

New Clause 17 and New Schedule 3 inserting Schedule 6 into the Bill: Availability of Local Authority Support ILPA Briefing for House of Commons' Committee Stage of the Immigration Bill 2015

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The proposed new schedule to the Immigration Bill :

- removes local authority leaving care support from specific groups of care leavers; and
- restricts the support that may be provided by local authorities to families with children.

It makes significant and sweeping changes to child welfare legislation undermining established frameworks that safeguard and promote the welfare of children and preventing the UK from meeting its obligations under the United Nations Convention on the Rights of the Child. It creates a system of Home Office support of considerable complexity: instead of the current system of Home Office support under sections 95 and 4 of the Immigration Act 1999 there will henceforth be Home Office support under sections 95 and 95A of that Act and under paragraphs 10A and 10B of schedule 3 to the Nationality, Immigration and Asylum Act 2002. ILPA opposes the introduction of the new Schedule and recommends that it should not stand part of the Bill.

Devolved administrations

No provision is made for Scotland, Wales or Northern Ireland but the letter to the National Asylum Stakeholder Forum says

“the government has in mind to extend these provision to the rest of the UK once we have had further dialogue with the devolved administrations”

The reference to “further dialogue” is unclear. **Has there been any “dialogue” with the devolved administrations to date? If so, what did they say?**

We suggest that it would have been proper to hold these discussions first as part of deciding whether the new powers are appropriate. We are mindful of the existing duties that apply in Scotland and Wales from which we take the extracts below:

Children and Young Persons (Scotland) Act 2014

1 Duties of Scottish Ministers in relation to the rights of children

(1) The Scottish Ministers must—

(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and

(b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

(2) In complying with their duty under subsection (1)(a), the Scottish Ministers must take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware.

...

(2) 2 Duties of public authorities in relation to the UNCRC (1) As soon as practicable after the end of each 3 year period, an authority to which this section applies must publish (in such manner as the authority considers appropriate) a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements.

...

Rights of Children and Young People (Wales) Measure 2011 (2011 nawm 2)

1. Duty to have regard to the Convention on the Rights of the Child

(1) From the beginning of May 2014, the Welsh Ministers must, when exercising any of their functions, have due regard to the requirements of—

(a) Part I of the Convention,

(b) articles 1 to 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, except article 6(2), and

(c) articles 1 to 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(2) From the beginning of May 2012 until the end of April 2014, the Welsh Ministers must, in making any decision which falls within subsection (3), have due regard to the requirements of Part I of the Convention and the Protocols.

(3) A decision falls within this subsection if it is a decision about any of the following—

(a) provision proposed to be included in an enactment;

(b) formulation of a new policy;

(c) a review of or change to an existing policy.

...

Leaving care support removed from specific groups of children leaving care

The Schedule removes leaving care support provided by social services under the Children Act 1989 from children leaving care who are under immigration control who reach the age of 18 years and do not have a pending asylum claim or leave to enter or remain in the UK.

This affects children turning 18 who do not have leave and have no pending asylum application before the Home Office (the amendment is specific that it must be an asylum application) and no pending appeal (asylum or human rights in the case of appeals). This group includes, for example, trafficked children or others taken into care from abusive situations in the UK seeking to regularise their immigration status through an application under the immigration rules based on long residence in the UK or an application for leave to remain under article 8 of the European Convention on Human Rights protecting the right to private and family life.

Paragraph 2(2) of the proposed new Schedule would remove these young people from provisions relating to foster placements and personal advisors. They would remove these young people from the protection of allowing them children to remain in their existing foster placement whilst they make the transition to adulthood, a major reform¹ introduced by the government in 2013 and provisions which ensure that a personal adviser is allocated to children leaving care in a role established in regulations to provide advice and support to young people leaving care in place of a parent².

Paragraph 4 of the new Schedule inserting **new paragraph 3B** into Schedule 3 to the Nationality, Immigration and Asylum Act 2002 would exclude young people from certain leaving care provisions³ if they would qualify for Home Office support under new section 95A Immigration and Asylum Act 1999 or under new paragraph 10B of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 inserted by the amendment. The effect of this is to exclude these young people from the principal leaving care provisions of the Children Act 1989 that require local authorities to continue to provide support and assistance to young people leaving their care and to continue to act as their ‘corporate parent’ by maintaining contact with the young person, appointing a personal adviser, keeping their pathway plan under review and making specific provision to meet their educational and training needs.

Contrast the wording of new paragraph 3B which deals with young people leaving care, with new paragraph 3A which deals with families. While 3A prevents local authorities from supporting families where a certain type of support is, or there are reasonable grounds for believing could be, provided by the Home Office, paragraph 3B makes no reference to a “type of” support. It appears that if a care leaver is getting any Home Office support under s95A or under paragraph 10B to the Schedule, the local authority is barred from assisting them. **Why the difference between the two paragraphs? Is it intentional? If so, what is the intention?**

Child welfare legislation and protective frameworks undermined

Child welfare legislation has made specific provision for children leaving care in recognition of their particular needs; the acceptance that transition to adulthood may be turbulent and children do not become adults immediately on reaching 18 years of age and the need for local authorities to reflect the level of care and support that other children would expect from a reasonable parent in the transition to adulthood⁴.

