ILPA briefing to amendments tabled for House of Lords Committee Stage of the Immigration Bill: Part Five: Support for certain categories of migrant

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations.

For further information please get in touch with Alison Harvey, Legal Director or Zoe Harper, Legal Officer, on 0207 251 8383, Alison.Harvey@ilpa.org.uk; Zoe.Harper@ilpa.org.uk

Part Five of the Immigration Bill deals with:

- Support for certain categories of migrant (Clause 37 and Schedule 8);
- Availability of local authority support (Clause 38 and Schedule 9);
- Transfer of responsibility for relevant children (Clauses 39-43);
- Proposed new clause on access to higher education for children leaving care;
- Proposed new clauses on family reunion and other matters.

This briefing deals with the amendments tabled in the first four categories listed above relating to the provision of support, including for higher education. A separate ILPA briefing addresses the proposed new clauses on family reunion and other matters.

SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT (Clause 37 and Schedule 8)

Lord Rosser, Lord Kennedy of Southwark, Baroness Hamwee and Lord Paddick's opposition to Clause 37 standing part of the Bill.

Part 5 makes significant changes to the current system of asylum support. Clause 37 and Schedule 8:

- Repeal section 4 of the Immigration and Asylum Act 1999 under which those at the end of the asylum process and others on temporary admission unable to return to their country of origin are accommodated. It is replaced by new section 95A of the Immigration and Asylum Act 1999 which makes provision for support for those at the end of the asylum process who face a genuine obstacle to returning to their country of origin but not for other persons on temporary admission similarly unable to return to their country of origin.

- Remove the right of appeal against a decision to refuse or to discontinue support for those whose claims for asylum have failed and against a decision to discontinue support when any further submissions are rejected. These appeal rights also will be lost by those who continue under the old support regime under transitional protection.

- End the continuation of support under section 95 of the Immigration and Asylum Act 1999 for families of children who reach the end of the asylum process until they leave the country. Families will be required instead to qualify for support under section 95A or under a complex set of provisions for limited support from the local authority under paragraph 10A inserted into Schedule 3 of the Nationality, Immigration and Asylum Act 2002 and conditional upon cooperating with attempts to remove them.

Provisions not sufficiently thought through or detailed

Part 5 has been substantially amended by the Government in Committee and Report in the House of Commons and yet another raft of Government amendments has been tabled for debate at Committee Stage in the House of Lords. ILPA has described the proposed replacement for the current support system as:

> *A series of tatty "safety" nets, each full of holes and inadequate to hold a person, slung one beneath the next, like fishing nets. As each one fails you plummet to the next, then fall further*[1].

This assessment has not changed despite attempts in this next wave of Government amendments to patch a few of the very many holes. The impression remains one of haste: proposals not fully thought through or developed and subsequently rushed through parliament without adequate reflection on how they may operate in practice, leaving people, including children, at risk of inhuman or degrading treatment where they are deprived of their basic rights to food and shelter as a result of falling through the gaps in provision or of being left vulnerable to poor quality decisions on their applications for support without access to judicial scrutiny.

Much of the content of the provisions in this part of the Bill is left to be determined in regulations to be made by the Secretary of State. The Delegated Powers and Regulatory Reform Committee has said in relation to new section 95A of the Immigration and Asylum Act 1999 that:

> *The new section relies on wide regulation-making powers in subsections (1), (3)-(6), (9) and (10), wider even than in the provision that the new section is to replace (in section 4 of the 1999 Act)*[2].

Expressing surprise that such wide provisions should be subject to the negative resolution procedure[3], the Committee has recommended that regulations be subject to the affirmative procedure, particularly since the purpose of the regulations is to provide relief from destitution[4]. Whilst the Government stated that it was giving due consideration to the

[1] House of Lords Second Reading Debate, 21 December 2015.
[2] Delegated Powers and Regulatory Reform Committee (2015) Immigration Bill, 17th Report of Session 2015/16 at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/73/73.pdf, para 22
[3] *Ibid*, paragraph 20.
[4] Delegated Powers and Regulatory Reform Committee (2016) Immigration Bill: Government Response, 19th Report of Session 2015/16, at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/85/85.pdf, p.8.

recommendation[5], the recommendation of the committee has not been addressed in the amendments tabled.

Meanwhile, the House is provided with no information on the nature of the support that will be provided under section 95A of the Immigration and Asylum Act 1999 or sections 10A of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to support it in scrutinising the legislation.

Information / assurances to seek:

The Minister should be asked to confirm that support under section 95A and paragraph 10A will meet a person's or a family's essential living needs.

Nor is there adequate information as to who will qualify for support under section 95A of the Immigration and Asylum Act 1999 and how they will qualify. Support for destitute asylum seekers who face a "genuine obstacle to return" to their country of origin may be provided subject to conditions under section 95A(4) of the Immigration and Asylum Act 1999. This provides limited information as to who will not qualify for support under this section and face destitution.

The Government's document, *Reforming support for migrants without immigration status*[6], states that it will not be possible to apply for section 95A support outside the prescribed "grace" period for the termination of section 95 support. This would mean that it would only be possible to make an application for section 95A support during the last 21 days of receiving section 95 asylum support. The Government states that the regulations would create exceptions where the reason for applying outside that period was outside the person's control, for example where they were not promptly notified of the refusal of their asylum appeal or where they were hospitalised or otherwise too unwell to make an application for section 95A support during the grace period[7].

It would be artificial to create a distinction between those who apply within the grace period for the termination of support under s.95 Immigration and Asylum Act 1999 and those who do not apply within this period. A person who is destitute and cannot leave the UK because they face a genuine obstacle to doing so would require support to prevent breaches of their human rights as they are not permitted to work in the UK to support themselves and have no access to mainstream benefits so would be unable to secure food or shelter.

Many scenarios can be envisaged where an individual would be unable to access support under section 95A despite being unable to comply with the suggested condition of applying within the grace period of section 95 support. These would affect, for example:

- People who have not been in receipt of section 95 support from the Home Office previously, for example because they are supported and accommodated by a friend, but are left destitute at a later stage where the friend finds that they are no longer able to provide support and accommodation;
- People whose section 95 or section 95A is wrongly terminated by the Home Office making it impossible for the individual to reapply for support;
- People for whom a genuine obstacle to leaving the UK arises outside the grace period for termination for support. For example, pregnant women are prevented from flying

[5] *Ibid*.
[6] Home Office (2016) *Reforming support for migrants without immigration status*, para 30.
[7] Home Office (2016) *Reforming support for migrants without immigration status*, para 30.

six weeks before their due date for the birth of the child, but if the woman was to reach this advanced stage of pregnancy outside the grace period for termination of support, she would be unable to access support, with harmful consequences to both her and her baby. Similar problems may arise where other genuine obstacles arise to removal to the proposed country of origin, for example where a land route of return from a neighbouring country ceases to be available.

It is the experience of the Asylum Support Appeals Project that it is rare for those currently in receipt of support under section 4 of the Immigration and Asylum Act 1999 to have been able to apply for this support whilst in receipt of section 95 support. In its experience, only a few people are able to make an application within 21 days of service of their dismissed asylum appeal. Applicants may be unable to obtain the medical evidence or documentation (e.g. from foreign embassies) that they need to demonstrate the genuine obstacle to their return within a period of three weeks. A condition requiring the application to be made within a specific timeframe will create a class of destitute people in the UK forced into inhuman and degrading conditions while they are unable to return to their country of origin.

Information / assurances to seek:

The Minister should be pressed to ensure that regulations for section 95A support do not make this conditional upon the timing of a person's application;

The Minister should be asked to give effect to the recommendation of the Delegated Powers' Committee and amend the Bill to provide that any regulations under section 95A(4) are subject to the affirmative procedure.

Repeal of section 4 of the Immigration and Asylum Act 1999

Schedule 8 would replace section 4 of the Immigration Act 1999 with a new section 95A, a power to support those whose claim for asylum is refused but who have a "genuine obstacle to removal". Only those with protection claims would be able to obtain this support. There is no power in this part of the Bill to support single adults (with the exception of care leavers who are young adults, discussed below) who have never claimed asylum, even if they cannot be returned, even if they are stateless.

Removal of a right of appeal against support decisions at the end of the asylum process

Schedule 8 would remove the right of appeal against a decision to refuse or to discontinue support for those whose claims for asylum have failed, and against a decision to discontinue support when any further submissions are rejected. This must be considered in the context of poor quality Home Office decision-making in asylum support cases and the proposal that families with children will be subject to this system without recourse to judicial scrutiny of incorrect decisions by a Tribunal.

This specific concern is discussed in detail in our commentary below on **Amendment 230 in the names of Lord Rosser, Lord Kennedy, Baroness Lister and Lord Roberts** which would provide for a right of appeal against a decision to refuse or terminate support under section 95 of the Immigration and Asylum Act 1999.

