

Illegal Migration Bill – Briefing on Children for Report Stage

28th June 2023

Expected impact of the Bill 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.

1. Children and inadmissibility

According to the Refugee Council's impact assessment,¹ **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, including children, impacted by the Bill.² The Government's own Economic Impact Assessment only deals with the counter-factual, the costs of doing nothing and estimating that people will be reliant on Home Office support for 4 years.³

The right to claim asylum has to be categorically upheld. We need to remember that most separated children arriving in the UK are fleeing the brutal Taliban regime in Afghanistan, and hundreds come each year from Sudan,⁴ where the long-running conflict has recently hit the headlines.

The data shows that **most children arriving in the UK come from countries with very high grant rates for refugee status**, and are forced to take dangerous journeys because there are **limited options for safe routes to the UK**. For example, for separated children from Afghanistan, the grant rate is almost 100%, for Eritrea it is 99% and for Sudan it is 95%. Of all children who arrived alone and had their cases

¹ <https://www.refugeecouncil.org.uk/information/resources/illegal-migration-bill-impact-assessment/>

² *Ibid.*

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165397/Illegal_Migration_Bill_IA_-_LM_Signed-final.pdf

⁴ Number of asylum claims from unaccompanied children by top nationalities (in alphabetical order) for 2022: Afghanistan (1,686), Albania (781), Eritrea (356), Iran (600), Sudan (597). Source: Quarterly Immigration Statistics – Year ending December 2022 – table Asy_D01: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets>

determined last year, **nearly 9 out of 10 (86%) were permitted to stay and rebuild their lives in the UK.**

2. Compliance with Children Act

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.

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, as well as the power to terminate a child's 'looked after' status when they are in the care of a local authority.

For 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 154 yet to be found.⁵ The provision of accommodation and support to children sits outside of the Home Office's competence and knowledge base.⁶

As we started to see an increase in people arriving in Dover, including an increase in separated children, the Kent County Council decided, in June 2021, to stop taking these children into its care, citing 'extreme pressure' on its services. This decision led to the Home Office opening hotels in South East to accommodate these children whilst they wait for placement with other local authorities via National Transfer Scheme (NTS). Kent eventually resumed taking in children and the government made the NTS mandatory (and better funded), **however, the Home Office continues to put children in hotels. This means these children are supported in a way that circumvents the usual process, i.e., being placed in local authority care under the 'looked after' provisions in the Children Act 1989. Concerningly, there are recent reports the Home Office expects to re-open hotels whereby instances of children absconding and going missing previously occurred.⁷**

Clauses 15-20 will create a two-tier system where a group of children is treated differently solely because of their nationality and immigration status. The default position, when there is a child need, this child should go into the care of the Local Authority – as outlined in the Children Act 1989.

⁵ <https://questions-statements.parliament.uk/written-questions/detail/2023-06-15/189803>

⁶ Confirmed in the judgment by *R (Medway Council) v Secretary of State for the Home Department* [2023] EWHC 377 (Admin) at [39].

⁷ <https://www.theguardian.com/uk-news/2023/jun/25/child-migrants-to-be-sent-back-to-hotel-where-136-vanished>

3. Age assessments

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

Refugee Council urges Peers to support the below amendments

The following amendment seeks to remove unaccompanied children from the inadmissibility regime:

Amendment 14

Clause 4, page 6, line 8, after "who meets the four conditions in section 2" insert "and does not fall within the exceptions in section 3"

Member's explanatory statement

This amendment would make asylum and human rights claims admissible from unaccompanied children, who are exempted from the duty to remove by clause 3. This would continue current policy under which unaccompanied children's asylum claims are not subject to the inadmissibility regime.

Currently in the name of

LORD DUBS

LORD SCRIVEN

BARONESS BUTLER-SLOSS

THE LORD BISHOP OF DURHAM

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

Amendment 89

Clause 16, page 24, line 13, at end insert —

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

In names of: THE LORD BISHOP OF DURHAM , LORD COAKER , BARONESS HELIC , LORD GERMAN

⁸ <https://www.refugeecouncil.org.uk/latest/news/our-response-to-the-recent-aesac-report-on-using-scientific-methods-to-assess-age/>

The following amendments ensure access to justice for children undergoing age assessments:

Amendment 156

Clause 56, page 58, line 25, 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.

In names of: THE LORD BISHOP OF DURHAM, BARONESS LISTER OF BURTERSETT, BARONESS NEUBERGER, BARONESS BRINTON

Amendment 157

Clause 56, page 58, line 34, 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.

In names of: THE LORD BISHOP OF DURHAM, BARONESS LISTER OF BURTERSETT, BARONESS NEUBERGER, BARONESS BRINTON

Amendment 161

Clause 57, page 60, line 13, 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.

In names of: THE LORD BISHOP OF DURHAM, BARONESS LISTER OF BURTERSETT, BARONESS NEUBERGER, BARONESS BRINTON

The following amendment seeks to reinstate existing time limits for detaining children:

Amendment 51

Clause 10, page 15, leave out lines 10 to 35 and insert— “(2D) Detention under sub-paragraph (2C) is to be treated as detention under paragraph 16(2) for the purposes of the limitations in paragraph 18B (limitation on detention of unaccompanied children).”

Member's explanatory statement This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

In names of: BARONESS MOBARIK
THE LORD BISHOP OF DURHAM
BARONESS STROUD
BARONESS HELIC

Further reading

- [Joint Parliamentary briefing on the impact of the Bill on children](#)
- [Briefing on the use of hotels for children](#)
- [Joint briefing on the detention of children](#)
- [Refugee and Migrant Children's Consortium briefings on the IMB](#)

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