ILPA BRIEFING TO AMENDMENTS TABLED FOR THE IMMIGRATION BILL, LORDS' REPORT THIRD DAY 21 March 2016: PART 5

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.

ILPA has already provided a briefing on parts four and five, covering all amendments tabled for the second day of report, see http://www.ilpa.org.uk/pages/immigration-bill-2015.html We have repeated the briefings to those parts not already debated here. We have not repeated briefings to those amendments debated but not yet voted upon. 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 5 *Support*

Before Clause 62

AMENDMENT 116A NEW CLAUSE *Unaccompanied refugee children: relocation and support* in the names of Lord Dubs, Lord Alton of Liverpool, Lord Roberts of Llandudno and Baroness Sheehan

Purpose

Requires the Secretary of State to relocate 3000 unaccompanied refugee children in European Union countries to the United Kingdom. These 3000 children are in addition to the 20,000 the Government has promised to relocate in three years under the vulnerable persons' relocation scheme.

Briefing

Those who wish to read the debates on the Kindertransports of the 1930s can do so at on the Millbank systems pages. An extract appears below, and **more are annexed to this briefing (see end)**. They are a tough read with hindsight, and an even tougher read as the fugue of history plays out its repetitions. They range widely: it is suggested that the Jewish children come to Britain, that 10,000 of them go to Palestine, whose fate was being debated at the time, that they go to Tanganyika. Nor is concern limited to Jewish children, concern about Spanish refugee children is also repeatedly voiced.

> *"**Mr M Macdonald** I understand that, if it is desirable that these children should leave Germany in the meantime, they can be received in this country under the various schemes which are now being operated for the care of Jewish child refugees, if the refugee organisations can guarantee their maintenance. I should add that considerable numbers of young refugees from*

Germany are at present being admitted into Palestine under the existing arrangements, both as dependants and as students proceeding to recognised educational institutions, including agricultural training centres.

Mr. Adams *As this is a matter of extreme urgency, will my right hon. Friend see that one or other of the means suggested is used to get these children out of their present environment with the greatest possible speed?*

Mr. MacDonald *That is a matter, in the first place, for the organisations which are doing this work in the country to-day.*

Mr. Noel-Baker *Is the right hon. Gentleman aware that these children in Germany in many cases are in really terrible conditions, without adult protection and without the means of finding food, and is he aware that the machinery of the Home Office for granting visas is so inadequate that the visas cannot be obtained in sufficient quantities to save their lives?*

Mr. MacDonald *All these factors have been borne in mind in reaching this decision. So far as the children coming to camps or other accommodation in this country are concerned, the authorities are doing everything possible to expedite the bringing of the children into this country."*[1]

The last kindertransport took place on 1 September1939, two days before Britain entered the second world war. The war in Syria has raged for years; the fate of the children is a matter of record much more detailed than that to which parliamentarians in the 1930s had access.

The call for the UK to relocate 3000 unaccompanied children was first made by the Save the Children and has been taken up by, for example, the International Development Committee. The matter was debated in the House of Commons on 25 January 2016.

The Government responded to the calls on 28 January. It said that

- The UK will work with UNHCR on a new initiative to resettle unaccompanied refugee children from conflict regions such as Syria to the UK;
- The Department for International Development will create a new fund of up to £10 million to support the needs of vulnerable refugee and migrant children in Europe.

Both of the above will complement existing aid and resettlement programmes. The Minister made explicit that it would not be limited to children fleeing Syria.

The proposals are a step change from the UK's previous insistence on targeting its aid outside the European Union and the first indication that the UK should show solidarity with other European States to whom refugees are turning for protection.

The Government also announced that it would provide further resource in the European Asylum Support Office to help Greece and Italy identify persons, including children, who could be reunited with direct family members elsewhere in Europe under the Dublin Regulation in the UK. This is linked to the UK Government's responsibility under the Dublin III Regulation which has recently been tested in the courts in the case of *R (ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM v*

[1] HC Deb 14 December 1938 vol 342 cc1975-6.

SSHD UKUT JR/15401-1405/2015, discussed below.

Ministers have talked about "strengthening the Dublin Regulation" insofar as this is concerned with pushing back to countries such as Italy, struggling to cope, persons seeking asylum who have turned up in the UK but entered the European Economic Area visa Italy. The Government has said much less about those aspects of the Dublin Regulation which involve the UK in accepting responsibility for persons, including children, who have family members here. The Dublin III regulation provides:

> ***Article 8 Minors***
>
> *1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.*
>
> *2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.*
>
> *3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.*
>
> *4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.*
>
> *5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).*
>
> *6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).*
>
> ***Article 9 Family members who are beneficiaries of international protection***
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> *Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the*

application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10 Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing

Article 11 Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

The case of *ZAT et ors* involved three separated children, plus the sibling of one of them who was dependant upon him and had special needs. It was recently heard by the Upper Tribunal as a judicial review. Although there was not disagreement that the children's links in the UK, where they had family members ready and willing to care for them, meant that under the Dublin III Regulation the UK would ultimately be responsible for them, the Government argued, and continues to argue, for it is appealing the case, that such responsibility only arose when the French authorities made a formal "take charge" request to it to take the cases of the children. The evidence in the case was that such a request would take a year to materialize, during which period the children would be in danger in the camp in Calais. The Tribunal held that the children's rights to family life meant that the UK could not sit and wait for the request.

In the Commons debate on 25 January 2016, the Minister argued that

> *"The vast majority are better off staying in the region so they can be reunited with surviving family members. So we have asked the UNHCR to identify the exceptional cases where a child's best interests are served by resettlement to the UK and help us to bring them here."*

He cited UNICEF

> *UNICEF itself has emphasised*
>
> > *"the importance of first and foremost assessing the individual situation of unaccompanied children, and their best interests, before any actions are taken; noting that in these situations children who may appear unaccompanied are in fact being supported by family members, or others, and decisions on how they are cared for should take this into account."*

ILPA shares UNICEF's concerns about the effect on the likelihood of eventual family reunion. In cases where children have family members in the UK, there is a response to the4se concerns. The child is not going into public care in the UK, but in the family unit. Parents are likely to get in touch with the family. Moreover, some 26,000 unaccompanied children have come to the European Economic Area. Any advantage to their prospects of family reunion that derive from remaining in the region of origin have already been lost, as Sir Eric Pickles MP reminded the Minister

> *I am pleased that the Prime Minister is looking at this matter again. He is quite right to try to keep children in the region, but to use one of those phrases, we are where we are. There are children at risk, and I urge the Government to look carefully at that.*

Tim Loughton MP echoed him:

> *Notwithstanding the considerable aid that we have given to displaced Syrians in the area, which is the right thing to do, there is a humanitarian case for helping the children who are in limbo and very vulnerable to traffickers, the elements and so on*.

