

26 May 2023

ILLEGAL MIGRATION BILL: IMPLICATIONS FOR COUNCILS

Purpose

1. To inform members about the Illegal Migration Bill currently making its way through Parliament and to highlight potential implications for local authorities.

Background

2. The Prime Minister has stated tackling small boats is one of his five priorities for 2023, 'We will pass new laws to stop small boats, making sure that if you come to this country illegally, you are detained and swiftly removed'. The Bill has been introduced following this commitment.
3. The Illegal Migration Bill was announced by the UK Government on 7 March 2023. It aims to deal with challenges relating to the UK's asylum process, and in particular arrivals via small boat crossings in the English Channel.
4. The Bill, which was not subject to a public consultation, makes a number of proposals:
 - The Bill will change the law so that people who come to the UK illegally will not be able to stay. Instead, they will be detained and then promptly removed, either to their home country or a safe third country (like Rwanda). The Home Secretary will be under a legal duty to make arrangements for the removal of illegal entrants falling within the scheme.
 - Detention powers will be strengthened so that people can only apply for bail to the First-tier Tribunal after 28 days (with the aim to make it easier to remove people).
 - People who enter the UK illegally will not have their asylum claim determined in the UK. Once removed, they will not be allowed to come back to the UK again.
 - If they cannot be returned to their home country, their asylum claim will be considered by a safe third country, such as Rwanda.
 - Changes will be made to last minute legal challenges for those with no right to be in the UK and due to be removed.
 - While those in scope will be able to challenge the decision to remove them from the UK, it will not prevent their removal and any legal challenges will be considered when they have been successfully removed to another country. If, exceptionally, there is a real risk that someone would suffer serious and irreversible harm if they were sent to Rwanda they would not be removed until it was safe to do so.

- Those subject to the duty to make arrangements for removal will not be able to access the modern slavery system in the UK. If someone is identified as a potential victim of modern slavery, the Government will ensure they are safely returned home or to another safe country. This will mean that trafficking victims are protected, while preventing abuse of modern slavery laws.
 - The list of countries that are considered safe in law is being expanded. As well as EU member States, the list will now include Albania, Iceland, Liechtenstein, Norway and Switzerland.
 - The Bill will provide for the government to commit to resettling a specific number of the most vulnerable refugees from around the world every year, working with local councils to understand their capacity first and following Parliamentary approval.
5. The current asylum system costs approximately £3bn per year and around £6m is spent per day on hotels. The following facts/figures indicates the scale of the challenge:
- Over 45,700 people arrived in small boats in 2022 and there were over 40,000 asylum applications in 2022 from those who arrived in the UK via small boat.
 - There were 74,751 asylum applications (main applicants only) in the UK in 2022, more than twice the number in 2019.
 - In 2022, there were 110,171 individuals in receipt of support, 30% higher than 2021.
 - Over 45,000 asylum seekers are currently being accommodated in hotels located across 200 local authorities.
6. A number of organisations have raised concerns about aspects of the Bill. For example, the Law Society has highlighted the Bill may be incompatible with UK international obligations under the European Court of Human Rights and the UN Refugee Convention. They believe the Bill will reduce the oversight of our courts, and more cases are likely to end up in Strasbourg, which puts the UK at increased legal liability. They are also concerned that the Bill contains limited safeguards that, coupled with restrictive timescales for appeal, are likely to diminish access to justice for everyone caught by its provisions and it is unclear where those in detention will be held and how they will access legal advice.
7. Another significant concern raised by the Refugee Council in their impact assessment of the Bill¹, is the lack of safe and legal route for people to claim asylum within the UK which the Bill does not address. Clause 51 of the Bill makes provision for setting an annual cap on the number of people to be admitted to the UK for resettlement through safe and legal asylum routes, to be set by Parliament. The Secretary of State is required to consult representatives of local authorities in the UK to determine their capacity to accommodate and provide integration services for the persons to be resettled each year to determine the country's capacity. The annual number will remain

¹ [Refugee-Council-Asylum-Bill-impact-assessment.pdf \(refugeecouncil.org.uk\)](https://www.refugeecouncil.org.uk/wp-content/uploads/2022/07/Refugee-Council-Asylum-Bill-impact-assessment.pdf)

in place until revised by subsequent regulations and may apply for a period of years.