It has long been accepted that unaccompanied children should be the responsibility of local authorities because local authorities are specialists in the needs of children and the Home Office, which is empowered by this section to make the regulations is not. This is no less true of care leavers who are a group at particular risk and in need of specialist care and support. The Home Office attitude toward them is amply evidenced in the letter to the National Asylum Stakeholder Forum which talks about “adult migrant care leavers.”

¹ Inserting section 23CZA into the Children Act 1989,

² From section 23D of the Children Act 1989; Regulation 8, The Care Leavers (England) Regulations 2010, SI 2010/2571

³ Under sections 23C, 23CA, 24A and 24B of the Children Act 1989 (leaving care provisions)

⁴ Department for Education (2015) *The Children Act 1989 Guidance and Regulations Volume 3: planning transition to adulthood for care leavers*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397649/CA1989_Transitions_guidance.pdf at 3.1-3.3

Under the leadership of Edward Timpson MP, now Minister of State for Children and Families, the Government launched a major cross-departmental Leaving Care Strategy in 2013⁵ and reiterated its commitment to this strategy in July 2015, the Minister stating that it was time to do more for “highly vulnerable” young people leaving care⁶.

In removing leaving care support from young people who do not have a pending asylum claim, a pending appeal or leave to remain, the Government undermines its commitment to ensuring that care leavers receive the same level of care and support that other young people get from their parent/s.

It is not correct to state, as the Government has done⁷, that the provisions of the Children Act 1989 are inappropriate to meet the support needs of young people pending their departure from the UK. Statutory guidance issued to local authorities on leaving care duties under the Children Act 1989⁸ and on the care of unaccompanied asylum seeking and trafficked children⁹ addresses the need for pathway planning for unaccompanied children where their immigration status is not resolved and provides for a dual or triple planning approach that takes into account the different possible outcomes for the child, including preparation for return to the country of origin.

The Joint Committee on Human Rights has stated that unaccompanied migrant children must be properly supported in the transition to adulthood and receive bespoke and comprehensive plans that focus on educational goals, reintegration and rehabilitation¹⁰. This includes planning for possible return to the country of origin¹¹ and the provision of support to young people leaving care whose appeals rights are exhausted¹². The Committee has also stated that it would be difficult to reconcile the removal of support from young people leaving care on the basis of their immigration status, rather than on assessment of need, with the non-discrimination provisions of the United Nations Convention on the Rights of the Child¹³. Article 2 of the Convention requires that States respect and ensure the rights of each child within their jurisdiction without discrimination of any kind¹⁴.

Inadequacy of support under section 95A and paragraph 10B for children leaving care

Young people will instead be required to access support under new section 95A of the Immigration and Asylum Act 1999 inserted by the Immigration Bill to provide support to those who are destitute and can demonstrate there is a genuine obstacle to their return to the country of origin. If they do not qualify, support may be provided by new paragraph 10B added into Schedule of 3 the Nationality, Immigration and Asylum Act 2002 by the proposed schedule to the Immigration Bill on local authority support.

⁵ HM Government (2013) *Care Leaver Strategy*, at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266484/Care_Leaver_Strategy.pdf

⁶ Edward Timpson, Children and Families Minister (2015) *Speech: Our mission to give vulnerable children a better start in life*, 10 July 2015 at:

<https://www.gov.uk/government/speeches/our-mission-to-give-vulnerable-children-a-better-start-in-life>

⁷ Letter from Clive Peckover, Asylum and Family Policy Unit to Members of the National Asylum Stakeholder Forum, 12 November 2015

⁸ Department for Education (2015) *The Children Act 1989 Guidance and Regulations Volume 3: planning transition to adulthood for care leavers*, at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397649/CA1989_Transitions_guidance.pdf, paras 6.21-6.22

⁹ Department for Education (2014) *Care of Unaccompanied and Trafficked Children: Statutory guidance for local authorities on the care of unaccompanied and trafficked children*, at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf, para 59-60

¹⁰ Joint Committee on Human Rights (2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK*, First Report of Session 2013/14, HC196 at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>, para 198

¹¹ *Ibid*

¹² *Ibid*, para 213

¹³ *Ibid*, para 209

¹⁴ United Nations Convention on the Rights of the Child, available at: http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf

Although young people leaving care who fall within the scope of the Schedule will be removed from the protection of the principal support provisions of the Children Act 1989, no detail is provided about the support that will be given to young people by the Home Office under the new provisions inserted by the amendments or about which groups of young people will qualify for this. Provisions meeting the needs of children leaving care are given such a high priority that they are detailed in the primary legislation of the Children Act 1989, however provisions to be made for young people under the Immigration Bill are left entirely to regulations to be made by the Secretary of State for the Home Department. The Home Office is not the department with specialist expertise in children and families and there is no indication that the needs of children leaving care reflected in current statutory frameworks would be met under the new provisions.

