

THE ILLEGAL MIGRATION BILL

A GUIDE FOR PROFESSIONALS WORKING IN
SOCIAL CARE



Training & Consultancy

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Disclaimer

The document has been produced as a collaboration between Social Work Sorted and Immigration Social Work Services and is designed to be used for information purposes only.

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The purpose of the document is to provide an overview of the proposed 'illegal Migration Bill' to people working within the Social Care sector. The information in this document is an interpretation of the impact of this proposed bill and no legal consultation has taken place.

It is vital for anyone accessing this document that this information is considered alongside other sources, to ensure that you are informed by a diverse evidence base.

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Background to the illegal migration bill

This legislation is being put forward as a solution to prevent and deter unlawful migration and in particular migration which takes place via unsafe and illegal routes.

To achieve this purpose;

- The Secretary of State (currently Suella Braverman) will have a duty to make arrangements for the removal of individuals as soon as 'humanly practical' after they arrive in the UK if they are assessed to be in breach of immigration control
- Asylum claims which are based on human rights and protection requirements can be disregarded if someone is eligible for removal from the UK.
- Anyone who is being removed from the United Kingdom can be held in detention.
- Anyone who is a victim of modern slavery or trafficking but is subject to removal from the United Kingdom is not entitled to the assistance and support that they would normally be entitled to.
- Anyone assessed to meet the conditions for removal will not be able to be able to enter the UK, be granted permission to remain or settle in the UK or gain citizenship again.
- Any appeal or legal challenge made to halt the removal of an individual will not prevent arrangements being made for removal.

We will look at the individual parts of this bill in more detail and discuss how they will individually impact social work practice and what the specific concerns are.

Section One: Duty to make arrangements for removal

The legislation sets out 4 conditions that if an individual is assessed to meet, the Secretary of State must make arrangements for their removal from the UK. These can be summarised as;

1. They entered the UK without leave or had gained this leave through means such as deception.
2. They arrived in the UK on or after 7th March 2023
3. If they did not come directly from a country in which their life or liberty was threatened.
4. If they require electronic travel authorisation but did not have it

This removal will be organised regardless of whether;

- a claim for protection or a human rights claim has been made,
- the individual is a victim of slavery or human trafficking or is appealing their removal.

Rather than refusing the protection or human rights claim, the claim will be deemed inadmissible and there will be no right of appeal. Limited claims can be made but arrangement for deportation will continue.

**What does this mean
in reality?**

There is no way to claim asylum in
the UK

Section One: Duty to make arrangements for removal

The bill provides the Secretary of State with the authority to make arrangements for the removal of an unaccompanied asylum seeking child when they are under 18 years of age.

Any individual child may be removed to;

- A location in which they are a national or citizen
- A location where they have a passport or other identity document
- A location where they travelled to the UK from.
- A location where there is reason to believe they will be admitted.

What does this mean?

All previous safeguards are removed and children are vulnerable to removal thereby absolving the UK of any responsibility for their safety

When an individual is subject to deportation and instructions are made for their removal, these instructions will also apply to specific relatives if they do not have appropriate leave or right to reside in the UK. This can apply to partners, children, any child living in the household where the individual is caring for them, the individual's parent or an adult dependant relative

Section One: Duty to make arrangements for removal

What are the concerns about this?

This new legislation has a significant impact upon the majority of asylum seekers entering the United Kingdom. So called 'safe and legal routes' are discussed in section 7 but data shows that 85% of the asylum claims processed for those arriving in small boats (not a safe and legal route) were successful (PMQs 3rd November 2022). Therefore, despite individuals requiring protection within the UK, their asylum claim will be disregarded and immediately look to remove them from the UK.

As a social care workforce do we want legislation that clearly ignores the evidence of a need for protection?

Do we want legislation that limits how those seeking asylum can identify their need for protection?

To further add concern, the legislation not only allows individuals to be forcefully removed from the UK to a country that they are from, but also somewhere they travelled through, or somewhere it is believed they will be allowed to enter. This bill provides no detail concerning who will assess the safety and suitability of this, how this will be arranged or facilitated.

