The New Plan and the Nationality & Borders Bill

How will Migrant and Refugee Children be Affected?

This version:

16 December 2021

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Introduction

On 24 March 2021 the government announced its New Plan for Immigration which details proposals for upcoming reform of the asylum and immigration system, with an overall aim *"to build a fair but firm asylum and illegal migration system."* Subsequently, on 6 July 2021 the government published the Nationality and Borders Bill incorporating many of these proposals. On 22 July, the government published its response to the consultation on the *New Plan*. The bill received its second reading in Parliament on 20 July, and completed its passage through the House of Commons on 8 December 2021. It is now being debated in the House of Lords.

MiCLU work with children and young people who have been displaced by war, fleeing abuse, and/or trafficked into the UK for exploitation, children and young people separated from their families, and young undocumented people and their families. We are gravely concerned about the impact that the proposals will have on children and young people.

We have considered how the measures are likely to impact on young asylum seekers and migrants – including victims of trafficking, British national children, children in families and unaccompanied or separated children and young people – and set out our responses to the different proposals. We especially consider what young people have told us about the issues that the proposals relate to and share what they have told us.

As the Bill progresses through Parliament we plan to update this response with additional information.

Whilst we welcome some new provisions addressing specific historic injustices in the system, we are concerned that the government's overall approach to reforming the asylum system simply **rehashes regressive old ideas and policies** alongside bringing existing rules into legislation, and will do **little to reform the asylum with regard to efficiency or fairness**.

Ultimately we believe the government's proposals will increase the burden on the tax-payer while having a severely **detrimental impact on the most vulnerable** of those who seek protection from the UK. This is because it **fails to engage with the realities** of migrants and asylum seekers and the practicalities of providing protection to individuals who have experienced significant trauma.

The government's failure to grapple with the reality of the experiences of refugees seeking safety in the UK could not be any more stark than when we consider the recent example of Afghanistan. The Nationality and Borders Bill contains measures penalising asylum seekers for arriving via third countries by deeming them 'inadmissible' to the UK asylum system, or granting a lesser status to those entering the UK 'illegally'.

Yet, as was recently witnessed, those fleeing the newly installed Taliban regime were exhorted by British politicians to escape the country in just such a way - via the land border to a third country - once the UK became unable to provide a safe direct means out.

The proposals are worryingly predicated on inaccurate, ill-considered or non-existent evidence in relation to a broad range of issues: from the numbers of migrants, to the relation between need for protection and illegal smuggling, to myths around pull factors to the UK[1], to the numbers of asylum appeals.

- The proposals as they relate to further restrictions on migrants' rights rely on statistical data that has consistently overestimated non-EU migration. More recent and ongoing ONS analysis of a broader data set "*has added an average of 93,000 per year to EU net migration from the year ending March 2012 to the year ending March 2020, while figures for non-EU migrants have been reduced by 54,000"*[2]. Proposals based on misconceived assumptions are necessarily themselves misconceived.

- The New Plan states that: *"Access to the UK's asylum system should be based on genuine need, not on the ability to enter illegally by paying people smugglers."* This implies a false dichotomy between claimants in "genuine need" and claimants who enter the UK illegally. Given the country of origin of most asylum seekers in the UK[3], it is clear this dichotomy is false and unfounded.

- The New Plan further states: *"Our asylum system is too easily exploited by people smugglers and does little to disincentivise individuals from attempting to enter the UK illegally."* We refer to an open letter by over 450 leading academics in the UK, who confirm in response that such claims have been closely examined by researchers and there is no evidence to support this idea of economic pull factors, or that deterrence strategies work, they simply cost lives[4].

- A further claim is that: *"the courts are becoming overwhelmed by repeated unmeritorious claims, often made at the last minute and justice is being delayed for those with genuine and important claims."* We note that the statistics used to justify this claim confirm that, in 2019, 43% of asylum appeals were allowed. That such a figure is used to suggest that claims are unmeritorious beggars belief.

Meanwhile the consultation process for the planned measures was extremely brief and not inclusive of those it will directly affect, with child and young refugees and migrants among those who were not consulted.

In its response to the New Plan consultation, the government identified the following areas as "**issues of importance**" that they will keep under review during the passage of the Nationality and Borders Bill and as part of ongoing work:

- *There being a general lack of detail and explanation of the policies, and an evidence base for these.*
- *The 'fairness' elements of the new plan not being sufficient or balanced, when set against the 'firm' elements.*
- *The potential for the plan to contribute to greater inefficiencies in the system.*
- *The potential for equalities impacts and needing to adjust existing safeguards and protections in the system to support those who may be vulnerable; and mitigate against any potential unintended consequences.*
- *The requirement for improved guidance and/or stronger operational processes.*

Despite its recognition of these significant defects, the government has indicated its intention to press on with the majority of the proposed reforms.

We also continue to have a number of questions arising from the consultation exercise which, to date, remain unanswered and still require clarification from the government.

The information and responses below relate specifically to the potential impact on young asylum seekers and are as such limited in their scope. For further reading, please see the last section of this briefing with links to responses from other organisations in the sector and further information.

[1] In relation to which the government have refused to its evidence on why asylum seekers travel to the UK in response to a Médecins Sans Frontières FOI request: https://www.theguardian.com/uk-news/2021/nov/20/home-office-covering-up-its-own-study-of-why-refugees-come-to-the-uk

[2] Migration Observatory (16 April 2021) EU made up much higher share of net migration after 2010 than official figures suggested. This refers to ONS analysis of international migration using RAPID data.

[3] https://www.unhcr.org/uk/asylum-in-theuk.html#:~:text=Where%20do%20asylum%2Dseekers%20in,)%20and%20Eritrea%20(2%2C241)

[4] https://docs.google.com/document/d/e/2PACX-1vQF_mpQDUxaFg5CUdccxTONLAJ5_811wkHjfPJWqASo3niClxmo8GHvCGfb_0uI4FV6LkbtggXAp7h/pub

1. The impact of the proposed asylum reforms on children's rights

We are not aware of an impact assessment having been undertaken that considers specifically how these proposals will affect the rights of children, who make up a relatively large and incredibly vulnerable population of asylum seekers (between 2010 and 2020 almost a quarter (23%) of all asylum applicants were children[5])[6].

With the exception of the age assessment proposals, the New Plan fails to articulate the potential impact of the proposals on unaccompanied asylum-seeking children (UASC) up to age 18. Nor are the potential impacts of the proposals on 18 to 25 year olds (former UASC) who arrived in the UK as children set out in the New Plan, nor considered in debates on the Nationality and Borders Bill.

i. Government proposals

In its response to the New Plan consultation, the government confirmed that it has completed an Equality Impact Assessment (EIA) in line with its public sector equality duty. The EIA was published on 16 September. In general, Home Office analysis is that with appropriate mitigation and justification, any impacts would not amount to unlawful direct or indirect discrimination. Mitigating actions, they say, will include appropriate training of relevant staff, including first responders, and in particular social workers and carers, who will assist in the identification of vulnerable individuals; clear guidance to operational teams on areas such as interviewing; and ensuring the asylum applicant would be able to choose the gender of their interpreter and interviewer.

The EIA is described as a 'live' document that will be subject to further review and scrutiny as policies develop, with continued stakeholder engagement that will be used to inform the parliamentary scrutiny process, as well as implementation and operationalisation of the policies. We believe a separate Child Rights Impact Assessment should be added to this process.

ii. MiCLU's response

For unaccompanied children in the UK who will almost certainly have arrived using clandestine routes, the implications of turning 18 before any National Referral Mechanism (NRM) or asylum resolution has been reached are serious. The impact is often described as a cliff-edge between the protections provided by children's services and the removal of these when the young person transitions to adult services. The high level of risk not only impacts on those who arrive as children but increases as decisions on their asylum claims are delayed into adulthood.

[5] Of these 85,871 children, 23,810 were recorded as unaccompanied asylum-seeking children (28%) and the remaining 62,061 were children who were part of a family claim (72%).

[6] On 24 August 2021 the Home Office responded to a Freedom of Information Request saying that they could 'confirm that the Home Office holds the information […] requested, namely an Equality Impact Assessment, which includes consideration of impacts on children.' However a formal child rights impact assessment considering the impact of all the proposals on children has not been produced, while the Equality Impact Assessment that has since been published makes reference to children only on limited points.

Similarly, the impact on children within refugee and migrant families appears not to have been recognised or acknowledged when considering the differential impact on families with children of measures such as restricting access to public funds. This is despite a duty imposed by Section 55 of the Borders, Citizenship and Immigration Act 2009 which requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children within the UK.

The UK government has made a public commitment to give due consideration to the United Nations Convention on the Rights of the Child (UNCRC) when making new policy or legislation[7]. We recommend that the Home Office comply with this by carrying out a formal Child Rights Impact Assessment (CRIA) to add a comprehensive, child rights focused perspective to its usual equality impact assessment processes.

2. Safe & legal routes to settlement

i. Government proposals

- Continue to resettle refugees and grant them Indefinite Leave to Remain on arrival to the UK
- Introduce a new humanitarian route for those facing persecution because of their gender, religion or cultural belief to offer discretionary assistance to people still in their country of origin, allowing them to enter the UK in specific and compelling circumstances. Such cases would be exceptional and where the person's life is at direct risk
- Review refugee family reunion routes

Alongside its response to the New Plan consultation, the government published its promised Report in relation to legal routes from the EU for protection claimants, including family reunion of unaccompanied children. In this review, it confirms its intention to:

- Continue the UK resettlement scheme and pilot an Emergency Resettlement Mechanism, starting in Autumn 2021, that will enable refugees in urgent need to be resettled more quickly (meaning weeks rather than months)
- Follow through on the proposal to provide a new humanitarian route where an individual faces imminent danger whilst still in their country of origin and therefore is not eligible for a UK refugee resettlement programme – further details of how the scheme will work will be issued in due course
- Implement a single global approach for family reunion entry clearance applications
- Provide additional clarity in the Immigration Rules on the exceptional circumstances in which the UK would grant leave to a child seeking to join a relative in the UK

These measures do not require legislative change.

