

# Refugee and Migrant Children's Consortium

## Illegal Migration Bill – House of Lords Second Reading

### Introduction

The Refugee and Migrant Children's Consortium (RMCC) is profoundly concerned by the Illegal Migration Bill, which is an affront to the protections the UK should provide to children, young people and families under the Refugee Convention, the UN Convention on the Rights of the Child and the Children Act 1989. No Child Rights Impact Assessment has been undertaken. And although the government continues to insist a general impact assessment will be published 'in due course', none was made available as the bill was scrutinized in the House of Commons.<sup>1</sup> The Bill also undoes a decade's worth of progress made under the Conservative government, reversing the ending of child detention and protections for child victims of trafficking.

The proposals contained in this Bill will have severe consequences for the welfare and physical and mental health of extremely vulnerable children who have fled conflict, persecution and other unimaginable harms and are in desperate need of support, stability and protection. The measures do not just affect those arriving on small boats, but instead impact nearly all children arriving in the UK and seeking protection who have not come by the very limited 'safe routes'. Children have made up approximately a fifth of those applying for asylum in the UK over the past decade.<sup>2</sup>

Counter to the Home Secretary's duty to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009, the proposals will leave children locked out of claiming refugee protection; detained; removed; if unaccompanied, accommodated by the Home Office outside the established care system; and if a victim of trafficking or child of such a victim, unprotected. Children will be left in limbo for years, unable to access any form of status or to rebuild their lives.

The RMCC opposes the Bill in its entirety and firmly believes that if passed it will have a devastating impact on those fleeing conflict, persecution, and human rights abuses, stripping them of their right to seek safety and undermining our international commitments.

This briefing covers:

- Children and the duty to remove / inadmissible asylum and human rights claims
- Child detention
- Children in Home Office-run accommodation
- Children and exclusion from modern slavery protections
- Ban on leave and child citizenship
- Age assessment

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<sup>1</sup> [Illegal Migration Bill - Hansard - UK Parliament](#)

<sup>2</sup> See [How many people do we grant protection to?](#), and Pinter, I. (2021) '[Children and Families Seeking Asylum in the UK](#)'. CASEbrief/41. Centre for Analysis of Social Exclusion, LSE, p.1

## Removal of children and inadmissible claims (Clauses 2, 3 and 4)

- Clause 2: Sets out the duty on the Secretary of State to remove anyone who arrives in the country irregularly and meets the four conditions in that clause.
- Clause 3: Exempts unaccompanied children under the age of 18 from the Secretary of State's *duty* to remove but does reaffirm her *power* to remove such a child.
- Clause 4: Sets out that any person meeting the Clause 2 conditions will have their protection or human rights claim declared 'inadmissible' and will be denied the right to claim asylum.

These proposals mean that a child now arriving (not having come through one of the very limited 'safe routes') having fled war or persecution will not be able to seek protection. Children within families will be subject to a duty to remove and unaccompanied children will face the threat of removal which becomes a reality on their turning 18.

**Unaccompanied children** already face incredible trauma and mental anguish after arriving in the UK alone, having been separated from their family. Last year, the main countries of origin of the over 5200 unaccompanied children who sought asylum in the UK included Afghanistan, Albania, Iran, Sudan and Eritrea.<sup>3</sup>

Government amendments adopted at third reading set out that the power to remove unaccompanied children will be exercised for the purposes of family reunion or if they are nationals of a safe country identified in clause 50, such as Albania.<sup>4</sup> This does not represent a power that will be 'exercised in very limited circumstances'<sup>5</sup> given Albanian unaccompanied children accounted for the second most common nationality of children arriving in the UK in 2022 as well as the second most common nationality referred as potential child victims of modern slavery.<sup>6</sup>

Even if allowed to remain in the UK whilst a child, unaccompanied children will live in the knowledge that upon their 18<sup>th</sup> birthday, they will be subject to removal, regardless of their protection needs or the life they may have built in the UK. As looked-after children, they will be unable to plan for their futures or benefit from their education. A decade ago, the majority of unaccompanied children were granted temporary leave to remain until they turned 17½ (rather than refugee status) and we know that the fear of removal forced many children to go underground and go missing, at extreme risk of exploitation and incredible danger of self-harm and suicide.<sup>7</sup> If this Bill becomes law, we will see the same happen again.<sup>8</sup>

