

To - Children, Young People and Education Committee, & Equality and Social Justice Committee

Submitted by Children in Wales

Legislative Consent Memorandum for the UK Government's Illegal Migration Bill

Introduction

We welcome the opportunity to contribute comments to inform the joint Equality and Social Justice, and Children, Young People and Education Committees scrutiny of the Legislative Consent Memorandum for the UK Government's Illegal Migration Bill.

We note that the Committees are not considering the merits or otherwise of the Bill at this point in time, and have requested comments on the specific provisions that require consent of the Senedd. These pertain to Clauses 19 and 20 of the Bill.

To inform our response, we have taken account of the content of the Legislative Consent Memorandum as laid by the Welsh Government; representation made by the Wales UNCRC Monitoring Group to the UN Committee on the Rights of the Child, and our engagement with statements and position papers released by a broad range of UK children and human rights organisations and multi-agency coalitions with expertise in this policy area.

Consistent with our mandate, our response is principally focused on Children's Rights and the implementation of the United Nations Convention on the Rights of the Child (UNCRC), alongside our involvement in the facilitation of the [Wales UNCRC Monitoring Group](#).

Questions & Responses

A very brief overview of your view of the Bill

We share the concerns expressed by the UN Committee on the Rights of the Child in their Concluding Observations (recommendations) to the UK and devolved Governments published on the 2nd June 2023 in respect of -

"The potential impact of the Illegal Migration Bill on children, which includes a ban on the right to claim asylum, allows for the prolonged detention and removal of children, creates barriers for acquiring nationality, and lacks a consideration of the principle of the best interests of the child" (pp18)

In our [recent briefing](#) to the UN Committee on behalf of the Wales UNCRC Monitoring Group to inform their examination of the UK and devolved government progress in implementing the UNCRC, we reinforced the widespread concern and profound uncertainty expressed by human rights organisations and [refugee coalitions](#) regarding the impact of the Bill on the lives of vulnerable children seeking safety, sanctuary and refuge across the UK, and the lack of [pre-legislative scrutiny of the Bill](#). The Bill as proposed, will deny both accompanied and unaccompanied children who arrive irregularly the right to seek asylum (clause 4), and provide UK ministers with the power to remove children when they reach the age of 18 (clauses 2 & 3).

We share the concerns expressed by Commissioners, the United Nations, human rights organisations and refugee coalitions surrounding the content and narrative of the proposals. For example,

- the Children's Commissioner for Wales has described the Bill as being unacceptable and a clear breach of human rights obligations, [calling upon](#) the Welsh Government to provide robust challenge.
- The Council of Europe Commissioner for Human Rights has [expressed concerns](#) that that the Bill will result in significant regression of the protection of the human rights of asylum seekers.
- The UN High Commissioner for Human Rights [said](#) "We have very serious concerns from an international refugee law and from an international human rights law perspective, because it (the bill) would essentially bar people from seeking asylum in the UK if they come through a certain way"

**Any concerns you may have in respect of the impact the Bill would have on:
`separated asylum seeking children in Wales, including whether you have any concerns about existing arrangements for these children; and**

Any anticipated implications of the Bill on the assessment of needs and provision of care and support under the Social Services and Well-being (Wales) Act 2014;

Children seeking asylum, especially those unaccompanied and separated (UASC), are extremely vulnerable, often at greater risk of exploitation, abuse, gender based violence and trafficking. Many will have experienced trauma, been victims of criminal exploitation and will require specialist interventions and support upon arrival in Wales.

Presently, there is an alarming lack of clarity as to where children will be accommodated and what level of 'care' will be provided whilst accommodated, firstly as they await

transfer to a local authority setting after arrival, and secondly, when placed in a local setting pending removal from the UK. It is unclear as to the type and standard of accommodation which is to be provided to children transferred to Wales pending removal from the UK, and the assessment process which is to be followed. As Wales does not have an independent professional guardianship system for UASC (unlike Scotland), it is also unclear how they will get their voices heard and be adequately legally represented.

Children's social service functions delivered by Welsh local authorities are subject to the due regard duty to the UNCRC under Part 1 of the [Social Services and Well-being \(Wales\) Act 2014](#). All persons determined to be children should be granted 'looked after' status, and following an assessment of need, should have access to a range of care and support services from local authorities to aid recovery and the wider statutory entitlements that their status offers, including independent advocacy arrangements. This extends to the added safeguards and protections the UNCRC provides, including the requirement that all decisions made by professionals are always made in the child's best interest.

