

Written evidence from Refugee and Migrant Children's Consortium (NBB0047)

Refugee and Migrant Children's Consortium

The Refugee and Migrant Children's Consortium (RMCC) is a group of over 60 NGOs working collaboratively to ensure that the rights and needs of refugee and migrant children are promoted, respected and met in accordance with the relevant domestic, regional and international human rights and welfare standards. For more information and a list of members, please visit www.refugeechildrenconsortium.org.uk.

Do these reforms adequately address any remaining areas of unjustified discrimination in British nationality law?

We welcome the reforms correcting historical anomalies affecting British Overseas Territories citizens, the intention to ensure children can inherit their biological father's nationality even if their mother is married to someone else (clause 6) and the intention to create a discretion to register people over 18 as British citizens (clause 7 - this must be a fee-free application).

These reforms do not adequately address other anomalies affecting children. They do not address children born to European parents in the UK between 2000 and 2006, who lost out on becoming British automatically due to the definition of 'settled' at this time.

The reforms could also be improved by giving a wider discretion in adult naturalisation cases, to allow for a range of circumstances. There should be a broader discretion that allows people with a strong connection to the UK to qualify for naturalisation. For example, it should allow a care leaver who has grown up in the UK and has obtained settled status under the EU settlement scheme to naturalise even if they do not meet all the requirements.

There is also deep concern within the RMCC around the proposed changes to nationality and stateless children. No evidence has been provided in support of changing the current law. The new proposals will penalise children who are left stateless and the proposed approach goes against children's best interests and the commitment to eliminate statelessness. We believe that clause 9 of this Bill may contravene the UK's obligations under the 1961 Convention on the Reduction of Statelessness and the UN Convention on the Rights of the Child.

More generally, unfairness in nationality law will continue to be visited upon children for as long as the government continues to put a price tag of £1012 on their registering as British.

Do proposed changes to the application and appeals process for asylum applicants provide adequate human rights protection, including provisions providing for credibility and the weight given to evidence to be affected by the timeliness of applications and supportive evidence?

The standard of proof for aspects of well-founded fear is that of a 'reasonable degree of likelihood'. This recognises that the conventional standard of proof approach in civil claims

is not the correct one given the inherent difficulties of evidencing many asylum claims, and the serious possibility of persecution if an asylum seeker is returned incorrectly.

Children often have difficulty articulating a well-founded fear of persecution. The need for this is already accepted by the Government, as set out in Immigration Rule 351. Similarly, Home Office guidance 'Children's asylum claims' recognises the difficulties a child may have due to their age and understanding. This acceptance that asylum seeking children should be subject to a lower standard of proof is also reflected in the legal aid funding criteria for appeals work.

Young asylum seekers are one of the most vulnerable groups of children in the UK. They come from a wide range of backgrounds, but in addition to the difficulties faced by many adult asylum seekers (e.g. bereavement, language barriers, emotional or mental health problems, confusion about the asylum system) they have an additional vulnerability solely because they are children. This makes them both more at risk on return and makes it harder for them to evidence that risk. This must be taken into account in any proposed changes to the standard for testing a well-founded fear, especially given existing concerns that there remains a lack of understanding within the asylum system of issues relating to separated children and child-specific forms of persecution.

In any credibility assessment, it must be considered that trauma is a common factor amongst refugee children. Children seeking protection have experienced especially traumatising events and are at risk of psychological disorders, with adolescents vulnerable to being neglected because of adult-like behaviours they may adopt under stress. There may be occasions when a child will not be able to give instructions relating to her or his claim at all and some children may only be able to give a vague account.

The Government must have a 'best interests' understanding of past harm, future risk and the refugee and humanitarian protection needs of the child. It is crucial to view the rights of child asylum seekers not only in the context of the Refugee Convention, but also Article 22 of the UN Convention on the Rights of the Child. Refugee law has to be interpreted to reflect the special needs and vulnerabilities of children and the best interests of children.

Proposals to establish a good faith requirement, a 'one-stop' process, and to otherwise narrow the appeals process will adversely impact children and young people. Many children and young people have to go through the appeals process and often present new evidence at later stages. Overwhelmingly, their reasons are no reflection of the strength of their claim, but rather include:

- The impacts of trauma, and only after living for a period in safety in the UK and accessing therapeutic support, are they able to recall more information supporting their claim; and
- Inadequate legal representation with vital documents not submitted as part of their first application or their case poorly presented.