Removal of section 95 support from families at the end of the asylum process

It is proposed that families with minor children whose claims for asylum fail will no longer be supported until they leave the country but will have to look to section 95A in the same way as single adults and support provided to them is made conditional on their being a genuine obstacle to removal in the same way. This is similar to section 9 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which was the subject of an unsuccessful pilot in 2005[8], of which the Joint Committee on Human Rights said:

> *97. The section 9 pilot has caused considerable hardship and does not appear to have encouraged more refused asylum seeking families to leave the UK. ... We believe that using both the threats and the actuality of destitution and family separation is incompatible with the principles of common humanity and with international human rights law and that it has no place in a humane society. We recommend that section 9 be repealed at the earliest opportunity.*[9]

At the time when section 9 was proposed, Mr James Clappison, for the Conservative party, stated:

> *We were concerned—and so were many others—that children could slip through the safety net that the Government were seeking to put in place and that, as a result, children and families could suffer hardship, especially children who were taken into care and separated from their families—which is undesirable and should be avoided if possible—or even worse. …*
>
> *…. We are concerned about the welfare of children, who should not suffer under any circumstances, whoever their parents are and whatever their basis for being in the country. The intention of the original Children Act 1989 was that any child on British soil should benefit from its comprehensive protection which puts their interests first.*[10]

The Minister's summary at Commons Report of what has changed since 2005 was:

> *First, the current onus on the Home Office to show that a family is not co-operating with return is removed; … the family will have to show that there is a genuine obstacle to their departure.*
>
> *Secondly, the 2005 pilot involved a largely correspondence- based …The new approach will involve a managed process of engagement with the family…*
> *Thirdly, we judge that circumstances have changed: it is now more generally recognised that the taxpayer should not have to support illegal migrants who could and should leave the UK.*[11]

This is repeated in the Home Office document, *Reforming support for migrants without immigration status*. The first two reasons given make false distinctions. Under the new system the family bears the brunt of having to show why they should be supported, rather than the Home Office being required to show why they should not. The system is predicated upon the Home Office never making a mistake: as to the family's initial claim for asylum or as to an obstacle for return.

---

[8] Border and Immigration Agency, Family Asylum Policy: The section 9 implementation project (undated) http://webarchive.nationalarchives.gov.uk/20140110181512/http:/www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf (accessed 5 September 2015). See further Refugee Council and Refugee Action's 2006 report *Inhumane and Ineffective - Section 9 in Practice*, 2006 Immigration, Asylum and Nationality Bill in Standing Committee E, 6th session, afternoon 25 October 2005, Tony McNulty MP, at Col.237.

[9] Joint Committee on Human Rights, *The Treatment of Asylum Seekers* 10th Report of session 2006-2007 HL Paper 81, HC 60 http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf

[10] HC Report, 16 June 1999, 417-421.

[11] HC Deb 1 December 2015, Col 226.

The timescales within which support will be cut off are too short for the managed "family removal" process to take place within them; they will cut across that process and may cause the family to disappear. As to the third reason, it amounts to saying that the best interests of the child no longer come first and that the principles of the Children Act 1989 no longer prevail. That is not in accordance with the law.

Below the section 95A safety net hangs a new net for families with dependent children, a new paragraph 10A of Schedule 3 to the Nationality Immigration and Act 2002 which provides for families to be supported if certain conditions are met. 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 schedule. Under paragraph 10A the Home Office may make regulations to arrange for support for a person who is destitute, has a dependent child, 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 could bring a statutory appeal; or
c) they have a pending statutory appeal; or
d) they have exhausted their appeal rights and are cooperating with removal; or
e) support is necessary to promote and safeguard the welfare of the child.

As discussed above, the detail of these provisions and who will qualify for them is left to regulations despite their importance to the protection of children and promotion of their welfare. The Delegated Powers and Regulatory Reform Committee has recommended that regulations made under paragraph 10A of the Schedule are subject to the affirmative procedure[12].

The Government has brought forward **Amendment 234Y** which would allow a local authority to provide support to a family who may be destitute whilst it is determining whether support should be provided. This follows criticisms made by ILPA and others at an earlier stage of the Bill that local authorities were prevented from providing support to a family where there were reasonable grounds to believe that the family was eligible for Home Office support even if the family was not in practice receiving this support. The circumstances in which the local authority will be able to provide support to families who may be destitute will, however, be determined in regulations, giving rise to the risk that there will remain gaps through which families with children may fall.

The risk of destitution remains despite the tabled amendment as the new support process relies on families understanding the complexities and criteria of three different systems of support, how to access these and on their having the ability, confidence and English language skills to advocate effectively for themselves. Families risk falling through the gaps between the three systems of support: section 95 provision, section 95A support and support under paragraph 10A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 which itself has different sets of eligibility criteria under its different paragraphs.

[12] Delegated Powers and Regulatory Reform Committee (2015) Immigration Bill, 17th Report of Session 2015/16 at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/73/73.pdf, para 23

For example, paragraph 10A(4)(a) provides the Home Office with a power to support families who have a pending appeal. This would be a pending human rights appeal or appeal against revocation of refugee status since those with a pending asylum appeal qualify for support under section 95. Under paragraph 10A(4)(b) however, support will not be provided on the basis of the pending appeal if the Secretary of State has certified the claim such that the person cannot appeal from within the UK, for example under the "remove first appeal later" provisions of Clause 34. In such circumstances, a person who wishes to challenge their removal will have to bring a judicial review. The family will not be eligible for support on the basis of a pending appeal while they do so, or while they make other representations to the Home Office. The family may then need to qualify under paragraph 10A(6) for support necessary to safeguard and promote the welfare of the child but the criteria for this support is left to regulations to be determined by the Secretary of State.

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 2012. 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[13].

Welfare of the child

Paragraph 10A(6) provides a residual category for support to promote and safeguard the welfare of the child where the family do not otherwise qualify for support. Under paragraph 10A(7), the Secretary of State may make regulations to specify the person who must take the decision on whether this support is required and may specify what they must or may take into account in so doing.

The Secretary of State has said that she intends local authorities to provide support to families with minor children under section 10A although this is not on the face of the legislation. Rather than allow them to use their existing expertise, however, as to what is necessary to safeguard and promote the welfare of children, she can dictate to them, or to anyone she subsequently identifies is to provide the support, what is necessary, even though the Home Office does not have specialist expertise with children and families.

These assessments should be determined by local authorities in accordance with their duties under section 17 of the Children Act 1989. Questions of how and whether support will be provided to children and families at risk of destitution under this provision should not be left to regulations by the Secretary of State.

Children with additional welfare needs

A 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 other needs of a child or their family which must be addressed to safeguard and promote the child's welfare[14] but it is unclear whether the Schedule achieves this and there is a risk that families with children become the object of protracted disputes between the local authority and the Home Office as to the support that should be provided by each and/or fail to receive the

[13] April 2012. Available at http://www.westminster.gov.uk/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc

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

support needed to safeguard the welfare of children within the family.

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"* however it is unclear whether the legislation achieves this.

Whilst it may be intended that the restriction on providing 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, it might be read as preventing local authorities from providing for the welfare of a child if the child were 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 paragraph 3Amight be read as preventing the local authority 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.

The nature and the extent of support that can be provided under paragraph 10A to children and families is not defined. There is no statement on the face of the Bill making it clear that support must meet the essential living needs of children and families. It will therefore be unclear to local authorities 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 of lengthy disputes as to the support that should be provided by the Home Office and by the local authority respectively and/or the family may fail to receive the support needed to safeguard the welfare of children within the family.

Information/assurances to seek

The Minister should be asked to amend the Bill to insert a statement that support will meet the essential living needs of children and families to clarify the remaining duties on local authorities under section 17 of the Children Act.

Amendment 228 in the name of Baroness Lister, Lord Alton and Lord Dubs

Purpose: This amendment seeks to increase the period after which asylum support under section 95 of the Immigration and Asylum Act 1999 ceases when a person is granted refugee status, humanitarian protection, discretionary leave to remain, indefinite leave to remain or limited leave to remain for 30 months.

Briefing

Individuals supported under section 95 of the Immigration and Asylum Act 1999 who are granted leave to remain are currently given a "grace period" of 28 days from the date of the determination of their claim during which they may continue to receive section 95 support whilst obtaining work or applying for mainstream benefits. This period is prescribed in regulation 2(2A) Asylum Support Regulations 2000 (as amended).

A period of 28 days from the date of the determination of the claim has been found to be insufficient to protect refugees and others granted leave to remain from destitution. Freedom from Torture clinicians have identified that this is the period when torture survivors under their

care most frequently experience destitution, including street homelessness[15]. Two further research reports published in 2014 by the British Red Cross[16] and by the Refugee Council[17] highlight the difficulties that refugees face during this 'move on' period due to problems with Home Office and Department of Work and Pensions processes, including delays in receiving Biometric Residence Permits and difficulties in obtaining a National Insurance number.

