

**MEMORANDUM OF EVIDENCE TO
JOINT COMMITTEE ON HUMAN RIGHTS****CHILD POVERTY BILL****Introduction:**

1. The Immigration Law Practitioners' Association (ILPA) is a professional association with over 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.
2. In this submission, we are concerned to highlight the situation of children who are subject to immigration control, including separated children and children in families, or whose parents or primary carers are subject to immigration control or who are A8 or A2 accession State nationals with limitations on their entitlements to social assistance.
3. Our submission is in two main parts. Firstly, we explore specific concerns regarding the Bill and its relation to the children we highlight. Secondly, we briefly note, by reference to earlier ILPA briefings and submissions where applicable, examples of how poverty and socio-economic disadvantage may be and is caused to these children. Thereafter, we include a short conclusion. All the ILPA briefings and submissions referred to in this submission remain available on our website at www.ilpa.org.uk in the 'Briefings' and 'Submissions' sections respectively.

Part One: Content of the Bill – unequal application or exclusion:

4. It is not clear to what extent the duties, which would be established by the Bill, will extend to the group of children we highlight. What is clear is that the measures in the Bill, as currently drafted, would not extend equally to all these children as to other children in the UK; and while some measures certainly would apply to these children others may not. We note that the current HM Treasury (October 2007) PSA Delivery Agreement 9 to "*Halve the number of children in poverty by 2010-11, on the way to eradicating child poverty by 2020*" does not include children of asylum-seekers¹. We

¹ See fn. 3 on page 3 of PSA Delivery Agreement 9.

consider this to be contrary to the UK's obligations under Article 2 of the 1989 UN Convention on the Rights of the Child ("the UN Convention"), which requires States Parties to respect and ensure the rights set forth in the Convention to each child without discrimination. We are mindful that the UN Committee on the Rights of the Child in its 20 October 2008 Concluding Observations² expressed concerns that asylum-seeking and refugee children experience discrimination³ and would emphasise that these concerns extend beyond that group to children in families subject to immigration control or of A8 or A2 nationals. These children should be protected by the legislation.

5. Clauses 2 to 5 of the Bill set out specific targets relating to child poverty. These targets relate to "*children who live in qualifying households*". As to what is to be a qualifying household and the circumstances in which a child is to be treated as living in a qualifying household, clause 6(1)(a) and (b) provides that this is to be determined by regulations. The Explanatory Notes indicate that these regulations will found relevant definitions upon the Family Resources Survey and Understanding Society survey. ILPA shares concerns expressed at Second Reading⁴ that the group of children we highlight may be excluded or largely excluded from these surveys and hence from the intended targets.
6. If these concerns are realised, the UK and devolved administrations' strategies would still, on the face of the Bill, be required to have regard to these children but solely in respect of the second of the two limbs of clause 8(2):

*"(b) for the purpose of ensuring as far as possible that children in the United Kingdom do not experience socio-economic disadvantage."*⁵

7. Clause 13(1)(b) would still require the Secretary of State to report to Parliament on the progress made to implement the strategy, including as to progress in relation to the second of the two limbs. Nonetheless, there would seem to be a risk that poverty affecting children to whom the specified targets did not apply received less attention because the key measures for assessing progress towards the eradication of child poverty may be taken to be those targets.

² UN Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4

³ *Ibid* para. 24

⁴ *Hansard* HC, Second Reading, 20 July 2009 : Column 628 (*per* Sally Keeble MP), Column 642 (*per* Julie Morgan MP) and Column 662-3 (*per* Steve Drew MP)

⁵ This terminology is replicated in respect of Scottish and Northern Irish strategies, see clauses 10(2)(b) and 11(2)(b)

8. Moreover, the Committee highlights clause 15, which requires that the Secretary of State and the Child Poverty Commission have regard to economic and fiscal circumstances. There is a related requirement upon the Scottish Ministers and relevant Northern Ireland department. During the passage of the Bill, Stephen Timms MP, Financial Secretary to the Treasury, observed:

“Clause 15 is not, as one or two Members have suggested, a get-out clause. The only way of avoiding the duty to meet the targets under the Bill would be to repeal the legislation. Clause 15 is about how, not whether, the Government meet the targets, in a value-for-money way that is consistent with the needs of the wider economy.”⁶

9. But this response is inadequate if the targets do not apply equally to all children. If some children, e.g. children among those we highlight, do not fall within the targets, the UK (and Scottish and Northern Ireland) strategy will only apply insofar as the second limb. Yet this limb only requires measures to ensure *“as far as possible that children... do not experience socio-economic disadvantage”*; and hence the reach of this limb may more readily be constrained by the requirements in clause 15. This underlines the need for the targets to cover all children within the jurisdiction.

