# Refugee and Migrant Children's Consortium

## Illegal Migration Bill – Report Stage

### 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 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, with the government continuing to insist it will be 'published in due course' yet none has been made available as the bill is scrutinized in the House of Commons.[1] 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. They 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.[2]

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; if a victim of trafficking or child of such a victim, unprotected; and denied their citizenship rights. 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 devasting impact on those fleeing conflict, persecution, and human rights abuses, stripping them of their right to seek safety and undermining our international commitments.

The government has referred to 'special arrangements' for children but provided no concrete reassurance about the impacts of the Bill on them. 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 the exclusion of modern slavery protections
- Child citizenship

[1] Illegal Migration Bill - Hansard - UK Parliament

[2] 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.

Unaccompanied children already face incredible trauma and mental anguish after arriving in the UK alone, having been separated from their family. Last year, 5,242 unaccompanied children sought asylum in the UK,[3] the main countries of origin including Afghanistan, Albania, Iran, Sudan and Eritrea. Under the Bill's proposals, they would be left in an ongoing period of insecurity and instability, irrespective of their circumstances or age on arrival.

The Minister stated that "there is a power, not a duty, to remove unaccompanied children" which will be exercised if they are nationals of a safe country identified in clause 50, such as Albania.[4] This does not represent a 'limited use of their power' as stated by the Minister given Albanian unaccompanied children account 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 victims of modern slavery for exploitation as children.[5]

Even if allowed to remain in the UK while a child, unaccompanied children will live in the knowledge that upon their 18th birthday, they will be subject to removal, regardless of their protection needs which will be deemed inadmissible 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. Instead, they will live in fear of where they will be removed to. A decade ago, the majority of unaccompanied children were granted temporary leave to remain until they turned 18 (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.[6] If this Bill becomes law, we will see the same happen again.[7]

Every child needs stability, support and security to develop and thrive. These fundamentals are universal and apply no matter the child's background, where they are from or how they have arrived. They are particularly critical for children who have fled circumstances far beyond their control, experienced unimaginable horrors and have endured traumatic journeys. This concern is raised by the Local Government Association (LGA) and the president of the Association of Directors of Children's Services (ADCS) who stated that "*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 clear that all new legislation must be child focused*

[3] Home Office data tables: Asy_D01 – Asylum applications raised, by nationality, age, sex, UASC, applicant type, and location of application
[4] Illegal Migration Bill - Hansard - UK Parliament
[5] 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
[6] Joint Committee on Human Rights, Human Rights of unaccompanied migrant children, 2013
[7] 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.

*and protect their rights, yet this Bill seeks to do the opposite and removes such protection from a specific group of children*."[8]

The RMCC also has concerns about **children in families**.[9] It is clear that much of the Illegal Migration Bill is simply unworkable and that the government will not 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.[10] Children and families must not be locked out of protection and left in perpetual limbo, but instead must be allowed to have their asylum considered.

**Case study**

The Independent Child Trafficking Guardianship service received a referral for Abdi* after he had been reported as missing. Abdi fled the war in Syria and arrived in the UK in January 2022 a few months before his 18th birthday. Abdi was accommodated by a local authority in England where he was supported to access the optician, dentist, and medical appointments; he was enrolled in college and was attending regularly. Abdi went missing in May, a few months after arriving in his placement. He took a bag and clothing with him when he left. Abdi was reported missing the same day and enquiries made with friends and college; attempts were also made to contact him by phone. Shortly before going missing, he told placement staff he had seen the news about asylum seekers being sent to other countries and that he was frightened that he would be deported.

At the strategy meeting held after he went missing it was highlighted that Abdi had shared his anxieties with his placement worker about the news reports and that before he went missing Abdi had been worried about the Home Office decision to send people who were seeking asylum in the UK to Rwanda and that he could potentially be removed.

## Child detention (clause 11)

- Clause 11: 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.[11] Children within families may only be detained for up to 72 hours in pre-departure accommodation.[12]

The Bill would allow for the routine, indefinite detention of children – unaccompanied or with their families – anywhere the Secretary of State considers appropriate. The Secretary of State is given the discretion to determine when detention is 'reasonably necessary', where a child, family or adult should be detained, and for how long.

