

# Refugee and Migrant Children's Consortium

## Illegal Migration Bill - Second Reading Briefing 13th March 2023

### Introduction

RMCC members are profoundly concerned by a Bill designed to deny refugees the chance to put forward their case and agree with the UN Refugee Agency that the Bill undermines the very purpose of the Refugee Convention. It risks breaching the UN Convention on the Rights of the Child. The Children's Commissioner for England has expressed 'deep concern'.<sup>1</sup>

The government has not only failed to properly consider children's rights with this Bill (indeed, it has failed to uphold *anyone's* rights with this legislation),<sup>2</sup> it is aiming to undo over a decade's worth of progress made under the Conservative government for the protection of child victims of trafficking and will reverse the ending of child detention.

This is not just about 'small boats' – under this Bill nearly all children who have not arrived via the very limited 'safe routes' (i.e. resettlement schemes) will be blocked from protection as refugees and victims of trafficking. All children from countries such as Afghanistan, Eritrea, Sudan, Iran and Syria, fleeing war and persecution and having endured traumatic journeys to the UK, will now be potentially subject to indefinite detention and removal. Most will be left in limbo for years, unable to access any form of status or rebuild their lives.

A huge number of children will be negatively impacted by this Bill. Over the last decade, children aged under 18 have accounted for around a fifth of those applying for asylum. In 2022, there were 15,670 children who sought asylum, of which 5183 were unaccompanied children and 10,487 were children with their families.<sup>3</sup>

### Clauses 2-10 Inadmissibility and removal - children will be locked out of protection and in limbo

Whilst last year's Nationality and Borders Act created a new cohort of arrivals potentially in line for 'group 2' refugee status, this Bill will create yet another cohort: those arriving from March 2023 who are locked out of the asylum system altogether. Clause 2 places a duty on the Secretary of State to make arrangements to remove an individual should they meet the following conditions:

1. They entered the UK irregularly;
2. They entered or arrived in the UK on or after 7 March 2023;
3. They did not come directly from a country in which their life and liberty were threatened;
4. They require leave to enter or remain in the UK, but do not have it.

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<sup>1</sup> [https://mobile.twitter.com/Rachel\\_deSouza/status/1633206302297010177?s=20](https://mobile.twitter.com/Rachel_deSouza/status/1633206302297010177?s=20)

<sup>2</sup> [ECHR Memo Illegal Migration Bill-07323 \(parliament.uk\)](https://www.parliament.uk/echr/memo-illegal-migration-bill-07323)

<sup>3</sup> From detailed Home Office data tables: Asy\_D01 – Asylum applications raised, by nationality, age, sex, UASC, applicant type, and location of application: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/list-of-tables#asylum-and-resettlement>

This *duty* to remove applies to adults and children in families. Under Clause 3, the Secretary of State also has a *power* to remove unaccompanied children<sup>4</sup> which becomes a duty when the child reaches the age of 18.

Clause 4(2) provides that for *any* person meeting the conditions in Clause 2, their protection or human rights claim will be deemed 'inadmissible': it will not be considered and there will be no right of appeal. This is effectively a ban on claiming asylum for anyone who does not come to the UK via one of the few, extremely limited resettlement routes. This appears to extend to children **so that any child now arriving in the UK to seek safety will be unable to have any claim to protection, be they with their parents or arriving alone.** The government will then seek to remove them to their country of origin or a country where they embarked/will be admitted that is on the list of 'safe' countries in the Bill's only schedule, including Rwanda. While awaiting removal, children and families will either be detained or left reliant on the minimal support and accommodation that is currently provided by the Home Office to those who have had their asylum claims refused. Given the numbers affected, this is likely to be for months or years.

The forced removal process of children and families has since 2014 included a duty on the Home Secretary to consult with the Independent Family Returns panel when a child is removed or detained. But Clause 14 of this Bill simply disapplies this safeguard, paving the way for dangerous enforced removals of families who are deemed inadmissible (Clause 4) to places where children's safety and welfare will be at risk.

#### **Clauses 11-14 Detention - huge renegeing on progress to end child detention**

Clause 11 of the Bill reverses the safeguards put in place by the previous Conservative government to help end the routine detention of thousands of children and families for immigration purposes. It will also for the first time allow for the routine detention of unaccompanied children beyond the existing 24-hour time limit and it will be at the discretion of the Secretary of State to determine when detention is 'reasonably necessary to enable the examination or removal to be carried out, the decision to be made, or the directions to be given'. Detention will not be restricted to 'pre-departure accommodation' as a last resort before removals, which has been the case since 2014 for families, and people will not be able to apply for bail for 28 days. Instead children - whether unaccompanied or with their families - could be detained anywhere the Secretary of State considers appropriate.

RMCC members, many Conservative politicians, the Children's Commissioner for England, and children and families themselves, alongside others across the political and professional spectrum, fought hard to secure a change in policy in 2010 to end the practice of 'state sponsored cruelty'<sup>5</sup> through mass detention. This was because widespread evidence showed the long-lasting damage that detention has on children's lives.<sup>6</sup>

#### **Clauses 15-20 Accommodation of unaccompanied children - undermining the Children Act 1989**

There is a wealth of evidence on the significant harm facing unaccompanied children

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<sup>4</sup> As set in the Bill's Explanatory Notes, this power is only to be used in limited circumstances, 'As a matter of current policy this power will only be exercised in limited circumstances ahead of them reaching adulthood, such as for the purposes of family reunion or where removal is to a safe country of origin.' See Para. 48 [Illegal Migration \(parliament.uk\)](#)