8. Prior to the publication of the Bill, in response to increasing demand and with the aim of reducing the use of hotels, the UK Government has required all local authorities to participate in accommodating asylum seekers while their claims are considered. A Wales Full Asylum Dispersal Plan was agreed by the WLGA Executive Board in September 2022 which sets out how an additional 2,344 asylum seekers will be shared across all Welsh councils by the end of December 2023. Progress is being made and since the plan was agreed 279 asylum seekers have been dispersed to Wales with 8 council areas accommodating people for the first time.
9. However, given the significant pressure on the asylum system, the Home Office, through their accommodation providers, are also in discussion with a number of councils on the proposed use of hotels in their area for use as contingency or initial accommodation. Those accommodated in initial or contingency accommodation are not counted as part of but additional to the agreed numbers to be dispersed to the area through the Wales dispersal plan.

Potential implications for councils

10. While the Bill is still making its way through Parliament, it is necessary to consider the potential implications of the Bill for local authorities who are key stakeholders in managing migration and its impacts at the local level.
11. The LGA has published briefings on the Bill²³ which highlight key issues of interest to local government, many of which are as relevant for Wales as they are for England, with two key issues being identified as changes to the current asylum system including powers of detention and consultation on the resettlement cap, and the accommodation and support for unaccompanied children. In more detail, concerns on the proposals in the Bill include:
 - *Clause 11: Powers of detention:* this makes provision for the detention of people liable to removal to their home country or a safe third country. The location of large-scale detention centres would have significant local implications and so, as with currently proposed large sites, local government and their statutory partners should be engaged well in advance on potential locations, with a shared risk assessment, clarity on funding and community engagement process if any site is agreed.
 - *Clause 58: Cap on number of entrants using safe and legal routes* - This places a duty on the Secretary of State to make regulations specifying an annual number of persons to be admitted to the UK through safe and legal routes. This will require the Secretary of State to consult representatives of local authorities in the UK (and other people or organisations the Secretary of State considers appropriate) to determine capacity to accommodate and

² [Illegal Migration Bill, Committee Stage, House of Commons, 27 and 28 March 2023 | Local Government Association](#)

³ [Illegal Migration Bill, House of Lords Second Reading, 10 May 2023 | Local Government Association](#)

provide integration services for the persons to be resettled each year, with this to remain in place until revised by subsequent regulations. The Bill does not however outline how this engagement will take place or how councils will be funded for any new routes to the UK. Though the recognition of the impacts on local areas is welcome, the LGA has raised concerns around being asked to pledge numbers or provide a cap, given the potential cohesion risks and the well-recognised issues with forecasting population change and churn both locally, nationally and internationally.

12. Specifically in relation to changes to the accommodation and support for unaccompanied children, the following issues are identified:

- *Clause 2: Duty to make arrangements for removal* which places a duty on the Secretary of State to make arrangements for the removal of people from the United Kingdom when they arrive without leave to enter on or after 7 March 2023, where they have come from a "safe" country immediately prior. However, the detention and removal of families may act as driver for children previously travelling within their families to claim asylum as lone children on arrival in the UK and in turn further increase numbers that need to be taken into care.
- *Clause 3: Unaccompanied children* which clarifies that the Secretary of State is not required to remove a person from the United Kingdom while they are an unaccompanied child, though they retain the power to do so. Children would be removed when they turned 18, in line with Clause 2 of the Bill. In requiring the removal of children as soon as they turn 18, it is not clear how the Bill is compatible with other legislation, in particular the Children Act 1989 and associated guidance. This stresses the importance of consideration of the wishes and feelings of the child, and the need to operate in their best interests. Guidance also requires councils to plan for permanence for children, including developing relationships and ensuring children have a sense of security, commitment and belonging. There are also concerns that the Bill may be incompatible with the United Nations Convention on the Rights of the Child to which the UK is a signatory, in particular Article 3 (best interests of the child), Article 12 (respect for the views of the child), Article 22 (refugee children) and Article 39 (recovery from trauma and reintegration). This incompatibility would place councils in the position of trying to comply with two competing sets of legislation as they attempt to fulfil their duties towards children.
- *Clause 15: Accommodation and other support for unaccompanied migrant children* which provides a power to the Secretary of State to provide, or arrange to provide, accommodation and other support to unaccompanied migrant children. The Bill clarifies that the Secretary of State is currently not in the position of corporate parent to any unaccompanied child given the Home Office does not have and therefore cannot discharge duties under Part 3 of the Children Act 1989. It states that the Home Office has always taken the view that these children should be in local authority care and that it is for the local authority where an unaccompanied child is physically located to consider its duties under the Children Act 1989. The Bill does not take the opportunity to clarify who is the corporate parent of unaccompanied asylum-seeking children placed in hotels by the Home