[7] https://questions-statements.parliament.uk/written-statements/detail/2018-11-20/HCWS1093

The Equality Impact Assessment did note the concerns of stakeholders who responded to the New Plan consultation regarding how accessible safe and legal routes would be, particularly for a child or woman in need of protection. If safe and legal routes are focussed on migrants from areas of conflict, *"then there may not be routes for people to come to the UK from countries that are at peace, but in which they may nevertheless experience persecution . . ."*. Stakeholders argued that making it harder for them to access safe and legal routes could displace them into more dangerous routes. In order to mitigate this, the government has said it will work with UNHCR to ensure UK resettlement schemes are fair and accessible; and the Secretary of State will consider using discretion to allow individuals fleeing persecution to come to the UK.

ii. MiCLU's response

Developing additional safe and legal routes for individuals unable to travel to the UK through resettlement or refugee family reunion routes should be a priority for the government. The UK should ensure there are both regional (i.e. the geographical region of Europe) and global arrangements for safe and legal asylum routes in place.

Existing safe and legal routes do not provide a rapid route to safety for the majority of asylum seekers, including unaccompanied children and young people. Those compelled or forced to flee a crisis, violence or persecution will always have to move quickly to be safe. Visa processes are bureaucratic and slow, require visible efforts to move away from an area which can place those fearing for their safety at greater risk, and require documentary evidence that is difficult if not impossible for some victims of persecution to provide. This is particularly the case for unaccompanied and separated children and young people.

MiCLU calls on the Home Office to develop a complementary safe and legal route for unaccompanied and separated asylum-seeking children both within EU countries and outside Europe to enable them to travel lawfully to the UK in order to seek asylum. This could be modelled on a previous route created by an amendment to the Immigration Act 2016 sponsored by Lord Alf Dubs (the 'Dubs' scheme, which has now ended[8]). The scope should be wide enough in terms of access and numbers to offer meaningful protection to children seeking safety.

It must however be acknowledged that safe and legal routes will always be insufficient to provide a rapid route to safety for the majority of asylum seekers – as evidenced with much recent publicity by the example of Afghanistan, following the Taliban takeover. **The promotion of safe and legal routes should never be to the detriment of providing swift, fair and durable protection on application in-country.**

3. Nationality & statelessness law

i. Government proposals

8 Section 67 of the Immigration Act 2016, named after its sponsor Lord Dubs, required the UK Secretary of State to "make arrangements to relocate to the UK and support a specified number" of unaccompanied child refugees from Europe. A total of 480 child refugees were accepted into the UK before the scheme was closed in July 2020. There is now no legal route that provides the same protection for unaccompanied children from Europe who may not have relatives in the UK. https://www.gov.uk/government/publications/policy-statement-section-67-of-the-immigration-act-2016/factsheet-section-67-of-the-immigration-act-2016

- Introduce new registration provisions for children of British Overseas Territories Citizens (BOTC) to acquire citizenship more easily
- Introduce measures to enable a child to acquire their biological father's citizenship if their mother was married to someone else
- Introduce a new discretionary adult registration route to give the Home Secretary an ability to grant citizenship in compelling and exceptional circumstances where there has been historical unfairness beyond a person's control
- Change the registration route for stateless children who were born in the UK and have lived here for five years to ensure that people should not be able to acquire these benefits if they purposely fail to acquire their own nationality for their child

The child statelessness measure is one of two (the other being the age assessment proposals – see section 5 of this briefing) that the Equality Impact Assessment notes presents a risk of direct discrimination on the basis of age. However, the government has considered that the proposals are lawful under the Equality Act 2010 and has therefore decided to take forward the stated reforms in full through Part 1 of the Nationality and Borders Bill.

Clause 10 of the Bill goes further, as it inserts a new paragraph (3A) into Schedule 2 of the British Nationality Act 1981 for stateless children aged 5-17, requiring that the Secretary of State be "satisfied" that the child is unable to acquire another nationality before they may be permitted to register as a British citizen. It considers that a child is able to acquire a nationality *where (i) that nationality is the same as one of the parents; (ii) the person has been entitled to acquire that nationality since birth; and (iii) in all the circumstances, it is reasonable to expect them (or someone acting on their behalf) to take steps to acquire that nationality.*

During Commons Committee and Report stages, Opposition parties tabled amendments to remove Clause 10 [previously Clause 9] from the Bill and asked the government to provide evidence to support its contention that *"increasing numbers of non-settled parents in the UK are actively deciding not to register their child's birth at the embassy or high commission, and thus failing to secure their child's entitlement to their parents' nationality by descent".* The Home Office submitted its statistical evidence to the JCHR[9], asserting that the increase in applications since 2017 come primarily from parents who are nationals of India and Sri Lanka – this, in turn, they suggest may relate to those countries' requirements that the birth of children born in the UK must be registered with the relevant high commission, which the parents failed to do. During the debate, the Minister was unable to specify in how many of these cases the parents deliberately had failed to register their child's nationality.

The government also introduced a **new Clause 9** to the Bill which will amend s.40 of the British Nationality Act 1981 to allow the government to make a decision to deprive a person of British citizenship in the absence of any contact with that person – a power which can also be applied retrospectively.

ii. MiCLU's response

9 https://committees.parliament.uk/writtenevidence/40942/pdf/

We welcome new registration provisions for children of a British Overseas Territories Citizen (BOTC) to acquire citizenship more easily and to fixing the injustice which prevents a child from acquiring their father's citizenship if their mother was married to someone else. However, Clause 4(2) of the NB Bill places a 'good character' requirement on children which we regard as inappropriate, and which could conflict with the Home Office s.55 best interests duty.

We welcome the intention to create a discretion to register people over 18 as British citizens. At present the fee for a discretionary application is £80 and the fee for a child to register as British under a s1(3) route is £1012. Adult citizenship rates are £1206 for registration. Fees set at this level are unaffordable for many – this needs to be addressed if the statutory amendment is to make things fairer.

We further welcome the proposal to introduce a new discretionary adult registration route to give the Home Secretary an ability to grant citizenship in compelling and exceptional circumstances where there has been historical unfairness beyond a person's control. However, it is not clear what 'historical unfairness beyond a person's control' means. Will there be guidance on what that 'historical unfairness' is? Are we assuming that 'beyond a person's control' will be as it is considered now: i.e., that children cannot be penalised for their parents'/responsible adult's actions in failing to sort out their status in the UK?

We would further want the new measure to specifically state that it: 1) includes children and young people who have been in local authority care and for whom no application for registration was made as a child; and 2) acknowledges the position of children whose parents have not taken steps to register them where such an application was open to them. Additionally, we would not want to lose the discretionary element of the current wording of s.3(1)[10] to be lost: *"If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen."*

However, as mentioned above, there are **serious concerns that the changes in Clause 10 of the Nationality and Borders Bill will lead to increased childhood statelessness in the UK, leaving more children in an effective limbo and facing growing up without a nationality**. As the European Network on Statelessness (ENS), the Project for the Registration of Children as British Citizens (PRCBC), and Amnesty International UK jointly state: *"For many children, the change proposed by Clause 9 [now 10] will perpetuate their statelessness as they will have no immediate entitlement to a parent's nationality, but the Secretary of State's judgement will shut them out from British citizenship."*[11]

Under current nationality law a child can acquire British citizenship under statelessness provisions where they were born in the UK, have lived here for 5 years and have never had another nationality. We believe making the proposed change to this route would be in conflict with the Home Office s.55 best interests duty. It would also penalise the child for what their parent(s) have(/have not) done. Moreover, if this route is removed, how will the Home Office make provision for 'genuinely stateless children' to acquire citizenship?

[10] The British Nationality Act 1981 https://www.legislation.gov.uk/ukpga/1981/61

[11] Joint submission by the European Network on Statelessness (ENS), the Project for the Registration of Children as British Citizens (PRCBC), and Amnesty International UK concerns Clause 9 (Stateless Minors) of Part 1 (Nationality) of the Nationality & Borders Bill (NBB): https://www.statelessness.eu/updates/publications/joint-submission-uk-house-commons-public-bill-committee-nationality-borders

We believe **the only workable solution to this is to remove this Clause from the bill.** This is also the preferred recommendation of the Joint Committee on Human Rights (JCHR).[12] The JCHR notes that the child statelessness measures *"will effectively mean that a child born in the UK will have to prove that it (or more realistically its parents, or carers in the case of a looked after child) could not reasonably have acquired another nationality for that child. This may be particularly difficult for children who do not have significant support or do not have access to the relevant documents . . ."*.[13] As an alternative approach, we recommend that the Home Office decision maker should make a more detailed and well-reasoned decision and, if there are other routes to citizenship, then this could potentially be the basis for a refusal.

In relation to the **new Clause 9** to the Bill which will amend s.40 of the British Nationality Act 1981 to allow the government to make a decision to deprive a person of British citizenship in the absence of any contact with that person, we note that this has the potential to impact UASC and former child asylum-seekers, as well as the children of any affected individuals. We further believe **this measure goes against the principle of natural justice** by empowering the UK government to secretly strip an individual of their British citizenship. The government argues that the individual will retain a right to appeal the decision, but it is difficult to understand how they can do so in the absence of knowing that such a decision has been made. If the person is a parent, **under the s.55 best interests duty, the UK government should also be required to consider how such a decision would impact on their children**.