The Bill does not provide the necessary assurances that children arriving by boats to the UK and subsequently dispersed should and will be subject to robust assessments of need arrangements guided by the best interest of the child principle, or receive the same level of care, support and protection as is currently provided to other UASC through existing Welsh statutory arrangements.

We would not wish to see children denied the care, support and protection they should receive under Welsh law and international conventions, or the creation of a two-tier support and accommodation system, and the significant risk of vulnerable unaccompanied children then being exploited, abducted or going missing from unregulated and wholly inappropriate accommodation, such as hotels.

Whether the Bill is compatible with the Rights of Children and Young Persons (Wales) Measure 2011, including what impact it would have on the 'Child First, Migration Second approach' which underpins the delivery of support to child asylum seekers in Wales.

Wales has shown a clear commitment to safeguarding and furthering children's rights since the inception of the Senedd, with early policy and guidance from Welsh Government testimony to this. The Rights of Children and Young Persons (Wales) Measure 2011 requires Welsh Government to pay due regard to the UNCRC when exercising any their functions, with arrangements clearly set out in the Children's Scheme and an expectation that comprehensive Child Rights Impact Assessment (CRIA) are undertaken and published on decisions which will have an impact on children.

We do not see how the Bill is compatible with the principles of the Measure or the current activity underway in Wales led by a legislative options group overseen by the Welsh

Government to explore further incorporation of the UNCRC and to further children's rights in Wales.

Wales has a proud tradition of taking a 'child first, migrant second' approach and in welcoming refugees and asylum seekers, recognising the valuable contributions they make to our society and to offer safety and security for UASC wherever they have travelled from and by whichever means. This approach is embedded throughout policy in Wales and compatible with the principles of the UNCRC and [General Comment No 6](#) – Treatment of unaccompanied and separated children outside their country of origin. The vision of Wales as a Nation of Sanctuary is to be commended and forms a key strand of the Welsh Governments current Programme for Government, with the [Nation of Sanctuary Plan](#) being endorsed by the UN's High Commissioner for Refugees.

The Bill in its current form runs counter to this approach and has been accused of severely undermining this vision.

Any concerns you may have relating to the Bill and compatibility with Convention rights.

Article 1 of the UNCRC ensures that every child under 18 is entitled to all of the rights as prescribed regardless of their characteristics and circumstances.

Much has however been written in respect of the threat to the rights of children, and the incompatibility of the Bill to obligations as set out in the UNCRC (including the more detailed UNCRC [General Comment No 6](#) – Treatment of unaccompanied and separated children outside their country of origin); the 1951 UN Refugee Convention and the European Convention on Human Rights. There has been widespread concern following the second reading in Westminster regarding any assurances that the Bill is compatible with the European Convention in Human Rights.

In the recent state party examination by the UN Committee of the UK and devolved Governments progress in implementing the UNCRC (18-19 May), one of the Committee members asked UK officials if the Illegal Migration Bill is indeed 'legal', and expressed profound concern with the proposals and their compatibility with the UK Government obligation towards all children. In their set of recommendations (Concluding Observations) published on 2nd June, they called for the Government to -

"Urgently amend the Illegal Migration Bill to repeal all draft provisions that would have the effect of violating children's rights under the Convention and the CRC/C/GBR/CO/6-7 19 1951 Refugee Convention, and bring the Bill in line with the State party's obligations under international human rights law to ensure children's right to nationality, to seek asylum and to have their best interests taken as a primary consideration, as well as to prevent their prolonged detention and removal" ([pp18-19](#))

We await Governments response to the UN Committee's call.

All acts of parliament should be fully compliance with the Articles and key principles of the UNCRC, including non-discrimination (Article 2), best interest (Article 3), protection (Article 19) and participation (Article 12).

We are not aware of any [Child Rights Impact Assessment](#) having been developed or published by the UK Government in respect of this Bill, or any involvement of children and young people in the decision making process or during the detailed drafting.

Conclusion

The Bill as currently introduced should not progress in its present format, and should be significantly amended to ensure that it is fully compatible with international obligations and domestic Welsh law which incorporates the UNCRC and fully adheres to the best interest of the child principle.

A CRIA should be urgently undertaken, published and subject to periodic review to demonstrate compliance with the UNCRC and to safeguard from any regression of existing rights entitlements and protections.

Depending on whether amendments are to be made to the current Bill, the Welsh Government may be required to introduce protective measures to mitigate any negative impact on vulnerable children, and to engage with the UK Government in respect of the implications of many strands applying in Wales to children as discussed above.

NB This response is written from a policy, not a legal perspective.