10. The Committee raises the question of strengthening the duty in clause 9(4)(c) by reducing the discretion left to the Secretary of State to consult with children and organisations working with or representing children. A similar question may be asked in relation to the duty upon responsible local authorities at clause 22(6)(a). Given the concerns that the targets to be established by the Bill may not apply equally, or at all, to all children in the UK, we would recommend that this duty is strengthened so as to ensure that the strategy is informed by the needs and situations of all children, including those we highlight. This should be addressed by requiring that consultation include consultation with children, in accordance with the UK’s obligations under Article 12 of the UN Convention, and organisational representatives of particular groups of children, including these children.

11. As regards the responsibilities of local authorities and *“partner authorities”* toward reducing child poverty in local areas, we are discouraged that, as was the case when the duty to safeguard and promote the welfare of children was introduced by the Children Act 2004⁷, the UK Border Agency

⁶ *Hansard* HC Second Reading, 20 July 2009 : Column 678

⁷ Only belatedly is the UK Border Agency to be brought within the family of agencies required to safeguard and promote the welfare of children, and the means towards this still leaves the UK Border Agency in some respects on the outside by establishing a

is not included among the individuals and agencies listed in clause 19(2). Whereas clause 20(1)(c) requires a local authority to make arrangements to promote co-operation with “*such other persons or bodies as the authority thinks fit*”, the UK Border Agency (like the “*partner authorities*” listed in the Bill) has a UK-wide remit and, by reason of its policies and operations, clearly affects the socio-economic experiences of children within the meaning of “*child poverty*” as described at clause 24 (e.g. in providing for housing and financial support to asylum-seekers, including asylum-seeking families; through dispersal of asylum-seekers; and through its handling and determination of immigration applications which will determine children’s and families’ access to various services and benefits). The UK Border Agency should be included in the list of agencies in clause 19(2).

Part Two: Child poverty affected or caused by immigration control:

12. This Part of our submission highlights circumstances where children who are affected by immigration control may experience particular socio-economic disadvantage as compared to other children in the UK. It does not seek to be exhaustive. The key purpose is to highlight the breadth of circumstances in which these children may face poverty, and hence the need to address concerns as to the unequal application of the Bill to them.
13. Underlying the examples given is the legislative and policy position that generally excludes persons in the UK who are subject to immigration control, as well as certain A8 and A2 nationals⁸, from a range of social and welfare provisions, and which in relation to specific groups of migrants restricts or denies permission to work⁹. This position is compounded by difficulties some migrants face in accessing provisions to which they are entitled, demonstrating their entitlements, moving from one immigration status to another (where the type and/or source of available support may

separate duty under section 55 of the Borders, Citizenship and Immigration Act 2009. Though Ministers have emphasised the close relationship between this and the duty under the Children Act 2004, it remains to be seen how effective creating a separate duty will prove – i.e. whether the meaning and effect of the duty, and the guidance that is to be produced under it, will have the same meaning and effect as the duty and guidance under section 11 of the Children Act 2004.

⁸ Family members of A8 and A2 workers are held not to satisfy the habitual residence test for the purposes of access to welfare entitlements during the first year of the worker’s employment.

⁹ The relevant provisions are not described here in full. In our October 2007 submission to the Committee for its inquiry into Treatment of Asylum Seekers (para. 3 *et seq*) we highlighted something of the legislative background.

change), facing delays in decision-making on their immigration applications and securing fair and safe decisions on such applications¹⁰.

14. In March 2007, the Committee published a report following an inquiry into the Treatment of Asylum Seekers¹¹. The Committee there highlighted several concerns related to socio-economic disadvantage facing children seeking asylum, alone or in families. We note that the Committee made several findings and recommendations in relation to access to the asylum system (and therefore asylum support), access to asylum support, the provision of asylum support and the refusal of permission to work to asylum-seekers and refused asylum-seekers. The concerns of the Committee have not in the meantime been ameliorated, let alone removed. Recent developments accentuate concerns:

- The UK Border Agency's position on permission to work for asylum-seekers and refused asylum-seekers has not altered since its response to the Committee's report¹². The Government's intention not to opt-in to the revised Reception Directive¹³ is in part determined by unwillingness to accede to the proposed improved reception arrangements for permission to work for asylum-seekers waiting for 6 months or more for decisions on their initial claims¹⁴. The Agency's response to the recent judgment of the Court of Appeal requiring that permission to work be considered on application by any refused asylum-seeker who has waited for 12 months or more for a decision on his or her fresh asylum claim¹⁵ has been to decline to deal with applications for permission to work

¹⁰ Such difficulties were highlighted in our October 2007 submission (para. 5) to the Joint Committee in response to the Joint Committee on Human Rights, *Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers*, Seventeenth Report of Session 2006-07, HL Paper 134, HC 790.

¹¹ Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, Tenth Report of Session 2006-07, HL Paper 81-I HC 60-I.