We refer to PRCBC and Amnesty International UK's detailed and critical briefing regarding this measure, which states: "At the heart of this is an enduring prejudice that some British people are never to be truly accepted as British. […] Not informing a British citizen of the stripping of that person's citizenship will mean that person is unable to take any step to correct or challenge the decision to do this. [Not informing] the person also risks that they may take steps that put them in danger."[14]

There also still remain some anomalies in nationality law that the government did not include in its proposals which affect babies born in the UK to European parents between 2 October 2000 and 29 April 2006 who have lost out on being automatically British; we ask the government to correct that anomaly in the new legislation.

4. The two-tier asylum system

There is some conflation in the New Plan of 'illegal' entry and those entering the country legally via a safe third country. Ultimately it would seem that asylum seekers from both groups will receive differential treatment to refugees who arrive via 'legal routes', which would include being granted only a temporary protection status (if they arrived 'illegally' or if they cannot be returned) – thus creating a 'two-tier asylum system'.

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[12] Joint Committee on Human Rights (3 Nov 2021) Legislative scrutiny: Nationality and Borders Bill Part 1 – Nationality. https://committees.parliament.uk/publications/7774/documents/81006/default/

[13] Ibid, para.45

[14] https://www.amnesty.org.uk/files/2021-12/NBB%20BriefingFINAL16Dec2021_0.pdf?VersionId=T59HzT3APxIQtovo04eeZX6ixkfnAO6h

4.1 Differential treatment based on method of arrival

i. Government proposals

- Introduce a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin (as it would breach international obligations) or to another safe country

Clause 11 of the Nationality and Borders Bill allows for the differential treatment of refugees by separating them into two groups. The group receiving better treatment (called Group 1 in the Bill) must have arrived directly in the UK from their home country, presented themselves without any delay, and have either entered legally or can show good cause for their unlawful presence in the UK. Asylum seekers who have entered or are in present in the UK unlawfully (meaning they do not have leave to enter or to remain) must show good cause for their unlawful entry or presence

Examples of worse treatment for the second group (called Group 2 in the Bill) include being granted only a form of **temporary permission to remain; and variations regarding the road to settlement, the ability to have recourse to public funds unless destitute, and the ability of family members to join them in the UK**. People granted temporary protection status will be expected to leave the UK as soon as they are able to or as soon as they can be returned or removed, once no longer in need of protection.

In response to a question asking whether the government intends the Clause to apply to unaccompanied children, the Minister responded that decision has not yet been made.[15]

It is unclear whether the government intends that this differential treatment will apply to individuals who arrived in the UK as a child, once granted status. It is further unclear what, if any, differential effect being granted temporary protection status would have on dependent children's access to public services.

During Commons Committee debates, Opposition parties noted *"that among the public relief measures defined as public funds in this context are those specifically intended to support children, such as child benefit, and the particularly vulnerable, such as carer's allowance and personal independence payments. Local authorities will have to step in to provide support for these families and the government have stayed silent on what provision they will make for local authorities."* The government in its Equality Impact Assessment has stated that it will seek to mitigate adverse impacts by **not applying the condition of "No Recourse to Public Funds" in relation to temporary protection status to former unaccompanied asylum-seeking children care leavers**, however the duration of such an exemption has not been indicated and there is no provision of any similar mitigation for the children of asylum-seekers or asylum-seeking child dependants, who thus indefinitely face the risk of poverty even upon recognition of their refugee status. In a submission to the JCHR,[16] the Home Office confirmed its opinion that the differential treatment measures comply with both the Refugee Convention and the ECHR.

[15] Joint Committee on Human Rights (1 Dec 2021) Legislative scrutiny: Nationality and Borders Bill, Question 46.
[16] https://committees.parliament.uk/writtenevidence/40941/pdf/

During Commons Committee debates, the government was told that the reapplication process that would be part of the granting of temporary status will add to Home Office workloads and exacerbate systemic delays – it is understood that the government proposes temporary status would require renewal every 2.5 years, lasting until settlement is possible at 10 years.

Clause 39 creates a new **criminal offence of arriving in the UK without a valid entry clearance** where required, in addition to entering without leave (already an offence under s.24(1)(a) of the Immigration Act 1971). The maximum penalty for this offence would be up to 4 years imprisonment. Children may potentially thus be criminalised simply for entering the UK, when they themselves had no control over the decision to enter.

What young people said

"By the new rules that they are making, don't you think that the immigration will increase, immigration underground I am talking about – they will just go underground like a lot of people."

ii. MiCLU's response

The government proposes differential treatment of refugees based on their method of arrival; MiCLU believes this would **contravene international law**. The Refugee Convention makes it clear that refugees should not be penalised for their illegal entry or stay, recognising that the seeking of asylum can oblige refugees to breach immigration rules.

Additionally, Article 3 of the Refugee Convention stipulates that: *"The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin."* The proposal to introduce a two-tier system where refugees arriving through resettlement or refugee family reunion will be granted refugee status and have settlement rights, whilst the asylum claims of those arriving clandestinely or through a safe third country to which they can be removed and, if not, will be granted a form of temporary protection status will also have **a disproportionate impact on particular nationalities**, for example, asylum seekers or victims of trafficking from Vietnam or Albania, who are not able to access resettlement or family reunion routes and equally unable (or are not given the choice) to travel directly to the UK[17].

These proposals wholly fail to take into account the reality that **children seeking refuge have little to no control over the decision to travel, the means of travel, or the final destination.**

[17] Over the last five years, Vietnam and Albania consistently have been in the top 8 unaccompanied child asylum applicant producing countries. Refugee Council (Aug 2021) Children in the asylum system. https://media.refugeecouncil.org.uk/wp-content/uploads/2021/09/03081304/Children-in-the-Asylum-System-Aug-2021.pdf

Children who are trafficked are psychologically or physically coerced or tricked into leaving, or are in a position of such vulnerability that they are unable to make sound choices, are also **not in control of their migratory decisions**.

In discussions with children and young people, the UNHCR found that:

- Children are not involved in the arrangements made for their departure
- Children tend not to know where they are going at the point of departure from their country of origin. Their immediate concern was to escape danger and reach a place of safety, without a specific destination in mind
- A number of different actors may be involved in making the initial arrangements for children to leave their country of origin, in addition to accompanying them at various points along their journey, and the children themselves are not clear about who has made the arrangements for travel
- Children travelling with smugglers would have little or no control over the trajectory of their journey
- Children travelling with smugglers or traffickers faced restrictions on their freedom of movement through the use of force, location (underground cells) or threats of violence to actual physical and sexual abuse[18]

If unaccompanied children are classed as Group 2 refugees, presumably they will be granted an insecure type of temporary leave and have to renew it every 2.5 years - a reduction in the durability of status currently available to the majority of unaccompanied asylum-seeking children. The impact having an unclear and unstable future has on refugee children is well documented – their lives are effectively put on hold. They are unable to plan for the future and find it difficult to feel settled, develop strong relationships and move forward in life. These impacts can lead to mental health problems, and make it far more difficult for them to integrate in British society and, in some cases, put them at risk of being exploited or re-trafficked in the UK. We consider the implications in more detail in the section below on temporary protection.

4.2 Inadmissibility

i. Government proposals

- Ensure those who arrive in the UK, having passed through safe countries, or who have a connection to a safe country where they could have claimed asylum, will be considered inadmissible to the UK's asylum system
- Serve those deemed inadmissible with a notification upon arrival that the UK will seek to return them to a safe country
- Seek rapid removal of inadmissible cases to the safe country from which they embarked or to another safe third country

Despite acknowledging the considerable levels of concern expressed in response to the consultation, the government does not propose to make changes to their policies.

[18] Gazzotti, L (2019) Destination anywhere: The profile and protection situation of unaccompanied and separated children and the circumstances which lead them to seek refuge in the UK

In addition to the differentiated approach to asylum seekers depending on how they arrive in the UK set out in Clause 11 of the Nationality and Borders Bill, Clause 14 confirms that asylum applications from EU nationals can be declared inadmissible, and Clause 15 gives the government the power to declare asylum claims inadmissible if the claimant has a connection to a "safe third State". **Clause 28 enables the government to remove such persons from the UK even while their asylum claim is pending, and to any other third country state** (not necessarily the third country state with whom the individual has the connection).

As a safeguard, in their response to the consultation, the government said it will ensure that individual circumstances are always considered sensitively and thoroughly by caseworkers and the relevant clauses in the Bill provide this flexibility, but **given the high levels of risk faced by vulnerable individuals and need for consistency we believe that such decisions should not be left to individual discretion.**

In the Equality Impact Assessment, the government confirms that it will: *"mitigate the risk of adverse impacts on unaccompanied asylum-seeking children by exempting them from the inadmissibility process."* However it is not clear whether this will apply to those who applied as unaccompanied asylum-seeking children and whose status has not been resolved once they turn 18. It furthermore would appear that **all dependent children in asylum seeking families who travel to the UK through a safe country or who have connections with a safe third country** will be subject to the new regime.

During Commons Committee debates, Opposition MPs remarked that inadmissibility measures have been in place since 1 January 2021 but, with only a handful of people returned to other countries, they are not working[19] – one reason being that the UK has no reciprocal return agreements in place with EU countries. They also asked how, in the case of families with dependent children, the delay of any consideration of their asylum claim for the six months during which their claims are suspended, would be compliant with the Home Office s.55 duty to safeguard and promote the welfare of children. The Minister responded that the measure is meant to deter asylum seekers from travelling to the UK.

