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Dear Emma and Enver,

Immigration Bill – care leavers

Thank you for your letter of 18 January and for the opportunity on 8 March to discuss with you the care leaver provisions in Schedule 11 to the Immigration Bill.

I recognise that the Alliance for Children in Care and Care Leavers represents the views, and reflects the expertise, of many working in the sector and it is therefore very helpful to us to have your views and I hope that we will have your continuing input to the delivery of the new system of Home Office and local authority support for migrants without immigration status for which Schedules 10 and 11 to the Immigration Bill provide. As I mentioned when we met, subject to the approval of government amendments tabled for the Lords Report stage, the regulations required to implement those changes will be subject to the affirmative Parliamentary procedure and therefore key details of the new system will be subject to debate and approval in both Houses of Parliament. In working jointly with the Department for Education on the drafting of those regulations and associated guidance, we would welcome the input of key partners, such as the Alliance and the Refugee Children's Consortium, to that work.

As we discussed, it is important that we are clear about what will change under the Immigration Bill provisions – and what will not change – and why. I am therefore grateful for your offer to work with officials on briefing material which helps to make that clear, particularly for the organisations and professionals working with this group of young people.

As you know, the changes to local authority support for care leavers in Schedule 11 to the Bill will not affect care leavers who are granted refugee

status or leave to remain or who have an outstanding application for this when they turn 18. The majority of adult migrant care leavers fall into these groups. By virtue of government amendments made at the Lords Committee stage, the changes will also not affect those care leavers who were the victims of trafficking or were taken into local authority care because of problems in their family in the UK and are now making their first application to regularise their immigration status. All these groups will remain subject to the care leaver provisions of the Children Act 1989.

The changes in Schedule 11 will primarily affect those adult care leavers who have exhausted their appeal rights and who the courts agree should now leave the UK. We do not consider as a matter of principle that the Children Act is the right framework for support in these cases in the period before they leave the UK: it is designed to support those young adults whose long term future is here.

However, as we discussed, Schedule 11 will enable local authorities to continue to provide them with accommodation, subsistence and other support the local authority considers is required in individual cases pending the person's departure from the UK. This could include, for example, a continued foster placement or the advice and support of a personal adviser where appropriate. This provision will be made under regulations made under the new paragraph 10B and paragraph 11 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002.

We estimate that around 750 appeal rights exhausted adult care leavers are currently supported by local authorities. They will continue to be able to receive that support under the current framework, but cases which become appeal rights exhausted after the new system comes into force will instead access support by local authorities under the new arrangements in Schedule 3 to the 2002 Act.

This new form of local authority support will be available where the person does not qualify for Home Office support under the new section 95A of the Immigration and Asylum Act 1999 for failed asylum seekers with a genuine obstacle to their departure from the UK (e.g. they have yet to receive a travel document from their embassy). Any care leavers who become appeals rights exhausted under the new scheme who come within this category will therefore move to Home Office support, but I would emphasise two points:

- First, it will be possible for them to remain in local authority accommodation, funded by the Home Office, where this is appropriate in their individual circumstances.
- Second, where they receive accommodation and/or subsistence support under section 95A, the local authority will be able under the regulations made under the new paragraph 10B and paragraph 11 of Schedule 3 to the 2002 Act to meet any other social care needs the person has.

We will work closely with local authorities to establish and manage the practical steps required in such cases.

I would add that a failed asylum seeker turning 18 who has made further submissions on protection grounds which remain outstanding after a period of time prescribed in regulations (expected to be 5 days in most cases), or which result in the grant of leave or which are accepted as a fresh claim for asylum, will remain subject to the Children Act care leaver framework. So too will a young person turning 18 who was previously granted UASC Leave or other limited leave to remain and has applied for further leave to remain.

A person will only fall within the scope of the new paragraph 7B of Schedule 3 to the 2002 Act (and therefore, if they are a care leaver, for support under the regulations made under the new paragraph 10B and paragraph 11 of that Schedule rather than under the Children Act) where, aged 18 or over:

- They are not an asylum seeker. Care leavers who are asylum seekers will remain subject to the Children Act care leaver framework, including those treated as asylum seekers under the expanded definition provided under Schedule 10 to the Bill that encompasses those with outstanding further submissions.
- They require immigration leave and do not have it. This will not include those who were granted UASC Leave or other limited leave to remain pre-18 and who have “continuing leave” because they applied in time for further leave to remain and that application or an appeal is outstanding. And
- They are not awaiting the outcome of their first application for leave to remain in the UK or the outcome of an appeal against refusal of that application.

This means that a care leaver will only fall within the scope of the new paragraph 7B and therefore for support under the regulations made under the new paragraph 10B and paragraph 11 of that Schedule rather than under the Children Act where, aged 18 or over, they are appeal rights exhausted or where, post-18, they have made a further specified immigration (non-asylum) application and that application or any appeal is outstanding.

As we discussed, it is essential that local authorities support children in their care to engage in a timely way with the Home Office to resolve their status. This should be an integral part of their pathway plan under the Children Act. Schedule 11 makes no change to that framework in this respect or in any other where children are concerned. Working together with the Department for Education, we see the implementation of the support measures in the Immigration Bill as an important opportunity also to refresh and reinforce the pre-18 arrangements, including to ensure that local authorities are clear about the relevant process and that the Home Office responds in a timely way to applications from children in local authority care.


I agree that proper immigration controls in this context must be accompanied by the right safeguards. Adult care leavers who have failed to establish a lawful basis to remain here should leave the UK where they can do so, but they should receive the support the local authority considers appropriate prior to their departure from the UK. The new mechanism which Schedule 11 to the Immigration Bill 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 here. I agree that the Children Act otherwise remains the right framework for supporting care leavers' transition into adulthood.

We also discussed some important points that will need to be reflected in the regulations made under the new paragraph 10B and paragraph 11 of Schedule 3 to the 2002 Act, and in the associated guidance and operational procedures, for those appeal rights exhausted care leavers affected by the changes:

- Provision should be geared to what the local authority is satisfied is needed to support the person through to their voluntary, assisted or enforced departure from the UK.
- Provision should recognise the importance of keeping in touch with the person through to their departure from the UK and of continuity of contact. Building on effective pathway planning pre-18, which should have encompassed the possibility, now realised, that the young person could be required to leave the UK, local authorities should consider the role that personal advisers might play in discharging this function effectively.
- This needs to be complemented by and dove-tailed with clear and effective liaison with local authorities by the Home Office, to deal promptly with any further immigration application and to provide the right connection in appeal rights exhausted cases with voluntary, assisted or enforced return arrangements.

It was clear from our discussion that the Alliance for Children in Care and Care Leavers will have much to contribute in helping the Home Office, together with the Department for Education, to shape the implementation of the new system of support to best effect. I look forward to that contribution and to further discussion and dialogue around that.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Brokenshire', written in a cursive style.

Rt Hon James Brokenshire