

Ymateb gan Comisiynydd Plant Cymru
Response from Children's Commissioner for Wales

To: Jayne Bryant, Chair,
Children and Young
People Committee

Jenny Rathbone MS,
Chair, Equality and
Social Justice
Committee

Senedd Cymru

Via email only

8th June 2023

Dear Chairs,

Thank you for your letter dated 22nd May concerning the UK Government's Illegal Migration Bill ("the Bill").

I am deeply concerned by the Illegal Migration Bill and the impact it would have on children should it be enacted. This Bill has the potential to significantly undermine the safeguards in place to protect children, and the endeavours by Welsh Government to be a Nation of Sanctuary. By enacting the Bill as it currently stands the UK would be in breach of international treaties including the UN Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR) and the Convention and Protocol relating to the status of refugees (the Refugee Convention 1951).

The implications of this Bill on children's rights would be significant and wide-ranging, failing to recognise the universal basis of the UNCRC and violating the right to protection for children in vulnerable circumstances. Specifically, article 22 of the Convention states:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Implications of the Bill

As this Bill sits within the remit of my counterpart in England, as you'd rightly expect, my office has been in close contact with Dame Rachel de Souza's team during this period, offering advice and support. Here I set out what I see as some of the key implications of the Bill on affected children in Wales:



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As set out in section 19 of the Bill, section 15 to 18 regarding unaccompanied asylum seekers will apply to Wales. I have significant concerns regarding the provisions set out within this Bill and the implications this will have on children and their rights. In a recent [briefing](#), the Children's Commissioner for England highlights concerns relating to section 15 and 16 of the Bill. This briefing details issues from a children's rights perspective and reflects on the situation of children being accommodated in Home Office accommodation since 2021. My office has worked with my counterparts in England, Scotland and Northern Ireland in preparing this briefing, and it reflects my concerns regarding the safety of children in these accommodations and the impact it will have on access to their rights as set out within the UNCRC.

Given the concerns my counterpart in England has raised regarding the standard of safeguarding in Home Office Hotel accommodation for children, I am particularly worried about the proposed powers of the Secretary of State to cease local authority care and make arrangements for a child reside in accommodation for unaccompanied migrant children. The quality of care must be considered and children must have access to their rights within all settings. Explicitly, this allows for asylum seeking children to be treated differently to others under local authority care, placing their 'looked-after' status at risk, breaching article 22 of the UNCRC. Article 22 states that 'the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason...'. Children who are seeking asylum are entitled to all rights set out within the UNCRC.

The proposal for the Home Office to be provided with the power to accommodate children, and to direct a looked after child to be returned to Home Office accommodation is deeply troubling. You'll be aware that local authorities here in Wales have a duty under the Social Services and Wellbeing Act to carry out a needs assessment. If a child is not placed with the local authority but with the Home Office, this duty will not apply. Again this in direct conflict with Article 22 of the UNCRC.

After meeting with unaccompanied Asylum Seekers being cared for by local authorities in Wales, I have recently raised a range of concerns with Welsh Government including access to education, mental health support and suitable accommodation. It is feared that the implementation of this Bill, as it stands, would exacerbate these issues and have a negative impact on children in accessing their rights. During my time as Commissioner, I have met unaccompanied asylum seeking children living independently, in hotels. This reflects the wider and ongoing issues regarding social care and a lack of suitable accommodation, particularly for those young people aged 16 and over,

who are approaching the milestone of leaving care. It is important that all children young people are able to access a safe, registered caring environment, which promotes a children's rights approach.

The Bill is a threat to existing devolved legislation and the powers and duties of the Welsh devolved Government, local authorities, and public bodies. The Rights of Children and Young Persons (Wales) Measure (2011) places a duty on Welsh Ministers to pay due regard to children's rights as set out within the UNCRC. This includes local authorities' duty to assess and address children's support and accommodation needs, regardless of their immigration status. The Bill would also undermine this existing legislation, violating children's rights and conflict with Welsh Government's Nation of Sanctuary commitments as set out in the *Nation of Sanctuary – Refugee and Asylum Seeker Plan* (2019).

Wales' 'Child First, Migration Second approach' promotes a children's rights approach to the delivery of support to children seeking asylum in Wales - this Bill would entirely undermine this delivery model.

The UN Committee on the Rights of the Child published its [Concluding Observations](#) on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland last week. Included with that work are several areas that need 'urgent measures', including asylum-seeking, refugee and migrant children and it goes on to raise specific concerns about the Bill. I append the relevant recommendations to the UK State Party to this letter.

I trust the above will be of use in your deliberations. Please do not hesitate to reach out if you need us to expand further on any of the points raised.

Yours sincerely,

Rocio Cifuentes MBE
Children's Commissioner for Wales

Appendix: UN Committee on the Rights of the Child - Concluding observations on the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland

The Committee is deeply concerned about:

- a) Restrictions to the rights of asylum and family reunification, the criminalization of arrival without prior permission and the introduction of a two-tiered system for identifying refugee children, under the Nationality and Borders Act of 2022;*
- b) 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;*
- c) The persistent use of unreliable methods for determining a child's age, the large number of children whose age has been disputed, and the lack of data on the number of asylum-seekers claiming to be children who have been assessed and sometimes detained as adults by immigration officials. 50.*

With reference to joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration, the Committee urges the State party to:

- a) 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 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;*
- b) Amend the Nationality and Borders Act to abolish the designation of "Group 2" status to certain groups of refugee children, and ensure that all asylum seeking and refugee children, including unaccompanied children, are not criminalized and have access to necessary support and services;*
- c) Review and strengthen the asylum process to ensure that children receive age-appropriate information and legal advice about their rights, asylum procedures and requirements for documentation; that their best interests are given primary consideration in all asylum processes; that*

- their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies;*
- d) Strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health services, housing, psychosocial support, and social protection including benefit entitlements;*
 - e) Put an end to the use of unreliable and invasive procedures for determining a child's age; develop an age determination procedure that is child- and gender-sensitive, includes multidisciplinary assessments conducted by relevant professionals of the child's maturity and level of development, and respects the legal principle of the benefit of the doubt; and ensure that children have access to legal advice throughout the process and, if necessary, can challenge the outcome of such assessments;*
 - f) Ensure that children and age-disputed children are not removed to a third country;*
 - g) Develop a consistent, statutory system of independent guardianship for all unaccompanied children, and ensure that all unaccompanied children throughout all jurisdictions of the State party are promptly identified and appointed a professionally trained guardian;*
 - h) Review its system of family reunification involving unaccompanied children, with a view to ensuring that children have an unqualified right to apply for family reunification and that applications are considered in a consistent, expeditious and child rights-based approach, and that the best interests of the child are a primary consideration in all related decisions.*