What young people said

[19] Q1-3 stats indicate 6,598 'notices of intent' were issued; 48 individuals were served with inadmissibility decisions; 10 were returned. 2,126 individuals were subsequently admitted into the UK asylum process for substantive consideration of their asylum claim. https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2021/how-many-people-do-we-grant-asylum-or-protection-to#inadmissibility

"How come they want to prioritise the way you came to this country? They should prioritise the needs of this individual, not the way the individual came to the country."[20]

"People, like us, like refugees or asylum seekers – we don't choose, we choose to be safe, we came here to be safe, we didn't choose the way – there are many ways to come here, but we come here for a safe life. There is supposed to be a choice, people who come legally, they choose to be here. Asylum seekers they don't have a choice, they can't choose, they just have to find somewhere to be safe. […] We don't have the option to choose France or England and then we choose 'Oh my God England because it is better.' We don't have those options. Other people might have options, but we don't."[21]

"They might think that people take advantage maybe of this and they want to be harsh – to make this process even more harsh for people maybe not to take advantage, but what they don't think is that someone who is in need and who is fleeing their country because of certain problems is not going to take into consideration 'Oh the UK system' or 'the asylum process is difficult for me so I am not going to go there'. People don't look for how difficult it is, they just need to be safe."[22]

"It is not something that you plan: 'Ok, in a year's time, in two years' time, in three years' time I'm going to the UK and I'm going to apply for asylum.' It is not something that you think of, it is just something you have to do and you do it basically in the heat of the moment because you have to leave your country. So I don't think it will discourage anyone else. If you leave your country you don't go on websites to see how this asylum-seeking process works. When we come here we don't know how it works. That shows. That's normal. We are just coming here for safety."[23]

[20] Focus group with Shpresa Programme Immigration Champions on the Nationality and Borders Bill, September 2021.
[21] Ibid
[22] Ibid
[23] Ibid

ii. MiCLU's response

The reasons for putting the inadmissibility measures in primary legislation are unclear because they are already in place through paragraphs 345A-D of the Immigration Rules and accompanying statutory case guidance on inadmissibility – both of which came into force following the UK's exit from the European Union. Currently, families with children under the age of 18 are subject to these powers. However, unaccompanied asylum-seeking children are not, though an unaccompanied child *"may be invited to withdraw their asylum claim, if all the following conditions are met:*

- *a close family member of the child has been identified in a third country, and they are willing to take care of the child*
- *UK social services are content that the family member has the capacity to care for the child and is suitable to do so*
- *the child agrees to be reunited*
- *it is in the child's best interests to be reunited*
- *the country has agreed to admitting the child to join their family member."*[24]

The government aims to make inadmissible any asylum claims from persons coming via what the UK deem to be a "safe third country" or who have "connections" to a safe third state. However, as the New Plan points out, **there are currently no formal returns agreements in place between the UK and the EU or individual EU member states** to allow the UK to return asylum seekers *"to the safe country of most recent embarkation"* or *"to effect removals to alternative safe third countries"*.

4.3 Temporary protection

i. Government proposals

- If an inadmissible person cannot be removed to another country and if they did not come to the UK directly, did not claim without delay, or did not show good cause for their illegal presence, they will be considered for temporary protection
- Temporary protection status will be for a period no longer than 30 months, after which individuals will be reassessed for return to their country of origin or removal to another safe country
- Temporary protection status will not include an automatic right to settle in the UK, family reunion rights will be restricted and there will be no recourse to public funds except in cases of destitution
- People granted temporary protection status will be expected to leave the UK as soon as they are able to or as soon as they can be returned or removed

Clause 11 of the Nationality and Borders Bill provides the legal framework for the creation of a new type of temporary leave.

[24] Inadmissibility: Safe third country cases https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947897/inadmissibility-guidance-v5.0ext.pdf

The Group 2 asylum seekers (i.e. those who arrive in the UK without leave to enter or remain) may be granted "temporary protection status". Temporary protection status will not include a defined route to settlement in the UK, but individuals may be eligible to apply for long residency settlement after 10 years if the requirements are met.

When asked how the government intends to use these powers during Commons Committee debates on the Nationality and Borders Bill, the Minister responded that details *"will be set out in the normal way in the immigration rules and guidance in due course"*, and that the guidance should provide flexibility for decision makers to take vulnerabilities into account when deciding on Group 2 status.

What young people said

"You see all the people around you doing things. I've been diagnosed [with] anxiety and depression. Sometimes you're so fed up you don't want all this responsibly on our shoulders. When I came here, we were just kids and we just want to feel like every other kid. We don't want to be judged by the way we look, emotionally, physically, psychologically. It's affected how I look, I've changed a lot."[25]

"Even if they want to give you temporary leave and then review your case again, how can they deport you back when you have already 5, 6 years in this country, have been settled, have been doing your activities here, how can they turn your life that way?"[26]

ii. MiCLU's response

We have not yet had unequivocal reassurance from the government that either children who come to the UK alone and unaccompanied or those within families will be excluded from the effects of clause 11 (differential treatment of refugees). Asylum-seekers who are found to be 'inadmissible' (see above section 4.2) look set to share with this group a similar form of temporary status (i.e., if they cannot be returned).

[25] Quotation from *Into the Arms of Traffickers Companion Guide - Voices of the Young People*. Christine Beddoe. October 2021

[26] Focus group with Shpresa Programme Immigration Champions on the Nationality and Borders Bill, September 2021

If this differential treatment does apply to unaccompanied children and young people it will **prevent proper permanence planning for a durable solution** – a solution that meets all of their protection needs, takes into account their views, and leads to a longer-term sustainable arrangement. The young people we work with describe how the asylum system puts their lives on 'pause' for years. Apart from adverse and long-lasting mental health impacts, the stigma of being an asylum seeker, and isolation through not being able to do the same things as their peers, these young people are denied the opportunity to grow up in a healthy, safe and secure way.

Being granted what in many cases could be a 'perpetual' temporary protection status results in permanent uncertainty. MiCLU has considerable experience of working with families on the 10 year route to settlement. Our experience of supporting children and families on this route is that the length of the route and the short grants of leave (i.e., temporary leave which must be renewed every 30 months until the 10 year period has been reached), together with long periods left in limbo, actually cause people to develop mental health problems on account of the ongoing stress involved in living a precarious existence[27]. We have clients on this route who have been diagnosed with mental health conditions as a direct result of the challenges they face having to reapply every 30 months, and the impact this precariousness has on their access to higher education, employment and public services.

For asylum-seekers who have mental health conditions related to previous trauma the impact of such uncertainty will be magnified, as settlement and security are needed in order to start to recover and engage with and respond to treatment. Elder Rahimi solicitors reported in critical research in 2018 that "*It is evident that delay can compound the effects of trauma and the asylum process on children and young people. The asylum process is itself inherently traumatising, yet the additional uncertainty at what is a critical time in a young person's development is adding to this."*[28]

Based on current experience of the process, we believe that any temporary protection status system **will further not fulfil the government's aim of reducing delays or costs, but will in fact have the opposite effect** by exacerbating systemic delays and have a detrimental impact on the resources of the Home Office and the courts.

4.4 Reception centres, processing of claims, accommodation and support

i. Government proposals

- Introduce new asylum reception centres to provide basic accommodation and process claims to speed up the processing of claims and appeals onsite
- Maintain the facility to detain people where removal is possible within a reasonable timescale
- Make fuller use of existing immigration bail powers, which provide for residence conditions, reporting arrangements and monitoring

[27] Bawdon, F, Makinde, D and Akaka, Z (2019) Normality is a luxury: how limited leave to remain is blighting young lives. Let Us Learn.
[28] Elder Rahimi (2018) *Systemic Delays In The Processing Of The Claims For Asylum Made In The UK By Unaccompanied Asylum Seeking Children (UASC).*

Clause 12 of the Nationality and Borders Bill allows for the use of certain types of accommodation to house certain cohorts of asylum seekers and failed asylum seekers in order to increase efficiencies within the system and increase compliance. When deciding the type of accommodation an individual may be offered, the Home Secretary may take into account the stage their protection claim has reached, as well as their past compliance with conditions of bail and conditions attached to any support they have previously been receiving.

Clause 16 of the Nationality and Borders Bill amends s.4 of the Immigration and Asylum Act 1999 to extend the entitlement to accommodation and support to those whose claims have been declared inadmissible. This brings the entitlement in line with the accommodation and support provided to failed asylum seekers.

In its response to the consultation, the government said it will also ensure that asylum seekers and failed asylum seekers housed in accommodation centres are provided with a full package of support that ensures their essential living needs are met while their claim for protection is being decided. They will engage further on the design of the support package through the established forums used to consult stakeholders on support matters.

During Commons Committee debates, the Minister provided further detail about these plans. The move to the accommodation centre model is intended to allow the government to move away from the current accommodation model, "*which is under considerable strain and relies mainly on procuring flats and houses through the private rental market, and booking temporary hotels."* Accommodation centres will have wrap-around services available to those accommodated including casework and other services; and there will be an advisory group for each centre, who will visit the site, hear complaints and report any findings to the Secretary of State. Local authorities will be consulted, but not able to veto proposals to set up an accommodation centre in their area.

The Minister confirmed that the government has no intention to accommodate children in accommodation centres. "*More broadly, decisions will be made on a case-by-case basis, as set out in policy, in relation to other individuals."* At Report stage, in relation to off-shore processing of asylum claims, the Minister confirmed that unaccompanied children will not be transferred for offshore processing, and that the government will not split family units for offshore processing – which could allow for families with dependent children to be sent to an offshore facility.

ii. MiCLU's response

The government is proposing to use asylum processing centres to accommodate those who enter the UK whilst they await the outcome of their claim and/or removal from the UK.

In relation to 'off-shore processing', this is **not appropriate for asylum claims involving children** (whether unaccompanied or within families) who require the protection of UK Children's Services, access to education and to accommodation/foster care, and opportunities for play based learning which promotes their integration into the UK.