UNHCR is charged with the identification of the children outside European Economic Area and the UNHCR Best Interests determination and assessment procedures take very seriously the question of whether relocating the child will enhance or reduce their changes of family reunion and whether current risks make it imperative to move the children. The Minister said in the 25 January debate

> *We know that the people traffickers exploit anything that we say and twist it in a perverse manner to encourage more people to travel and put more lives at risk. That is why we are looking at this issue very closely to determine what is in the best interests of the child, to ensure that more lives are not put at risk and to see how we can support this activity.*

The people traffickers are not short of things to exploit. They have the situation in Syria; they have the dire situation in many countries through which refugees travel and where they end up. The idea that the UK's sharing responsibility within Europe will fundamentally alter the calculations of refugees seeking safety or those who exploit them is a proposition for which no evidence has been advanced and for which, we suggest, evidence is unlikely to exist to be advanced. ILPA has made this point to the House of Lords Committee on the European Union in its evidence to the Committee's enquiry into The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU3 and on the EU Action Plan on Migrant Smuggling[2].

The Committee described itself as "not convinced" by the Government's reasoning. It

> *31. … we heard arguments that the Government's concern that the proposal could act as a "pull factor", which would encourage further migration to the EU, was not supported by evidence. The migrants affected by the present proposal are those belonging to nationalities for which international protection is on average granted in at least 75% of cases—at present, those from Syria, Eritrea and Iraq. The situation in each of these countries is dire: it is clear that the vast majority of those leaving these countries are fleeing civil war or the imminent threat of persecution. This is underlined, for instance, by the presence of millions of Syrian refugees in camps in Jordan and Lebanon. The Government's argument that the relocation of 40,000*

[2] HL Paper 46, 4th Report of Session 2015-2016 , 27 October 2015
http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/46/46.pdf

migrants who have reached Greece or Italy will somehow encourage more to leave their countries of origin is therefore unconvincing.

32. The Government's approach will do little to help the response to a humanitarian crisis within the EU's borders.

33…we are concerned that, by failing to opt in, the Government would fail to live up to its duty of solidarity and burden-sharing between the Member States during an "emergency situation".

34. Finally, we recognise the international and domestic political implications of failing to opt in. The EU's delayed response to the crisis has significantly weakened its credibility as an international actor and has attracted global criticism.

ILPA concurs with the Committee. To describe the situation in terms of "pull factors" is to ignore that the push factors, persecution, war, torture, extra-judicial execution and overburdened countries of first asylum provide more than enough motive for persons to flee to the European Union. Conditions of insecurity in countries of first asylum, and basic needs not being met, are further push factors. These points are developed in ILPA's responses to House of Lords European Union Select Committee for its enquiry into migrant smuggling, and to the Home Affairs Committee. ILPA's evidence to the Committee is available at http://www.ilpa.org.uk/resources.php/31315/ilpa-submission-to-house-of-lords-select-committee-on-the-euroepan-union-home-affairs-sub-committee-

The United Nations and its implementing partners are having to contemplate shifting resources, already insufficient, from Turkey which is hosting 2.3 million refugees, Lebanon where one in three of the population is a refugee and Jordan, to one of the richest continents in the world, because the States of Europe have failed to get refugees to places where they can be provided with food and shelter[3] .

People are walking. Across Lesvos in the dark if they are not lucky enough to benefit from a lift from the volunteers on the island or unlucky enough to fall prey to gangs who take their money then dump them far from their destination. People are walking from Greece, through Macedonia, fearing to stop, fearing that borders will be closed again. A recent account described a child with a broken arm, continuing the long march with her mother who feared to stop to go a hospital until Austria, the final destination, was reached.

Winter is coming. Lesvos, Lampedusa, Sicily, Hungary, all are close enough to go and see what is happening and many have been. At the Society of Black Lawyers and Society of Asian Lawyers conference at Westminster Central Hall on 12 December 2015 one lady, a dentist, who had volunteered on Lesvos, described how difficult it is to take wet clothes off a shivering baby. She described volunteers coming from all over the European Union, and indeed further afield, to Lesvos, because of the limits on what they could do for refugees closer to home and the feeling that in a situation such as the present, to be a bystander was not an option.

The situations from which the refugees currently in the European Union have fled are worsening. These refugees are not about to leave. Large numbers of persons will remain displaced for many years, even if the situations which have produced refugees are rapidly

[3] http://data.unhcr.org/mediterranean/regional.php

resolved, which currently does not appear likely. This is what UNHCR defines as a protracted refugee situation. It is no good huddling in a corner and waiting for it to stop.

At the Society of Black Lawyers and Society of Asian Lawyers refugee conference on 15 December 2015, Dr Yasmeen Hasnain, an NHS consultant in emergency medicine at Milton Keynes NHS Foundation Trust and tutor of the School of Emergency Medicine at Oxford Deanary and Dr Tanveer Hussain a senior General Practitioner with considerable humanitarian assistance, described the results of a fact-finding mission to Sicily, and Lampedusa in June 2015 supported by the Pakistani Medical Association and a visit to Calais in September 2015. They described the considerable physical and mental health problems of the refugees. They also described meeting, by chance, refugees they had met in Catania who had made it to the Calais jungle, and the striking deterioration in their mental health during their time in Europe.