¹² See Joint Committee on Human Rights, *Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers*, Seventeenth Report of Session 2006-07, HL Paper 134, HC 790.

¹³ Council Directive 2003/9/EC, 27 January 2003

¹⁴ Letter of Lin Homer, Chief Executive of the UK Border Agency to UNHCR of 6 March 2009, made available to members of the National Asylum Stakeholder Forum, includes: "*The further additional rights that the draft [Reception] Directive would grant asylum seekers –particularly on employment and material support- would in our view encourage unfounded claims because people would be more likely to come to the EU and claim asylum in order to benefit from their rights, and not because they need protection.*"

¹⁵ *R(ZO(Somalia) & Anor) v Secretary of State for the Home Department* [2009] EWCA Civ 442

by those who fall within the scope of the judgment while the Secretary of State seeks to appeal to the Supreme Court.

- Decisions taken on the levels for asylum support for 2009/2010 highlight a general risk to the support provided to all, including families on asylum support or in receipt of section 4 support¹⁶. Asylum support has not generally been increased in line with inflation¹⁷, and the reasons given by the UK Border Agency for these decisions indicate that this is a response to pressure on the UK Border Agency budget¹⁸. Not only do these decisions put real pressure on the financial circumstances of families now seeking asylum, they evidence the ongoing insecurities facing families reliant on asylum support in the future.
- In a joint Memorandum to the Committee in respect of its inquiry, the Home Office and Department of Health asserted that case-ownership, procedures and targets under the New Asylum Model (NAM) would lead to “*faster and higher quality processes*”¹⁹. It might have been hoped, therefore, that some of the problems with delays, poor decision-making and poor administration of the asylum system would be addressed by the NAM. However, several problems have emerged which indicate that this hope has not been realised. The relevant targets at no time have applied or been intended to apply to 100% of asylum claimants²⁰, and there appears to be a growing backlog of cases under the NAM which do not fall within the targets. There are no resolution targets covering 100% of claimants. Case-ownership has to date failed to provide reliable end-to-end ownership in all cases. The concerns, including

¹⁶ Families seeking asylum are generally entitled to support under section 95 of the Immigration and Asylum Act 1999. However, some families are supported under section 4 of the Immigration and Asylum Act 1999, generally where the child was born or otherwise joined the family unit after the asylum claim and appeal has been finally determined.

¹⁷ There has not been a uniform response in relation to the levels of asylum support. However, e.g., freezing the level of asylum support for single parent families seeking asylum constitutes a cut in real terms for these family units.

¹⁸ See minutes of the National Asylum Stakeholder Forum meeting of 22 July 2009, available at

<http://www.bia.homeoffice.gov.uk/aboutus/workingwithus/stakeholders/nationalasylumstakeholderforum/>

¹⁹ Appendix 69 to the Committee’s Tenth Report *op cit* (para. 2.6).

²⁰ The target to resolve, whether by way of grant of status or voluntary or enforced departure, NAM cases within 6 months has risen to 75% of claims by the end of 2009, and is to peak at 90% of claims by the end of 2010: see *Hansard HC*, 25 July 2006 : Column 736 (*per* John Reid MP, then Home Secretary).

as to quality of decision-making, which ILPA highlighted to the Committee in respect of the legacy cases²¹ in response to Government's response to the Committee's report²² generally remain pertinent to NAM cases.

15. A specific socio-economic disadvantage faced by some refugee children is denial of family reunification²³.
16. Separated children seeking asylum are not supported directly by the UK Border Agency. However, support is provided under the Children Act 1989. Local authorities receive funding by way of grant from the UK Border Agency in respect of these children. Whereas the entitlement of these children is established in children's legislation, we are concerned that there is potential for the security of that support and commitment of local authorities to be influenced by decisions taken by the UK Border Agency in respect of the grant. Moreover, age assessment practices in the UK asylum system continue to deprive some children of their entitlements as children and mean that they risk the poverty to which adults seeking asylum, or whose applications for asylum have been refused, are subjected²⁴.
17. Children, who or whose parent or parents are subjected to the special immigration status (if this is brought into force²⁵), will suffer particular socio-economic disadvantage by reason of the indefinite denial of employment opportunities and access to mainstream support²⁶.
18. Generally, migrant families are excluded from welfare provisions in the UK unless and until indefinite leave to remain is granted²⁷. Whereas the Immigration Rules generally require migrants to the UK (e.g. migrants

²¹ That is the backlog of cases unresolved prior to the introduction of the NAM: see *Hansard* HC, 19 July 2006 : Column 338 & 25 July 2006 : Column 736 (*per* John Reid MP, then Home Secretary).

²² ILPA September 2007 submission: Memorandum to the Joint Committee on Human Rights following publication of the Government's response to the Committee's Tenth Report of session 2006-07, *The Treatment of Asylum Seekers* (para. 5).