The problem of the gap between a grant of leave and access to support was vividly and tragically highlighted by the death of child EG, a little boy who starved to death in this period. The case is relevant not just to those granted leave, but to all situations in which there is a gap and an emergency response is needed. We cite from the Executive Summary of the Westminster Council Safeguarding Board Serious Case Review, as amended as directed by the High Court[18]:

> *11.1.8 An initial post mortem examination on 10.03.10 found there was no food in EG's stomach or digestive tract. EG was described by the paediatric pathologist as 'severely underweight and dehydrated' and he concluded that 'this was clearly the immediate cause of death'.*

EG's mother died two days later. The serious case review identifies the following "National issue":

> *5.1.4 Westminster Local Safeguarding Children Board should write to the National Asylum Support Service and Department for Work & Pensions to express its concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies which are triggered in the transitional period between withdrawal of support by the National Asylum Support Agency and entitlement to Benefits.*

The commencement of the grace period from the date of receipt of the Biometric Residence Permit (which can be subject to delay) as well as the provision of 40 days in which asylum support and accommodation is continued, rather than the existing 28 days, work together to improve the existing situation in which those granted leave to remain may experience destitution or hardship in the gap between the two support systems. It would be useful, however, to make provision that asylum support only cease once mainstream benefits and/or employment has commenced. The provision of a National Insurance number and the establishment of mainstream benefits can be subject to delay and the additional flexibility would provide security to those individuals who suffer particular problems during this process. In this regard, **Amendment 229 in the names of Baroness Hamwee and Lord Paddick** is to be preferred.

Amendment 229 in the names of Baroness Hamwee and Lord Paddick

This amendment seeks to address the same difficulty as **Amendment 228 in the name of Baroness Lister, Lord Alton and Lord Dubs.** It identifies a different, and arguably more flexible, way to prevent those granted leave to remain following an asylum claim from falling into destitution whilst they deal with the bureaucracy involved in transferring from the asylum

---

[15] Freedom from Torture (2013) *The Poverty Barrier: The Right to Rehabilitation for Torture Survivors in the UK* at: http://www.freedomfromtorture.org/sites/default/files/documents/Poverty%20report%20FINAL%20a4%20web.pdf

[16] British Red Cross (2014) *The Move-on Period: An Ordeal for New Refugees*, at: http://www.redcross.org.uk/~/media/BritishRedCross/Documents/About%20us/Research%20reports%20by%20advocacy%20dept/Move%20on%20period%20report.pdf

[17] Refugee Council (2014), *28 days later: experiences of new refugees in the UK*, at: http://www.refugeecouncil.org.uk/assets/0003/1769/28_days_later.pdf

[18] April 2012. Available at http://www.westminster.gov.uk/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc

support system to employment or mainstream benefits. It does so by requiring that the claim is only deemed to be determined for the purpose of asylum support once the decision on the claim has been made and it appears to the Secretary of State that the person is no longer destitute. This means that asylum support would continue until the person has been able to access mainstream benefits and accommodation. This would deal with both delays in the Home Office's issuing a Biometric Residence Permit, the required identify document, to the applicant and delays on the part of the Department of Work and Pensions in issuing a National Insurance number and establishing the claim to mainstream benefits.

Government Amendments 229ZA, 229ZB, 229ZC and 230ZA

These are consequential amendments that follow from changes made by the Immigration Bill in this Part and elsewhere.

Amendment 229ZB in the names of Baroness Hamwee and Lord Paddick

Presumed purpose: This amendment would require that the provision of asylum support under section 95A of the Immigration and Asylum Act 1999 be made in cash rather than in kind, in vouchers or prepaid cards limited to use in specific shops or supermarkets such as the 'Azure' card[19] as currently under the provision of support under section 4 of the Immigration and Asylum Act 1999.

Briefing

The "azure" card can also only be used to purchase essential items and, although, according to Home Office guidance, the only restricted items are fuel, gift cards, alcohol and cigarettes, users report supermarket staff refusing to allow cardholders to purchase socks, toiletries, children's clothing and cleaning utensils. These problems are further compounded by reports of technical faults with the card, which mean that the cardholder is unable to make any purchases. By restricting their access to cash, section 4 recipients are unable to for instance, pay for shoe repair, travel via public transport, or purchase food from markets or discount stores. Evidence provided to the Home Affairs Select Committee inquiry into asylum was that 82% of surveyed section 4 recipients were unable to buy fresh fruit and vegetables and more than 90% regularly missed a meal[20]. It also indicated that substantial numbers of those asylum seekers supported under section 4 are presenting with health problems. In 2011, Refugee Action found that 206 individuals raised issues related to Section 4 and health problems in casework sessions or were identified by the caseworker as having a physical or mental health problem. This is very high given that only 2,310 people were on S4 at the end of 2011[21].

The criteria for receiving section 4 support which will now be replaced by section 95A support include that the individuals concerned are temporarily unable to return to their countries of origin through no fault of their own. There is no evidence to show that the harsher regime applied of cashless support under section 4 has met the intended policy objective of encouraging more people to return home. The House of Commons Home Affairs Committee in its inquiry on asylum concluded in relation to section 4:

---

[19] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/asylum/vouchers.pdf

[20] House of Commons Home Affairs Committee, *Seventh report of session 2013/14: Asylum* at: http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf

[21] www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-18.htm

Given that resources are constrained across Government at this time, the allocation of funding and staff to running a parallel support system seems excessive.

We are not convinced that a separate support system for failed asylum seekers, whom the Government recognise as being unable to return to their country of origin, is necessary[22].

The Committee recommended that the Government identify a better way to provide support to people at the end of the process who are unable to return to their country of origin[23].

A simplified asylum support system which unifies the levels and type of payment minimizes transfers between different systems and ensures that asylum seekers can properly meet their essential living needs, has the potential to deliver substantial financial and administrative savings.

Amendments 229A, 230A and 230B in the name of Lord Roberts

Purpose

These amendments seek to ensure that the Secretary of State is placed under a duty to provide support where applicants meet the relevant criteria rather than simply having a power to provide support.

Amendment 229A would therefore create a duty instead of a power to provide support to failed asylum seekers who meet the criteria of new section 95A of the Immigration and Asylum Act 1999.

Amendments 230A and 230B place the Secretary of State under a duty, instead of the current power, to provide temporary support to failed asylum seekers under section 98A of the Immigration and Asylum Act 1999.

Briefing

This change would be welcome. The current provisions for support to asylum seekers under section 95 of the Immigration and Asylum Act 1999 and for support to failed asylum seekers under section 4 of the Immigration and Asylum Act 1999 are expressed as powers of the Secretary of State rather than as duties and would also benefit from amendment.

Amendment 230 in the names of Lord Rosser, Lord Kennedy, Baroness Lister and Lord Roberts

Purpose: Schedule 8 would remove the right of appeal against a decision to refuse or to discontinue support for those whose claims for asylum have failed and against a decision to discontinue support when any further submissions are rejected. This amendment would reinstate a right of appeal against Home Office decisions to provide support whether under section 95 or under new section 95A of the Immigration and Asylum Act 1999.

Briefing

The most recent statistics from the Asylum Support Tribunal indicate that in the year between September 2014 and August 2015, the Asylum Support Tribunal received 2067 applications for appeals against a Home Office refusal of asylum support. 62% of these were either allowed

[22] House of Commons Home Affairs Committee, *Seventh report of session 2013/14: Asylum* at: http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf, para 80-81.
[23] *Ibid.*

(44%), remitted or withdrawn by the Home Office. Once the Asylum Support Tribunal has its ability to scrutinise Home Office decisions reduced, it is anticipated that refusals of asylum support will increase[24].

The Minister suggested at Common's Report that these figures do not give the full picture. He argued that many of the allowed appeals (41% in the year to August 2015) turned on new evidence granted at appeal, citing the report of the Independent Chief Inspector of Borders and Immigration[25] as evidence that 89% of refusals were reasonably based on the evidence available at the time. The rate of correct initial decisions is, however, no indication of whether, when a decision is wrong, the Home Office is able to put it right. The Chief Inspector's report found that of 103 refusal decisions, 74 carried a right of appeal. Only 12 applicants in the sample exercised this right. Two of the 12 appeals were allowed by the Tribunal. Both of these allowed appeals concerned Section 4 applications. The Chief Inspector found that the Home Office submission that appeals were allowed because of the evidence provided at the appeal stage was "consistent with one of the appeals in our sample," hardly a matter of statistical significance. He recorded that one appeal

> *…concerned a complex and unusual case relating to an outstanding judicial review. It was unclear from the support application whether or not the judicial review remained outstanding at the time the decision was made, but ultimately the Tribunal accepted that it was ongoing.*[26]

The Chief Inspector observed three appeals against discontinuation of section 4 support and wrote:

….in each of these appeals, UKVI had failed to follow its own policy on discontinuation: prior to making the decision, it had not written to the recipient requesting any information that would prevent discontinuation. This was a significant factor in determining the outcome of each case.

> *4.32 Two of these appeals were remitted back to UKVI to enable further applications to be considered. In the final case, although again there was further evidence to consider, the appeal was allowed as the Judge concluded that the applicant was homeless and a delay would not be appropriate.*
>
> *4.33 Remitted appeals accounted for 9% of appeal outcomes between August 2012 and 2013, occurring on no less than 117 occasions. Our experience at the Tribunal has indicated that some of these appeals could have been avoided if UKVI had followed its own policy on discontinuation.*

In other words, the Home Office failed to follow its own policy on obtaining the very evidence the Minister says should have been submitted earlier.

The Asylum Support Appeals Project has published research[27] in which the organisation reviewed 50 client files from October and November 2015 in which an appeal was allowed or remitted to the Home Office for reconsideration to examine why those appeals were successful and the extent to which 'late' evidence was provided and influenced their outcome. This is a

---

[24] Asylum Support Appeals Project analysis of statistics received from the Asylum Support Tribunal

[25] July 2014, see http://icinspector.independent.gov.uk/wp-content/uploads/2014/07/An-Inspection-of-Asylum-Support-FINAL-WEB.pdf .