When this matter was debated in the House of Commons on 25 January 2016, the Minister, James Brokenshire MP, said

> *"The Government are clear that any action to help and assist unaccompanied minors must be in the best interests of the child, and it is right that that is our primary concern."*

It would be unacceptable to bring an unaccompanied child to the UK, make him/her feel safe here and then, if their parents were relocated, refuse to allow the child to be reunited in the UK with his/her parents. The UK's discriminatory attitude toward refugee children is discussed above in our comments on **Lord Hylton's amendment 234**. Such discrimination is contrary to the best interests of children. Sir Edward Leigh MP, albeit speaking against Save the Children's proposal that the Government bring 3,000 separated children to the UK, did not doubt that relocating a child entailed obligations toward them in respect of family reunion:

> *For every child refugee we take from a camp in Dover or Calais, we will simply have to take many other people who will come as part of the family.*

Conservative MP Andrew Bridgen said

> *"Many Members of this House are suggesting that we rescue unaccompanied minors from other European Union countries and bring them to Britain. Does the Minister agree that one of the dangers of that is that their relatives will appear, and human rights lawyers in this country will insist that they have a right to join those minors in the UK because they have a right to a family life?*[4]*"*

Yes, as human rights lawyers, we shall insist that these children have rights to family reunion, as refugees who have suffered persecution and now seek to rebuild their lives.

It would be unacceptable to bring an unaccompanied child to the UK but hold over his/her head the prospect of not being allowed to stay past the age of 18. What teenager, and most of the children in question will be teenagers as in most cases younger children either find their way into some form of family unit or fail to survive[5], could feel safe with the prospect of removal hanging over them. This fails to have regard to the best interests of children.

[4] Col 46.

[5] Yvette Cooper MP described seeing children of 11 and 12 in Calais, being cared for by a British volunteer, HC Deb, 25 January 2016, col40.

The current UK immigration rules do not give children the same entitlements to be reunited with their parents as adults have to be reunited with their minor children. Instead they must rely on discretionary provisions of the rules. This is often stated to be to ensure that children are not sent on ahead alone to secure leave for the family but this is based on a misunderstanding of the position of the children who could apply for refugee family reunion.

Children asking for refugee family reunion are not given discretionary leave because they are unaccompanied; they are being recognized as refugees because they are at risk of persecution by reason of their race, religion, nationality, political opinion or membership of a social group in the country of origin. They have as much right to international protection and to respect for their rights as refugees as any adult. Many people will recognize the choice of parents, forced to pay smugglers because of a lack of safe and legal routes to safety and not having enough money to bring the whole family out, to get their child to safety first and put the child's needs before their own. We have seen the dangerous journeys parents make both with and without their children to try to get them to safety.

The position could be changed without primary legislation.

ILPA supports this amendment

After Clause 63

AMENDMENT 120 NEW CLAUSE ***Family Reunion: persons with international protection needs*** in the names of Lord Hylton, the Lord Bishop of Southwark and Baroness Hamwee

AMENDMENT 122A NEW CLAUSE ***Family reunion, Refugee Resettlement Programme*** in the names of Lord Alton of Liverpool, Lord Roberts of Llandudno and Lord Hylton

Purpose

The Immigration Rules are made under section 3 of the Immigration Act 1971. This amendment deals with two parts of those rules

i) The rules on refugee family reunion
ii) The rules on family reunion for British citizens and settled persons

The rules on refugee family reunion do not make provision for minor children to be reunited with their parents or grandparents, for adults to be reunited with their parents or with their siblings.
The effect of **amendment 120** and is to require the Secretary of State, within six months of the passage of the Act, to make provision within the immigration rules for the broader groups of refugee family members. The terms on which she does so are left to her.

The Immigration Rules make provision for British citizens and settled persons, and refugees where the relationship is outside the scope of the family reunion rules, to be reunited with family members in the UK. The rules include stringent eligibility requirements as to income and savings thresholds and other requirements such as that adult dependent relatives must stand in need of personal care which cannot be provided by the sponsor or by family members in the country of origin. **Amendment 120** would require the Secretary of State, within six months of the passage of the Act, to make provision for British citizens and those with indefinite leave to remain in the UK, whether they themselves had ever been refugees or not, to bring to the UK their family members with international protection needs. The terms would be no less favourable than those on which refugees can be reunited with family members save that a condition that the family member could not have recourse to "public funds" as defined in the immigration rules but would instead have to be supported by the family member in the UK, could be imposed.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 makes provision for legal aid to be further extended, or further withdrawn, by secondary legislation. These are separate provisions: an order under 9(2)(a) always makes provision for legal aid to be extended. Thus **Amendment 120** would require legal aid to be extended by order to cases of refugee family reunion within six months of the passing of the Act, although the exact terms on which this would be done are left to the Lord Chancellor.

Amendment 122A is in more general terms. It requires the Secretary of State to set up a resettlement programme, but does not place a time limit on this. It envisages that there might be a limit on the number of places offered under the programme and specifies that these shall be in addition to persons being resettled under existing commitments on refugee resettlement. As to the persons in the UK who would be joined by relatives under this programme, it does not distinguish between family members of refugees and those granted humanitarian protection on the one hand, and British citizens and settled persons on the other. The persons to be resettled would be persons identified by UNHCR or host States as persons in need of international protection.

Amendment 122A gives priority to those not eligible under the existing immigration rules. These might include for example, the parents of minor children recognised as refugees, or family members of British citizens who cannot meet the financial thresholds imposed in the immigration rules. It would permit requirements to be imposed as to resource to public funds.

Amendment 120 and **Amendment 122A** could be used to resettle broadly the same cohort, and both permit resettlement of persons from outside and from within the European Union. Only **Amendment 120** permits the sponsorship of grandparents. **Amendment 120** makes provision on legal aid. **Amendment 122A** does not, but is compatible with changes to legal aid, which could be achieved by secondary legislation.

Briefing

ILPA supports both amendments and does not distinguish further between them in this briefing.

UK law makes provision for a person with leave to remain as a refugee to be reunited with spouse, partner and minor children. That entitlement ceases when the person becomes a British citizen; at that point they must fulfil the requirements of the immigration rules (minimum

income thresholds and very high bars in respect of relatives other than spouses and minor children.

Rules on refugee family reunion are contained within the immigration rules in Part 11 and Appendix FM. Part 11 provides for reunion of recognized refugees with spouses and minor children on more favourable terms than family applications from other persons (for example there is no fee and no financial threshold to meet). Appendix FM provides for refugees to be reunited with a wider range of family members and for British citizens and settled persons (including but not limited to persons who were recognized as refugees) to be reunited with spouses, minor children and a wider range of family members, but subject to onerous eligibility conditions, such as financial thresholds. ILPA has put detailed proposals to the Home Affairs Select Committee[6] on refugee family reunion[7].

