

The Border Security, Asylum and Immigration Bill: the issue of legislative consent

Evidence submitted by the Bevan Foundation to the Children, Young People, and Education Committee as they consider their response to the Legislative Consent Memorandum laid in respect of the Border Security, Asylum and Immigration Bill (referred to below as 'the Bill').

Our response focuses on the Committee's request for views on the following:

- the Bill in general;
- the remaining provisions in the Illegal Migration Act 2023, including any concerns about existing arrangements for unaccompanied children;
- 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; and
- Clause 51, which provides retrospective statutory authority for fees charged in connection with the following three services provided by a third-party supplier on behalf of the Home Office and the Department for Education (DfE): The Home Office Visas and Nationality Service; The DfE UK European Network of Information Centres Services (the UK ENIC Service); and the non-UK Early Years Qualifications Recognition Service.

Key points

- The bill repeals key provisions in the Illegal Migration Act that allowed for the increased detention of children, the creation of a two-tier system for the accommodation of children, and the penalisation of children for refusing scientific age assessment. This is a positive step for children in Wales and removes key provisions which were inconsistent with the Rights of Children and Young Persons (Wales) Measure 2011 and the "child first, migration second" approach.
- The Bill builds on an existing statutory framework that poses significant risks to children. It introduces new criminal charges and does not contain adequate safeguards for children. It therefore runs counter to the vision of Wales as a Nation of Sanctuary and challenges the "child first, migration second" approach that underpins the delivery of support to asylum-seeking children in Wales.
- The Bill retains and builds on legislation that diminishes judicial oversight of detention, criminalises seeking asylum, and reduces trafficking and modern slavery protections. Such legislation is not compatible with the international obligations of the UK, and Wales as a devolved government, under the 1951 UN Refugee Convention, the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (UNCRC), and the Council of Europe Convention on Action Against Trafficking in Human Beings.

Evidence

1. Overview: our view of the Bill

- 1.1 The Border Security, Asylum and Immigration Bill aims to improve the investigation and detection of immigration crime, serious and organised crime, to deter irregular migration to the UK and reduce small boat crossings in the Channel, and to strengthen the UK's immigration and asylum system, rebuilding public confidence.
- 1.2 The Bill creates a new border security agency and introduces a framework of new and enhanced powers and offences in an attempt to achieve the above.
- 1.3 The Bill repeals the Safety of Rwanda (Immigration and Asylum) Act 2024 (IMA) in its entirety. This is a welcome and progressive step.
- 1.4 The Bill repeals key provisions of the Illegal Migration Act 2023, including:
 - child detention powers contained in Section 11 of the IMA but not yet enacted (Unaccompanied Children can still be detained for 24 hours in airport and short-term facilities and families for 72 hours or a week if authorised by the Minister – Immigration Act 2014);
 - accommodation of unaccompanied children by the Home Office (found to be unlawful) and removal from local authority care;
 - provisions within the IMA for penalising children for refusing age assessments (age assessment provisions and accompanying safeguarding risks within the Nationality and Borders Act 2022 remain);
- 1.5 The Bill stops short of repealing all of the provisions in the IMA which are harmful to children. It retains provisions within the Nationality and Borders Act 2022 which are harmful to children.
- 1.6 New powers and criminal offences introduced by the Bill are potentially harmful to children. These risk criminalising children and increasing the numbers of children wrongly sent to adult prisons.
- 1.7 While the Bevan Foundation welcomes the repeal of the damaging and unlawful Safety of Rwanda (Immigration and Asylum) Act 2024 and the repeal of most of the Illegal Migration Act 2023, we are concerned that the government has chosen to retain aspects of the Illegal Migration Act 2023 and the Nationality and Borders Act 2022 that are harmful to children, that risk criminalising refugees, including children, and which undermine the 'child first, migrant second' approach which underpins the delivery of support to children seeking asylum in Wales.

2. Remaining provisions in the Illegal Migration Act 2023 and concerns about existing arrangements for Unaccompanied Children

- 2.1 The Bill retains the IMA's addition of new countries to the "white list" from which asylum and human rights claims are inadmissible (Section 59). This allows for the continued blanket refusal of asylum claims from these countries rather than assessing claims on their merits. Concerns have been expressed by UNHCR about the inclusion of Albania on this listⁱ. Although Unaccompanied Children are exempt from inadmissibility action, this is not adequately confirmed in guidance and exists within a system that frequently mistakenly treats children as adults.
- 2.2 Section 57 of the IMA (direct refoulement) raises concerns about the safety of children, particularly where they are wrongly treated as adults. Direct refoulement allows for people seeking asylum to be removed without individual consideration of whether it would be safe or reasonable to do so and with very limited opportunity to present evidence of the risks facedⁱⁱ. Where cases are judged inadmissible, there is limited opportunity for fair age assessment and is an increased risk of incorrect assessment.