[26] *Op.cit.,* paragraph 4.30.

[27] Asylum Support Appeals Project (2016) *ASAP Research Briefing: Why Appeals Succeed* at: http://www.asaproject.org/wp-content/uploads/2016/01/ASAP-Research-Briefing-Why-Appeals-Succeed-Jan-2016.pdf

larger sample of relevant cases than that considered by the Chief Inspector of UK Borders and Immigration.

The organisation found that whilst additional evidence was relevant to the outcome of the appeal in 42 of the 50 cases, it was the single or dominant factor underpinning the Tribunal Judge's decision in only 15 of the 50 cases reviewed. In 22 of the 50 cases reviewed, a combination of factors was relevant to the decision of the Tribunal, including the Tribunal's rejection of the Home Office's legal position, the Tribunal benefitting from oral evidence given by the applicant, legal or factual error on the part of the Home Office. This finding confirms the factual and legal complexity of some asylum support appeals. The context in which further evidence is provided was also identified as relevant, for example, in some cases this had been requested directly by the Tribunal, including where the Home Office should have been aware of the information.

The Asylum Support Appeals Project found that 36 of the 50 successful appellants (72% of the sample) would be unable to exercise a right of appeal under the changes proposed under the Immigration Bill. Twenty of these appellants were recorded by the service as 'vulnerable clients' due to a mental health problem, a physical health problem or to being a victim of domestic or sexual violence.

Examples of decisions, taken from ILPA's response to the Home Office Consultation on Asylum Support, illustrate why this area of operations should not be immune from scrutiny:

Case of A

A's claim for asylum had failed. He had physical and mental health problems. His eye sight was very poor as a result of having been tortured. He was destitute and living on the streets. A law centre advised him to submit further representations by post as he was unable to travel by person to the Further Submissions Unit in Liverpool. They also helped him apply for support. The Home Office refused him support on the grounds that he had not attended the Liverpool Further Submissions Unit in person, as required by its policy. It made no mention of his postal submissions nor did it address his request to submit them by post for medical reasons.

Case of B

B was in receipt of section 4 support but was given one weeks' notice by the accommodation manager that this support would terminate on the basis that it should have ended two years previously as it was alleged that B had breached the conditions of his support at that time. This was not something that had previously been put to B and he denied the allegation of a breach in any event. A voluntary sector organisation assisted B to make a new application for s 4 support, and asked that this be treated as urgent due to his imminent homelessness and because he has a disability; his leg has been amputated and he wears a prosthetic limb. However, the Home Office refused to give B's application any priority or provide him with accommodation before his current accommodation was due to end. The voluntary sector organisation referred B to lawyers as they considered that B would be street homeless unless legal action was taken. The lawyers sent the Home Office a letter before claim threatening judicial review and he was provided with accommodation the following day.

Case of K

K's support was terminated and because of this he did not receive notice of the appeal hearing. The appeal was heard in his absence and, in the absence of evidence from him, dismissed. He did not know that this had happened. He applied for and was granted 'section 4' support on the grounds that there was no route of return to his country of origin. When Secretary of State indicated an intention to cease support, on the grounds that there was now a viable route of return, K's legal representatives, a law centre, prepared submissions to demonstrate that K continued to be entitled to support on other grounds, citing the applicable case law. The Secretary of State indicated that support would be terminated before the date on which K could lodge further submission in Liverpool. This would have left K street homeless. The representatives applied for an emergency judicial review to require the Secretary of State to accommodate K until he was able to make his application. Within just a few days, the Secretary of State indicated that K would be granted indefinite leave to remain in the UK.

Case of D

D, with the help of a voluntary sector organisation, had applied for section 4 support as he, his wife and his children (aged three, four, and seven) had been told to leave their relative's accommodation and they had nowhere else to go. The Home Office refused this application as D was not treated as having made a fresh claim for asylum as he had not submitted this in person at the Liverpool. D had not done so because he could not afford to travel to Liverpool. A duty barrister from the Asylum Support Appeals Project, acting pro bono, represented D at his appeal to the First-tier Tribunal (Asylum Support), but the appeal was refused, although it was accepted that D was destitute. D was referred to legal aid lawyers for advice about challenging those decisions. D's immigration background was unusual and complicated, and it was advised that rather than challenge the section 4 decisions, under which support is provided to persons whose claims for asylum have failed, he should instead apply for section 95 support, which is paid to persons who have an outstanding, unresolved claim for asylum. D was provided with emergency accommodation (available in these circumstances but not in cases of section 4 support) within two days and subsequently went on to receive section 95 support.

The Minister stated at Commons Report:

> *Common examples of a genuine obstacle will be where medical evidence shows the person is unfit to travel or there is evidence that an application for the necessary travel document has been submitted and is still outstanding. These are generally straightforward matters of fact which do not require a right of appeal.*[28]

This does not reflect our experience. Disputes over what medical evidence establishes or does not establish are common. Lawyers argued that medical evidence indicated that that hunger striker Isa Muasu was unfit to fly but the Home Office chartered a private plane to remove him to Nigeria. The 'plane was refused entry to Nigerian airspace. It is a difficult legal question at what point silence from an Embassy or a High Commission becomes non-recognition of a person under the operation of its law, the definition of statelessness under the 1961 UN Convention on the Reduction of Statelessness.

[28] HC Deb 1 December 2015, col 226.

The House of Lords Select Committee on the Constitution has expressed its concern that it would be difficult to argue that UK immigration law meets the central requirements of clarity, certainty and unpredictability of the rule of law[29] given its complexity and frequently changes to it. A right of appeal to the Tribunal against incorrect asylum support decisions, which can be equally complex in this context, is therefore all the more important in ensuring the proper application of the law.

If rights of appeal are not restored, the only remedy will be judicial review. This would be an inadequate remedy, falling short of the requirements of article 6 of the European Convention on Human Rights as it covers the right to a fair trial in the determination of civil rights and obligations, because asylum support appeals involve the determination of questions of fact and matters that go to credibility. The right of appeal to the Tribunal would ensure judicial oversight of Home Office decisions in a cost effective, straightforward and accessible way.

Further, if the Government proceeds with its intention to introduce a residence test for legal aid following the decision of the Court of Appeal in *Public Law Project v The Lord Chancellor*[30], judicial review will be a remedy beyond the means of destitute applicants. The government is consulting on raising the fees for judicial review from the current £60 to lodge an application, £215 for an oral renewal (where permission is refused on the papers), and £215 for a hearing to £135 for an application and £680 for a hearing or an oral renewal.[31]

AVAILABILITY OF LOCAL AUTHORITY SUPPORT (Clause 38 and Schedule 9)

Families with children

ILPA's concerns about how the provisions of Schedule 9 affects families with children are set out in our commentary on **Lord Rosser, Lord Kennedy, Baroness Hamwee and Lord Paddick's opposition to Clause 37 standing part of the Bill** above. We have criticised in particular:

- The complexity of the legislation giving rise to the risk that families and children fall through gaps;
- The absence of detail on the support scheme established, this being left to regulations;
- The lack of a clear provision that support mustl meet individuals' essential living needs;
- The lack of clarity about when local authorities' duties under section 17 of the Children Act will apply to provide additional assistance to families supported by the Home Office. This gives rise to the risk of families being the object of disputes over the support to be provided by each agency and/or failing to receive the support needed to meet additional needs of any child and safeguard their welfare.

[29] House of Lords Select Committee on the Constitution (2015) 7th Report of Session 2015/16: Immigration Bill, at: http://www.publications.parliament.uk/pa/ld201516/ldselect/ldconst/75/75.pdf, paragraph 18.
[30] *Public Law Project v The Lord Chancellor* [2015] EWCA Civ 1193 (25 November 2015) at: http://www.bailii.org/ew/cases/EWCA/Civ/2015/1193.html
[31] See the Ministry of Justice consultation 2015 consultation *Court fees proposals for reform* at https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/courtfeesconsultation.pdf

We add here a commentary on amendments tabled to Schedule 9 which relate to families with children before discussing in a separate section our concerns in relation to the application of Schedule 9 to support for young people leaving the care of the local authority.

Government Amendments 234C and 234D

Purpose: These amendments make minor changes to the text reflecting and clarifying that the provisions apply to England.

Briefing

The Government has indicated that it has in mind to extend the provisions to the rest of the UK *'once we have had further dialogue with the devolved administrations'*[32]. Extensions of the legislation to Scotland, Northern Ireland and Wales are deferred to regulations. We suggest that it would have been proper to hold these discussions before the Bill was presented to parliament so that the concerns of the devolved administrations could influence the choice of provision for the country as a whole. This is all the more so as the reserved matter of immigration encroaches upon the devolved matter of community care and particular duties in relation to the United Nations Convention apply in both Scotland and Wales under the Children and Young Persons (Scotland) Act 2014 and the Rights of Children and Young People (Wales) Measure 2011 (2011 nawm 2).

Government Amendment 234P

Purpose This amendment brings '*Zambrano* carers' within the scope of the support schemed established by Schedule 9 of the Immigration Bill.