Lord Bates said when this amendment was debated at Committee

> *Our policy is more generous than our international obligations require. Some EU countries require up to two years' lawful residence before a sponsor becomes eligible and impose time restrictions on how quickly family members must apply.*[8]

International obligations set a floor, they require a minimum from States.

Extending refugee family reunion

There are refugees who do not have spouses and children but want to be reunited with parents or siblings who are refugees. The current rules provide for refugees to be reunited with their minor children and spouses/partners. Bizarrely, anomalously and cruelly they do not provide for minor children who have been recognised as refugees or given humanitarian protection – yep, recognised as refugees not just given discretionary leave, recognised to face persecution on return – to be reunited with their parents? Why not? The family cannot be together in the country fled.

The current UK immigration rules do not give children the same entitlements to be reunited with their parents as adults have to be reunited with their minor children. Instead they must rely on discretionary provisions of the rules. This is often stated to be to ensure that children are not sent on ahead alone to secure leave for the family. Lord Bates repeated this in Committee[9]

> *This is a considered position designed to avoid perverse incentives for children to be encouraged or even forced to leave their country and undertake a hazardous journey to the UK. As Save the Children pointed out, many children are feared to have fallen victim to people traffickers. Allowing children to sponsor their parents would play right into the hands of traffickers and criminal gangs and go against our safeguarding responsibilities.*

This is based on a misunderstanding of the position of the children who could apply for refugee family reunion. They are not being given discretionary leave because they are unaccompanied; they are being recognized as refugees because they are at risk of persecution by reason of their

[6] http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration
[7] See http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration
[8] Col 1881
[9] 3 February 2016, col 1881.

race, religion, nationality, political opinion or membership of a social group in the country of origin. They have as much right to international protection and to respect for their rights as refugees as any adult. Many people will recognize the choice of parents, forced to pay smugglers because of a lack of safe and legal routes to safety and not having enough money to bring the whole family out, to get their child to safety first and put the child's needs before their own. We have seen the dangerous journeys parents make both with and without their children to try to get them to safety.

Those applying for refugee family reunion should be allowed to submit their applications in the countries in which they find themselves and not required to make hazardous journeys to reach designated posts. For example, family members in Turkey should be permitted to make applications in Istanbul, not to have to travel to Amman.

UNHCR states[10]:

> "*Family reunification plays a significant role in meeting the long-term needs of resettled refugees ...The family is often the strongest and most effective emotional, social and economic support network for a refugee making the difficult adjustment to a new culture and social framework.*"

Examples of cases for which no provision is made under the current rules

A Syrian girl aged 18 years and four months was refused because she is over 18. At the time of the application she was in Damascus with her grandmother.

Two Afghan girls aged 19 and 21 whose father is a refugee in the UK following distinguished service for the UN for which he had been targeted by the Taliban, were refused family reunion and left separated from the rest of the family.

The Iranian male sponsor has been married for 34 years. He has his marriage certificate and numerous photographs. He left Iran in 2007 and was in Greece, unable to get out, working to subsist, unable to be in touch with his family for a period. He developed mental health problems. He has helped by the church to come to the UK where he applied for asylum. He was refused but succeeded on appeal. His application for family reunion with his wife and minor daughter was refused. Legal representatives tried again and the second application has just been refused on the basis that because there was a gap of contact around 2007 for some years, the marriage is not subsisting. They have been in regular touch since 2012. He says it is usual to be away from the family for periods, but when you marry you marry for life, there is no question that marriage is not subsisting and he has never stopped thinking about them. His lawyer writes "But you can't prove that."

Two orphan Afghan siblings are separated; one has been recognised as a refugee in the UK but as a child is not entitled to family reunion.

The Lord Bates spoke of Calais

[10] June 2010 *Background Note for the Agenda Item: Family Reunification in the Context of Resettlement And Integration*: *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context,* for the Annual Tripartite He might Consultations on Resettlement, Geneva, 20-21 June 2001.

> *In relation to Calais, which was mentioned by the noble Lord, Lord Hylton, the UK is contributing £7 million to help with the relocation of migrants away from the Calais centre, where the conditions are so appalling.*

The UK's seven million may have contributed to the violent relocations. Accounts from the camp are of people given no information, suddenly surprised and required, by French CRS officers who do not speak their language and are not accompanied by interpreters, suddenly to vacate their homes. There are accounts and eye witness accounts of the use of violence. Children have been witnesses to scenes of violence. Tear gas has been used. It appears from eye witness accounts that at least some fires have been started by those clearing the camp. One of the reasons given in the judgment of the Tribunal in France for permitting the evictions to go ahead was that an emergency vehicle could not penetrate this part of the camp and the risk of Delays can have a huge effect in these cases, exposing family members overseas to threats from violence or from disease. Representatives have had the experience of one or more family members on the original application, in particular children, dying before they can come to the UK.

Family reunion for British citizens and the settled with their relatives in need of international protection

At the same time as refugees in the UK seek family reunion, there are British citizens and settled persons who never were refugees, or who are no longer refugees, but who have close family members who are suffering or fleeing persecution, stuck in refugee camps.

The Home Secretary has expressed interest in community sponsorship schemes. Schemes that build on existing family relationships are likely to be more stable and raise fewer safeguarding concerns. Persons with British or settled relatives have a ready made support network in the UK and a real prospect of integrating and in their turn supporting the "most vulnerable" refugees, whom the government intends to resettle, to integrate. British citizens and persons with indefinite leave to remain in the UK are suffering because of their fear for the lives of family members and their knowledge of the distressing conditions in which they are living. Many, MPs' staff are describing the constituents who come to their surgeries because they can find no way to bring their family members to safety.

The current rules on bringing spouses, partners and children to the UK[11] require that the sponsor in the UK demonstrate that they have an income of at least £18,600 per year plus an extra £3,800 for one dependent child and extra £2,400 for each additional child. Only specified sources of income and evidence specified in the Immigration Rules can be taken into account. Thus the income of the UK sponsor can be taken into account, the spouse's income overseas, income they would derive from offers of employment in the UK, and offers of third party support cannot. A person looking to sponsor a spouse, partner or child cannot look to other members of the family, friends or concerned community members to put up the relevant sums.

Where a person does not earn the relevant amount then £16000 plus two and a half times the shortfall in savings must be demonstrated. Again there are rules as to what counts.