3. Compatibility with the Rights of Children and Young Persons (Wales) Measure 2011

- 3.1 The Bevan Foundation is of the view that the Bill leaves in place legislation which is incompatible with the Rights of Children and Young Persons (Wales) Measure 2011, and that it introduces new powers and offences which build on existing legislation to undermine the rights of children in Wales.
- 3.2 The Bill retains the public order disqualification for trafficking and modern slavery protection within the IMA. This expands on provisions in the Nationality and Borders Act and imposes a disqualification from trafficking or modern slavery protection if a person has served custodial sentences of more than a year or been prosecuted for certain offences. This raises concerns about compatibility with international law.
- 3.3 The undermining of trafficking and modern slavery protections is concerning for children who have been criminally exploited. A report by the Independent Anti-Slavery Commissioner and ECPAT in 2024 noted that "65% of all disqualified potential victims exploited as children were acknowledged as having an element of criminal exploitation in their case"ⁱⁱⁱ
- 3.4 The Bill also retains the application of age assessment provisions and the application of modern slavery provisions set out in the Nationality and Borders Act 2022. Scientific age assessment introduced in the Nationality and Borders Act 2022 is not repealed.

- 3.5 The Bill expands on existing criminal offences under immigration law (Clauses 13 to 36). These include supplying or handling “articles for use in immigration crime” which attracts a sentence of up to 14 years. The broad-ranging definition of such articles and the lack of specificity about where such offences might be committed or by whom, leaves children open to criminalisation merely for seeking asylum or assisting someone to seek asylum.
- 3.6 There is evidence that children are currently wrongly treated as adults within the immigration system and that some face criminal charges and are detained for offences such as facilitation or smuggling after being forced to steer a boat. The Bill adds to these concerns by failing to restore full judicial oversight of detention.
- 3.7 Serious concerns remain in relation to existing arrangements for Unaccompanied Children. It is imperative that Wales bolsters protection for such children by introducing a Guardianship Scheme in line with the model operated in Scotland^{iv}.
- 3.8 The Bill sits within a legislative framework that is not compatible with the Rights of Children and Young Persons (Wales) Measure 2001. It builds on this framework by adding criminal offences and cementing reduced protections that will undermine the safety, protections, and rights of children in Wales. It lacks safeguards for children which would help promote the “child first, migration second” approach, and as such would undermine the approach in Wales. There are insufficient safeguards to prevent children from being criminalised.

4. Clause 51 (retrospective statutory authority for fees charged)

- 4.1 Clause 51 of the Bill provides retrospective statutory authority for fees charged in connection with the following three services provided by a third-party supplier on behalf of the Home Office and the Department for Education (DfE):
- the Home Office Visas and Nationality Service;
the DfE UK European Network of Information Centres Services (the UK ENIC Service); and
the non-UK Early Years Qualifications Recognition Service.
- 4.2 This clause aims to address concerns raised by the House of Lords Secondary Legislation Scrutiny Committee that applicants have since 2008 been charged fees paid to a third party contractor, without statutory authority^v. The clause seeks to retrospectively make such charges legal and avoid the need to repay them.
- 4.3 Due to the very short notice for this consultation response, we have had little time to consider this element of the Bill and make no comment here on Clause 51. Generally, the use of legislation to retrospectively change the law runs counter to the principles of fairness, transparency, and justice.

ⁱ UNHCR, Legal Observations on the Illegal Migration Bill, May 2023, <https://www.unhcr.org/uk/sites/uk/files/legacy-pdf/641d7b664.pdf>

ⁱⁱ Ibid.

ⁱⁱⁱ Independent Anti-Slavery Commissioner and ECPAT, Child Trafficking in the UK 2024: a snapshot www.ecpat.org.uk/Handlers/Download.ashx?IDMF=3000811a-60bd-491e-88d2-3201080a2163

^{iv} Davies, et al, A Guardianship Service for All Unaccompanied Children in Wales: a research briefing, the Children's Society, Bevan Foundation, Children's Legal Centre Wales, and British Red Cross, 2024 <https://www.bevanfoundation.org/resources/calling-for-a-guardianship-service-for-every-unaccompanied-child-in-wales/>

^v Free Movement Weekly Immigration Newsletter #42, <https://freemovement.org.uk/free-movement-weekly-immigration-newsletter-42/>