

IMMIGRATION BILL: ILPA BRIEFING ON UNACCOMPANIED REFUGEE CHILDREN FOR PING PONG

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

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

The Lords' Amendment

“Unaccompanied refugee children: relocation and support

- (1) The Secretary of State must, as soon as possible after the passing of this Act, make arrangements to relocate to the United Kingdom and support 3,000 unaccompanied refugee children from other countries in Europe.
- (2) The relocation of children under subsection (1) shall be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.

Key elements of the amendment

- Unaccompanied children
- Refugee children
- In Europe
- Children not within the Vulnerable Persons Relocation Scheme (whether because of description or numbers).
- Bringing these children to the UK
- As soon as possible

What has already been promised

– and was promised before Lords voted on the amendment, thus not considered sufficient to meet their concerns

1. Vulnerable Persons Relocation Scheme – 5000 a year from outside Europe. Including children.
2. “existing substantial UK aid and resettlement programmes which are already helping many thousands of children at risk in conflict zones, on transit routes within Europe and in the UK” [mentioned in 28 January statement]

3. The UK Government is already providing substantial funding to NGOs such as Unicef and UNHCR to provide shelter, warm clothes, hot food, and medical supplies to support vulnerable people, including children, on the move or stranded in Europe or in the Balkans.
4. Promises made in 28 January statement available at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-28/HCWS497/>
 - The Government will work with the UN High Commissioner for Refugees (UNHCR) to lead a new initiative to resettle unaccompanied children from conflict regions [i.e. from outside Europe]. We have asked the UNHCR to make an assessment of the numbers and needs of unaccompanied children in conflict regions and advise on when it is in the best interests of the child to be resettled in the UK and how that process should be managed. The UNHCR has already been clear that these are likely to be exceptional cases.
 - The Home Office will host a roundtable to invite views from a range of NGOs and local authorities, including UNICEF and Save the Children, on how we can provide more support for children in the region, in transit and domestically to prevent children putting themselves at risk and making dangerous journeys on their own.
 - The UK Government will also commit to providing further resources to the European Asylum Support Office to help in “hotspots” such as Greece and Italy to help identify and register children at risk on first arrival in the EU.
 - And we will, of course, continue to meet our obligations under the Dublin Regulations.
 - The Home Secretary has asked the Anti-Slavery Commissioner, Kevin Hyland, to visit the hotspots in Italy and Greece to make an assessment and provide advice on what more can be done to ensure unaccompanied children and others are protected from traffickers.
 - The Department for International Development is creating a new fund of up to £10 million to support the needs of vulnerable refugee and migrant children in Europe. The fund will include targeted support to meet the specific needs of unaccompanied and separated children who face additional risks. The support will include identifying children who are in need, providing safe places for at risk children to stay, data management to help trace children to their families, and services such as counselling and legal advice.
 - The Home Office will continue to encourage local authorities to support the dispersal of U[naccompanied] A[sylum] S[eeing] C[hildren] from Kent and to work with NGOs, local authorities and the Department for Education to review current practice and consider how capacity could be strengthened, including through ensuring that there is sufficient safe accommodation and specialist support for foster placements.

Who stands to benefit from the amendment

The amendment is concerned with bringing children to the UK from other parts of Europe . It focuses on unaccompanied children but this cohort includes children who are unaccompanied in Europe but would be accompanied in the UK here because they would be joining family. Groups of children who stand to benefit from the amendment include

- Children coming to the UK under Dublin to make their claims to asylum in the UK. Could be joining family members here seeking asylum, settled, British etc. Children in

this group have the right to come to the UK already, in bringing them to the UK the Government is only doing what it is obliged to do anyway. But there is scope for more effort to be put into this, for example providing adequate resources for local authorities to do child protection checks and ensuring that Home Office has capacity to work fast on these cases.

- Children coming to the UK under refugee family reunion. Refugee family reunion applications are free and those who join family get leave in line with family member, access to benefits etc. Refugees and persons with humanitarian protection can be joined by family members. As with Dublin regulation cases, there are problems with obtaining DNA tests, evidencing the relationship etc. relationship etc. But main barrier for the children of concern is that family reunion rules only permit parents to be joined by minor children and adults by spouses /partners. To make a real difference to children unaccompanied elsewhere broader rules are needed, in the case of unaccompanied/separated children let them join siblings, uncles and aunts, grandparents (subject to child protection and best interests assessments being carried out).
- Family reunion other than refugee. Every MP has a caseload of these – British /settled constituents saying “my 19 year old niece is in a camp in Jordan and I cannot bring her in because of your stringent requirements on family reunion”. Very often these families are volunteering to pay for the relative, as they would any family member sponsored, i.e. “no recourse to public funds”. The barriers under the immigration rules are fewer for children than for adults (spouses, financial requirements). See e.g. rule 297 at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members> (about indefinite leave to enter: test is “ and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child’s care”). What would help are things such as: no fee; the child’s being able to apply from any country, regardless of whether they have lawful residence there and an application of guidance that recognized these children as meeting the “serious and compelling test. If third party sponsorship were allowed (i.e. someone other than relative puts up the money) more persons could benefit from the route. Linked with family reunion

Other unaccompanied children – without family in the UK

It is possible to ask the Government to extend its 28 January commitment to children within the European Union. The commitment was:

The Government will work with the UN High Commissioner for Refugees (UNHCR) to lead a new initiative to resettle unaccompanied children from conflict regions [substitute “other parts of Europe”]. We have asked the UNHCR to make an assessment of the numbers and needs of unaccompanied children in conflict regions [substitute other parts of Europe] and advise on when it is in the best interests of the child to be resettled in the UK and how that process should be managed. The UNHCR has already been clear that these are likely to be exceptional cases

Other changes needed

Legal aid for refugee family reunion. Legal Aid for refugee family reunion was restored when in *Gudanaviciene* in High Court it was ruled that refugee family reunion was within the definition of “asylum” in the Legal Aid Sentencing and Punishment of Offenders Act 2014 and therefore in scope of legal aid. It was removed when the Court of Appeal disagreed (the case is now pending before Supreme Court). A small number of cases are affected. A concession that cases of family reunion with a child unaccompanied outside the UK would always meet the merits test for exceptional legal aid funding would not be as good as restoring legal aid for refugee family reunion but would assist some families.

Leave given to children resettled in the UK

Children brought in under Vulnerable Persons resettlement scheme, under 28 January promises to children from “conflict regions” or agreed to be brought in as a result of the amendment should be given indefinite leave to remain straight away to provide them with security and stability. Similarly for children brought in under the Dublin Regulation whose applications succeed.