5. Age assessment

i. Government proposals

- Introduce a new National Age Assessment Board (NAAB) to set out the criteria, process and requirements to be followed to assess age, including using the most up to date scientific technology. Details will appear in secondary legislation
- Legislate so that front-line immigration officers and other staff who are not social workers are able to make reasonable initial assessments of age
- Change current requirement to treat an individual as an adult "where their physical appearance and demeanour strongly suggests they are over 25 years of age" to "significantly over 18 years of age"
- Require local authorities to either undertake full age assessments or refer to people to the NAAB for assessment where they have reason to believe that someone's age is being incorrectly given, in line with existing safeguarding obligations
- Consult on creating a fast-track statutory appeal right against age assessment decisions of the NAAB

In its response to the consultation, the government noted stronger support around creating a right of appeal for age assessments and enabling local authorities to make referrals to the proposed National Age Assessment Board. This measure is one of two (the other being the child statelessness proposals – section 3 of this briefing) that the Equality Impact Assessment notes presents a risk of direct discrimination on the basis of age. The government however believes that the statutory right of appeal to the First Tier Tribunal will mitigate that risk.

At Commons Committee stage of the debates on the Nationality and Borders Bill, the government tabled Clauses 48-56 (Part 4) which introduce the new age assessment measures. Clause 48 defines an "age-disputed person" as a person with insufficient evidence of their age. In oral evidence to the Joint Committee on Human Rights (JCHR), the Refugee and Migrant Children's Consortium pointed out how this changes current statutory guidance which stipulates that an age assessment should only be carried out if there is "significant doubt" about the young person's age; and that the new proposals could lead to an age dispute whenever someone decides to dispute the age.[29] This could lead to an increase in the number of age assessments carried out, and create further delay in the system.

Under Clauses 49-50, a local authority or public authority will be able to refer an age-disputed person for age assessment to the NAAB, or carry out the age assessment in the local authority. Opposition MPs asked for further detail on how the Board is meant to work, to whom it will be accountable, how independent it will be from its sponsor department (the Home Office), and whether it will be able to override a local authority age assessment at the direction of the Home Secretary. *"The role of any such board should be to support local authorities, not to supplant and overrule them."* Under Clause 49, the Secretary of State has a power to require a local authority to provide the evidence on which it bases its decision that the age-disputed person is the age they claim to be [i.e., a child under 18]. The standard of proof for an age assessment will be the balance of probabilities.

[29] Joint Committee on Human Rights (17 Nov 2021) Legislative scrutiny: Nationality and Borders Bill. Questions 28-35.

During Commons Committee debates, Opposition MPs described the process as putting a burden on a child to prove they are under 18 and argued that introducing such a high standard of proof would significantly increase the risk of children being wrongly treated as adults. In oral evidence given to the Joint Committee on Human Rights, the British Association of Social Workers (BASW) explained that, under the Children Act 1989, *"it is not for the child to prove they are a child, it is for the authority to prove that they are not a child"*.[30] In terms of the purpose and operation of the Board, BASW also commented that, in terms of helping hard-pressed children's services, the NAAB could be useful but could also add simply another layer of bureaucracy and delay to the process.

Clause 51 introduces the use of scientific methods in age assessment, the details of which will be specified in Regulations, following scientific advice. The young person must consent to the use of the scientific method, though a decision not to consent will damage the young person's credibility. However, the idea of using only scientifically verified methods is undermined by Clause 51(9) which allows an unspecified decision-maker to use "a scientific method that is not a specified scientific method for the purposes of an age assessment under section 49 or 50 if the decision-maker considers it appropriate to do so". During Commons Committee debates, Opposition MPs said that this Clause *" . . . undermines the fundamental idea that people should be able to give free consent to medical procedures and examinations, and not be pressured into them. Similarly, it undermines the principle that such a procedure should happen only if it delivers a scientific benefit for that person."* The British Dental Association, Royal College of Paediatrics and Child Health, and British Medical Association have expressed serious ethical concerns about the proposals. The Minister responded that the government will comply with all relevant regulatory frameworks in relation to the scientific methods chosen.

The bulk of the detail on age assessment procedures will appear in Regulations, to be issued under Clause 52. Clauses 53-54 give the young person a right to appeal to the First Tier Tribunal, for which legal aid will be available (Clause 56).

ii. MiCLU's response

We believe the government's plans to introduce a new National Age Assessment Board (NAAB) to set out the criteria, process and requirements to be followed to assess age, including the most up to date scientific technology would be of questionable effectiveness.

Professional medical bodies have been **unequivocal in their rejection of the use of scientific methods to assess age because it is imprecise** and the use of ionising radiation for this purpose is not appropriate. It is unclear why the government wishes to revisit the use of scientific technology in the absence of any new techniques that could be used safely and accurately as part of a holistic, multiagency age assessment.

Good practice in age assessment must involve and be informed by others who play a significant role in that young person's life. Therefore, **age assessment processes and skills development need to involve holistic assessments**. It is unclear how that will work with a panel of social workers based in a national Board that is part of the Home Office.

[30] Joint Committee on Human Rights (17 Nov 2021) Legislative scrutiny: Nationality and Borders Bill. Questions 28-35.

The Home Office has said that they want NAAB to be as independent as possible, but **any function that may affect children in the care of the state requires independent oversight**.

Creating a statutory requirement on Local Authorities to either undertake full age assessments or refer people to the NAAB for assessment where they have reason to believe that someone's age is being incorrectly given, **risks undermining social work expertise** and professional discretion.

We also believe that reversion to the 'under 18' guidance is of great concern. It is **widely recognised that physical appearance is not an accurate basis for the assessment of a person's age**. Within different ethnic and national groups there are wide variations in young people's growth and ages of puberty, and young people may look and act older than they are because of their experiences in their country of origin, or difficult journey to the UK.

The Home Office further proposes that the First-tier Tribunal will hear appeals against age assessment decisions, that the right of appeal will apply to local authority age assessments and NAAB age assessments, and that both short form and full age assessments will be appealable – though initial age assessments carried out by immigration officers will not. Since age disputes need to be carried out expeditiously, has the Ministry of Justice assessed what knock-on effect they may have on Tribunal capacity – **will the new appeal system add further delay to Tribunal hearings for other types of cases**?

It is envisaged that the new appeal system will focus on a finding of fact, and not comment on process. Decisions about which judges would hear these cases have not been made, but the intention is that they will be used to having to consider expert reports and trained in working on children's cases. However, **we are unconvinced that making a decision on age per se is within current judges' skill set or their remit**.

In relation to aiming to reduce the use of the judicial review for disputed age assessments, we would not want to lose a scrutiny of age assessment processes since that learning could support and inform both local authority and Board practice.

6. Expedited approach to appeals

i. Government proposals

- Introduce a new fast-track appeal process for cases that are deemed to be manifestly unfounded or for new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation
- Introduce an expedited process for claims and appeals made from detention

In its response to the New Plan, the government acknowledged that the majority of public and stakeholder respondents were sceptical that the proposed reforms will make the asylum and appeals system faster and fairer. However, the government remains of the view that it is right to introduce a faster timeframe for suitable cases through the accelerated detained appeals route, so that some appeals are decided more quickly in the interests of a more efficient asylum and removal process. In mitigation, it will build in safeguards to ensure fairness and access to justice.

Clauses 26-27 of the Nationality and Borders Bill amend the Nationality, Immigration and Asylum Act 2002 to introduce an "accelerated detained appeal", with the government saying they will set out longer timescales (5 days) and additional safeguards that will address a previous version of the scheme called the Detained Fast Track system, which was found to be unlawful (see further details in section below).

ii. MiCLU's response

The government proposes to have an expedited approach to appeals, particularly where further or repeat claims are made by the individual.

In our view, these proposals are **likely to result in litigation and will increase the burden on courts rather than reduce it.** In relation to children and young people, there is **no acknowledgement of the obstacles to a child being able to articulate information** needed to inform their asylum claim. The changes therefore have the potential to be hugely unjust and to significantly discriminate against children and young people and other vulnerable groups.

Similar issues arise in relation to gender-based and honour-based violence. In general, this proposal has the potential to disadvantage the most vulnerable whereas those with more 'obvious' asylum claims based on political opinion or religious belief (who are largely adult males) will be better able to articulate their claims from the start.

Availability and quality of legal advice is highly relevant to this and, without increased investment in free legal advice which is linked to the development of a legal system that promotes high quality of advice provision, this suggestion will only result in individuals (particularly those who are more vulnerable by reason of age, sex, identity or health status) being removed to persecution or death.

Poor quality advice is a particular issue in detention and leads to: A) Late and unmeritorious claims being made by unscrupulous representatives B) People being forced to make late claims because it is only when they are threatened with removal that they can access legal aid and potentially instruct a solicitor with a proper understanding of Judicial Review.

The appeals process would be significantly more streamlined if Home Office decision making was better, and people were able to put their claims and expect to have them examined fairly. For example, citing Home Office statistics which are not referenced in the New Plan, the Migration Observatory reports that, between 2016 and 2018, 43% of appeals against initial decisions with known outcomes as of May 2020 were successful, which increased the grant rate of 36% at initial decision to 54% after appeal. Furthermore, for applications received in 2012 to 2018 with known outcomes as of May 2020, successful appeals increased success rates by between 12 and 20 percentage points each year[31].

The appeal success rate continues to increase – the New Plan mentions a 43% success rate[32], but more recent figures for the year ending June 2021 gives a 48% success rate. We believe this reflects the deterioration in the quality of initial decision making. The litigation on previous fast

[31] Walsh, PW (Dec 2020) Asylum and refugee resettlement in the UK briefing. The Migration Observatory

[32] https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2021/how-many-people-do-we-grant-asylum-or-protection-to

track procedures and attempts to remove appeal rights indicate the potential for unlawfulness and danger to individuals of an over-simplification leading to erroneous decisions in the interests of speed.