Office. Clarification on the corporate parent role is important to ensure clear accountability for the welfare and safety of all children. If children are placed in Home Office accommodation, the legislation should clarify that this must be regulated accommodation in line with all other accommodation for children in care. Councils would welcome further discussion on key operational issues such as age assessment, reducing the risks of children going missing to avoid detention and removal or as a result of being trafficked, and clarifying the corporate parent role for children in detention. Councils must be consulted on and able to influence the location of any Home Office accommodation for children to ensure the appropriateness of the location and capacity of local services to support children.

- *Clause 16: Transfer of children from Secretary of State to local authority and vice versa* which provides power to the Secretary of State to direct a council to receive a child or to cease looking after a child. The Bill strengthens government's powers to direct councils who are concerned that they will be required to take lone children into care, or to stop caring for a child, without consideration of whether that direction is appropriate for individual children. There are also concerns that councils will be directed to accept responsibility for children (including large numbers of children in Home Office accommodation) without the ability to engage on or influence where these children are placed, and without consideration of local capacity to appropriately support those children including social care, health and education services. This clause offers no recognition of pressures on individual councils or the need to ensure the appropriate placement of individual children in line with statutory guidance.
- *Clause 55: Decisions relating to a person's age* which removes the right of people to appeal age assessment decisions including where these are not made by social work professionals. The LGA view is that a recent Freedom of Information request to councils found that in 2022, 70 councils reported at least 867 children being identified in adult asylum accommodation as a result of inaccurate age assessments at port. This carries significant safeguarding implications for children where they are being placed with unrelated, unknown adults without access to the support that unaccompanied children are entitled to under the Children Act 1989.

13. Immigration is a reserved matter, therefore most of the Bill's provisions apply across all four parts of the UK. However, aspects of the Bill also relate to devolved competence and therefore the consent of the Senedd is required. As such, Welsh Government has laid a Legislative Consent Motion in the Senedd⁴ relating specifically to Clause 19 which extends the powers in clauses 15-18 which will have an effect on the function of Welsh local authorities and any other devolved authority involved in providing care and support to children under the Social Services and Well-Being (Wales) Act 2014, and Clause 20 relating to the transfer of children between local authorities. The LCM states however that the Minister for Social Justice, "cannot recommend the Senedd gives its consent to these provisions being included in the Bill because I do not consider that it is appropriate for this provision to be made in relation to Welsh social care in this Bill. In any event, I cannot recommend consent is given as

⁴ [lcm-ld15778-e.pdf \(senedd.wales\)](#)

the UK Government has failed to confirm that the Bill is compatible with Convention rights and many leading international organisations are concerned it is incompatible.”

14. Local authorities have a positive record on welcoming and supporting new arrivals in local areas, stepping forward at times of crisis to offer homes and support often as people restart their lives in the UK. This not without its challenges however and maintaining community cohesion is a key aim of the way in which councils wish to manage and oversee the impact of migration at the local level. The Bill is likely to add further complexity as to how councils undertake this role. Councils are fully aware of the pressure on the current system as this pressure is felt by local areas, particularly those with a number of hotels, including those for unaccompanied asylum-seeking children. It is imperative that the UK Government works closely with councils in responding to the current challenges and in how changes required by the Bill, should it receive Royal Assent, will be taken forward, with joint planning and good communications.
15. As highlighted, the LGA has produced briefings on aspects of the Bill that will impact on local authorities which have been shared with parliamentarians during the passage of the Bill. Members of COSLA have also discussed the Bill and have concerns which they will be sharing with the UK Government. Depending on the views of members on the Bill and the potential implications for councils, members may wish to share their views and any identified concerns. As such, members may wish to work with the other LGAs across the UK to raise issues of shared concern to strengthen the voice of local government.

Recommendations

16. Members are recommended to:

- 16.1 Note and comment on the issues raised in this report;**
- 16.2 Discuss the potential implications of the Bill for councils and local areas; and**
- 16.3 Agree any actions they may wish to take to highlight any identified concerns and to confirm whether there is support for working with the other LGAs across the UK on shared issues of concern.**

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