²³ See ILPA February 2009 submission to the Joint Committee on Human Rights' inquiry on Children's Rights, para. 45.

²⁴ ILPA February 2009 submission to the Joint Committee on Human Rights' inquiry on Children's Rights, section G.

²⁵ Provision for the special immigration status is set out in sections 130 *et seq* of the Criminal Justice and Immigration Act 2008, which received Royal Assent on 8 May 2008. These sections have not been commenced.

²⁶ See ILPA February 2009 submission to the Joint Committee *op cit*, para. 35.

²⁷ No recourse of public funds provisions are included at section 115, Immigration and Asylum Act 1999 and paras. 6-6B of the Immigration Rules (HC 395).

coming to study, work or join family members) to demonstrate their capacity to support themselves, migrant families are no less susceptible than others to such events as family breakdown or unemployment²⁸. The period during which migrant families may be precluded from access to welfare benefits will be significantly extended by the naturalisation regime to be introduced under the Borders, Citizenship and Immigration Act 2009²⁹. No recourse to public funds provisions also apply in certain cases where children are seeking to join, accompany or be joined by, his or her parent and hence may impinge on rights under the UN Convention not to be separated and to family reunification³⁰.

19. Children of irregular or undocumented migrants are also at particular risk of poverty and deprivation on account of exclusion from welfare support and the parents not having permission to work. This group includes where migrants have entered the UK unlawfully and where they have overstayed. Changes to the Immigration Rules, and the prospect of further changes in the years ahead inspired by the Government's proposal that a points test be introduced for the naturalisation route³¹, which could be levered up or down, indicate a risk that this group may continue to grow.

20. A further aspect of poverty and deprivation arises from charges that may be imposed on those who are not 'ordinarily resident' in the UK³², which engages the UK's obligations under Articles 24 and 39 of the UN Convention. Those particularly at risk include:

- Dependant children aged 16 to 18 of workers and certain students where those children are not in full-time education;
- Children of workers who are temporarily unemployed;

²⁸ ILPA September 2009 submission to the Ministry of Justice request for views on European Union Justice and Home Affairs Future Work Programme 2009 (Stockholm Programme) highlights groups at risk, including Accession State nationals and victims of domestic violence. We would also refer the Committee to the Statement on No Recourse, which relates to domestic violence and to which ILPA is a signatory, available at: http://www.wrc.org.uk/includes/documents/cm_docs/2009/0/6_0904_nrpf_statement_final.pdf

²⁹ Sections 39-41 of the Act establish the basis for the new naturalisation route. Further information is available from ILPA briefings on the UK Borders Bill, including January 2009 initial briefing, February 2009 House of Lords Second Reading briefing, May 2009 House of Commons Second Reading briefing and July 2009 briefing on Part 2 (naturalisation); and see ILPA May 2008 submission on the Path to Citizenship consultation.

³⁰ Article 9 & 10

³¹ UK Border Agency consultation: *Earning the Right to Stay, A new points test for citizenship*

³² see National Health Service (Charges to Overseas Visitors) Regulations 1989, SI 1989/306 as amended.

- Children of certain persons in the UK with an outstanding settlement application;
- Children of families whose asylum claims have been refused; and
- Children of undocumented migrants.

These concerns extend to situations of pregnant women and women giving or who have just given birth since they may not be entitled to free health care thereby placing the child at risk³³.

Conclusion:

21. The children we highlight face the risk or reality of socio-economic disadvantage by reason of their and/or their parents' immigration status. If the Government's aim to eradicate child poverty in the UK is to be realised, it is plain that these children must be included in the targets and strategies that are implemented in order to achieve that aim. Moreover, as we have argued elsewhere³⁴, the Department for Children, Schools and Families needs to take responsibility for ensuring that generally accepted standards regarding the safety and welfare of children are applied to all children in the UK including those highlighted in this submission.

22. Moreover, since the UK Border Agency, through its practices, policies and the legislation it implements, has a profound potential and real effect upon the socio-economic status of a significant number of children in the UK, the inclusion of that agency among those, to whom duties such as those referred to in this submission are to apply, is necessary – both to ensure that eradication of poverty is achieved for all children; and to ensure that the culture change in that agency, to which Government has committed itself, is neither hindered nor precluded by the development of wider policy and practice from which that agency is exempted³⁵.

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³³ See Refugee Council: *First do no harm: denying healthcare to people whose claims for asylum have failed*, June 2006 which provides a useful introduction to the subject as well as information on how this affects the specific group in question.

³⁴ See, e.g., ILPA February 2009 submission to the Joint Committee *op cit*, para. 36.

³⁵ See further ILPA August 2009 submission on draft statutory guidance on section 55, Borders, Citizenship and Immigration Act 2009.