Section One: Duty to make arrangements for removal



As a social care workforce how comfortable do we feel about individuals being forcefully taken to a country that they have no links or ties to? A country that they may have never been to?

Focusing on children specifically; whilst the bill does not say that the Secretary of State will *have* to make arrangements for unaccompanied asylum children, it does state they can.

- If the law allows it to happen, why wouldn't it?
- We ask what arrangements will be made to ensure that children's needs are met?
- Who will assess this and how will outcomes for children be tracked?
- We are already aware that other European countries are not accepting the UK requests to transfer asylum seekers therefore where do the government intend to send them?
- What assessments will be undertaken to ensure that a young person is not vulnerable to abuse or being recruited back into a smuggling/trafficking ring?



As a social care workforce are we comfortable with children being deported? Are we confident that assessments will take place to safeguard children and this will be tracked to ensure their wellbeing is a priority?

Section Two: Detention and Bail

The Illegal Migration Bill continues with the current policy of indefinite detention. It widens the perimeter in which it is allowed to include anyone whom is 'suspected' to meet the new 4 conditions for deportation or their family member if they can be subject to deportation as discussed above.

This applies to anyone of any age



The timeframe for detention continues to be indefinite as long as 'in the opinion of the Secretary of State is reasonable necessary'.

The new bill now prevents anyone being provided immigration bail via the First-Tier appeals process until after 28 days after their detention started. The decision by the immigration officer or Secretary of State will be deemed as final and not liable to be questioned or set aside by the court, there can be no argument that an error has been made in reaching the decision and no petition for judicial review can be made.

What are the concerns about this?

Currently 24,000 people are detained indefinitely within the UK in detention centres or Immigration Removal Centres. This detention is not due to a criminal offence but rather due to immigration 'offences'. The purpose of this detention should be for the immediate and imminent removal of individuals from the UK. It is not for public protection as the criminal justice system such as prison has this purpose.

Section Two: Detention and Bail

Detention time can be varied from several days to several years. There is no consideration for individuals who can not be returned to their countries of origin as they are stateless, it is too dangerous to travel there or because their original nationality can not be proved. **Currently 60% of those in detention are released from detention.**

As a social care workforce are we happy with the prospect of an unknown additional number of people being detained for an indefinite period of time given the known negative impact detention has upon individuals?

As social workers our practice, conclusions and decisions are subject of oversight, review and critique. It's how we reflect, develop our practice and ensure that our decision making is robust and appropriate.

As a social care workforce do we feel comfortable that this legislation prevents, in nearly all cases, any oversight taking place when someone's liberty is being removed?



- This legislation allows for children to be detained indefinitely despite the known and well documented long term impact this is known to have. It provides no detail concerning where children and young people will be held whilst they are detained indefinitely.



As a social care workforce can we support children being detained, despite not committing a criminal offence? Isn't it our goal to do our very best to avoid children and young people entering custody?

Section Three: Unaccompanied children

This bill allows the Secretary of State to provide or arrange for the provision of accommodation for unaccompanied children in England as well as provide or arrange additional support for that child.

The Secretary of State may decide a unaccompanied child can cease residing in accommodation from a certain date and can direct local authorities to take transfer of this child after 5 days of being notified.

The Secretary of State can also direct a local authority to cease looking after a child with 5 days notice.

The Secretary of State can direct a local authority to provide information for the purpose of helping the decision of transferring children and young people. This information can be any information which the Secretary of State deems fit.

If the Secretary of State deems that a local authority has 'failed' without a reasonable explanation to comply with their directions, an order can be made stating the local authority is in default of their duty.

Section Three: Unaccompanied children

What are the concerns about this?

- Initially it seems like the Secretary of State is simply further legislating the National Transfer Scheme and making sure that all authorities comply with the timescales of this.

However, the terminology and the provisions that are being made within the bill actually allow the Home Office to remove children from the care of local authorities and provide accommodation and support instead.