Due to legal aid funding cuts and problems with the legal aid system, many asylum-seeking children and young people struggle to access quality legal advice from specialist lawyers. The availability of high quality legal advice under legal aid contracts or on a charitable basis is both patchy and frequently limited. Following the introduction of the Legal Aid, Sentencing

and Punishment of Offenders Act 2012 (LASPO), legal aid cuts came into effect, leading to at least a 30% reduction in regulated immigration advice services across the country and an almost 50% decrease in the number of non-fee charging services regulated to deal with appeals and representation. Certain parts of the UK have been identified as ‘advice deserts’ because there is an extremely limited coverage of services.

The RMCC believes that the proposals could be improved in a number of ways, including:

- Effectively resourcing legal support
- Assign appropriate resource to child asylum applications
- Improve arrangements for substantive interviews
- Better use of case reviews within the asylum process
- Making positive decisions on issues that do not require further investigation through interview
- Making positive decisions on claims for which all evidence has been submitted
- Supporting a durable solution

Does introducing a two-tier system of rights for refugees meet the UK’s obligations under refugee law and human rights law?

Members of the RMCC are gravely concerned by this proposal and contend that the UK must adopt the internationally accepted definition of a refugee. We disagree fundamentally with applying unequal treatment to recognised refugees and do not believe this is permitted under the Refugee Convention. There are further concerns regarding proposals around prioritising re-settlement based on ‘desirability’ or ‘deserving’ individuals. We fundamentally disagree with this flawed approach to refugee protection.

We have not yet had unequivocal reassurance from the government that children who come to the UK alone and unaccompanied will be excluded from the effects of clause 10. It is extremely important that the government quickly confirms that it will exclude any person who arrived in the UK as an unaccompanied child from these provisions and do so on the face of the Bill. Children in families could be granted temporary status for 30 months indefinitely and this goes against refugee children’s well-established need for permanence and stability as they go through recovery and rebuild their lives (Article 39 of the UN Convention on the Rights of the Child).

Expanding the policy of no recourse to public funds to refugees will mean that thousands more children are subjected to an existing failed policy which keeps children locked in extreme poverty for long periods of time. This policy has been found to be unlawful by the courts and in contravention of the Secretary of State’s section 55 duty to promote the welfare of children. It is a cruel policy, punitive on children based on actions they had no part in. We

know from our work that NRPF conditions are *particularly* damaging for families with children precisely because having children makes it more difficult for parents to work and earn enough for their family. Those with a disability, single parents and ethnic minorities are already at greater risk of poverty and discrimination and therefore are likely to be disproportionately affected by this measure.

Do proposed new powers for UK Border Force to direct vessels out of UK territorial waters, and for the Home Office to return people to “safe countries” risk undermining refugees’ human rights as well as the principle that refugees should not be expelled or returned to the frontiers of territories in any manner whatsoever where they risk persecution (the principle of non-refoulement)?

The RMCC strongly opposes these proposals. The proposals for directing vessels out of UK territorial waters are highly dangerous, breach international law, and are likely to lead to trauma, injury or death of vulnerable individuals, including children and young people. In terms of returning people to safe countries, it is noted that since leaving the EU and the Dublin Regulation, the UK has been unable to negotiate any agreement with another country related to safe countries. In any event, such proposals would be contrary to international refugee law, and likely to lead to worse outcomes for children and young people seeking safety.

What are the implications of extending the offence of helping an asylum seeker facilitate irregular entry to the UK so that it also covers those that may help asylum seekers for no benefit to themselves?

Clause 38 increases the maximum term for the offence of assisting unlawful immigration from 14 years to life. It expands those who could be convicted of the offence of knowingly facilitating the entry to the UK of an asylum-seeker by removing the condition that it need be ‘for gain’. We are concerned that such measures must in no way serve to deter people from saving the lives of babies and children like Artin, Armin and Anita Iran-Nejad, whose death at sea shows the cost of there being no safe and legal routes to the UK for families fleeing persecution.

Do the changes proposed by the Bill adequately protect the right to life for those at sea?

See answers above.

Do the proposed powers to remove asylum seekers to “safe countries” while their asylum claims are pending, with a view to supporting the processing of asylum claims outside the UK in future, comply with the UK’s obligations under refugee law and human rights law?

Clause 14 appears to put into primary legislation the safe third country provisions introduced into the Immigration Rules in January 2021. These provisions will only exacerbate hugely

long delays in the Home Office processing asylum claims, including those of traumatised children. The operating assumption appears to be that everyone should be claiming asylum somewhere else and the UK should be uniquely shielded, even in a world where so many people are forced to flee their countries and other countries are receiving far more people.

These proposals are deeply flawed and previous attempts – such as ‘deport first, appeal later’ and ‘remove first, appeal later’ have shown the various issues around lawfulness, access to justice and lack of understanding around the best interests of children. In Home Office guidance on inadmissibility, unaccompanied children are “presently treated as not suitable for third country inadmissibility action”. The government must, at minimum, put the exclusion of anyone who arrives as an unaccompanied children on the face of the Bill.