Introducing an expedited process for claims and appeals made from detention would be potentially unlawful. In essence, it is a new Detained Fast Track (DFT) which, in Detention Action v First Tier Tribunal (IAC), Upper Tribunal (IAC) and the Lord Chancellor [2015] EWHC 1689 (Admin), was found to be structurally unfair. This was followed by a Ministry of Justice consultation[33], after which the government invited the Tribunal Procedure Committee to consider new rules for an expedited appeals process. Following its consultation, the TPC decided not to introduce rules in relation to cases where an appellant is detained, highlighting in particular the need for any such system to have "rigorous procedural safeguards."[34]

7. Provision of evidence and credibility issues

7.1 The one-stop process

i. Government proposals

- A new 'one-stop' process will require people to raise all protection-related issues upfront and have these considered together and ahead of an appeal hearing where applicable. This includes grounds for asylum, human rights or referral as a potential victim of modern slavery
- Introduce new powers that will mean decision makers, including judges, should give minimal weight to evidence that a person brings after they have been through the 'one-stop' process, unless there is good reason

Clause 17 of the Nationality and Borders Bill gives the Home Secretary or an immigration officer the **power to serve an evidence notice on an asylum seeker requiring the recipient to provide, before the specified date, any evidence in support of the claim**. Where evidence is provided late, the individual must set out in a statement the reasons for doing so. Clause 18 creates a **principle that, if a person making an asylum or a human rights claim provides evidence late, or fails to act in good faith, this conduct shall be taken into account as damaging the claimant's credibility** by the decision-maker. During Commons Committee debates, Opposition MPs asked the government to disallow use of the notices for vulnerable groups, including children, and asked how the measure complies with the s.55 duty to promote and protect the welfare of children. The Minister responded that the Clause provides for "good reasons" why the evidence may be late, which remains undefined so that caseworkers have discretion both in the Bill and guidance as to what and how practical difficulties in providing evidence, and a claimant's vulnerabilities will be relevant.

Non-compliance with the evidence notice will create consequences **under Clause 25, which sets out that a decision-maker in an asylum or a human rights claim or appeal must have**

[33] Ministry of Justice (April 2017) Immigration & Asylum Appeals: the Government's response to its consultation on proposals to expedite appeals by immigration detainees.
[34] Ministry of Justice (April 2017) Immigration & Asylum Appeals: the Government's response to its consultation on proposals to expedite appeals by immigration detainees.

regard to the principle that evidence raised by the claimant late is given minimal weight, unless there are good reasons why the evidence was provided late. During Commons Committee debates, Opposition MPs noted: *"For people under 18, there are obvious reasons why their evidence may be late. It seems ridiculous that without amendment, the clause seriously suggests that we punish children by giving their evidence less weight if they cannot meet an arbitrary date."* The matter was argued again at Report stage. Both time, the Minister said these issues would be covered in guidance.

Similar measures to enable potential grounds to be a victim of modern slavery to be considered alongside a protection or human rights claim, ahead of any appeal hearing appear in Clause 57 through the issuing of a slavery or trafficking information notice. If the "relevant status information" (i.e. information relevant to the NRM making a reasonable grounds or conclusive grounds decision) is provided late, the individual must set out in a statement the reasons for doing so. During Commons Committee debates, Opposition MPs said the measure *"places a significant burden on victims to self-identify, to understand what information may be considered relevant and to provide full disclosure at the very early stages of having been identified as a potential victim of trafficking."* The Minister responded that safeguards will be built in, that individuals will have access to legal advice, and that further detail will be set out in guidance.

Clause 58 sets out the "damage to credibility" consequences of an individual's late compliance with the slavery or trafficking information notice. This measure thus creates an additional barrier to identification for persons who are subject to immigration control, despite the fact that identifying victims of trafficking is not an immigration matter but a safeguarding duty.

The Equality Impact Assessment notes that vulnerable people who have experienced discrimination, ill treatment, exploitation and other forms of persecution may find it more difficult: *"to disclose what has happened to them; to participate in proceedings; and to understand the consequences of non-compliance with legal requirements, such as: the consequences of not using a safe and legal route to come to the UK; the requirements of the one stop notice; and the appeals process",* and so experience indirect discrimination. The government propose to mitigate this through training of relevant staff.

What young people said

"A person that you see for the first time is completely a different experience that you see this person now and maybe you know that maybe you not going to see him anymore and you just telling him your story and you have in your mind that he is going to tell to everybody so it is going to be a shame on you. I didn't know that your solicitor is private that your story that you are sharing to him is going to be just confidant

between you and him. So it was really bad experience for me."[35]

"I was in the beginning I was so shy because I was grow up it was [a conservative area]. So in that place the lady doesn't have the right to speak, so whatever I was telling them I was shy to telling my story I was scared speak to a man, I didn't know what to tell him first and I didn't know who this person is and why I am in that place."[36]

"*When I first went to my solicitor I wasn't able to give all the details because the first meeting I had with my solicitor it was in English, my English it was not really good because I had just arrived in the UK. There was no interpreter there, I had to try and explain with my hands or with my words that I know all the things but when the second meeting was with the solicitor I was trying to tell the things in [my language] and the translator, I don't know if he had translated it in a good way, the way how I mean it, but I don't know, after, after when I get my file, after two years maybe, I recognise that some of the things it was missing there, so I keep telling more things and things and things, so I think this is a bad thing because when you keep telling more details I think they are not going to trust you because they say in the first time you didn't say all of these things and now you are giving these small details so maybe they are calling me liar."*[37]

"The interview basically asked sometimes very, very personal questions – you know I could not explain to them you know, it was really personal, asking some questions which, makes me feel, you know sometimes I feel very bad to tell them how my story was and everything."[38]

"Basically it was really hard for me because I was only 16 and to have that story in this age, it was like very, very difficult for me and to share with him, and sometimes I would be shy to

[35] Focus group with Shpresa Programme Immigration Champions on disclosing information to lawyers and the Home Office, November 2019
[36] Ibid
[37] Ibid
[38] Ibid

tell him – you know he was a man, and I was really shy to tell him, a man. I was – it was very difficult."[39]

ii. MiCLU's response

Proposed new 'one-stop' immigration processes requiring people to raise all protection-related issues 'upfront' (in the form of evidence notices and priority removal notices) fly in the face of any understanding of the human experience of trauma, abuse and child development. **Victims of trafficking often do not disclose their exploitation immediately; particularly children recounting abuse. Children are often too afraid and mistrusting to disclose their experiences at once and it is common for abusers to coach them with a story to tell authorities.**

We are concerned about any approach that requires applicants to provide an upfront account of their experiences and would, conversely, penalise anyone who makes late disclosures. The reasons why individuals make late disclosures are very varied. They include:

- Psychological barriers with avoidance being an integral component to PTSD diagnoses, which means that not speaking about traumatic events is what happens
- Shame associated with recounting traumatic experiences
- Experiences which may have happened when the applicant was a child
- Protecting oneself psychologically from the full impact of trauma while still facing insecurity.
- Poor quality legal representation or simply someone who didn't ask the right questions/took an approach that didn't lead to sufficient trust being built
- Poor quality of interpretation and/or fear of speaking about events in front of communities from applicants' own communities
- Being detained at the time of the claim
- The gender of legal rep/interpreters/interviewing officer etc.

Late disclosures are closely linked to trauma and the continuing impact of this is well-documented in psychological research papers.

We are very concerned about the inclusion of victims of modern slavery within this immigration proposal. **Identifying victims is not an immigration matter but a safeguarding matter.** Given the vulnerability of survivors of child trafficking and the need for a child protection response, identification of this abuse is entirely inappropriate within the immigration system.

7.2 Well-founded fear test

i. Government proposals

- Set a clearer and higher standard for testing whether an individual has a well-founded fear of persecution, consistent with the Refugee Convention

[39] Ibid

Clause 31 of the Nationality and Borders Bill sets out a two-stage test to be used by a relevant decision maker (persons, Courts or tribunals) when deciding whether an individual has a "well-founded fear" of persecution in accordance with the Refugee Convention. Under stage 1, the decision maker should determine whether the claimant has established that they have a characteristic which could cause them to fear persecution in their country of nationality or the country of their former habitual residence. This is assessed on the "balance of probabilities" standard, which is a higher standard of proof than the current test of "reasonable likelihood" which is used in assessing the risk of persecution in asylum claims. Should the first test be met, the decision maker must then consider whether the claimant may be persecuted if returned to their country of nationality or the country of their former habitual residence as a result of the reason established in stage 1 of the process, based on the "reasonable likelihood" test. **The government's proposed approach is one that was rejected by the Court of Appeal 21 years ago in the key case of Karanakaran v Secretary of State for the Home Department.**

Acknowledging concerns expressed by respondents to the consultation, the government has said it has taken note of the how the well-founded fear test may affect those who share protected characteristics. They have considered how to utilise training of and guidance for decision-makers to mitigate any differential impacts and ensure that these groups are adequately supported to evidence their claim to the relevant standard. During Commons Committee debates, the Minister insisted that the government's aim is to introduce create distinct stages that a decision maker must go through, with clearly articulated standards of proof for each – though Opposition MPs commented that it will do the opposite and increase confusion and inconsistency in decision-making.

ii. MiCLU's response

Article 1(A)(2) of the Refugee Convention defines "refugee" as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

We are not clear about the justification for this change. These issues are already defined in the Refugee Convention and it would seem more sensible to put further effort into improving the quality of Home Office decision-making since the statistics on appeals indicate that around 50% are allowed by the First-tier Tribunal[40]. In our experience, Home Office decision makers already apply a high threshold.