[11] See House of Commons Briefing Paper no. 06724, 16 July 2015 *The financial (minimum income) requirement for partner visas.* See also the June 2013 report of the All Party Parliamentary Group on Migration, available at http://www.appgmigration.org.uk/family-inquiry

The amendment proposes amending the rules where the person to be sponsored is a person in need of international protection. Refugee relatives of British citizens and settled persons, whether inside or outside the EU, should not be expected to meet the requirements of the immigration rules as to earnings, etc. This would mean not having to pay a fee or meet requirements as to minimum income thresholds, language and other requirements of the rules.

What of relatives other than spouses, partners and children? The current rules for adult dependant relatives to come to the UK require that the applicant must, as a result of age, illness or disability, require long-term personal car, described in Home Office guidance[12] as requiring help performing everyday tasks. The applicant must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable. The Entry Clearance Officer (must be satisfied that the applicant will be maintained adequately, accommodated and cared for in the UK by the sponsor without recourse to public funds.

The All Party Parliamentary Group on Migration recommended[13]:

> ***Adult dependent relatives***
>
> *7. Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:*
>
> - *Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so;*
> - *An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.*

The Secretary of State could make new rules now. She does not require an amendment to primary legislation to do so. The amendment is prompt, but the timetable it imposes ensures that change happens.

Legal Aid

In the case on legal aid provisions for exceptional funding of cases out of scope of the Legal Aid, Sentencing and Punishment of Offenders Act 2012[14], the judge in the High Court held that refugee family reunion had been within the scope of legal aid all the time, because it was a right "arising from" the Refugee Convention and thus fell within the definition of "asylum" in Schedule 1 to the 2012. Following this the Legal Aid Agency reinstated legal aid for refugee family reunion. The Court of Appeal disagreed with the judge in the High Court and legal aid for refugee family reunion was again withdrawn.

Without legal aid many refugees will struggle to be reunited with family members. Those most overwhelmed by their current situation and fears for family overseas will all too often struggle most.

[12] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263241/section-FM-6.0.pdf
[13] http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf
[14]

The Government said in its response to the consultation on legal aid:

> "*Applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum. Respondents argued that these cases are akin to claims for asylum but if a person wishes to claim asylum it is open to that person to do so either as a dependant of a primary asylum claimant or to do so in his or her own right. Legal aid for any such asylum claim will be in scope.*"

This is incorrect. The family members are outside of the UK and hence cannot claim asylum. It would be unlawful[15] to assist them to do. To deny family reunion increases the risk that they make hazardous and clandestine journeys to the UK.

The Home Office record in dealing with these applications is especially poor, and belies the suggestion they are straightforward. Management information collected in 2008-2009 indicated that some 61% to 66% of refusals are overturned on appeal.[16]

Refugee family reunion cases frequently take a long time. Often family members must be traced. Communication may then be indirect and very slow. Even when they can be reached, they may be in a camp and unable under their own steam to travel to interviews at embassies or consular posts etc. Even submitting the application may be a matter of considerable difficulty. It is too often the case that not all family members survive long enough to be reunited in the UK.

A lawyer working in a small not for profit in the South West writes:

> *I have two clients with complex mental health needs (such that I am invited to the mental health team's risk management meetings) - such is the strain of separation, guilt, loss, pain when speak on phone to relatives abroad who are very distressed, have expectations that the sponsor can now sort things out since they have refugee status (so much so that it can become too painful to keep those conversations up)..."*

Work is complicated because refugee family reunion applications are treated in the Home Office as another type of immigration application. Insufficient attention is paid to the situation of applicants who often have protection needs.

For example, family members are expected to cross international borders if there is no Visa Application Centre in the country in which they are living. This can be impossible for those without documents, and dangerous for those who attempt the journey. Having got there they face the dilemma of whether to remain in that country while the application is processed, something which can take a considerable time.

There can be debates on whether a relationship is "subsisting". Home Office guidance provides for this to be proven by, for example, being in touch by telephone, but without acknowledging the challenges this may present both to the newly arrived refugee in the UK and the family member overseas. Delays in making the application or a separation of some years are too often

[15] Immigration Act 1971, s25A

[16] Management information collected by the UK Border Agency for 2009 and 2008, and shared with ILPA and others in discussion on refugee family reunion applications and policy. More recent evidence is not to ILPA's knowledge available. For further statistics, see *Hansard,* HC Report, 22 June 2010 cols 143-144W

used as a reason for refusal even where the person has managed, despite the lack of legal aid, to instruct a lawyer who has explained this.

The requirements of the immigration rules demand detailed evidence and, even where a legal representative is on record, there is often no request for further information where what has been provided is inadequate. Clients are telephoned by the Home Office, without an interpreter being provided, rather than the Home Office calling the legal representative on record.

Legal advice and representation and the ability to challenge cases on appeal on human rights grounds to the Asylum and Immigration Chamber of the Tribunal are thus necessary to win these cases.

An exceptional grant of legal aid is not the answer. One of the test cases in the exceptional funding litigation *Gudanaviciene et ors v SSHD* [2014] EWCA Civ 1622 was the case of B, an Iranian national who was recognized as a refugee for her political activities on behalf of Kurds. Following her departure from Iran, her husband and son, who was born on 2 June 1997, were arrested and interrogated. They were beaten and threatened and ordered on release to give the authorities information about the B. B spoke no English and was dependent on assistance from the Iranian and Kurdish Women's Rights Organisation (IKWRO). They advised her that she might be able to apply for family reunion so that her husband and son could join her in the UK. They were not authorised to assist with such applications. The Court of Appeal records

> *…In the ordinary course the applicants and sponsor would be expected to provide proof of marriage, proof of parentage, proof of a de facto pre-flight family relationship which was still subsisting, and proof of the sponsor's UK refugee status. … (a).. the family did not have access to all documentation required to satisfy the requirements of the rules, on account of their separation and dispersal, (b) the son was a 16 year old now living separately from his parents and it could be contended that he was living an independent life, so that assistance was required with preparing a witness statement to set out what had happened, and submissions were required on the point of continued dependency; and (c) evidence was needed on the psychological/psychiatric impact of separation on members of the family. In addition, the family would need legal advice and assistance in order to make a concurrent application to expedite the family reunion applications, on the basis of factors including the best interests of the son.*

B's son had no passport and there were no facilities available in Iran to enable a visa to allow entry to the UK to be obtained there. B feared that if he approached the Iranian authorities for a passport he would be arrest or ill-treated. The High Court records "The only way he could apply for the necessary documentation to enable him to achieve entry to the UK was to go unlawfully to Turkey and apply there.