The Local Government Association and the President of the Association of Directors of Children's Services (ADCS) have been clear: "*If this legislation is passed, it will run counter to a number of our fundamental responsibilities set out in the Children Act 1989, such as securing permanence and having consideration for children's wishes and feelings. ADCS is*

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<sup>3</sup> Home Office data tables: [Asy\\_D01 – Asylum applications raised, by nationality, age, sex, UASC, applicant type, and location of application](#)

<sup>4</sup> [Illegal Migration Bill - Hansard - UK Parliament](#)

<sup>5</sup> Contribution by Robert Jenrick, Wednesday 26 April 2023, <https://hansard.parliament.uk/commons/2023-04-26/debates/5751EE9A-180E-48BA-A8CA-D51B230C1984/IllegalMigrationBill#contribution-5D2BBA28-89E3-4BB1-962F-7612237DF280>

<sup>6</sup> Home Office data tables: [Asy\\_D01 – Asylum applications raised, by nationality, age, sex, UASC, applicant type, and location of application](#); Home Office [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022: data tables](#)

<sup>7</sup> [Joint Committee on Human Rights, Human Rights of unaccompanied migrant children](#), 2013

<sup>8</sup> In light of the Home Offices flawed approach to age assessments, which has seen hundreds of children wrongly deemed to be adults and treated as such, there is also a risk that children will be mistakenly removed with no means of redress.

*clear that all new legislation must be child focused and protect their rights, yet this Bill seeks to do the opposite and removes such protection from a specific group of children.”<sup>9</sup>*

The RMCC also has concerns about **children in families**. It is clear that much of the Illegal Migration Bill is simply unworkable and that the government will not in practice be able to remove significant numbers of people seeking protection from the UK. Since 2021, over 20,000 people have been ‘identified for consideration on inadmissibility grounds’ and yet only 21 were removed up to the end of September 2022.<sup>10</sup> Children and families must not be locked out of protection and left in perpetual limbo, but instead must be allowed to have their asylum claims and best interests properly considered.

### **Child detention (Clause 10)**

- Clause 10: Gives the Secretary of State powers to detain those subject to the duty to remove, to detain unaccompanied children and to detain children within families, with broad discretion on where to detain and for how long.

The Illegal Migration Bill reverses the safeguards put in place by the previous Conservative-led government to end the routine detention of thousands of children and families for immigration purposes. Currently, unaccompanied children may only be detained with strict safeguards for up to 24 hours in short-term holding facilities. Children within families may only be detained for up to 72 hours in pre-departure accommodation.<sup>11</sup>

The Bill would allow for the routine, indefinite detention of children – unaccompanied or with their families. In a government amendment adopted during Report Stage, the Secretary of State agreed to exercise these powers in circumstances to be specified in future regulations – leaving her full discretion to determine via future statutory instrument any limits on the detention of unaccompanied children for both removal and age assessments.<sup>12</sup>

The Bill is an alarming departure from the government’s commitments in 2010 – enacted into law in 2014 – to end the practice of ‘state-sponsored cruelty’<sup>13</sup> that was the mass detention of children. If the government’s intention is to detain and remove those arriving on small boats, then more than 13,000 children may face detention annually under this government proposal.<sup>14</sup>

Previous research conducted in the UK evidenced the long-lasting damage detention does to children’s lives. The effects on their physical and mental health included weight loss, sleeplessness, nightmares, skin complaints and self-harm, depression and symptoms of post-traumatic stress disorder.<sup>15</sup> More recent research analysing the impacts on children of Australia’s immigration detention policies similarly evidences the devastating impacts on children’s physical and mental health and their wellbeing and upon their parents’ parenting capabilities.<sup>16</sup> Despite the overwhelming evidence and its own duties to promote the welfare

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<sup>9</sup> [Local Government Association; ADCS Statement on Illegal Migration Bill](#)

<sup>10</sup> See Home Office data tables: [Asy\\_09a – Cases considered under inadmissibility rules, 1 January 2021 - 30 September 2022](#):

<sup>11</sup> Immigration Act 2014, Sections 5 and 6, [Immigration Act 2014 \(legislation.gov.uk\)](#)

<sup>12</sup> [Illegal Migration Bill - Hansard - UK Parliament](#)

<sup>13</sup> Medical Justice (2010) [‘State Sponsored Cruelty’ - Children in immigration detention](#)

<sup>14</sup> Figure based on the Refugee Council’s [Impact Assessment of the Bill](#) which finds that in the first three years of the legislation coming into effect, between 225,347 and 257,101 people will have their asylum claims deemed inadmissible. This includes between 39,500 and 45,066 children, consisting of between 13,065 and 14,906 unaccompanied children and between 26,435 and 30,160 children with family members."