Child-specific persecution currently is poorly understood by Home Office caseworkers, and this change will exacerbate that and put more children at risk. Children themselves can be unaware that they have a well-founded fear of persecution. Child victims of trafficking who claim asylum already face considerable difficulty within the asylum system, often due to the complexity of their cases and lack of adequate legal advice, among other issues. Changes to the

[40] At the time of writing, the most recent Tribunal statistics indicated that 51% were allowed, including 52% of asylum/protection cases and 57% of human rights cases.
https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2021/tribunal-statistics-quarterly-january-to-march-2021#immigration-and-asylum

standard of proof would severely impact them, with the likely consequence that, in the absence of stability, many will be at significant risk of re-trafficking within the UK and further abuse and exploitation.

8. Legal advice and legal aid

i. Government proposals

- Provide more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims

The government response to the consultation noted an all-round recognition that the proposals to provide more generous access to legal advice will be effective. In recognition of concerns about legal aid, the government proposes to allow more flexibility in the number of hours and how they are used; and ensure payments are made at hourly rates to properly reflect the work that is done.

Clause 24 will bring recipients of a priority removal notice (introduced through Clauses 19-23 of the Bill) served to anyone who is liable for removal or liable for deportation within the scope of legal aid. Clause 56 and Clause 65 of the Nationality and Borders Bill adds specific measures to Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to bring appeals relating to age assessment, and advice on referral into the national referral mechanism (NRM), within the scope of legal aid.

During Commons Committee debates, Opposition MPs commented that the Clause 24 measures are for seven hours of legal aid to be available, arguing that this is insufficient. The Minister responded that the extension of provision under this Clause is estimated to cost an additional £4 million to £6 million in legal aid. During debates under both Clause 24 and 65, Opposition MPs urge the government to adopt a broader approach to legal aid, noting that, in England and Wales, 63% of the population do not have access to an immigration and asylum legal aid provider due to a lack of provision; and, where there are providers, many are operating beyond capacity. In relation to Clause 65, they argued that legal aid for potential victims of slavery and trafficking in the UK pre-NRM should not be limited to cases with existing immigration and asylum aspects.

What young people said

"You know I have changed three lawyers. So the first one… I was staying for three years with him – with her. And she – once I was sending her email to ask her what is going on with my case and she would reply in two weeks' or in three weeks' time. And after that she said 'alright you are done with me I can't do any more so I am going to leave the company', but you know

she didn't, she just wanted to put my case away. So I tried to find another one, and he said, he read my case, he read my interview of my case and he said 'you don't have any merit so you just have to pay.' So I left that one and I didn't go with that solicitor, I tried another one, and she just kept sending letter to the Home Office that are not in [my] bundle, so still I do not know what's in those letters. And I changed again, because they brought me a refusal letter and she said 'alright if your case doesn't have merit you have to pay."[41]

"You know, I couldn't trust him … I went to his office, and all he said to me was just sign here, he gave me a paper to sign, but I didn't know what the paper was, I just signed it, I don't know, when you have a situation like this, you don't really have a choice, so I just signed the paper and he start asking me the questions. … I didn't even know why did I need him, because he was a lawyer, cause where I came from, when you have a lawyer that means you've done something bad… I said "I've done nothing wrong so why do I need a lawyer?" … But I don't know, he never explained to me, how the system works and why do I have to tell him and everything."[42]

"He was asking questions the same as the Home Office [..] and I was just trying to answer it, he didn't help me at all, or [say] 'look – I know you are depressed or we can take a break', but he just wanted to finish so he could go home. [I didn't get to read through my story] he was just asking the question, put the story in there, and said 'alright just sign it right now and you can go.'"[43]

ii. MiCLU's response

We welcome the proposal to provide more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims – but only if account is taken to **improve the geographical spread of asylum advice, and the quality of the legal advice available**.

[41] Focus group with Shpresa Programme Immigration Champions on disclosing information to lawyers and the Home Office, November 2019. The young person in question was subsequently represented by a lawyer working within child-centred practice who was able to secure them protection.
[42] Ibid.
[43] Ibid.

Jo Wilding's report on the immigration legal aid market[44] demonstrated a market failure in asylum and immigration legal aid: not only are there legal aid advice deserts, but even in areas where there is a supply of providers they have limited or no capacity to take on new cases.

In addition to these general failings, our experience is that the situation is worse for asylum seeking children and young people. Sources of child-centred and child-specialist immigration and asylum advice are even fewer, and in general have very limited capacity to take on new cases.

The lack of child specific asylum advice results in children and young people receiving a service which is not adequate for their needs. Statistics available from the Legal Aid Agency's for their quality assurance Peer Review process support our view that **a significant proportion of legal aid immigration providers are providing advice and representation that is not competent**.

We believe that **the Ministry of Justice, in collaboration with the Home Office, should review the funding and provision of asylum and immigration legal advice to children and young people to put resources put into a 'Right First Time' approach** – this quality improvement exercise would lead to savings in legal aid costs, and reduce delays and costs associated with Home Office asylum claims and appeals.

9. Expert evidence

i. Government proposals

- Introduce a new system for creating a panel of preapproved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by parties

The Government has decided not to establish a panel of experts but intends to take forward work on the joint instruction of experts in immigration and asylum proceedings through proposing changes to the Tribunal Procedure Rules.

ii. MiCLU's response

MiCLU are concerned **that this proposal reduces both the pool and the diversity of available experts**. Those commissioned by MiCLU have expertise working with children and young people and are called upon to provide expert evidence on medical, country, social work or trafficking issues, and there is considerable variety in their areas of specialism within each of these fields. The value added by experts derives from the specificity of their knowledge on an issue rather than generalist knowledge which is likely already to be covered in the vast array of country of origin research materials that are available in the public domain.

The independence of experts is an established principle: the Civil Procedure Rules (CPR). The role and duties of experts are clearly defined also in Practice Directions issued by the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, and

[4444] Wilding, J (2020) Droughts and deserts: a report on the immigration legal aid market

various other guidance documents, e.g. the Istanbul Protocol and the Civil Justice Council *Guidance for the instruction of experts in civil claims*. Furthermore, the Courts have examined and clarified the role of experts, providing further instructions as to the role and remit of experts; e.g. *MOJ & Ors (Return to* Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) and JL (medical reports-credibility) China [2013] UKUT 00145 (IAC) to name but a few recent examples. It is therefore unclear what the proposal aims to achieve.

We are further concerned that such a proposal does not provide details as to the process in terms of how experts on the pre-approved panel will be selected, overseen, and how their independence will be assured.

10. Trafficking and modern slavery

i. Government proposals

- Clarify the definition of "public order grounds" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security

Under Clause 57, **the Bill establishes a procedure for 'slavery or trafficking information notices' to be issued to potential victims subject to immigration control.** These notices will be issued to seek further information needed to make trafficking determinations in the NRM. Victims must provide this information within a specified timeframe. During Commons Committee debates, Opposition MPs commented that the slavery and trafficking information notice *"places a significant burden on victims to self-identify, to understand what information may be considered relevant and to provide full disclosure at the very early stages of having been identified as a potential victim of trafficking."* **This measure creates an additional barrier to identification for persons who are subject to immigration control, despite the fact that identifying victims of trafficking is not an immigration matter but a safeguarding matter.** Furthermore, they exacerbate the risk that children's credibility will be damaged by not providing information within the set timeframe [please see the above section 7 'Provision of evidence and credibility issues']. The Minister responded that guidance to this section will include examples of 'good reasons' why potential victims may fail to comply with the notice, including the reference to the age when the exploitation took place. He also confirmed that the notice can cover information raised at both the reasonable grounds and conclusive grounds decisions stages.

The Bill increases the threshold for recognising that a person is a victim of trafficking (clause 59) from a consideration that they may be a victim to that they are a victim. This increase does not take into account the disclosure difficulties for victims and will decrease the protection that victims of trafficking need by directly resulting in a decrease in the number of victims identified. During Commons Committee debates, the Minister described the change in wording as 'minor'.

The Bill further establishes that victims who have been re-trafficked will no longer be entitled to support and protection. Clause 62 will disqualify from protection potential victims of modern slavery (i.e. those who have received a positive reasonable grounds decision) where the authority is satisfied that the person is either a threat to public order (having served a

custodial sentence of one year or more or specific crimes), or has claimed to be a trafficking victim in bad faith. That individual is no longer protected from removal from the UK. This has the potential to severely impact all trafficking survivors who are re-trafficked, and in particular children and young people, and is based on a fundamental misunderstanding of the nature of child trafficking and survivors' ongoing vulnerability to re-trafficking. During Commons Committee debates, Opposition MPs failed to remove child victims of trafficking from these new measures. The Minister responded that children's particular vulnerabilities will be taken into account on a case-by-case basis which will be set out in guidance.

We also note that **the standards for being granted leave at clause 64 are inappropriate for child victims**; these disregard the European Convention Against Trafficking (ECAT) to which the UK is bound and which clearly states that immigration leave must be granted in the child's best interest as the only standard. At Report stage, the Minister asserted that the measures will comply with the UK's international obligations.

What young people said

"When people are in difficult situations, they will do anything – they try to look for a job. When you tell people you have no right to work, they take advantage of you. You might get paid £5 or £10 day a day or a meal, it's like slavery."[45]

"I had 5 years waiting for a decision- the hardest thing is trying to stay out of trouble – we go school then college only 3 days a week – can't just stay at home – just 4 walls and a bed, makes you feel depressed. While I'm out I meet people, easy to hang out with wrong people, you don't care anymore, you end up fighting, police see you and do stop and search, then you have trouble with police. Even if you don't want to, there are different people outside waiting, you can't work, you have no money, they know your situation and they offer you. All I get is £45 a week, it's not enough. If I go to college I want to look like everyone else."[46]

"Friends ended up in prison, I came here for a safer life. I'm not much of a school guy, I want to work – but have nothing to do, [there are] people offering jobs to sell drugs, they make it seem so easy. If police catch you end up in prison."[47]

[45] Quotation from *Into the Arms of Traffickers Companion Guide - Voices of the Young People*. Christine Beddoe. October 2021
[46] Ibid
[47] Ibid

" . . . they are trying to – not discourage – but fight this illegal travel, but I think they are just making them raise their prices and someone who is desperate will sell their house and sell everything back home to feel 'at least I know my children are safe'."[48]

ii. MiCLU's response

The UK is a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). Article 13 provides for a recovery and reflection period to be given to potential victims of modern slavery for a minimum of 30 days, during which they are protected from removal. However, ECAT contains an exception "if grounds of public order prevent it or if it is found that victim status is being claimed improperly".