The Government has indicated that local authorities will be the agencies that would support young people leaving care under the new provisions¹⁵ however this is not on the face of the Bill. Currently, the Home Office, not local authorities, supports and accommodates adults at the end of the asylum process who face a genuine obstacle to return to their country of origin. Young people leaving care could find themselves housed in adult accommodation inappropriate to their needs. As local authorities are explicitly prevented from providing support to young people under leaving care provisions if support could be (could be not is being) provided under the new provisions, the Government's stated aim of prevent an abrupt end to care and supporting a managed process enabling return to the country of origin cannot be met under the legislation¹⁶.

Destitute families with children

The Government seeks to restrict the support that local authorities may provide to families with children by preventing local authorities from providing support or assistance to children and families under section 17 of the Children Act 1989 if that support is of a type that could be provided by the Home Office under the new paragraph 10A of the schedule¹⁷. Under paragraph 10A the Home Office may make regulations to arrange for support for a person who is destitute and has a dependent child and does not meet the criteria for support under section 95A and meets one of the following conditions:

- a) they have a pending application for leave to enter/remain of a type to be specified in regulations;
- or
- b) they have a pending statutory appeal; or
- c) they have exhausted their appeal rights and are cooperating with removal; or
- d) support is necessary to promote and safeguard the welfare of the child.

As in the provisions described above, the detail of these provisions and who will qualify for them is left to regulations despite their importance to the protection and promotion of children's welfare. It is unclear whether support will be provided by local authorities or through alternative Home Office provision.

The Home Office letter to the National Asylum Stakeholder Forum says that the new Schedule enables local authorities to continue to provide under section 17 of the children Act 1989 for any

¹⁵ Letter from Clive Peckover, Asylum and Family Policy Unit to Members of the National Asylum Stakeholder Forum, 12 November 2015

¹⁶ *Ibid*

¹⁷ New paragraph 3A in Schedule 3 of the Nationality, Immigration and Asylum Act 2002 provides that local authorities may not provide support where the support is of a type that could be provided by the Home Office under new paragraph 10A to the schedule.

other needs of a child or their family which must be addressed to safeguard and promote the child's welfare.

Risk of children falling outside the protection of section 17 of the Children Act 1989

The Government has stated that the Schedule “enables local authorities to provide under section 17 of the Children Act 1989 for any other needs of a child or their family which must be addressed to safeguard and promote the child's welfare”¹⁸ however it is unclear whether the amendments achieve this. Whilst it may be intended that the restriction on support or assistance under section 17 of the Children Act only applies where the support is of a type that could be provided by the Home Office under paragraph 10A, local authorities could be prevented from providing for the welfare of a child if the child was being provided with support under paragraph 10A but this was inappropriate for their needs. For example, Home Office accommodation under section 95A of the Immigration and Asylum Act 1999 would be a type of support that could be provided under paragraph 10A but the particular accommodation provided might not be suitable for a child and the local authority could be prevented by paragraph 3A from providing more appropriate accommodation under section 17 of the Children Act 1989. There is a risk that children may fall outside the protection of section 17 of the Children Act 1989 as a result.

It may also be unclear to local authorities the nature and the extent of support that might be provided under paragraph 10A to children and families as this is not defined so it will be unclear whether and at what point their duties under section 17 of the Children Act to provide additional support would kick in. Where subsistence and accommodation is provided by the Home Office, there is a risk that families with children become vulnerable to protracted disputes between the local authority and the Home Office as to the support that should be provided by each agency and/or fail to receive the support needed to safeguard the welfare of children within the family.

Dangerous gaps in support

The local authority is prevented from providing support and accommodation under section 17 of the Children Act 1989 where “there are reasonable grounds for believing that support will be provided”. This prevents local authorities from providing families with support on the basis that they may receive support in the future although they are not currently receiving any support. It would prevent a local authority from providing support on an emergency basis if a family are destitute and has been unable to access immediate support from the Home Office. This provision also prevents local authorities from providing support to families who would in principle be entitled to support under paragraph 10A but are not receiving it in practice.

The significant problems caused by gaps in welfare systems were tragically highlighted by the death of child EG, subject of a Serious Case Review by Westminster City Council in 2012¹⁹. EG was a one year-old boy who starved to death in 2010 and whose mother died two days later during the period between Home Office National Asylum Support ceasing and mainstream welfare support from the Department of Work and Pensions starting. The limitation on providing support under section 17 of the Children Act 1989 on the basis that support would reasonably be provided by another agency is a restriction that creates a recipe for further tragedies.

¹⁸ Letter from Clive Peckover, Asylum and Family Policy Unit to Members of the National Asylum Stakeholder Forum, 12 November 2015

¹⁹ April 2012. Available at <http://www.westminster.gov.uk/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc>