

ILPA Briefing for the peers' meeting on the Bill, 23 February 2016: Schedule 11: Availability of local authority support (care leavers)

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Removal of leaving care support under the Children Act 1989

Schedule 11 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 11 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 reform¹ 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 parent².

Paragraph 9 of Schedule 11 inserts new paragraph 10B into Schedule 3 of the Nationality, Immigration and Asylum Act 2002 which would exclude young people from certain leaving care provisions³ if they would qualify for support under that new paragraph. 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, which 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 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 making provision that may be discretionary in nature in place of the formal duties of the Children Act 1989.

¹ Inserting section 23CZA into the Children Act 1989.

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

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

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 adulthood⁴.

It has long been accepted that unaccompanied children should be the responsibility of local authorities because local authorities are specialists in the needs of children and the Home Office, which is empowered by this section to make 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 2013⁵ and reiterated its commitment to this strategy in July 2015, the Minister stating that it was time to do more for “highly vulnerable” young people leaving care⁶.

In removing leaving care support from young people who do not have a pending asylum claim, 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.

The proposals have not been 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 further amendments at Report Stage in the House of Commons and at Committee Stage in the House of Lords to make changes to proposals that have not had adequate consultation as to how they may operate in practice.

The Delegated Powers and Regulatory Reform Committee has recommended that regulations made under paragraph 10B of the Schedule are subject to the affirmative procedure⁷. The Minister in the House of Lords has accepted that there is a strong case for this and will confirm the Government’s approach at Report stage⁸. 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 are left entirely to regulations to be made by

⁴ Department for Education (2015) *The Children Act 1989 Guidance and Regulations Volume 3: planning transition to adulthood for care leavers*, at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397649/CA1989_Transitions_guidance.pdf at 3.1-3.3.

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

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

⁶ Edward Timpson, Children and Families Minister (2015) *Speech: Our mission to give vulnerable children a better start in life, 10 July 2015* at: <https://www.gov.uk/government/speeches/our-mission-to-give-vulnerable-children-a-better-start-in-life>

⁷ 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

⁸ Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

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 done⁹, 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 1989¹⁰ and on the care of unaccompanied asylum seeking and trafficked children¹¹ 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 rehabilitation¹². This includes planning for possible return to the country of origin¹³ and the provision of support to young people leaving care whose appeals rights are exhausted¹⁴.

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 Child¹⁵. Article 2 of the Convention requires that States respect and ensure the rights of each child within their jurisdiction without discrimination of any kind¹⁶.

Young people affected by the proposals

The Minister in the House of Lords stated in his letter to Lord Rosser of 10 February 2016 that leaving care support under the Children Act 1989 is the right framework for supporting care leavers' transition into adulthood and that schedule 11 would only affect young people who have not established a lawful basis to remain and whose long term future will not be in the UK:

“[T]he changes made by Schedule 9 of the Bill affect only those adults leaving local authority care who have not established a lawful basis on which to remain here and will generally have

⁹ Letter from Clive Peckover, Asylum and Family Policy Unit to Members of the National Asylum Stakeholder Forum, 12 November 2015.

¹⁰ 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.

¹¹ 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.

¹² Joint Committee on Human Rights (2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK*, First Report of Session 2013/14, HC196 at:

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>, para 198

¹³ *Ibid.*

¹⁴ *Ibid.*, paragraph 213.

¹⁵ *Ibid.*, paragraph 209.

¹⁶ United Nations Convention on the Rights of the Child, available at:

http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf

exhausted their appeal rights against the refusal of their asylum claim or leave to remain application.”¹⁷

However, schedule 11 applies to categories of young people with pending applications or entitlements whose future may well be in the UK and whose support needs should properly be met through the leaving care provisions of the Children Act 1989. These include:

- Young people who have not been supported by their local authority to regularise their status;
- Young people with a pending immigration application (or appeal arising from this) which is not their first application;
- Young people making further submissions that may be accepted as a fresh asylum claim.
- Young people bringing a judicial review to challenge an incorrect decision on their claim;
- Young people who have exhausted their appeal rights but have grounds for a further application.

Young people who have not been supported by their local authority to regularise their immigration status

During the debate, Lord Alton highlighted that Schedule 11 would remove the obligations on local authorities to provide leaving care support under the Children Act 1989 where the local authority has failed to support the child in its care to register as a British Citizen or obtain the leave to remain to which the child is or was entitled¹⁸. 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.

The Minister in the House of Lords has correctly stated that the provision of support to young people to resolve their immigration status should be an integral part of their pathway plan under the Children Act 1989¹⁹, however this does not always happen in practice and, in many such cases, it is only when the young person reaches 18 years and seeks access to university or employment that the local authority realises that the child, who may have been in the UK from a very early age, does not have a secure immigration status. Whilst the introduction of improved guidance to local authorities would have an important role in clarifying their responsibilities²⁰, there are currently and there will remain young people whose needs have not been appropriately identified or met by the local authority in this regard and who will lose the ongoing support of their local authority at the age of 18 years, despite having been dependent as a child on the local authority for taking care of these matters in their corporate parenting role and despite needing the support of the local authority most critically during the period when the impact of their irregular status becomes apparent. The long term future of such young people is likely to be in the UK but they will be unable to receive leaving care support under the Children Act 1989 as Schedule 11 is currently drafted.

¹⁷ Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

¹⁸ House of Lords Immigration Bill Committee, 4th day, at:

<http://www.publications.parliament.uk/pa/ld201516/ldhansrd/lhan105.pdf>, column 1845

¹⁹ Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

²⁰ *Ibid*

Young people with a pending immigration application (or appeal arising from this) which is not their first application

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 their human rights would be breached on return to their country of origin), the Government brought forward an amendment to 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 regularise their status.

It is common for children who have survived traumatic and degrading forms of abuse as children to experience difficulties in disclosing this information or not to disclose this at all. This information may therefore not form part of the asylum claim they made as children but may form part of a subsequent human rights claim raised under article 8 of the European Convention on Human Rights protecting their right to private and family life. For example, a child's history of trafficking that has not been previously disclosed may be raised in this context as relevant to the therapeutic and relationships the child has established in the UK that should be protected under the right to private and family life. Such young people who have a pending immigration application, but not an application that is their first application, would fall outside the protection of leaving care support under the Children Act 1989 from the local authority.

Delayed disclosure of abuse is recognised across both immigration and child protection contexts. For example, Home Office guidance in relation to gender-based violence states:

*While the substantive asylum interview represents the applicant's principal opportunity to provide full disclosure of all relevant factors, the disclosure of gender-based violence at a later stage in the determination process should not automatically count against her or his credibility. There may be a number of reasons why an applicant may be reluctant to disclose information, for example feelings of guilt, shame, and concerns about family honour, or fear of traffickers or having been conditioned or threatened by them.*²¹

Guidance from the Department of Education highlights the need for professionals to be alert to the signs of abuse suffered by children as this may not be disclosed:

*The signs of child abuse might not always be obvious and a child might not tell anyone what is happening to them. You should therefore question behaviours if something seems unusual and try to speak to the child, alone, if appropriate, to seek further information.*²²

Similar advice is repeated in Home Office guidance related to victims of child trafficking:

²¹ UK Visas and Immigration, Asylum Policy Instruction: Gender Issues in the Asylum Claim, 29 September 2010 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257386/gender-issue-in-the-asylum.pdf, para 7.2

²² Department for Education (2015) What to do if you're worried a child is being abused, at: <https://www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2>, para 28

*[C]hildren who are in a trafficking situation are often very reluctant to give information, and often relate their experiences in an inconsistent way or with obvious errors. More often than not this will be because their stories are made up by their trafficker or modern slavery facilitator.*²³

It would be wrong to prevent young people who have experienced trauma and abuse but not been able to disclose or receive support from accessing leaving care support under the Children Act 1989 which could address their needs under the Pathway planning process whilst their stay is regularised through a second application for leave to remain.

Young people making further submissions that may be accepted as a fresh asylum claim.

Young people whose initial asylum claim has been turned down may also make further submissions in support of a fresh asylum claim. This may arise for the reasons of delayed disclosure of abuse experienced as a child discussed above or where new evidence becomes available that the individual was not able to obtain as a child.

The Minister in the House of Lords has given the welcome assurance that where further submissions are accepted as a fresh asylum claim, young people will fall within the scope of leaving care support provided by local authorities under the Children Act 1989²⁴. However it is not clear whether young people will remain within the scope of this support whilst their further submissions are pending consideration. Young people whose further submissions are being considered should also continue to receive local authority support under the Children Act 1989.

By analogy, within the asylum support provisions under Part Five of the Immigration Bill, adults and families are entitled to asylum support under s.95 of the Immigration and Asylum Act 1999. They are entitled to this same form of mainstream asylum support where they have made further submissions which are pending consideration and where these have been accepted as a fresh asylum claim. It would be inappropriate for young people leaving care to apply for section 95 support provided to adults and face dispersal into adult accommodation away from the local authority, the services the young person is linked into and their networks of support.

Care leavers should continue to receive leaving care support under the Children Act 1989 both where further submissions made to the Home Office are pending consideration and where these are accepted as a fresh asylum claim. Both circumstances should be made explicit in the legislation so that the support entitlements are clear and young people do not fall through gaps in provision resulting from misinterpretation of the provisions.

Young people bringing a judicial review against an incorrect decision on their asylum and immigration application

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.

²³ UK Visas and Immigration, Victims of trafficking: guidance for competent authorities, 03 August 2015 at: <https://www.gov.uk/government/publications/victims-of-trafficking-guidance-for-competent-bodies>, para 9.2

²⁴ Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

Care leavers are also subject to certification of their claim under section 59 of Part Four of the Immigration Bill (the 'remove first, appeal later' provisions) discussed below. These provisions enable the Secretary of State to remove a person following the refusal of certain human rights claims and require them to bring their appeal from outside the UK. This would not affect those with asylum claims or protection claims under article 3 of the European Convention on Human Rights (the right to be free from torture, inhuman, degrading treatment or punishment) but the provisions would affect young people whose claims are based on the protection of their right to family or private life under article 8 of the European Convention on Human Rights. The only remedy that would be available to care leavers in this circumstance would be judicial review but they would fall outside the scope of leaving care support by operation of new paragraphs 2A(6) and 2A(7) whilst bringing a challenge to a claim certified in this way.

Young people who have exhausted their appeal rights

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 documented²⁵. 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..."²⁶

They may therefore have strong grounds to remain in the UK despite having come to the end of the asylum process, for example, following a further immigration or asylum application made with the benefit of appropriate legal advice and representation.

Appropriate support for young people leaving care

Section 2A(8) inserted into Schedule 3 of the Nationality, Immigration and Asylum Act 2002 by the Bill 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.

Statutory guidance stresses the risks faced by unaccompanied young people during the transition to adulthood and leaving care:

Unaccompanied children and children trafficked from overseas can be at particular risk of becoming isolated on leaving care. When planning for transition, the local authority must ensure that language or cultural factors are taken into account to reduce this risk. A trafficked child may still be at risk of exploitation from their traffickers on leaving care. This risk should be considered, particularly with regard to arranging accommodation²⁷.

²⁵ 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

²⁶ *Ibid*, p.49

²⁷ *Ibid*, para 56

It is clear that support provided under Schedule 10B will be inappropriate for the needs of young people whose long-term future may be in the UK as this is to be focused on pre-departure support:

I agree entirely that they should receive support appropriate to their needs prior to their departure from the UK. I suggest only that the new mechanism which Schedule 9 creates for this under Schedule 3 to the 2002 Act is an appropriate reflection of the fact that, unlike other care leavers, their long-term future is not in the UK²⁸.

As indicated above, care planning for young people leaving care under the Children Act 1989 must necessarily take a dual or triple planning perspective which does not pre-empt the outcome of any immigration decision but takes into account planning for both a long-term future in the UK as well as for any return to the country of origin.²⁹ A planning approach focused on departure will therefore not meet the needs of young people whose long-term future may be in the UK and such young people should more appropriately be supported by the local authority under Children Act 1989 provisions.

It is also precisely during periods of transition that young people leaving care will be most in need of support and continuity to manage those periods of uncertainty and difficulty:

Planning transition to adulthood for unaccompanied children is a particularly complex process that needs to address their care needs in the context of wider asylum and immigration legislation and how these needs change over time. Pathway planning to support an unaccompanied child's transition to adulthood should cover all areas that would be addressed within all care leaver's plans as well as any additional needs arising from their specific immigration issues³⁰.

For the same reason, continuing support under the leaving care provisions of the Children Act 1989 is also most appropriate for young people who may be required to return to their country of origin. 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.³¹

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

²⁸ Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

²⁹ 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 60

³⁰ *Ibid*, para 59

³¹ 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

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.³²

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.

Inadequacy of proposals for support under paragraphs 10B and 11

The Minister in the House of Lords has given the assurance that young people leaving care will be eligible for “*such accommodation, subsistence and other support under paragraphs 10B and 11 of Schedule 3 to the 2002 Act as the local authority is satisfied needs to be provided in their case in light of the statutory regulations and guidance which will apply*” and that this could include remaining in their foster placement in the period before their departure.

However, the clear duties within the Children Act 1989 are to be replaced by regulations made by the Secretary of State where the extent to which local authorities will be under a duty to provide accommodation, subsistence or support under paragraphs 10B and 11 of Schedule 3 to the 2002 Act to young people leaving their care is unclear. Provisions meeting the needs of children leaving care are given such a high priority that they are set out as duties on the local authority to young people leaving care in the Children Act 1989 and specified in detail. These include the requirement to develop a Pathway plan setting out a personalised plan for the young person's welfare, regularly review this Pathway plan, allocate a personal adviser able to maintain contact with the young person and provide guidance and support, and provide assistance to meet their health, welfare, education and training needs.