Our Questions

- As a social care workforce do we feel comfortable that our duties, responsibilities and areas of expertise will no longer be provided by us and this duty be taken over by the Home Office whose track record in safeguarding is under considerable scrutiny?
- How can the Home Office effectively safeguard children when over 200 young people have gone missing from Home Office hotels? (*Source, BBC*)
- How can the Home Office safeguard children when significant numbers of children have been assessed by the Home Office as adults when they were children?
- As a social care workforce do we think the Home Office can fulfil the duties of The Children Act 1989 and Leaving Care Act 2000?
- What will happen to children when their asylum claim is decided? Will the Home Office then transfer their cases to local authorities and how will they decide which local authority meaning settled young people will move from areas they have connections to?
- Given the Home Office's role is in assessing asylum claims is this not a conflict of interest? And is it not a conflict of interest that local authorities can be directed to provide any information that is requested to the Home Office?

Section Three: Unaccompanied children

As a social care workforce how do we feel as a social worker being directed outside of a court environment to share information about young people? Does this not breach confidentiality?



Priority question: why does the Secretary of State feel the need to take the care responsibility for unaccompanied children within the United Kingdom? The stated purpose of this legislation concerns preventing illegal entry to the United Kingdom, and there is no link between that and the provision of statutory services to children.

Reflective Questions?

As a social care workforce what alternative hypothesis are there for this? Is it to further heighten the hostile environment for migrant children and young people? Is it to reduce the monies paid to local authorities? Is it to allow the Home Office the opportunity to 'fast track' removals without the scrutiny and opposition of children's corporate parent?

Thinking about the current political context - can you reflect about why this might be the case? How might this further heighten the hostile environment for migrant children and young people? How would this affect local authorities financially?

Section Four: Modern Slavey

As we discussed earlier, regardless of whether an individual has been a victim of slavery or human trafficking, their asylum claim can be deemed as inadmissible and individuals will be deported from the United Kingdom. The only way that this does not apply is if the individual is complying with an investigation or criminal proceedings relevant to the exploitation, the Secretary of State considers it necessary for them to be present in the UK to co-operate with an investigation and the individual is not considered to be a risk posed to other members of the public.

If someone's claim is made inadmissible, all services provided to support them concerning the impact of their experiences can be withdrawn.

What are the concerns about this?

This decision to make someone's claim inadmissible and therefore, deportation action is taken regardless of there being reasonable grounds to conclude that someone has been a victim, suggests a lack of priority about safeguarding the vulnerable. There appears to be no consideration surrounding how the individual will be safeguarded in the future.

Despite the trauma, danger and distress that victims of slavery and human trafficking may have experienced, their only option to avoid deportation is to engage in a possibly retraumatising and distressing investigation concerning this matter.

Section Four: Modern Slavey



As a social care workforce are we happy that individuals are effectively being coerced into investigations? Are we comfortable that assessments of welfare can be disregarded and that services provided on welfare grounds are knowingly being removed?

As a social care workforce are we comfortable that someone who may have experienced trafficking and slavery can immediately be placed in detention indefinitely without appropriate assessment by someone suitably qualified?

Section Five: Entry, settlement and citizenship

The bill states that the Secretary of State may give individuals limited leave or indefinite leave to remain in the UK to ensure that there is compliance with the Human Rights convention or another international agreement the UK is a part of.

This legislation will significantly impact some children and their rights for citizenship. It states that a child born in the UK, with one parent who is a British citizen, **WILL NOT** be entitled to citizenship if either one of their parents has ever (whether before or after the child's birth) met the 4 conditions for removal from the UK.

What are the concerns about this?

Whilst saying limited leave or indefinite leave could be given, the bill also states that people's claims can be made inadmissible and any the arrangements for deportation will continue regardless of any claim submitted.

A child can be born in the UK to one British parent and still have their citizenship denied.

As social workers are we comfortable with the possibility that the Home Office now have the power to remove these key aspect of children's identity and protection?



Section Six: Legal proceedings

The bill identifies two claims an individual can make to prevent their deportation – a serious harm suspensive claim or a factual suspensive claim.

A serious harm suspensive claim is not the same as a human rights claim and making a suspensive claim does not affect an individual making a human rights claim.

When making a suspensive claim the burden of proof is placed upon the individual who must provide compelling evidence, ensure that their claim contains the prescribed information and be in the prescribed form and manner. The Secretary of State must decide the outcome of their claim before the end of the claim or decision period, however, can extend this as deemed fit.