We regard this proposal as extremely concerning; **in cases involving children and young people, it could lead to miscarriages of justice**. In our experience, many criminal defence lawyers do not know about the statutory defence of slavery and advise clients to plead guilty. Overturning that whilst challenging a Deportation Order is an arduous process and one that is very much reliant on the client then being referred into the NRM, and a positive Conclusive Grounds decision obtained.

Our solicitors have represented applicants who are under 18 and are prosecuted for offences such as cannabis cultivation, and then age assessed as adults and so made subject to the adult sentencing regime. We have also been made aware of an increase in the numbers of county lines cases involving unaccompanied asylum-seeking children who are then recognised as victims of trafficking. **The issue here is whether the government wants to prioritise child protection or prosecution**.

Further issues compromising the identification and protection of victims of trafficking are introduced in the Nationality and Borders Bill and as such are detailed and discussed in the next section.

11. Going further – a right to work for asylum seekers

i. Government proposals

- Offer an enhanced integration package for refugees arriving in the UK through safe and legal routes
- Develop a package of tailored support such as language training, skills development and work placements to help refugees build their lives in the UK
- Review support for refugees to access employment in the UK through our points-based immigration system where they qualify

[48] Focus group with Shpresa Programme Immigration Champions on the Nationality and Borders Bill, September 2021.

The New Plan refugee integration measures do not require legislative change. In its response to the New Plan, the government committed to developing an enhanced integration support package for refugees and making funding available.

In its review of safe and legal routes, the government committed to starting a pilot in Autumn 2021 which aims to support access to work visas for highly skilled displaced people.

Opposition MPs tabled an amendment during Commons Committee calling for asylum seekers to be granted permission to work six months after submitting their asylum application. The government refused to consider this, saying that a right to work could act as a pull factor for irregular migration. The government has been reviewing asylum seekers' right to work in the UK since December 2018 and, on 8 December 2021 issued its response. *"In light of wider priorities to fix the broken asylum system, reduce pull factors to the UK, and ensure our policies do not encourage people to undercut the resident labour force, we are retaining our asylum seeker right to work policy with no further changes. Ultimately we must ensure asylum claims are considered without unnecessary delay. Our resources are therefore better deployed to pursuing an ongoing programme of transformation and system improvement initiatives that will speed up decision making, reducing the time individuals spend in the system awaiting an interview or decision."*[49] However, this point of view has been challenged by the government's Migration Advisory Committee which, in its own research on pull factors, found *"no correlation between access to the labour market and choice of country for asylum"*[50] and recommends the government re-review their policy in order to better support asylum seekers' integration into their local communities and UK society.

What young people said

"Every day my mind is only thinking what will happen to my life, I can't go back to my country because my life was in danger, that put me in depression. Now I can't do anything. If I had a decision 3 years ago, I would have been at university by now."[51]

"You want to be productive, you want to build a life."[52]

"I been here almost 5 years. The delays – you are put in a box, you can't go forward, you just wait for a brown envelope to be positive or not. You can't build anything, can't build a career. Staying 4 years in ESOL because you can't do anything. It puts you in a state of depression but even if you

[49] House of Commons Written Statement UIN HCWS452 (8 December 2021) Asylum policy.
[50] Migration Advisory Committee (2021) MAC Annual Report Dec 2021, p.31
[51] Quotation from *Into the Arms of Traffickers Companion Guide - Voices of the Young People*. Christine Beddoe. October 2021
[52] Ibid

get a decision you have to recover after – you want to dream."[53]

"You see all the people around you doing things. I've been diagnosed [with] anxiety and depression. Sometimes you're so fed up you don't want all this responsibly on our shoulders. When I came here, we were just kids and we just want to feel like every other kid. We don't want to be judged by the way we look, emotionally, physically, psychologically. It's affected how I look, I've changed a lot."[54]

"I have had 5 years in talking therapies. I don't want to make extra work for NHS – I want to work and contribute my taxes. Someone asks you what are you doing and you are forced to say you have no right to work….I am angry with people, but I manage it with tablets, I have had 5 years taking pills."[55]

"If you meet someone on the road and they say asylum seeker, they treat you different in a bad way. It's not a nice thing – it's really bad."[56]

"Being able to work, it benefits not just us but everyone in the country, we can pay taxes. It's a win-win, especially for our mental health."[57]

ii. MiCLU's response

In the New Plan there is reference to increasing the prospect of refugees who arrive through safe and legal routes to enter employment. We believe **this proposal does not go far enough – in common with the Lift the Ban coalition, we believe that asylum seekers who have been waiting six months or more for a decision on their claim should have permission to work.**

In General Comment no. 23 to the UN Convention on the Rights of the Child, the UN Committee stipulates that: *"All children in the context of international migration, irrespective of status, shall have full access to all levels and all aspects of education, including early childhood education and vocational training, on the basis of equality with nationals of the country where those children are living."* In the UK, government policy is that children between the ages of 16 (school leaving age) and 18 are expected to participate in some form of education or training.

[53] Ibid
[54] Ibid
[55] Ibid
[56] Ibid
[57] Ibid

The local authority acting as the child's corporate parent is responsible for ensuring that unaccompanied asylum-seeking 16 and 17- year-olds are given a 'suitable offer' to continue their education.

Home Office policy is that unaccompanied asylum-seeking children are able *"to take part in work experience placements or training if that forms part of their education."* However, in practice, one in three 16-18-year-old UASC may not be enrolled in any educational institution. Moreover, that permission to take part in work placements effectively ceases when the young person reaches age 18. We have found that **colleges and work-based training providers refuse to allow young asylum seekers to advance beyond entry level vocational courses because the higher level courses have a substantive employer-led and work-based training element.** That refusal is a direct result of adult asylum seekers not being permitted to work whilst awaiting the outcome of their application.

In relation to children and young people the following issues arise:

- Lengthy delays in trafficking or asylum decision-making puts a displaced child's life on hold, adding to their feelings of vulnerability and insecurity and, ultimately, making it harder to integrate successfully in the UK.
- For those with mental health problems the insecurity prevents them engaging with treatment and beginning to heal.
- Delays in the asylum system mean that people who were relatively fit and healthy are broken by the system and exit after 3 or 4 years unable to undertake work, even though when they entered the system they would have been work-ready
- Lack of permission to work prevents asylum seeking young people from being able to plan for their future and feel able to realise their ambitions as they are not provided with support to enter employment because their status prevents them from doing so
- Delays endemic to domestic asylum and immigration policies and procedures, combined with asylum seekers not having permission to work whilst awaiting the outcome of their applications, increase their risk of being trafficked, re-trafficked and exploited Looking at wider support needs, there is no focus given on the type of accommodation and support to be provided to those who cannot work (yet), and particularly children, whether in families or unaccompanied.

We would add education and training to the list. However, we also believe that any package of support should be available to those granted refugee status, Humanitarian Protection and the temporary protection status, as well as asylum seekers who wait for more than 6 months for their asylum decision.

12. Further reading

Read more about the potential impact of the bill here:

ECPAT - Nationality and Borders Bill: Second Reading Briefing:
https://www.ecpat.org.uk/nationality-and-borders-bill-second-reading-briefing

Joint submission by the European Network on Statelessness (ENS), the Project for the Registration of Children as British Citizens (PRCBC), and Amnesty International UK concerns Clause 9 (Stateless Minors) of Part 1 (Nationality) of the Nationality & Borders Bill (NBB): https://www.statelessness.eu/updates/publications/joint-submission-uk-house-commons-public-bill-committee-nationality-borders

PRCBC and Amnesty International: Nationality and Borders Bill Part 1 (Nationality) House of Lords Second Reading: https://www.amnesty.org.uk/files/2021-12/NBB%20BriefingFINAL16Dec2021_0.pdf?VersionId=T59HzT3APxIQtovo04eeZX6ixkfnAO6h

Matrix Chambers joint legal opinion on the Nationality and Borders Bill – October 2021 https://www.freedomfromtorture.org/sites/default/files/2021-10/Joint%20Opinion%2C%20Nationality%20and%20Borders%20Bill%2C%20October%202021.pdf

REUK's response to the Nationality and Borders Bill July 2021: https://02c53844-21e1-4850-80b2-9464608e515f.filesusr.com/ugd/d5aa55_aa3be30bad4e4fb1b91662c87d7a2fef.pdf

UNHCR Legal Observations on the Nationality and Borders Bill - October 2021 https://www.unhcr.org/publications/legal/615ff04d4/unhcr-legal-observations-nationality-and-borders-bill-oct-2021.html

UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom May 2021: https://www.unhcr.org/uk/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk

Justright Scotland - New plan for immigration consultation: Our response: https://www.justrightscotland.org.uk/wp-content/uploads/2021/05/210506-New-Plan-for-Immigration-JustRight-Scotland.pdf

Follow the parliamentary debates through this gateway page: https://bills.parliament.uk/bills/3023

The UK Government has published a series of 'factsheets' to different sections of the Bill: https://www.gov.uk/government/collections/the-nationality-and-borders-bill