Government Amendments 234D, 234F, 234R and 234S make consequential changes.

Briefing

These cases involve families where the primary carer is a non-EEA national and has a right to reside in the UK under European law as they are the primary carer of a child who is a British citizen or EEA national who would not be able to live in the UK or the EEA if the carer was forced to leave the UK. They are named after the Belgian case of *Ruiz Zambrano* in the Court of Justice of the European Union. "*Zambrano*" carers have the right to work and reside in the UK but an amendment to the benefits regulations in 2012 removed their entitlement to mainstream welfare support.

Amendment 234Q in the names of Baroness Hamwee and Lord Paddick

Purpose: This amendment would place a duty on the Secretary of State, rather than the Bill's power, to make regulations for support to be provided to families who meet the criteria of paragraph 10A of the Nationality, Immigration and Asylum Act 2002.

Briefing

Local authorities have a duty to safeguard and promote the welfare of children within their area and it is in line with this duty that local authorities provide support and assistance to destitute families. Whilst the Secretary of State prevents local authorities from providing support and

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

assistance under their section 17 duty to families who would qualify for assistance under the scheme established under paragraph 10A of the Nationality, Immigration and Asylum Act 2002, she only gives herself a power to make arrangements for the support of families with children. This is inadequate in light of the responsibilities adopted in relation to the welfare of children.

Government Amendment 234T

In another indication of the haste in which the legislation has been drafted, this amendment corrects an omission and allows support to be provided to a family under paragraph 10A of the Nationality, Immigration and Asylum Act 2002 during the period when an appeal could be brought against a negative decision on an immigration application in addition to existing provisions that permit support to continue during an appeal. **Government Amendments 234U, 234V and 234W** make consequential changes.

Government Amendment 234Y

This amendment would allow the local authority to provide support to a family who may be destitute whilst determining whether support should be provided. This follows criticisms made by ILPA and others at an earlier stage of the Bill that local authorities were prevented from providing support to a family where there were reasonable grounds to believe that the family was eligible for Home Office support even if the family was not in practice receiving this support. The circumstances in which the local authority will be able to provide support to families who may be destitute will, however, be determined in regulations, giving rise to the risk that there will remain gaps through which families with children will fall.

Amendment 234X in the names of Baroness Hamwee and Lord Paddick

Purpose

Paragraph 10A(6) provides a residual category for support to promote and safeguard the welfare of the child where the family does not otherwise qualify for support. Under paragraph 10A(7), the Secretary of State may make regulations to specify the person who must take the decision on whether support is required and may specify what they must or may take into account in so doing.

This amendment would prevent the Secretary of State from making regulations about what a decision-maker may take into account whilst allowing the Secretary of State to dictate factors that must be taken into account when making decisions about whether support should be provided to protect the welfare of a child.

Briefing

It should be for the local authority to make decisions about the welfare of a child and for assessments to be undertaken in accordance with established protocols and guidance under child welfare legislation rather than under terms dictated by the Home Office which, moreover, does not specialist in children and family work.

This amendment, however, makes changes to the regulatory power that would further limit the discretion of social workers and their ability to conduct a proper assessment of the family's needs in accordance with social work practice and guidance because they would only be able to take into account regulations prescribed by the Home Office in mandatory terms.

Amendment 235 in the names of Lord Rosser and Lord Kennedy is therefore to be preferred.

Purpose

This amendment would require that regulations made by the Secretary of State under paragraph 10A(7) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 be laid before the Houses of Parliament and subject to the affirmative procedure. The regulations would set out the factors that a person responsible for providing support (such as a local authority social worker) should take into account when assessing whether support is necessary to promote the welfare of a child where a destitute family with children would not otherwise qualify for support.

The determination of whether and how support will be provided to families with children facing destitution should not, in ILPA's view, be left to secondary legislation made by the Secretary of State. If it is, it should be subject to the affirmative procedure. The Delegated Powers and Regulatory Reform Committee has recommended that regulations made under paragraph 10A of the Schedule are subject to the affirmative procedure[33].

ILPA considers that the power of the Secretary of State to make regulations about the factors that social workers must or may take into account when assessing the welfare of a child should be removed from the face of the Bill altogether. Assessments of the welfare needs of families with children are more properly made by local authorities in accordance with their duties under section 17 of the Children Act 1989 the range of developed protocols and social work guidance, and their existing expertise in interpreting those duties to safeguard and promote the welfare of the child. Provisions that seek to limit the matters that a local authority may consider in assessing the welfare of a child should be resisted.

Schedule 9: Young people leaving care

Under Schedule 9, local authorities will be prevented from providing leaving care support under the Children Act 1989 to young people leaving care who do not have leave to remain, a pending asylum application or a pending initial immigration application on other grounds.

We set out the detail of the provisions and our principled objections to the removal of this group of young people from the scope of leaving care support under the Children Act 1989 in our commentary in support of **Amendments 234B, 234M, 234N and 235A in the names of the Earl of Listowel, Baroness Lister, the Lord Bishop of Norwich and Baroness Hamwee.** These amendments would ensure that young people leaving local authority care who do not have leave to remain may be provided with leaving care support under the Children Act 1989 until they are granted leave or they are removed from the country. Outlining the groups of young people affected, we also provide briefing in support of **Amendment 230D in the name of Lord Alton** which highlights the impact on young people in care for whom the local authority has failed to take steps to regularise their stay whilst they are in care. We then address the large number of **Government Amendments** tabled at this stage of the Bill which fail to remedy the very many problems that exist in this poorly developed programme for replacing the essential protections of the Children Act 1989.

[33] Delegated Powers and Regulatory Reform Committee (2015) Immigration Bill, 17th Report of Session 2015/16 at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/73/73.pdf, para 23

Amendments 234B, 234M, 234N and 235A in the names of the Earl of Listowel, Baroness Lister, the Lord Bishop of Norwich and Baroness Hamwee

Purpose

These amendments would ensure that young people leaving local authority care are able to access leaving care support under the Children Act 1989 without discrimination.

Amendments 234B and 234M remove those provisions added by Schedule 9 to the Immigration Bill that would prevent local authorities providing leaving care support under the Children Act 1989 to young people are not asylum seekers and do not have leave to remain when they reach the age of 18 years.

Amendment 234N enables local authorities to provide leaving care support under the Children Act 1989 to young people who do not have leave to remain and are not asylum seekers.

Amendment 235A provides for the Secretary of State to make adequate funding available to local authorities as the specialist agency responsible for care leavers to meet the duties set out in the Children Act 1989 to young people subject to immigration control.

Briefing

The proposals to remove leaving care support under the Children Act 1989

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

Paragraph 2(2) of Schedule 9 would remove these young people from the protection of being allowed to remain in their existing foster placement whilst they make the transition to adulthood, a major reform[34] introduced by the government in 2013, and from 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 parent[35].

Paragraph 9 of Schedule 9 inserts new paragraph 10B into Schedule 3 of the Nationality, Immigration and Asylum Act 2002 which would exclude young people from certain leaving care provisions[36] if they would qualify for support 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 keeping in touch 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.

Instead, young people may only qualify for limited support under paragraph 10B, if they meet various conditions, awhich may include being moved to adult support and accommodation provided by the Home Office under section 95A of the Immigration and Asylum Act 1999 in any

[34] Inserting section 23CZA into the Children Act 1989.
[35] From section 23D of the Children Act 1989; Regulation 8, The Care Leavers (England) Regulations 2010, SI 2010/2571.
[36] Under sections 23C, 23CA, 24A and 24B of the Children Act 1989 (leaving care provisions).

part of the country away from their established support structures. The exact nature of support for young people leaving care is left, however, to be determined entirely in regulations.

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, that children do not become adults immediately on reaching 18 years of age and that 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 adulthood[37].

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 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."

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 2013[38] 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 care[39].

In removing leaving care support from young people who do not have a pending asylum claim, an initial immigration application that remains pending, 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.

In this area of the Bill, again, the proposals are not fully thought through or developed and are being rushed through parliament without the opportunity for detailed scrutiny of the major inroads this Schedule makes into established child welfare legislation. The proposals were first tabled for the last day of the Committee Stage of the Bill in the House of Commons, with a subsequent raft of amendments for Report Stage there. Now, there is once again a huge number of amendments seeking to make changes to proposals that have not had adequate thought or consultation as to how they may operate.

The Delegated Powers and Regulatory Reform Committee has recommended that regulations made under paragraph 10B of the Schedule are subject to the affirmative procedure[40]. In fact, much of the content of the provisions in this Part of the Bill is absent and left to be determined in regulations made by the Secretary of State. 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

[37] 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.

[38] HM Government (2013) *Care Leaver Strategy*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266484/Care_Leaver_Strategy.pdf

[39] 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

[40] Delegated Powers and Regulatory Reform Committee (2015) Immigration Bill, 17th Report of Session 2015/16 at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/73/73.pdf, para 23

are left entirely to regulations to be made by the Secretary of State for the Home Department. Parliamentarians are being asked to sign a legislative blank cheque for the Secretary of State to determine how to support this group of young people outside the existing statutory frameworks and where the Home Office is not the department with specialist expertise in children and families.