In the light of the resource constraints on local authorities, it is likely that provision for young people leaving care will not be made where the local authority has no clear duties in relation to the provision of support in accordance with an assessment of welfare need. A key rationale given by Edward Timpson, now Minister for the Department of Education, for placing a legal duty on local authorities to make provision for ‘staying put’ arrangements that enable young people to remain in foster care placements makes this clear:

A growing number of local authorities already offer young people the choice to stay but with little financial support it can be challenging for their foster families. Now all councils will have to follow their example, and we are giving them £40 million towards the cost³³.

In the absence of a clear duty and funding of provision, local authorities are likely to be unable to provide the additional support that this vulnerable group of young people leaving care will require when making the transition to adulthood. The absence of ongoing formal duties on the local authority to review a Pathway plan, allocate an adviser and make provision for the young person's specific health, welfare, education and training needs create a similar difficulty. The Pathway plan provides the key mechanism by which the care planning process and actions to

³² *Ibid.*

³³ Department for Education, *Press release: Children to stay with foster families until 21*, 04 December 2013 at: <https://www.gov.uk/government/news/children-to-stay-with-foster-families-until-21>

support the transition of a young person into adulthood under the Children Act 1989 are co-ordinated and resourced³⁴.

Whilst the Minister in the House of Lords has indicated that it may be possible for a young person who has exhausted their appeal rights facing an insurmountable obstacle to return to remain in local authority accommodation funded by the Home Office where this is appropriate in their individual circumstances, it remains the case that transfer to Home Office accommodation under section 95A of the Immigration and Asylum Act 1999 is envisaged generally³⁵. Such young people would therefore face dispersal away from the local authority and their existing support networks to be placed in adult Home Office accommodation located in any area of the country. It is also inappropriate to deprive young people of the support that they need when there is a genuine obstacle to their return to their country of origin.

Immigration appeal rights of care leavers

As indicated above, care leavers are also subject to certification of their claim under section 59 of Part Four of the Immigration Bill (the 'remove first, appeal later' provisions).

These provisions enable the Secretary of State to remove a person following the refusal of certain human rights claims and require them to bring their appeal from outside the UK. This would not affect those with asylum claims or protection claims under article 3 of the European Convention on Human Rights (the right to be free from torture, inhuman, degrading treatment or punishment) but the provisions would affect young people whose claims are based on the protection of their right to family or private life under article 8 of the European Convention on Human Rights. The provisions would therefore potentially affect young people who had arrived as an unaccompanied minor and seeking to establish their right to remain on the basis of their long residence or established private life in the UK. They could equally affect trafficked young people who have not applied for asylum but have applied for leave in the UK for the purposes of their recovery.

Care leavers whose cases were certified in this way would be required to leave the UK in order to bring their appeal against the refusal of the human rights claim. They would need to establish themselves in the country of origin, find work to support themselves and lodge an appeal within 28 days of removal.

They would be required to remain outside the UK for the duration of their appeal and conduct their appeal from abroad, only returning to the UK if their appeal was successful. Cases are subject to delays of potentially eight months or more. The President of the First-tier Tribunal issued a message about the challenge of listing and ILPA understands that delays are likely to increase in the foreseeable future. It is ILPA's understanding that volumes of appeals, and of judicial reviews, have exceeded those predicted at the time of the passage of the Immigration Act 2014. If the Home Office appeals, and permission to appeal is granted, the length of time away from the UK will be even longer.

³⁴ See for example: 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 chapter 3

³⁵ Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

The quality of Home Office decision-making remains a concern: statistics from 2014/15 indicate that 31% of appeals brought in all asylum and 'other' cases were successful at appeal and 42% of managed migration appeals led to the initial decision being overturned³⁶.

The only remedy available to care leavers against an assessment that removal for the purpose of the appeal would not breach their human rights would be judicial review, but they would fall outside the scope of leaving care support during this period by operation of new paragraphs 2A(6) and 2A(7) whilst bringing a challenge to a claim certified in this way. If the Government's residence test for legal aid becomes law, young people will not be eligible for legal aid making the right of challenge by judicial review illusory.

The iniquities of this clause in Part Four of the Immigration Bill are amply demonstrated by its potential application to care leavers and cannot be squared with the Government's duties as 'corporate parent' to these vulnerable young people.

³⁶ ³⁶ For full table see Table 2.5a in the zip file at <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015> In immigration judicial reviews, Professor Robert Thomas, of the University of Manchester School of Law, who has conducted detailed research into the immigration and asylum chambers of the tribunals over many years, has taken account of reviews won by claimants and those conceded by the Home Office and has concluded "*It is estimated here that the true success rate of immigration challenges is nearer to 30 per cent than the less than one per cent figure that arises from the Government's preferred and misleading metric.*" Mapping Immigration Judicial Review Litigation: An Empirical Legal Analysis [2015] P.L. October, Thomson Reuters (Professional).