This he did. He was staying in Turkey unlawfully, afraid to go out, very distressed and suffering from mental health problems. The husband was at that time hiding in Iran and it was not clear when he would be able to go to Turkey. They had no financial resources. In the words of the Court of Appeal "B did not speak English, had no experience of UK immigration law and was herself in poor psychological health and without financial or practical resources. …"

Yet an application for exceptional case funding was refused. The refusal was the subject of a review decision, by the Head of the Exceptional Cases Team. He concluded B would not be incapable of submitting an application form without the assistance of a lawyer.

It took six months for the application, prepared without funding, to be decided. B's son was refused. The High Court comments "Apart from the inexcusable delay in dealing with the application having regard to the circumstances in which the applicants were living in Turkey, the decision was extraordinary." The reasons for refusal were:

> *"You have not fully completed your Annex 4 of your application form, but according to your claimed father's application form you last saw your sponsor in February 2013. … You have provided a birth certificate, however apart from this, you have not provided any evidence that you were or are in a relationship with your sponsor. You have provided no photographs of the two of you together or any evidence of any contact … I acknowledge that you have provided your sponsor's Screening interview, but this does not mention you by name. If you had been in a relationship since you were born I would expect there to be overwhelming evidence of this. I am therefore not satisfied that you have been part of a family unit of your father at the time he left his country of his habitual residence in order to seek asylum."*

The Court of Appeal concludes

> *Our conclusions in relation to B's case are as follows. We accept that family reunion is generally a matter of vital importance for refugees and that it was so for B herself. The particular circumstances of B, her husband and her son gave rise to issues of particular complexity. It is striking that even though the application on behalf of the son was prepared with legal advice and assistance, it was refused at first on the ground of failure to satisfy the entry clearance officer that the son was part of the family unit – one of the areas of potential difficulty identified in the application for ECF. The resulting appeal and request for reconsideration added to the overall procedural complexity of the exercise. In relation to all of this, B was wholly unable to represent herself or her other family members. It was not simply that she was unable to speak English but that "[s]he did not have the first clue", as it was graphically put by IKWRO. Without legal advice and assistance it was impossible for her to have any effective involvement in the decision-making process*"

It found the refusal of exceptional case funding to be unlawful.

AMENDMENT 121 NEW CLAUSE *Conditions for grant of asylum: cases of genocide*
in the names of Lord Alton of Liverpool, Lord Forsyth of Drumlean and Baroness Cox

Purpose
Provides for a presumption that a person is refugee where a judge of the Supreme Court has determined that a group to which that person belongs is, in the place from which that person originates, subject to genocide. The presumption will operate in the UK but in addition applicants would be able to apply at British consular posts overseas.

Briefing
Genocide is defined in Article 2 of the Convention on the Prevention and Punishment of Genocide as follows:

2. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in
part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

The non-Governmental organization genocide watch divides States into those where genocide is taking place, those where genocide is considered imminent and those where early warning signs indicate a danger of genocide. At the moment it identifies genocide as taking place in South Kordofan, Blue Nile and Darfur in the Republic of Sudan; Iraq; Somalia; the Central African Republic; Rakhine in Myanmar, against the Rohingya but also in Kachin; in Borno State in Nigeria where Boko Haram is killing Christians and others. It identifies a danger of genocide in Burundi.

In the year ending September 2015, the UK received 2,842 applications for asylum from persons from Sudan. In the third quarter of that year 262 applications were received from Iraqis.

Of 795 Sudanese who received a decision in the third quarter of 2015, 662 were recognised as refugees. Of 273 Iraqis, 34 were recognised as refugees by the Home Office during that quarter. Of 203 Nigerians, 21 were recognised as refugees. Thirty-eight per cent of all appeals were allowed.

The idea of a humanitarian visa is not new. "Nansen passports" were used during after the first world war as identification and travel papers for refugees, starting with Russian refugees fleeing the civil war there. Nor is the idea old, Brazil launched a humanitarian visa programme in September 2013, and Argentina has created its own programme. There are different models. The Brazilian model allows people to come to Brazil to claim asylum. Others provide a temporary status, with an opportunity to apply for longer term protection if it is needed.

The amendment is a reminder that while Syria may be producing the largest number of refugees, there are conflicts as deadly in other parts of the world. The letter of the 1951 Refugee Convention is concerned a State taking responsibility for refugees who seek asylum within its territory, but the spirit of the Convention does not imply permission to make it impossible for them to reach the territory. Keeping borders open is an essential element of refugee protection and it is no answer that one is at a distance from the conflict. Some refugees escape by air and the UK may be a single flight away. Others can find no safety in the intermediate countries through which they travel, or those countries are at full capacity. Turkey is hosting over two million refugees. One in three persons in Lebanon is a refugee. Adequate shelter and food has not been provided in Lesvos and local people, assisted by volunteers, struggle to make good the shortfall. Other refugees have family or other links to the UK, such as having been to school or university in the UK, and see getting to the UK as the best chance to rebuild their lives. If the UK is to advocate to other countries that they keep their borders open to refugees, it must be seen to do so also.

ILPA supports this amendment

AMENDMENT 122 NEW CLAUSE ***Protection of locally engaged staff*** in the name of Lord Dubs and Baroness Hamwee

ILPA supports this amendment

Purpose

To make provision for those who worked with Her Majesty's Government in Iraq or Afghanistan and are now refugees to be resettled in the UK or to come to the UK to claim asylum.

Briefing

There are in refugee camps as far away as the Middle East and as near as Calais, persons who worked with Her Majesty's Government in Iraq and in Afghanistan. These include person who have worked on the Kandahar Air Field, who worked as translators and interpreters and who and as radio operators. Some have documentary proof of their employment; others rely on the evidence of serving and former members of the armed forces etc.

The amendment is modelled on the UK's policy for staff with whom it worked in Iraq, as set out in the then Secretary of State for Foreign and Commonwealth Affairs, David Miliband MP's statement to parliament[17], both in terms of eligible persons and the dependants whom they can bring with them.