It is not correct to state, as the Government has done[41], that the provisions of the Children Act 1989 are inappropriate to meet the support needs of young people who may be required to leave the UK. Statutory guidance issued to local authorities on leaving care duties under the Children Act 1989[42] and on the care of unaccompanied asylum seeking and trafficked children[43] 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 rehabilitation[44]. This includes planning for possible return to the country of origin[45] and the provision of support to young people leaving care whose appeals rights are exhausted[46].

The Joint 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 Child[47]. Article 2 of the Convention requires that States respect and ensure the rights of each child within their jurisdiction without discrimination of any kind[48].

Young people affected by the provisions

Children leaving care who reach the age of 18 years and do not have a pending asylum claim, a pending initial immigration application or leave to enter or remain in the UK would no longer be entitled to leaving care support under the Children Act 1989. The proposals would affect young people whose application has been determined and who have exhausted their appeal rights in the UK as well as some young people with pending immigration applications and young people who have never had the opportunity to regularise their immigration status.

---

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

[42] 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.

[43] 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.

[44] 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, para198

[45] *Ibid.*

[46] *Ibid*, paragraph 213.

[47] Ibid, paragraph 209.

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

The Home Office has stated that it wishes to discourage *'unaccompanied children from seeking to come to the UK to claim asylum for the wrong reasons'* and to counter an alleged perception of generous long-term support for those who arrive in the UK as children[49]. Recent research surveying the experiences of children seeking protection, however, confirms that children generally do not choose to leave their homes but are sent, coerced or taken by adults and/or traffickers, on their journeys to Europe[50].

Following criticisms made by ILPA and others at an earlier stage of the Bill that young people would have been excluded from leaving care support where they had a pending immigration application (for example on the basis that there human rights would be breached on return to their country of origin), the Government has brought forward **Amendment 234G** amending the criteria to allow leaving care support to continue where young people have an outstanding immigration application and this is their *first* application (Condition B, para 2A(4)). Whilst this is progress, it excludes a significant group of young people where a further application is necessary to regularize their status.

For example, human traffickers may make asylum or immigration applications for children they have trafficked to facilitate their entering or remaining in the UK. Once a child has been able to leave the exploitative situation, they would need to regularise their status with a further immigration application giving their true account of what has happened to them. At the age of 18 years, they would fall outside the scope of the formal leaving care regime under the provisions of the Bill.

Young people bringing a judicial review against an incorrect decision on their asylum and immigration application would also be excluded from leaving care support under the Children Act 1989 as this does not fall within the definition of a pending statutory appeal which means that such support can continue. Care leavers are also subject to certification of their claim under section 34 of the Immigration Bill (the 'remove first, appeal later' provisions) and would also fall outside the scope of leaving care support by operation of new paragraph 2A(6) and 2A(7) where their claim is certified in this way.

Section 2A(8) allows the Secretary of State to make regulations determining others who may be treated as having a pending claim for the purpose of leaving care support but, being subject to delegated legislation, it remains unclear how these might operate.

Young people may exhaust their appeals right despite originating from countries in conflict or known for their human rights abuses against children and despite having strong claims for protection. The variable and often poor quality of legal representation for asylum seekers and the difficulties child asylum seekers experience in understanding and properly participating in the administrative processes associated with their claims is well documented[51]. In the words of one young person refused protection:

> *"It's like when you come here you are blind, then you get a stick to help you to go, because you don't know the language, the words they don't work, and you don't know the way. By the time you find out, you are refused and all that, so it's all mixed, and confusion and all that…"*[52]

[49] Home Office (2016) *Reforming support for migrants without immigration status.*
[50] Law Centres Network (2015) *Put Yourself In Our Shoes: Considering Children's Best Interests in the Asylum System,* at: http://www.lawcentres.org.uk/policy/news/news/keep-children-s-best-interests-at-heart-of-asylum-system-new-report, p.53.
[51] *Ibid*, p.18.
[52] Ibid, p.49.

Amendment 230D in the name of Lord Alton demonstrates the unworkability of the provisions, highlighting the further impact on young people in care for whom the local authority has failed to take steps to regularise their status whilst in care. For example, some children in local authority care are entitled to be registered as British citizens, and others may apply to be registered at the discretion of the Secretary of State. Others meet requirements under the immigration rules or criteria in policies of the Secretary of State for indefinite or limited leave to remain. Children may not realise that they are not British or do not have a secure immigration status until they reach the age of 18 years when the impact of their status first becomes clear, yet they will lose the ongoing support of the local authority when they reach 18 years, despite having been reliant on the local authority for taking care of these matters.

Where young people have exhausted their appeal rights and will be returned to their country of origin, they nonetheless have the needs of other care leavers when they turn 18 years of age. As the United Nations High Commissioner for Refugees has stated:

> *For practical reasons, legal and administrative systems use chronological age, mostly the age of 18, to define the start of adulthood, even though there is little psychological or neurological evidence that the age of 18 necessarily signals full maturation and the achievement of adult capacities.*[53]

The United Nations High Commissioner for Refugees reminds that decision-makers may not see asylum-seeking children as 'real' children:

> *There is little doubt that unaccompanied asylum-seeking children challenge adjudicators' ideas of what constitutes childhood. One reason for this may be that, in Western societies, leaving the parental home is usually seen as a sign of the transition to adulthood.*[54]

It is important to ensure that such attitudes do not deny separated young people the protection afforded to other young people on leaving care while they remain in the UK and to support them making a safe departure from the UK.

<u>Inadequacy of proposed support for specific groups of young people leaving care</u>

When the proposals for care leavers were first tabled in the House of Commons, the Government stated that local authorities would be the agencies that would support young people leaving care under the new provisions[55]. The most recent document issued by the Government on this section of the Bill, however, now indicates that care leavers who have exhausted their appeal rights will, after some transitional period managed by the local authority, be transferred into Home Office support and accommodation[56] under section new 95A of the Immigration and Asylum Act 1999, inserted by this Bill. This is even though local authorities would be empowered to support young people under section 95A of the Immigration and Asylum Act 1999 since the Secretary of State may *'arrange for the provision of support for a person'* as well as provide support herself under section 95A(1) of the Immigration and Asylum Act 1999. It is inappropriate for young people leaving local authority care to be placed in adult Home Office accommodation which could potentially be located in any area of the country away from the young person's existing support structures and networks. It is also inappropriate to

[53] UNHCR (2014) *The Heart of the Matter: Assessing credibility when children apply for asylum in the European Union*, at: http://www.refworld.org/pdfid/55014f434.pdf , p.57
[54] *Ibid.*
[55] Letter from Clive Peckover, Asylum and Family Policy Unit to Members of the National Asylum Stakeholder Forum, 12 November 2015.
[56] Home Office (2016) *Reforming support for migrants without immigration status,* paras 71-72.

deprive young people of the support that they need when there is a genuine obstacle to their return to their country of origin, the qualifying criteria for support under section 95A.

The Home Office indicates that the proposed new scheme would allow the local authority to provide pre-departure support to a young person in those cases where it is satisfied that support needs to be provided and would set out factors that the local authority must or may take into account in this decision[57]. However, young people would be prevented from remaining in their foster care placement whilst preparing to leave the UK, meaning that they would not have the support of their foster carer at this time. The clear duties on the local authority to young people set out in detail in the Children Act 1989 are replaced by a scheme established by the Secretary of State operated at her discretion with no information before parliament at this stage as to how that discretion will be exercised.

The Home Office provides an annual grant to local authorities to support them in meeting their duties under the leaving care provisions of the Children Act 1989 to young people who are subject to immigration control[58]. The current grant already includes provision for young people who become appeals rights exhausted for a period of three months[59]. The Home Office could address financial difficulties faced by local authorities in meeting the needs of young people by paying for the true cost of care, including extending the grant to cover the period in which the young person has not been removed which is in the control of the Home Office, in its grant to local authorities, rather than in establishing a new, and complex system of support for young people at the end of the asylum process.

Amendment 235B in the names of Baroness Hamwee and Lord Paddick

Purpose

This amendment would place a duty on the Secretary of State to make regulations for arrangements for support to be provided to care leavers who meet the conditions for 10B support, rather than simply a power.

Briefing

The amendment highlights that it is being proposed that established duties under the Children Act 1989 are being replaced by a scheme at the discretion of the Secretary of State for the Home Department.

Government Amendment 235C

This amendment provides a further indication of the haste with which the legislation has been drafted. It amends the scope of persons to whom support under paragraph 10B of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 may be provided to cover all those who would have otherwise benefitted from leaving care support under the Children Act 1989 and not just 'former relevant children' as defined in leaving care legislation.

---

[57] *Ibid.*

[58] Home Office (2015) *Funding to Local Authorities Financial Year 2015/16: Home Office funding: Leaving care (post 18 years of age)* at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426091/Leaving_Care_Funding_Instructions_2015-16.pdf

[59] *Ibid*, p.3

Government Amendments 235D and 235F

Amendments 235D and 235F make a substantial change to the structure of conditions that care leavers would need to meet in for support to be provided under new paragraph 10B of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 inserted by this Bill. They remove the requirement for a young person at the end of the asylum process to be ineligible for support under section 95A of the Immigration and Asylum Act 1999 before being able to access support under paragraph 10B. Whilst this is some progress, the Government document, *Reforming support for migrants without immigration status* makes clear that young people will subsequently transfer to Home Office support and accommodation under section 95A[60]. As indicated above, it is inappropriate to move care leavers to adult accommodation which may be located in any part of the country away from their existing support structures and networks.