<sup>15</sup> The Children’s Society (2011) [What have I done? The experiences of children and families in UK immigration detention: Lessons to learn](#); BID (2011) [Last resort or first resort? Immigration detention of children in the UK](#):

<sup>16</sup> See Tosif S, Graham H, Kiang K, Laemmle-Ruff I, Heenan R, Smith A, Volkman T, Connell T, Paxton G. (2023). [Health of children who experienced Australian immigration detention](#)

of children, the UK government seeks to rescind its prior commitments and detain children en masse.

### Home Office-run accommodation for unaccompanied children (Clauses 15-20)

- Clause 15: Allows the Home Secretary to provide, or arrange the provision of, accommodation for unaccompanied children.
- Clause 16: Allows the Home Secretary to direct a local authority to take an unaccompanied child into care, to direct a local authority to return a child to Home Office accommodation, and to determine when a child will cease being looked after.
- Clause 17: Imposes a duty on local authorities to provide information to the Home Office regarding an unaccompanied child.

The Children Act 1989 is clear: local authorities in England have a legal duty to safeguard and promote the welfare of children within their area who are in need, which begins “as soon as the child...*is found in the Local Authority area*”.<sup>17</sup> The Children Act 1989 applies to all children equally, regardless of nationality, ethnicity or immigration status.<sup>18</sup>

With this Bill, the government seeks to establish powers in conflict with the duties and obligations of the Children Act 1989 and the long-standing system of care and child protection in this country. The Home Office has neither the authority, expertise nor mechanisms to care for children. Rather, Clauses 15 to 20 are a government attempt to put into law the Home Office’s practice since July 2021 of temporarily accommodating unaccompanied children in hotels outside the care system. **The result has been a safeguarding failure with over 4600 children housed in Home Office-run hotels, 440 missing episodes and 200 children still not found.**<sup>19</sup>

As has long been recognised, the care of children is first and foremost a safeguarding and child welfare issue. It is not an immigration issue. The Children’s Commissioners for England and Scotland have both stated their clear opposition, the former asserting that “*these children should have looked after status from the moment they arrive and be in the care of local authorities*”<sup>20</sup> and the latter highlighting that Clauses 15 to 18 seize powers and undermine the clear protections that Scotland’s devolved institutions have established<sup>21</sup> and that “*the Home Office’s history of neglect renders it an unfit parent for vulnerable children.*”<sup>22</sup>

### Modern slavery and trafficking (Clauses 21-28)

- Clause 21: Deems persons subject to removal who may be victims of modern slavery “threat(s) to public order” disqualified from protection unless they are cooperating with an investigation or criminal proceeding.
- Clause 22: Disapplies the Secretary of State’s duties under Section 50A of the Modern Slavery Act 2015 to provide necessary assistance and support to potential victims during the recovery period.
- Clauses 23/24: Disapply similar powers to support in Scotland/Northern Ireland.

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<sup>17</sup> Department for Education, [Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities](#), November 2017.

<sup>18</sup> See Joint Statement on the Illegal Migration Bill, [Care for every child: Duties to care for children must apply equally to all children | Children England](#)

<sup>19</sup> [Children Seeking Asylum: Safeguarding - Hansard - UK Parliament](#)

<sup>20</sup> [Letter to the Home Secretary on the Illegal Migration Bill | Children's Commissioner for England](#)

<sup>21</sup> [Illegal Migration Bill - Hansard - UK Parliament](#)

<sup>22</sup> [UK and Scottish Parliaments must challenge Illegal Migration Bill, warns Children's Commissioner - The Children and Young People's Commissioner Scotland](#)

- Clause 28: Amends the Nationality and Borders Act 2022 to disqualify from protection any child who is not a British citizen and has been convicted of an offence in the UK which carries any length of custodial sentence.

The measures proposed in this Bill will withhold modern slavery protections under the National Referral Mechanism (NRM) from survivors of trafficking and their family members who meet the four conditions set out in Clause 2. For unaccompanied children, despite being identified as victims, they will be denied the protections they should receive, such as access to support under the Modern Slavery Victim Care Contract or temporary leave as victims of trafficking upon turning 18. Any children of victims who meet these four conditions will also be disqualified from accessing specialist victim support, including safe house accommodation, subsistence, mental health services and/or outreach support.