There is no right to appeal any decision made by the Secretary of State concerning serious harm suspensive cases if the claim was made after the time period closed but before deportation or a new matter is presented.

An application can be made to the Upper Tribunal to appeal, however, only if their claim has not been concluded to be clearly unfounded. If it has been certified as clearly unfounded, the appeal via the Upper Tribunal can only take place if there is 'compelling evidence'.

There will also be no rights to appeal if someone subject to removal from the UK makes a human rights claim and this is refused. An application for judicial review can be made, however the Secretary of State will continue to make arrangements for the individuals removal.

Section Six: Legal proceedings

Any hearings within the Upper Tribunal services can not consider any new matters unless they have consent from the Secretary of State. The decision from the Upper Tribunal is final and can not be questioned or set aside in any other court.



What are the concerns about this?

Firstly the bill allows for the Secretary of State to amend the definition of serious and irreversible harm. They will be able to re-define and give examples of what can and can not be treated as serious and irreversible harm.

As a social care workforce are we aware of any other legislation where the accepted definitions can be changed without any formal review?

This new legislation makes it very challenging to appeal any asylum decisions despite the fact that currently 48% of negative asylum claim decisions made by the Home Office were overturned at appeal.

As social care workforce are we confident that the Home Office will be able to make the correct decisions when they have so far got it wrong nearly 50% of the time? Do we want a system to operate where many of their decisions can not be challenged?



Section 7: Annual number of entrants using safe and legal routes

The bill will allow the Secretary State to specify a maximum number of asylum seekers entering the UK using safe and legal routes to reach the UK annually. They can consult representatives from the local authority as well as anyone else they deem relevant to make this decision but they do not have if it's a matter of urgency. The Secretary of State will have to explain to Parliament via a statement if this number exceeds the maximum number of asylum seekers allowed to enter the UK and why.

What are the concerns about this?

As contributors to this guide, we do not and will never agree with the proposition that asylum seekers will be prevented from their legal right to claim asylum. We are not in agreement with the proposal that asylum seekers claims for protection and safety will only be considered if they enter the UK via a 'safe and legal route'. We question the accessibility and usability of the 'safe and legal routes' given that it has been well reported only 22 people from Afghanistan have been resettled (despite the commitment of 5,000 by the government) after the Taliban took control. In contrast a reported 8,000 people from Afghanistan have had to enter the UK via small boat.

As a social care workforce, do we agree that these 'safe and legal routes' are effective?



Section 7: Annual number of entrants using safe and legal routes

The idea that the government can simply choose how many people they will even be allowed to claim asylum is cruel, negligent and illegal. The UK have a legal responsibility to allow people to claim asylum. Local authorities have a duty to protect, safeguard and in some cases look after children and young people.



As a social care workforce do we announce each year we will only place a certain amount of children on child protection plans? Do we decide that only a certain number of children will be looked after? No we respond to the need that is presented to them!

The Secretary of State has stated she is unable to confirm that the legislation is 'compatible' with the European Convention on Human Rights. When we look at this document it appears very clear that the Illegal Migration Bill directly disregards several articles of the European Convention of Human Rights.

Therefore, we ask the social care workforce do we really want legislation in the UK which directly opposes the European Convention on Human Rights?



WHAT CAN WE DO TO HELP?

Sign our petition <https://chnng.it/rnzpCrJcCz>

Refugee Action – Write to Your MP campaign

[www.act.refugee-action.org.uk/page/123855/action/1?
ea.tracking.id=W1](http://www.act.refugee-action.org.uk/page/123855/action/1?ea.tracking.id=W1)

Refugee Council – Campaign for a fair and humane asylum system

www.act.refugeecouncil.org.uk/campaign/join-campaign-fair-and-humane-asylum-system

Stand Up to Racism, Care 4 Calais and Trades Union Congress – Protest

www.standuptoracism.org.uk/march-against-racism-18th-march/

BBC, About 200 asylum seeking children have gone missing

<https://www.bbc.com/news/uk-politics-64389249>