Government Amendment 235J

In a further example of the haste with which the legislation has had to be drafted, this amendment corrects an omission and allows support to a care leaver under paragraph 10B of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to continue where an appeal against a negative decision on an immigration application could be brought in addition to the existing provision which allows support to continue during the currency of a pending appeal. **Government Amendments 235E, 235K, 235L** make consequential changes.

Government Amendment 235M

This amendment would allow support to be provided to a care leaver whilst determining whether support should be provided. The circumstances in which the local authority may provide support to young people leaving care will be subject to regulations to be determined by the Secretary of State. The Delegated Powers and Regulatory Reform Committee has recommended that regulations made under paragraph 10B of the Schedule are subject to the affirmative procedure[61]. Regulations made under this power should be subject to the affirmative procedure so that any gaps in protection may be fully scrutinised by parliament.

Amendment 236 in the names of Lord Rosser and Lord Kennedy of Southwark

This amendment would require that regulations made by the Secretary of State under new paragraph 10B(7) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 be laid before the Houses of Parliament and subject to the affirmative procedure.

The regulations would set out the factors that must be taken into account for a specified person (such as a local authority social worker or a Home Office caseworker) to be satisfied that support should be provided to a young person, leaving the care of the local authority, who has exhausted their rights of appeal.

ILPA considers that the duties under the Children Act 1989 should not be replaced by a discretionary scheme to be determined in secondary legislation by the Secretary of State for the Home Department. Should regulations be made under this power, these should be subject to the affirmative procedure given the risk that young people leaving care may be left destitute as a

---

[60] *Ibid.*

[61] Delegated Powers and Regulatory Reform Committee (2015) Immigration Bill, 17th Report of Session 2015/16 at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/73/73.pdf, para 23

result of theme. The Delegated Powers and Regulatory Reform Committee has recommended that regulations made under paragraph 10B of the Schedule are subject to the affirmative procedure[62].

Government amendments 236ZB, 236ZC and 236ZD require that regulations made under new paragraph 2A(3)(b) are subject to the affirmative procedure. These are the regulations that allow the Home Office to specify the types of applications made by care leavers will meet the requirements of Condition A permitting them to continue to be supported by the local authority under Children Act 1989 provisions. Changes are not made to the level of parliamentary scrutiny of other regulations in that section or under paragraph 10B.

Government amendments 236ZA and 236ZE are consequential on changes made in this Part.

ACCESS TO HIGHER EDUCATION FOR CARE LEAVERS

Amendment 239B in the name of Baroness Kennedy of the Shaws

Purpose

This amendment seeks to ensure that care leavers granted leave to enter or remain are able to access higher education student loans and to provide that tuition fees are set at the home fees rate both for this group and for care leavers whose application for leave to enter or remain is pending.

Briefing

The need for this amendment arises as a result of changes made to the Immigration Bill by the Government for report stage in the House of Commons. The Government amendment inserted new clause 1A into Schedule 3 to the Nationality, Immigration and Asylum Act 2002, prohibiting local authorities from paying higher education fees (fees for university degree courses and for higher education courses leading to a Diploma in Higher Education, a Certificate of Higher Education, a BTEC Higher National Diploma or Higher National Certificate or for professional examination courses beyond A-level standard) to a care leaver they are supporting who has limited leave to remain (humanitarian protection, discretionary leave or leave under the Immigration Rules) or a pending asylum application.

The amendment seeks to make care leavers with limited leave to remain eligible for student loans provided centrally by the Department of Business, Innovation and Skills.

It also seeks to enable tuition fees to be charged at the home fees rate for all care leavers, including those who have pending applications who would not be eligible for a student loan.

These changes would not require primary legislation but amendments to the categories of eligibility in existing regulations on student loans[63] and the level of tuition fees[64]. The Minister should therefore be asked to give assurances in this regard.

---

[62] Delegated Powers and Regulatory Reform Committee (2015) Immigration Bill, 17th Report of Session 2015/16 at: http://www.publications.parliament.uk/pa/ld201516/ldselect/lddelreg/73/73.pdf, para 23

[63] *The Education (Student Support) Regulations 2011, SI 2011* setting out the categories of persons in England who are eligible for a student loan for higher education courses.

Assurances to seek:

- **The Minister should be asked to give an assurance that young people leaving local authority care who have been granted leave to enter or remain will be eligible for student loans provided centrally by the Department of Business, Innovation and Skills.**

- **The Minister should also asked for an assurance that care leavers will be charged tuition fees at the home fees rate, including where they would not qualify for a student loan as asylum seekers with a pending claim.**

Eligiblity for student loans for higher education

The Member's explanatory statement provided when this the Government amendment was tabled for Commons report stated that *"[i]nstead, to obtain such support, the person will be required to qualify under the Student Support Regulations"*. This was disingenuous to say the least.

Under these regulations, young people who have not been recognised as refugees but have been granted humanitarian protection only qualify for such a loan if they have leave to remain and have had three years ordinary residence in the UK. For those granted other limited leave, the Department of Business Immigration and Skills *Policy Statement Interim Policy for handling cases* following the Supreme Court Ruling in *Tigere*[65] says that where a person does not have permanent residence, cases will be considered under criteria such as having lawful leave and having lived at least half their life in the UK. Many young people leaving care, including those granted humanitarian protection, will therefore not qualify for student loans under the regulations as currently drafted.

Similarly disingenuous were the Minister's comments at Commons Report that the provision "addresses an anomaly[66]" in the treatment of "adult migrant care leavers" and is to ensure "equality of treatment." That special provision is made for young people with humanitarian protection or otherwise unable to return to their country of origin recognises their special needs and that they are alone without family support; it would endeavour to put them into a position equivalent to that of other young people resident in the UK, not give them some unfair advantage.

Home tuition fees for higher education

The amendment additionally seeks to ensure that tuition fees for young people leaving care in the UK are charged at the home fees rate where they have been granted leave to enter or remain in the UK or where they have an application for leave to remain pending.

The Government document, *Reforming support for migrants without immigration status*, suggests that Schedule 9 removes the difficulty faced by local authorities as a result of having to pay higher education tuition fees of care leavers under their leaving care duties at the overseas rate. Schedule 9, however, simply prevents local authorities from paying higher education fees for

[64] *The Education (Fees and Awards) (England) Regulations 2007, SI 2007/779* identifying categories of persons in England who may not be charged higher education tuition fees, that is fees at the overseas rate.
[65] *R (Tigere) v Secretary of State for Business, Innovation and. Skills* [2015] UKSC 57.
[66] HC Deb, 1 December 2015, col 225.

care leavers. The rate at which different categories of student may be charged university fees is set out in regulations on fees set by central government that may be amended.[67]

The eligibility criteria for home tuition fees for higher education mirror the eligibility criteria for a student loan. Therefore care leavers living in the UK would be charged overseas tuition fees for higher education if they had humanitarian protection but had not been ordinarily resident in the UK for three years; if they had other forms of limited leave to remain and not lived at least half their life in the UK; or if their application for asylum, human rights protection or other forms of leave remains pending.

ILPA considers that provision should be made for care leavers granted leave to enter or remain to be made eligible for centrally provided student loans for higher education. In this case, tuition fees set at the home fees would normally follow.

For young people leaving care whose applications for asylum, human rights protection or other forms of leave remain pending, providing eligibility for higher education tuition fees at the home fees rate rather than the higher overseas rate would enable care leavers living in the UK and unable to access student loans for higher education to access funding from charitable trusts to prevent them from having to delay entry to higher education in preparation for their life in the UK whilst their asylum or human rights application remains pending.

Characteristics of young people leaving care

Both amendments are aimed at improving the educational outcomes of young people leaving care.

Local authorities have a general duty under the Education and Skills Act 2008 to encourage, enable and assist young people in their area to participate in education or training. The statutory guidance to local authorities on exercising these functions highlights the importance of engaging young people in education or training after compulsory schooling has ended:

> *6. Participating in education or training for longer means young people are more likely to attain higher levels of qualifications and have increased earnings over their lifetime, better health and improved social skills. This in turn contributes to a more highly skilled, productive, and internationally competitive workforce*[68].

Supporting children to remain in education after the age of 16 years is also a key element of the Government's anti-poverty strategy which recognises the role of education in improving the life chances of children not just in the immediate term but also in breaking the poverty cycle affecting their children in the long term[69].

The situation of children leaving care is recognized by the Government in its strategy for care leavers:

---

[67] *The Education (Fees and Awards) (England) Regulations 2007, SI 2007/779* identifying categories of persons in England who may not be charged higher education tuition fees, that is fees at the overseas rate.

[68] Department for Education (2014) *Participation of young people in education, training or employment: statutory guidance for local authorities*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349300/Participation_of_Young_People_Statutory_Guidance.pdf

[69] HM Government, Child Poverty Strategy 2014-17, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324103/Child_poverty_strategy.pdf, paras 35, 46.