<sup>5</sup> Medical Justice (2010) 'State Sponsored Cruelty' - Children in immigration detention: [https://medicaljustice.org.uk/wp-content/uploads/2022/02/2010\\_State-Sponsored-Cruelty\\_Final.pdf](https://medicaljustice.org.uk/wp-content/uploads/2022/02/2010_State-Sponsored-Cruelty_Final.pdf)

<sup>6</sup> The Children's Society (2011) What have I done? The experiences of children and families in UK immigration detention: Lessons to learn: <https://resourcecentre.savethechildren.net/document/what-have-i-done-experiences-children-and-families-uk-immigration-detention-lessons-learn/>; BID (2011) Last resort or first resort? Immigration detention of children in the UK: [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/199/Last\\_Resort\\_or\\_First\\_Resort\\_-\\_Full\\_Report.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/199/Last_Resort_or_First_Resort_-_Full_Report.pdf)

currently accommodated by the Home Office in hotels, **including over 200 children who remain missing never to be found.**<sup>7</sup> In total, 4,600 children have been accommodated in such hotels and 444 missing episodes have been recorded. Yet this Bill now aims to embed this practice in primary legislation by giving the Home Office powers to accommodate children, in direct contravention of the duties under the UK's child protection laws.

This practice of the Home Office accommodating children in hotels, which began in June 2021, has raised significant concerns by a wide range of stakeholders, including the Children's Commissioner for England, the Independent Chief Inspector of Borders and Immigration, the former Independent Anti-Slavery Commissioner and former Victims Commissioner, not least because of the known risks to children recruited into exploitation at these hotels.<sup>8</sup> Reports have also found emotional abuse of children within the hotels by subcontracted Home Office staff, some of whom were not even vetted under the Disclosure and Barring Scheme to work with children.<sup>9</sup>

Despite urgent concerns repeatedly being raised with the Prime Minister, the Secretaries of State for Education and the Home Department and other local government agencies, the Home Office is resisting an end to this practice and is now seeking to further normalise a discriminatory process. This allows a government department with no authority or expertise to care for and accommodate some of the most vulnerable children in our society, and denies these children the care and support they should receive under the Children Act 1989. It also gives powers to the Secretary of State to terminate the 'looked after' status of a child by a local authority and to demand information from local authorities. RMCC members fear this Bill paves the way for Home Office-run reception centres for unaccompanied children.

#### **Clauses 21-26 Modern slavery - disqualifying exploited children**

The measures proposed in this Bill will withhold modern slavery protections under the national identification procedure known as 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 Victims Care Contract or temporary leave as victims of modern slavery when they turn 18. This provision, seen in tandem with the inadmissibility from asylum and human right claims, will leave most of those identified as victims of child trafficking in perpetual immigration limbo, unable to recover from their horrific experiences and rebuild their lives, in direct contravention of the UK's international obligations.

Similarly, 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 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 legitimate fears of detention and removal by accessing the NRM. It will also significantly impact on the ability of victims of this horrific crime to support investigations and prosecutions of the serious offences committed against them.

#### **Clauses 29-36 Entry, settlement and citizenship - punishing otherwise British babies and children for their parents' entry**

Not only does the Bill lock people out of seeking asylum, it prevents them ever getting leave in any way at all in the immigration system, and from getting citizenship. This Bill creates a

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<sup>7</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-10-18/65898/>

<sup>8</sup> [Charities call for action on children going missing from Home Office hotels; Suella Braverman's child migrant rules 'a gift to gangs'](#)

<sup>9</sup> [An inspection of the use of hotels for housing unaccompanied asylum-seeking children \(UASC\)](#)

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.

Crucially, this ban on leave also applies to any family member who does not have leave and is the partner, child, parent or adult dependent relative of someone who ever fell under Clause 2. This means that the Bill will punish family members who arrived in the UK before March 2023. For example, a Syrian mother and child have an old legacy asylum claim and the Home Office is about to grant five years' refugee status but then the father enters the UK and all are banned from getting any leave.

Punishment is also extended to future generations: any baby born in the UK after 7 March 2023 to a parent falling under Clause 2 is stripped of the citizenship rights they would otherwise have. This could even happen to a baby in the care system who has no relationship with that parent. 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 the immigration breach of a parent they may never have even met.

### **Devolution - tensions with administrations' care of children and anti-trafficking**

The Bill also presents significant concerns regarding devolved matters in Scotland, Wales and Northern Ireland, including local authority care of children and modern slavery and trafficking legislation. The Government's Delegated Powers Memorandum makes clear that the functions of local authorities in respect of looked-after children are a devolved matter and the drafting of the Bill recognises this tension, as Clauses 15-18 only apply to England, with clause 19 noting that the Secretary of State may make Regulations in the future on Clauses 15-18. Clauses 23 and 24 of the Bill remove duties and powers on the devolved administrations to provide support and assistance to victims of trafficking and their families, including children - attempting to compel devolved nations to violate the duties set out in international law.

### **Questions:**

Unaccompanied children are currently exempt from inadmissibility provisions. Can the government confirm whether all unaccompanied children's asylum claims will be deemed inadmissible under this Bill?

Does this government want its legacy to be the reintroduction of child detention?

Do as yet unborn babies deserve to have their citizenship rights stripped from them for the actions of one of their parents, whom they may never have met?

Does the government not agree that we should be proud of England's much respected framework in the Children Act 1989 and prevent it being undermined by cutting some children out of its protection?

Does the Home Office intend to run reception centres for 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?

Given that thousands of children will be detained and forced into perpetual uncertainty with no rights to apply for refugee protection, does the Government believe that this Bill is compliant with its obligations under the UN Convention on the Rights of the Child?

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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 young refugees and migrants.