[8] Local Government Association; ADCS Statement on Illegal Migration Bill
[9] The RMCC supports the intention behind NC33 and amendments 187, 188, 199, 200, 201, 202, 203, 204, 205 and 206 which all relate to children generally in relation to the duty to remove and inadmissibility.
[10] Home Office data tables: Asy_09a – Cases considered under inadmissibility rules, 1 January 2021 - 30 September 2022:
[11] Immigration Act 2014, Sect. 5, Immigration Act 2014 (legislation.gov.uk).
[12] Immigration Act 2014, Sect. 6, Immigration Act 2014 (legislation.gov.uk)

This is an alarming departure from the government's commitments in 2010 – enacted into law in 2014 – to end the practice of 'state-sponsored cruelty'[13] that was the mass detention of children. If the government's intention is to detain and remove those arriving on small boats, then we would see more than 13,000 children may face detention annually under this government proposal.[14]

The wide powers to detain unaccompanied children have been justified by the Immigration Minister as necessary because of the increased numbers of unaccompanied children arriving in the UK by small boat and the need for "ways to ensure that where those people are age-assessed… they are held in appropriate detained accommodation."[15] But we are already seeing hundreds of children incorrectly treated as adults by border officials and placed in adult accommodation/immigration detention at serious risk of harm. For example, of the 233 young people referred to the Refugee Council in 2021 who had initially been determined by Home Office to 'certainly' be adults, 94% were later found to be children.[16] This is not made clear in current statistics. The measures in this Bill are based on inaccurate data about the numbers of adults 'pretending' to be under 18 and will only serve to put more children at great risk.

Prior research conducted in the UK evidenced the long-lasting damage detention has on children's lives.[17] 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.[18] 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 wellbein and upon their parents' parenting capabilities.[19] Policymakers must recognise the adverse consequences and avoid detaining children and families. Yet despite the overwhelming evidence and its own duties to promote the welfare of children, the UK government seeks to rescind its prior commitments and detain children en masse.

## Accommodation for unaccompanied children

- Clause 15: Allows the Secretary of State to provide, or arrange the provision of, accommodation for unaccompanied children.
- Clause 16: Allows the Secretary of State 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.

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[13] Medical Justice (2010) 'State Sponsored Cruelty' - Children in immigration detention

[14] 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."

[15] Illegal Migration Bill - Hansard - UK Parliament

[16] Refugee Council, Identity Crisis, September 2022

[17] 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:

[18] The Children's Society (2011) What have I done?, p. 3.

[19] 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

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*".[20] This Act applies to all children equally, regardless of nationality, ethnicity, or immigration status.[21]

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 4,600 children housed in Home Office run hotels, 440 missing episodes and 200 children still not found**.[22]

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"*[23] and the latter highlighting that Clauses 15 to 18 seize powers and undermine the clear protections that Scotland's devolved institutions have established[24] and that *"the Home Office's history of neglect renders it an unfit parent for vulnerable children."*[25]

## 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.
- Clause 23: Disapplies similar powers to support in Scotland.
- Clause 24: Disapplies similar powers to support in Northern Ireland.

The measures proposed in this Bill will withhold modern slavery protections under the National Referral Mechanism (NRM) from survivors of trafficking or 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.

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[20] Department for Education, Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities, November 2017.
[21] 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
[22] Children Seeking Asylum: Safeguarding - Hansard - UK Parliament
[23] Letter to the Home Secretary on the Illegal Migration Bill | Children's Commissioner for England
[24] Illegal Migration Bill - Hansard - UK Parliament
[25] UK and Scottish Parliaments must challenge Illegal Migration Bill, warns Children's Commissioner - The Children and Young People's Commissioner Scotland

The measures will leave young survivors of modern slavery and the children of victims in destitution, unable to escape the abuses that they have been subjected to. It will drive more children and families into exploitation and other forms of significant harm due to fears of detention and removal by 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.

## Child citizenship

The RMCC is also concerned about the loss of their citizenship rights for children as a result of the way their parents or carers entered or arrived in the United Kingdom. These provisions in the Bill are a fundamentally discriminatory approach to citizenship acquisition under which babies and children would be subject to a harsh and life-determining penalty for the immigration breach of a parent they may never have even met or for their own entry at a time when they were a child.

Questions:

*The Department for Education has developed a template for Child Rights Impact Assessments (CRIAs). Can the Minister confirm if a CRIA has been carried out on the Illegal Migration Bill to assess the impact it will have on children? If it has, will this be published prior to the Bill entering the House of Lords?*

*Inadmissibility policy exempts unaccompanied children. Can the government confirm their intention under Clause 4 is that all unaccompanied children's asylum claims will now be deemed inadmissible?*

*Can the Minister explain in what contexts the government believes it will be necessary and proportionate to detain unaccompanied children for longer than 24 hours?*

*What is the government's response to concerns raised by the Children's Commissioners for England and Scotland that it is not appropriate for the Home Office to be accommodating unaccompanied children?*

*Does the government want child victims of modern slavery and the children of victims to be excluded from protection, pushing people into precarity, exploitation and abuse?*

*Does the government believe that it is fair to deprive unborn babies of their citizenship rights based on the actions of one of their parents, whom they may never have met?*

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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.