

Ymateb gan Gwasanaeth Eiriolaeth Ieuenctid Cenedlaethol Cymru  
Response from National Youth Advocacy Service

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**Illegal Migration Bill – NYAS Cymru letter to Committee Chairs**

Dear Jenny and Jayne,

1<sup>st</sup> June 2023

To inform the Committees' consideration of the Legislative Consent Memorandum, please find NYAS Cymru's written evidence regarding our views on the issue of legislative consent below.

**Overall views**

NYAS Cymru work to protect, support, empower and safeguard every child and young person who we come into contact with. We support the Welsh Government's 'Child First, Migration Second approach' and have worked to improve the 'asylum journey' for unaccompanied asylum-seeking children in Wales through our ['Place of Safety'](#) campaign.

Through our 'Place of Safety' campaign, NYAS Cymru has been instrumental in working with the Welsh Government to strengthen guidance to provide clarification with respect to the appropriate adult role. Guidance focuses on how the role should be independent to protect and advance the rights of children and young people seeking a place of safety.

NYAS Cymru offers an appropriate adult service in Cardiff for unaccompanied children arriving in the UK to claim asylum. Appropriate adults support children and young people during age assessments by making sure they understand what their rights are and what will happen during the age assessment process. As one of our appropriate adults said in relation to support for asylum-seeking children: "If they haven't got the right people, then it starts to fall down."

NYAS Cymru believes the Illegal Migration Bill to be inhumane and in clear breach of the rights of unaccompanied asylum-seeking children and young people. The Bill threatens the Welsh Government's standing as 'nation of sanctuary' for unaccompanied asylum-seeking children to feel safe and supported where they live. We stand alongside other UK children's charities who voiced their opposition in a [joint statement](#) to the Illegal Migration Bill in March 2023.

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## **Concerns of the impact the Bill on unaccompanied asylum-seeking children in Wales**

### Clauses 15 to 20 – provision of accommodation for unaccompanied children

Clauses 15 to 20 are the UK Government's attempt to legalise the temporary accommodation of unaccompanied children in hotels outside the care system, which has been Home Office practice since July 2021. Instead of connecting unaccompanied asylum-seeking children with the "right people", these clauses would separate children from the adults who can help them and send many straight into the hands of traffickers.

NYAS Cymru has long been campaigning for a 'do no harm' principle that extends across agencies to recognise and reduce the likelihood of traumatising or retraumatising young people with certain policies and decision-making. As not much is known about the suitability, location, or inspections of the proposed accommodation children would be housed in while awaiting transfer or removal, it is likely that living here would do young people harm.

A worrying number of unaccompanied asylum-seeking children and young people have gone missing from Home Office-run hotels, with many of them still missing. NYAS Cymru appropriate adults have reported that there is no oversight in much of the accommodation for unaccompanied asylum-seeking children housed together when awaiting their age assessments.

Some staff working in these hotels have not even been DBS checked. With reports of emotional abuse of children within hotels by subcontracted Home Office staff, NYAS Cymru is deeply concerned that children may be retraumatised after coming to Wales as a 'nation of sanctuary'.

Clause 15 enables the Secretary of State to ask a third party to provide accommodation for unaccompanied asylum-seeking children and young people from where they are currently accommodated and cared for. This raises serious concerns in respect to the standards of care and experience of staff who will be looking after these children and young people.

Many unaccompanied asylum-seeking children and young people arrive in Wales after experiencing traumatic events and losses, and have the right to be protected from violence (Article 19) and to special protection and help (Article 22) under the UN Convention on the Rights of the Child (UNCRC). With no time limit or particular standards of accommodation specified within Clause 15, children and young people who have faced extreme instability and trauma would be left without care and special protection.

The Home Office wishes to create a two-tier system of care for unaccompanied asylum-children, depriving them of the vital support they are entitled to. As the Home Office has consistently proven itself to be an unfit corporate parent, NYAS Cymru strongly believes that

their role in running accommodation for children must not be formalised.

#### Clause 19 – extension to Wales, Scotland, and Northern Ireland

Clause 19 (to enable the Secretary of State to extend clauses 15 to 18 to Wales without the consent of Welsh Ministers of Senedd Cymru) undermines the Welsh Government's 'Child First, Migration Second approach' and positioning as a nation of sanctuary.

Any attempt by the UK Government to undermine the Senedd's legislative competence would undercut the role of local authorities to make best interest decisions for the care-experienced children they are corporate parents to.

#### **Social Services and Well-being (Wales) Act 2014**

Part 6 of the Social Services and Well-being (Wales) Act 2014 provides that unaccompanied asylum-seeking children are treated as looked-after children. This means that local authorities automatically assume a corporate parenting responsibility for unaccompanied asylum-seeking children.

Clause 16 (to allow the Secretary of State to direct a local authority to take an unaccompanied child into care, to direct a local authority to return a child to Home Office accommodation, and vice versa) undermines the Social Services and Wellbeing Act. Giving powers to the Secretary of State to decide that a local authority must cease providing accommodation for an asylum-seeking child would override the local authority's role as their corporate parent and their status as a looked after child.

The Illegal Migration Bill would therefore create a two-tier system of care and deprive children of the care and support they deserve.

#### **Rights of Children and Young Persons (Wales) Measure 2011**

The Bill is incompatible with the devolved context in relation to the Rights of Children and Young Persons (Wales) Measure 2011.

The due regard duty established by the 2011 Measure requires Welsh Ministers to make balanced and informed decisions with reference to the UNCRC. Children Right's Impact Assessments (CRIA) are often used as a tool to determine a Bill's impact on children's rights.

No Child Rights Impact Assessment has been undertaken in relation to how the Bill will impact children's rights by the UK Government. The Illegal Migration Bill would however unambiguously fail Welsh Ministers' criteria for the Bill if passed, as these children will be stripped of their fundamental rights to protection and safety.

#### **UN Convention on the Rights of the Child**

In all actions concerning children, States should be guided by the overarching principles of non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right of the child to be listened to and taken seriously (Article 12).

The Bill fails to be child-centred and UK Government have not announced plans as for whether they plan to consult with children and young people with lived experience. NYAS Cymru believes that the following UNCRC rights will be incompatible with the Bill:

- Article 3: The best interests of children and young people should be thought about at all levels of society.
- Article 6: All children and young people have the right to survive and the right to develop.
- Article 12: Children and young people have the right to be listened to and taken seriously:
- Article 19: Children and young people have the right to be protected from violence, just like everybody else.
- Article 20: Children and young people have the right to special protection and help if they can't live with their family.
- Article 22: Children and young people who are refugees have the right to special protection and help.
- Article 39: I have the right to get help if I have been hurt, neglected or badly treated.
- Article 27: Children and young people should be able to have the food and housing they need to reach their full potential.

NYAS Cymru strongly opposes the Bill in its entirety as if passed, the fundamental rights and entitlements of unaccompanied asylum-seeking children would be breached.

As a leading children's rights charity who supports unaccompanied asylum-seeking children, we extend our support to the Welsh Government if they move to refuse consent on the Bill in relation to these provisions.

Best regards,