Such persons are familiar with the work of the British Armed Forces and Her Majesty's Government and were prepared to work with them in difficult and dangerous situations. Many speak excellent English. Many have faced heightened risks because of their work with Her Majesty's Government, although the amendment does not demand that the persecution they fear and on which they base their claims be as a result of work with Her Majesty's Government, Instead it requires, in the case of resettlement, that the person is a refugee, and the case of visa applicants that the person is coming to the UK to seek asylum.

The amendment does not require persons to have met all eligibility criteria under the Iraq policy; instead it requires that they are now refugees, or wish to claim asylum.

The Iraq policy has been preferred to the Afghanistan policies as it was more inclusive. Under the Afghanistan Intimidation Policy, as far as we are able to establish, at most one person has been resettled in the UK. There was a separate redundancy scheme including a resettlement policy for Afghanistan but resettlement was limited to a small subset of locally engaged staff working in Helmand outside protected bases and seriously injured staff whose only reason for failing to qualify under the policy was that the termination of their employment was due to injuries sustained in combat. The Iraq policies have been preferred to the Afghan policies in this amendment as the latter are currently the subject of a legal challenge on the grounds that they discriminate unlawfully by treating Afghan locally engaged staff less favourably than Iraqi locally engaged staff in a comparable situation were treated.

[17] HC Deb, 9 October 2007, c27WS.

Amendment 122B *Spouses and partners of British citizens* in the names of Lord Teveson and Baroness Hamwee

Purpose To prohibit immigration laws from placing constrains on the rights of a citizen of the United Kingdom to marry or enter into a civil partnership and to live with their spouse and partner in the United Kingdom.

Briefing

The right to marry is protected by Article 12 of the European Convention on Human Rights:

> *Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.*

.

The right does not entail a person's being given a particular immigration status and in this respect Lord Teveson's amendment goes further as it provides that a British citizen shall not be prevented from living with his or her spouse or partner in the United Kingdom.

Prior to changes to the immigration rules in 2014, a person who wished to be joined by their spouse or partner in the UK, or to have their spouse or partner remain with them, had to demonstrate that they could live together without recourse to public funds and that there was adequate accommodation for them. The couple had to be parties to a lawful marriage or civil partnership and to have met. The character, conduct and associations of the incoming spouse was also in point.

In July 2012 the rules were changed. Henceforth it was not sufficient that the couple could maintain and accommodate themselves and any dependent children without recourse to public funds. Instead they had to demonstrate an income of £18,600 and often demonstrate greater funds, as described in our briefing to amendment 232 in the names of Baroness Hamwee and Lord Paddick above.

These rules are not the end of the story. The couple who cannot fulfil all the requirements may seek to rely on Article 8 of the European Convention on human Rights which provides:

ARTICLE 8 Right to respect for private and family life

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In the Immigration Act 2014 an attempt was made to codify Article 8. Section 117B which it inserted into the Nationality, Immigration and Asylum Act 2002, *inter alia*, provided that

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3)It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4)Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5)Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

Home Office guidance defines "precarious" as the person's having limited leave to remain, even where the person has a route to settlement. As predicted, the codification has given rise to considerable litigation. The upshot can broadly be summarised as being that whether a person can join or remain with their spouse or partner in the UK is a matter of Article 8 of the European Convention on Human Rights, as it was before the 2014 Act was passed, but the Secretary of State can determine who gets a more favourable form of leave, by reference to the provisions of the Act. Litigation is ongoing and seems likely to be so for some time.

When a relationship qualifies on the basis of Article 8 alone, the route to settlement can be as long as 10 years.

The amendment takes us back to first principles. The Immigration Rules prevent persons from being with their spouse or partner in the UK. To very many people in the UK, that comes as a considerable shock when it affects them or someone close to them. The proposition that the result of your choice of partner is that you are banished from your country, in some cases for life, does not seem reasonable or humane. Let alone the prospect that, because your spouse or partner's company applies similar rules, there is nowhere that you can be together.

Immigration law favours those with money and in some cases does not accommodate those without money at all. Family immigration is an example of this. It is easy to get lost in debates about whether the £18,600 earnings threshold or other requirements should be modified and cease to look at this interference with people's ability to live peaceful lives in their country with the partner of their choice.

Amendments 123A, 123B, 123C and 123D in the names of the Earl of Listowel and Baroness Lister of Burtersett

Purpose

These amendments, together, ensure that young people leaving care are able to continue access leaving care support from their local authority under the Children Act 1989 in circumstances where their departure from the UK is not envisaged.

The amendments enable mainstream leaving care support to continue for young people with pending applications to remain in the UK whose long term future may be in the UK and young people who cannot leave the UK because there is a genuine obstacle to their removal, and specifically where:

a) a young person has a pending application for leave to enter or remain, removing the requirement that this must be their first application;
b) a young person has an outstanding application to register as a British citizen;
c) a young person has pending further submissions in relation to their asylum or human rights protection claim;
d) a young person is bringing a judicial review against an incorrect decision on their application;
e) a young person cannot return to their country due to a genuine obstacle to removal, which may in certain cases persist for lengthy periods of time;
f) the local authority has failed to assist a person in connection with their immigration status whilst they were a child in their care.

The amendments also ensure continuity of support during the asylum and immigration process and prevent young people falling through gaps in support provision at points of transition.

Briefing

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 reform[18] 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[19].

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

[18] Inserting section 23CZA into the Children Act 1989.
[19] From section 23D of the Children Act 1989; Regulation 8, The Care Leavers (England) Regulations 2010, SI 2010/2571.

provisions[20] 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.

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[21].

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[22] 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[23].

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.

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

[21] 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.

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

[23] 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

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 procedure[24]. 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 stage[25]. 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 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[26], 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[27] and on the care of unaccompanied asylum seeking and trafficked children[28] 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[29]. This includes planning for

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[24] 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

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

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

[27] 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.

[28] 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.

[29] 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

possible return to the country of origin[30] and the provision of support to young people leaving care whose appeals rights are exhausted[31].

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[32]. Article 2 of the Convention requires that States respect and ensure the rights of each child within their jurisdiction without discrimination of any kind[33].

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 exhausted their appeal rights against the refusal of their asylum claim or leave to remain application."*[34]

Schedule 11, however, 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 who have an outstanding application to register as a British citizen;
- 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 cannot return to their country due to a genuine obstacle to removal, which may in certain cases persist for lengthy periods of time;
- Young people who have exhausted their appeal rights but have grounds for a further application.