The measures will leave victims in destitution, unable to escape the abuses that they have been subjected to. It will drive more children, young people and families into exploitation and significant harm due to fears of detention and removal through accessing the NRM. It will also significantly impact on the ability of victims to support investigations and prosecutions of the serious offences committed against them.

The RMCC is seriously concerned about the impact Clause 28 will have on child victims of trafficking who are foreign national children. Child criminal exploitation is the form of child trafficking most commonly reported into the NRM and without a process of identification and robust safeguarding children are too often treated as criminals and convicted for exploitation-related offences.<sup>23</sup> **No child victim should be disqualified from accessing protection.** Children who are victims of exploitation and abuse should be protected, not prosecuted. Denying children recognition as victims of modern slavery and trafficking will also reduce investigations and prosecutions of those who have exploited children.

### **Leave and citizenship (Clauses 29-36)**

Not only does the Bill lock people out of seeking asylum; it prevents them ever getting leave in the immigration system. The Bill creates a ban on anyone who has ever fallen under Clause 2 (arrived in the UK irregularly after 7 March 2023 not directly from an unsafe country) getting an electronic travel authorisation, entry clearance, leave to enter or remain or permanent status – even those who arrived as babies and children.

Punishment is also extended to being barred from citizenship: a child arriving in the UK after 7 March 2023 who ever fell under Clause 2 is stripped of citizenship rights they would otherwise have. This could even happen where a baby or child comes to the UK with their family and is then taken into care; the Home Office will have cut off its power to grant citizenship to them. This is a fundamentally discriminatory approach to citizenship acquisition and potentially in breach of Articles 8 and 14 ECHR. Babies and children will be subject to a harsh and life-determining penalty for an immigration breach when they were minors.

### **Age assessments (Clauses 55 and 56)**

- Clause 55: Removes the right to appeal age determinations granted by the Nationality and Borders Act 2022. A judicial review can be brought but this would not prevent the government from removing the individual and the court may quash the decision only on the basis that it was wrong in law, not wrong as a matter of fact.

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<sup>23</sup> Home Office, NRM End of Year Statistics 2022, March 2023

- Clause 56: Provides for the Secretary of State to make regulations about a person's refusal to consent to a scientific age assessment which may set out the person is automatically treated as an adult.

These new measures introduced by the government during report stage in the House of Commons further pave the way for a system in which a child who arrives in the UK can be detained for possibly days or weeks while an age assessment is carried out by the Home Office (either border officials or the Home Office-run National Age Assessment Board). Said 'assessments' would not involve independent child protection experts and could include the compulsory use of x-rays/MRIs. If the child does not consent, the Home Office would then simply treat them as over 18. The Bill would significantly reduce opportunities to challenge these flawed 'assessments', with no right of appeal and limitations on judicial review.

The government claims that 'nearly half' of those whose ages are disputed are "adults posing as children".<sup>24</sup> **This claim (based on data for 2016-22) is false as last year nearly two thirds of ALL age dispute cases were found to be children.**<sup>25</sup> Additionally, new figures obtained by Helen Bamber Foundation show that in the last year alone 1300 young people were referred to local authority children's services having been treated as adults by the Home Office based on a visual assessment on arrival. Of these, over 850 were found to be children wrongly placed in the adult system at significant risk.<sup>26</sup>

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The [Refugee and Migrant Children's Consortium](#) (RMCC) is a coalition of over 80 organisations working together to promote and protect the rights of refugee and migrant children in the UK.

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<sup>24</sup> Home Office, [Illegal Migration Bill: children factsheet](#), April 2023

<sup>25</sup> Home Office, [Age Dispute Datasets](#), December 2022. In the data, 'Age dispute resolved' relates to the number of age disputes marked as complete, by date of completion, and may relate to an age dispute raised in an earlier period. An age dispute could, for example, be resolved: following a Merton compliant age assessment; receipt of credible and clear documentary evidence of age; a judicial finding on age; following a determination by two Home Office officers that the person's physical appearance and demeanour very strongly suggests they are significantly over the age of 18; or, where the reasons for raising an age dispute no longer apply.

<sup>26</sup> Helen Bamber Foundation, [Disbelieved and Denied Children seeking asylum wrongly treated as adults by the Home Office](#), April 2023