Immigration and Asylum Bill 1999
Commons Report Stage & 3rd Reading

Briefing from
Immigration Law Practitioners' Association

14 June 1999

This briefing concerns issues related to children, including the government's proposed New Clause 6 and the amendment that would preserve the entitlement of families with children to income support [1 on 1289].

ILPA recognizes that the government's proposed New Clause 6 is an attempt to answer some of the concerns that have been raised about the exclusion of local authorities' s.17 Children Act duties in clause 108 (old clause 99) of the Bill, but we do not believe that it sufficiently meets the case.

Despite the superficially welcome use of the word "must" in new subclauses 6(3) and 6(4), the effect is actually to replace the local authorities' clear s17 duty with something far more tenuous. The s80 powers which the Secretary of State "must" exercise are no more than the basic powers to provide support under the scheme with all its shortcomings and other obnoxious aspects which we have highlighted in other briefings.

Furthermore, these powers will be subject to further limitation and prescription by regulations whose contents <u>still</u> remain largely unknown. There are no fewer than 7 provisions for such secondary legislation in clause 80 alone.

If that were not worrying enough, the government proposes to amend clause 83(5), which empowers the Secretary of State to discontinue support in prescribed circumstances, to specify that such discontinuance could take place even in "circumstances in which the Secretary of State would otherwise be under a duty to provide support" [70 at 1289]. So the apparent protection offered by the use of "must" in New Clause 6 is actually full of holes. It creates a "duty" that the Secretary of State can wriggle out of at will.

Still further, even where clause 80 powers are employed to provide accommodation and/or essential living needs it must be remembered that these will be assessed by Support Agency staff according to Support Agency criteria, and not by trained social services staff with reference to the welfare of the children and families concerned.

This does not amount to an acceptable substitute for Children Act protection for children and their families. That Act makes the welfare of children the "paramount consideration" in decisions

about their upbringing. The government has failed to explain why the children of asylum seeking families deserve less than this.

If local authority Social Services departments are considered to be the best agency for delivering essential services, both long and short term, to UK resident children and their families then no less should be offered to the children of asylum seekers. Questions of funding and "burden sharing" between authorities are separate. They can and should be solved without erosion of the basic principle that all children within the UK should be equal under the law.

It is no answer to say that the discrimination is for a limited period. In the life of a child there is no period during which developmental needs can be put on hold. Even a short time can be crucial, for good or ill.

So speeding up the asylum determination process for families with children, whether by bringing forward the time targets for them to April 2000 or otherwise, in an attempt to limit the length of time they are trapped in the support system would not provide an adequate answer. Indeed the fact that this has been suggested is a tacit admission by the government that something is dreadfully wrong with the proposal to inflict the scheme on children at all.

In any event ILPA regards it as unacceptable to seek to limit potential damage to families with children at the expense of other asylum seekers who have their own vulnerabilities. Many will also have hopes of future reunion with families they have been forced to leave behind. Those hopes can only start to be realised once their status in this country is resolved. It simply would not be fair to delay those decisions in order to salve the government's conscience about inflicting the harshness of the support regime on families already here.

ILPA therefore continues to call for Clause 108 to be omitted from the Bill entirely, and for the government to make appropriate arrangements to fund and otherwise support local authorities in meeting their s17 Children Act duties to asylum seeking children and their families.

This does NOT mean that ILPA supports the status quo in which so many asylum seeking families are forced to turn to Social Services merely because they are denied access to benefits. On the contrary, ILPA continues to oppose Part VI of the Bill in its entirety, and to call for the restoration of access to mainstream benefits for all asylum seekers coupled with speedier and better decision making on all applications.

Alternatively, if the proposed support system is to be created at all, we support the amendment that would exclude families with children and restore their access to urgent cases rate income support. This, coupled with the omission of Clause 108/New Clause 6, would ensure that asylum seeking families could maintain themselves at a minimal level of dignity with the safety net of the Children Act to cover any exceptional circumstances.

Nothing less will do. Tinkering about with the amount of the cash element in the voucher scheme without increasing the overall value of the package is no more than another tacit admission that something is fundamentally wrong with the government's proposals as they will impact upon families with children.