<u>Young people who have not been supported by their local authority to regularise their immigration status</u>

During the debate in the House of Lords Committee, Lord Alton of Liverpool 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

[30] *Ibid.*
[31] *Ibid*, paragraph 213.
[32] Ibid, paragraph 209.
[33] United Nations Convention on the Rights of the Child, available at: http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf
[34] Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

entitled[35]. 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 1989[36], 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 responsibilities[37], 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.

Young people who have an outstanding application to register as a British citizen;

Some young people in local authority care may be able to regularise their status in the UK by registering as a British Citizen. Section 3(1) provides for registration as a British Citizen at the discretion of the Secretary of State where a young person is living in the UK, is aged 10 years or over, is of good character and their future clearly lies in the UK. This may be the case where the young person has lived in the UK from a young age and for many years.

As this is not an immigration application but an application for citizenship under nationality legislation, young people registering as a British Citizen will fall outside the scope of the provisions permitting leaving care support under the Children Act 1989 to continue.

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, allowing 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.

[35] House of Lords Immigration Bill Committee, 4th day, at: http://www.publications.parliament.uk/pa/ld201516/ldhansrd/lhan105.pdf, column 1845
[36] Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016
[37] *Ibid*

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.* [38]

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.*[39]

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

> *[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.* [40]

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.

<u>Young people making further submissions that may be accepted as a fresh asylum claim.</u>

[38] 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

[39]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

[40] 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

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 1989[41]. The Rt Hon James Brokenshire MP has given the same assurance and stated that asylum seekers turning 18 years who have made further submissions on protection grounds will remain subject to the Children Act care leaver framework[42]. This is welcome as it would be inappropriate for young people leaving care to have 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. The legislation should also state both circumstances clearly so that the support entitlements are clear and young people do not fall through gaps in provision resulting from misinterpretation of the provisions.

The legislation should also ensure that it does not itself create gaps in support for young people. The Minister has stated:

> *[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.*

It should be clarified that young people who have fallen out of leaving care support provided by the local authority under the Children Act 1989 may access this mainstream support where they have made further submissions that remain outstanding or where these are accepted as a fresh claim. Regulations made under the legislation should also ensure that no gaps in support for young people are created. It is unclear how young people will be supported during any time prescribed in regulations (envisaged to be 5 days) when they will be unable to access support from the local authority under the Children Act 1989.

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

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 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

[41] Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016
[42] Letter of Rt Hon James Brokenshire MP to Emma Smale and Enver Solomon, Alliance for Children in Care and Care Leavers, *Immigration Bill – Care Leavers*, 10 March 2016

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 cannot return to their country due to a genuine obstacle to removal, which may in certain cases persist for lengthy periods of time;

Research undertaken by the Office of the Children's Commissioner has identified that barriers to return to the country of origin may persist for lengthy periods of time:

> *In one local authority area in which research was conducted we were told that at the time they had 102 ARE care leavers. Of those, the Home Office had estimated that there was no imminent prospect of removal in 57 cases, while 45 were deemed removable. The average number of weeks that this population had been ARE was 75, with the longest being 198 weeks (just under four years) and the shortest, four weeks*[43].

Obstacles to removal may include a lack of cooperation by the country concerned in re-documenting the young person. This may be as a result of a lack of diplomatic relations (e.g. with Iran, North Korea), or a requirement of evidence of nationality, or because the country refuses to accept them as a national. A young person may find themselves to be stateless as a result of this process.

Young people who may remain in the UK for lengthy periods of time, and who may well not be removeable at all, should benefit from the full support that a vulnerable young person leaving care would be entitled to, rather than simply accommodation and subsistence provided to adults under section 95A of the Immigration and Asylum Act 1999.

Young people who have exhausted their appeal rights

Whilst the amendment does not make provision for leaving care support for young people under the Children Act 1989 who have exhausted their appeal rights, ILPA stresses the importance of this group remaining within the scope of the Children Act 1989.

Young people may exhaust their appeals rights 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[44]. In the words of one young person refused protection:

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[43] Office of the Children's Commissioner (2014) What's going to happen tomorrow? Unaccompanied children refused asylum, April 2014 at: http://www.childrenscommissioner.gov.uk/sites/default/files/publications/What's%20going%20to%20happen%20tomorrow.pdf

[44] *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*

> *"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…"*[45]

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.

The removal of groups of young people from leaving care provisions creates a complex and confusing system in which young people will move from one form of support to another depending on the progress of their case rather than their welfare needs as vulnerable young people. This is likely to lead to young people falling through gaps between the two systems and losing the continuity of support that may assist them in regularising their stay or remaining in contact with the authorities.

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 accommodation*[46].

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. The Minister in the House of Lords has stated:

> *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 UK*[47].

The Minister in the House of Common reiterated the position that support under Schedule 10B is not intended for young people whose future may be in the UK:

> *The changes in Schedule 11 will primarily affect those 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.*

[45] Ibid, p.49
[46] *Ibid*, para 56
[47] Letter from Lord Bates to Lord Rosser, *Immigration Bill – Committee stage day 4*, 10 February 2016

It is clear from the list of categories of young people above whose long term future may be in the UK and who will fall outside the scope of the leaving care provisions of the Children Act 1989 as the Immigration Bill is currently drafted that the legislation does not achieve this aim.

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.[48] A planning approached 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 issues*[49].

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.*[50]

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.*[51]

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.

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[48] 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

[49] *Ibid*, para 59

[50] 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

[51] *Ibid*.

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.

The clear duties within the Children Act 1989 are however 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 cost*[52].

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 support the transition of a young person into adulthood under the Children Act 1989 are co-ordinated and resourced[53].

The Minister in the House of Commons has stated:

> *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*

[52] 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

[53] 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

required to leave the UK, local authorities should consider the role that personal advisers might play in discharging this function effectively.

ILPA considers that the continued provision of a personal adviser to the young person is essential to maintaining continuity for the young person as their immigration and welfare situation changes and ensuring their ongoing engagement through a person with whom they have built trust over a period of time. However, this will not be realised in practice where the provision of personal advisers by the local authority are not funded by the Home Office and where they are only continued at the discretion of the local authority rather than as a formal duty.

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 generally[54]. 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.

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