> *Around 10,000 young people leave care in England each year aged between 16-18 years old[1]. They leave home at a younger age and have more abrupt transitions to adulthood than their peers. Unlike their peers who normally remain in the family home, care leavers will often be living independently at age 18. […]*
>
> *Research and inspection reports show that the quality of support care leavers receive is patchy and that their journey through the first decade of adult life is often disrupted, unstable and troubled. They often struggle to cope and this can lead to social exclusion, long term unemployment or involvement in crime. For example, 34% of all care leavers were not in education, employment or training (NEET) at age 19[3] in 2013 compared to 15.5% of 18 year olds in the general population[70].*

The poor educational outcomes and life chances of children leaving care are well-documented:

> *Care leavers are less likely to have achieved 5 A*-C GCSEs (37% of looked after children compared to 80% of non-looked after children in 2012). Only 6% of care leavers go into higher education compared to 23% of their peers at aged 18.[71]*

Ensuring care leavers are supported into education is therefore a key priority of the Government's care leaver strategy:

> *A big priority for government is, therefore, to ensure that children in care and care leavers get the support they need from schools, colleges, universities and local authorities to maximise their educational attainment and employment opportunities.[72]*

At the same time, young people leaving care who have limited leave to remain or whose applications for leave to remain are pending are prevented from accessing higher education whilst their lives are in limbo.

The United Nations High Commissioner for Refugees and the Council of Europe have identified the needs of young people seeking protection in the transition to adulthood in joint research undertaken by both agencies:

> *Reaching the age of majority has a strong impact on the psychological well-being of unaccompanied and separated children in general, but it proves to be all the more acute for those seeking asylum or being granted international protection, given their particular vulnerability and needs[73].*

They recommend improved support for access to education for separated young people seeking protection:

---

[70] HM Government (2013) *Care Leaver Strategy: A cross-departmental strategy for young people leaving care*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266484/Care_Leaver_Strategy.pdf, p.4.

[71] Department of Education: *Outcomes for Children Looked After by Local Authorities in England:* 31 March 2012; HM Government (2013) *Care Leaver Strategy: A cross-departmental strategy for young people leaving care*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266484/Care_Leaver_Strategy.pdf, p.6.

[72] *Ibid.*

[73] UNHCR / Council of Europe (2014) *Unaccompanied and separated asylum-seeking and refugee children turning eighteen: what to celebrate? UNHCR / Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum-seeking and refugee children*, at: https://www.coe.int/t/dg4/youth/Source/Resources/Documents/2014_UNHCR_and_Council_of_Europe_Report_Transition_Adulthood.pdf, p.10.

> *The study shows that access to education for UASASRC may be seriously undermined when they reach the age majority, and even beforehand, whereas testimonies demonstrate that continuing education would greatly facilitate the transition to adulthood as a whole. Access to education should be better supported, including, where necessary, after young unaccompanied and separated asylum seekers and beneficiaries of international protection have reached the age of majority, as it plays a critical role in their transition*[74].

Access to education can often provide an important focus for young people to move forwards with their lives after experiences of violence, trafficking or other forms of harm they may have suffered in their country of origin, during journeys to the UK or in the UK itself. Delays in the processing of their asylum or human rights applications and in the recognition of their protection needs prevent young people accessing higher education with their peers, with consequences for their ability to return to education and for their future life chances.

This amendment would support care leavers in accessing higher education in line with corporate parenting duties and the Government's strategy on young people leaving care.

TRANSFER OF RESPONSIBILITY FOR RELEVANT CHILDREN (Clauses 39-43)

Amendment 236ZJ in the names of Baroness Hamwee and Lord Paddick

Purpose

This amendment seeks to ensure that a transfer of responsibility for a relevant child is undertaken in accordance with the best interests of the child, including ensuring that children are not moved where they have family members or established ties to a local authority and to prevent delays in transfer that risk leaving children in limbo.

Briefing

Clauses 39 to 43 on the transfer of responsibility for relevant children were introduced to the Immigration Bill by the Government at Report Stage in the House of Commons. These create a mechanism in England under which responsibility for caring for unaccompanied children may be transferred from one local authority to another, either on a voluntary basis or under an enforced scheme. The Government has indicated that the proposals were developed in the light of the refugee crisis, following which increased numbers of unaccompanied asylum seeking children seeking protection in the UK have led to pressures on Kent County Council where children arrived[75].

If a child is to be moved to a different local authority then responsibility should be transferred with the child. A child should only be moved, however, where this is in their best interests. The amendment therefore ensures that consideration of the child's best interests is included in any decision to make voluntary arrangements for transfer of responsibility for the child or in any decision to enforce arrangements for the transfer of responsibility.

The stage at which the child is moved to another local authority will be very relevant to whether this is in their best interests. Whilst it might be possible to contemplate the transfer

---

[74] *Ibid.*

[75] Letter of James Brokenshire MP Immigration Minister to Sir Keir Starmer MP, 25 November 2015, available at: http://data.parliament.uk/DepositedPapers/Files/DEP2015-0916/2015-11-25_JB_to_Keir_Starmer_-_support_amendments.pdf

to a second local authority of an unaccompanied child who has newly arrived in the UK, it may not be in a child's best interests to uproot them once they had spent any length of time in the first local authority, developed relationships with carers or other individuals important to the child, become established in education or oriented themselves within the area.

The statutory guidance on the care of unaccompanied and trafficked children recognises the importance of stability and continuity of care for this group of children:

> *25. Local authorities should prioritise unaccompanied and trafficked children to provide the best likelihood that they will receive continuity of care and be able to build a sustained relationship with their social worker. This continuity should begin, where possible, from the child's assessment and be promoted throughout their time in care. Trafficked children might not initially recognise that they are victims of a crime. They may have been told that the authorities will try to put them in prison, or have been passed from one unknown adult to another. They need to know they can trust their social worker, and others involved in their care, and that they will be able to rely on support from allocated workers over time.*[76]

The importance of doing *'everything possible'* to minimise disruption to education is also stressed in statutory guidance on care planning, placement and case review for looked after children under the Children Act 1989[77].

Statutory guidance on the care of unaccompanied and trafficked children recognises the complexity of the asylum process and the need for children to be supported during that process[78]. This will include the provision of specialist legal advice to the child:

> *Unaccompanied and trafficked children subject to immigration control will need access to specialised legal advice and support. This will be in relation to immigration and asylum applications, decisions or court proceedings. If they have been trafficked, it may also be in relation to criminal proceedings or compensation claims. The plan should note that legal support is required and how it will be provided*[79].

It is necessary therefore that where a child has begun the asylum or immigration application process in the first authority or instructed a legal representative in their claim that they are able to remain in the first authority to pursue their claim with the support that they have already established and that they do not suffer disruption while their asylum claim is being processed. Unaccompanied children entering the care of the local authority will frequently have suffered traumatic experiences including witnessing, being threatened with or experiencing violence in their home country; undergone forced, dangerous journeys to the UK; or been trafficked into

---

[76] 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

[77] Department for Education (2015) *The Children Act 1989 guidance and regulations. Volume 2: care planning, placement and case review*, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf, para 2.69 and 3.16.

[78] 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 at para 69.

[79] 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 at para 35

abusive and exploitative situations in the UK. Children will need time to develop a sense of safety and a relationship of trust with a legal representative to be able to present their case as fully as possible.

Where this process has not yet commenced for a newly arrived child, the asylum process should be stayed until they are settled with appropriate support in the receiving local authority. Any decision to transfer the child to a second local authority should be made with due regard to the availability of specialist legal advice and representation on asylum and immigration matters. ILPA is aware of 'advice deserts' in parts of the country as a result of changes to the legal aid contracting process which awarded contracts to fewer agencies, the loss of the two major not-for-profit advice organisations providing asylum and immigration representation and the cuts to legal aid, including the removal of immigration advice from the scope of legal aid, which have led to the closure of agencies who have found it no longer viable to practise in this field. It is important that children are located in areas where high quality legal advice and representation can be obtained for their asylum and immigration matter.

The amendment proposes time limits for the transfer of responsibility for a child to a second local authority to ensure that delay or 'drift' in establishing or enforcing the arrangements is minimised for children in accordance with their best interests. Statutory guidance on working together to safeguard children provides that a local authority social worker should make a decision about the type of response that is required for a child within one working day of a referral being received[80]. It is important that the initial decision to seek a transfer to a second local authority is undertaken promptly so that the process of putting in place support for the child may be commenced in the second local authority as soon as possible. Children risk being left in limbo where there are protracted disputes between local authorities as to which authority should take responsibility for the child. Where children are left in limbo or situations of uncertainty there is an increased risk of them going missing. The voluntary transfer protocol developed during the summer by the Department of Education envisaged a transfer to a second authority taking place after three days of the child arriving. Similar guidance on appropriate time frames will be important in ensuring that delays in establishing care for the child are minimised.

Amendment 236A in the names of Lord Rosser and Lord Kennedy

This amendment would require the Secretary of State to obtain the prior consent of the National Assembly of Wales, the Scottish Parliament and the Northern Ireland Assembly in order to make regulations extending provision for the transfer of responsibility for relevant children to these devolved administrations. **Amendments 237 and 238 in the name of Lord Wigley** would have the same effect.

[80] HM Government (2015) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf at para 38.