources/illegal-migration-bill-impact-assessment/>

¹⁰ *Ibid.*

safeguard and promote the welfare of the child.”

Member’s explanatory statement

This amendment limits the Secretary of State’s power to transfer a child out of local authority care and into accommodation provided by the Secretary of State, by providing that they may only do so where to do so is necessary to safeguard and promote the welfare of the child.

Practical application: This amendment limits the Secretary of State’s power to transfer a child out of local authority care and into accommodation provided by the Secretary of State, by providing that she may only do so where to do so is necessary to safeguard and promote the welfare of the child.

★ Amendment 82, sponsored by Bishop of Durham

Clause 17, page 24, line 26, at end insert—

“(4) A local authority may not provide any information to the Secretary of State under this section about an identifiable child, unless to do so is strictly necessary to safeguard and promote the welfare of the child.

(5) The Secretary of State may not use or disclose any information about an identifiable child provided by a local authority under this section except for the purpose of making a decision under section 16(1) or (4), unless to do so is strictly necessary to safeguard and promote the welfare of the child.”

Member’s explanatory statement

This amendment limits the circumstances in which the power conferred by Clause 17 can be used to share information about identifiable children, and limits the use and disclosure of such information.

Practical application: The purpose of this amendment is to limit the circumstances in which the power conferred by clause 17 can be used to share information about identifiable children. It will ensure that the power can only be used for that purpose when it is strictly necessary to safeguard and promote the welfare of the child. It will also ensure that the Secretary of State cannot use or disclose any information obtained under clause 17 except for the intended purpose of making a decision on whether to transfer the child into or out of local authority care, unless to do so is strictly necessary to safeguard and promote the welfare of the child. This will mean that the Secretary of State cannot, for instance, use information gathered through the use of this power to assist in deciding the child’s asylum or human rights claim, or to facilitate removal action against the child.

The following amendments deal with clauses in relation to changes to the age assessment process:

★ Amendment 121, sponsored by Bishop of Durham

Clause 55, page 56, line 21, leave out subsection (2).

Member’s explanatory statement

This amendment reinstates the right of appeal against age assessments in respect of putative children whom there is a duty to remove under the Bill

★ Amendment 122, sponsored by Bishop of Durham

Clause 55, page 56, line 30, leave out subsection (4).

Member’s explanatory statement

This amendment removes a provision of the Bill that would prevent a judicial review challenge to an age assessment from serving as a barrier to the putative child’s removal from the UK.

British Refugee Council (commonly called the Refugee Council) is a company limited by guarantee registered in England and Wales, [No 2727514] and a registered charity, [No 1014576]. Registered office: 134-138 The Grove, Stratford, E15 1NS, United Kingdom. VAT reg no: 936 519 988

★ Amendment 126, sponsored by Bishop of Durham

Clause 56, page 57, line 42, at end insert —

“(2A) The regulations must provide that the consequence mentioned in paragraph (b) of subsection (2) shall not apply if P’s refusal to consent to the use of the specified scientific method was reasonable in all the circumstances.”

Member’s explanatory statement

The Bill provides for regulations to be made under which certain putative children may be treated as adults if they refuse to consent to scientific methods of age assessment. This amendment provides that this may not occur if the child’s refusal to consent was reasonable in all the circumstances.

Practical application: This amendment reinstates the right of appeal against age assessments in respect of putative children whom there is a duty to remove under the Bill. It also removes a provision of the Bill that would prevent a judicial review challenge to an age assessment from serving as a barrier to the putative child’s removal from the UK.

At present, the Bill also provides for regulations to be made under which a putative child whom there is a duty to remove under the Bill may be treated as an adult if they refuse to consent to scientific methods of age assessment specified in the Regulations. This amendment would provide that such a putative child may not be treated as an adult if their refusal to consent to the use of the specified scientific method was reasonable in all the circumstances.

Please contact:

Hayden Banks

Senior Public Affairs Advisor,
Refugee Council

E: Hayden.Banks@RefugeeCouncil.org.uk

M: 07 780 664 598