Will the proposed instructions to decision-makers on how to interpret the Refugee Convention secure or restrict the protections that Convention guarantees?

See answers above for issues with interpretation of the Refugee Convention – the UK government’s approach is flawed and any instructions to decision-makers will be inherently flawed. They will further risk decision making that is unlawful, against the best interests of children, and lead to further delays and backlog within a system that is already broken.

Do the changes that the Bill would make to the law regarding modern slavery ensure appropriate protections for victims? What will be the consequences of the presumptions that compliance with procedural requirements should affect a person’s credibility as a victim?

The provisions in the Bill will impact on all child victims of trafficking, both British and non-British. We are concerned about the provisions including:

- The introduction of slavery or trafficking information notices (clauses 46 and 47) will require information to be provided within a specified timeframe but only by those who claim asylum or have a human rights claim, a potentially discriminatory provision. The measure disregards what is recognised in the government’s own statutory guidance on trauma and abuse leading to late disclosure. It is unclear how the system will work in respect of children, who do not need to consent to being referred into the National Referral Mechanism.
- Increasing the threshold for a victim to be recognised (clause 48) from a consideration that they may be a victim to that they are a victim. This disregards the disclosure difficulties for victims. It risks child abuse victims going unidentified and being vulnerable to re-trafficking.
- Clause 51 precludes child victims who have served custodial sentences of over a year, as well as those prosecuted for particular offences, from being identified as victims. Children will be prevented from accessing the victim identification process under the National Referral Mechanism. This is despite criminal exploitation being the most commonly reported form of abuse for potential child victims. This provision is

incompatible with the UK's obligations under Article 4 of the European Convention on Human Rights as well as international obligations to children and victims of crime.

- The standards for being granted leave at clause 53 are inappropriate for child victims. The appropriate standard for children is stipulated at Article 14(2) of the Council of Europe Convention on Action against Trafficking in Human Beings and must be reflected in the Bill.

Is Home Office decision-making in immigration matters that raise human rights concerns sufficiently independent and rigorous to ensure that human rights are properly respected?

The RMCC have a number of concerns around decision-making in immigration matters. There is significant conflict in decisions affecting children and young people, including trafficking decisions made through the Home Office, the impact on child rights guaranteed under the Children Act 1989 and age disputes.

Many children and young people arrive in the UK with no documentary proof of their age. If their age is 'assessed' incorrectly by the Home Office and/or children's services, children may then be placed in accommodation with adults, or worse still, immigration detention or prison. This is a significant safeguarding concern. As the Association of Directors of Children's Services instructs social workers. Where there is doubt about whether or not the young person is a child, the dangers inherent in treating a child as an adult are in almost all cases far greater than the dangers of taking a young adult into your care.

Clause 58 of the Bill is a placeholder for a substantive clause introducing the age assessment proposals outlined in the New Plan for Immigration. RMCC has produced a detailed response to these proposals highlighting our concerns. Rather than aiming to help improve practice in this area, this legislation appears to be a vehicle for the government to legalise policy and practice that has harmed children and which has been successfully challenged in the courts. This will create unnecessary risks for children.

We are concerned that the bill will not ensure decision making is sufficiently independent and rigorous for a number of reasons, including the lack of good quality training for decision makers; the lack of understanding around children's rights, best interests and vulnerabilities within the Home Office; and the ongoing issues related to backlog and delay, of which the bill proposals will further exacerbate.

Is the Bill otherwise compliant with the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child, the European Convention Against Trafficking in Human Beings, and international refugee conventions that the UK has ratified?

It is the position of the RMCC that a wider consideration of children's rights and best interests is necessary in all policy-making by the Home Office. UNICEF UK research looking at child rights impact assessments in different jurisdictions in the UK indicates that impact assessments which focus on equality issues fail to provide a 'dedicated gaze on

children'. The commitment to carrying out child rights impact assessments (CRIA) was a cross-government one and we are not aware that the Home Office has carried out any to date. There is no evidence that children's rights have been sufficiently considered. There has been no Child Rights Impact Assessment, and the recently published Equality Impact Assessment does not sufficiently address the impact on children.

A significant number of children will be impacted by this Bill. So far, no data on children has been provided within the explanatory documents accompanying this Bill and the consultation on the New Plan for Immigration involved little or no consultation with children and young people. The objective of protecting children and childhood should run through any reforms. As the Bill stands, we are concerned that the proposals will be detrimental to children's safety, fundamental rights and life chances.

With reference to our previous answers, the RMCC believes that the bill is not compliant with the ECHR, UNCRC or the Trafficking Convention.

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