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7 Chwefror 2022

Annwyl Russell a Jayne

Memorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil Cenedligrwydd a Ffiniau ("y Bil")

Yr wyf yn ddiolchgar i chi a'ch aelodau am nodi'r materion y mae angen rhagor o wybodaeth amdanynt fel y disgrifir yn Atodiad 1 i'ch llythyr dyddiedig 18 Ionawr. Yr wyf yn ysgrifennu i ddarparu ymateb i'r pwyntiau a godwyd i helpu â'ch ystyriaethau mewn perthynas â'r Memorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil. Ymddiheuraf am yr oedi cyn ateb ac am fethu eich dyddiad cau ar 28 Ionawr.

Trafodaethau â Llywodraeth y DU

1 Yr wybodaeth ddiweddaraf am drafodaethau â Llywodraeth y DU, gan gynnwys manylion unrhyw sicrwydd y mae Llywodraeth Cymru yn eu ceisio neu ddiwygiadau y mae'n eu cynnig, neu gytundebau a wnaed gyda Llywodraeth y DU. Byddem hefyd yn ddiolchgar o dderbyn copïau o unrhyw ohebiaeth berthnasol â Llywodraeth y DU ar y materion hyn.

Mae Llywodraeth Cymru wedi codi pryderon dro ar ôl tro am effaith y Bil hwn ar Gymru ac wedi gofyn am fanylion y cymalau sy'n ymwneud ag asesu oedran o fis Mai 2021 ymlaen, heb lwyddiant. Mae'r prif bwyntiau a wnaed wedi'u nodi yn ein hymateb ffurfiol i'r *Cynllun Newydd ar gyfer Mewnfudo (a anfonwyd ym mis Mehefin 2021, ac y cafwyd ymateb iddo ym mis Medi 2021)*, yn y Datganiad Ysgrifenedig a gyhoeddwyd ar 6 Rhagfyr a rannwyd â swyddogion y Swyddfa Gartref, ac yn llythyr ar y cyd gan Lywodraeth Cymru a Llywodraeth yr Alban a anfonwyd ar 9 Rhagfyr. Mae copïau o'r dogfennau a'r ymatebion hyn ynghlwm wrth yr ymateb hwn fel dogfennau 1-3a yn y drefn honno.

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Nid yw Llywodraeth y DU wedi rhoi unrhyw sicrwydd boddhaol ac nid oes unrhyw welliannau wedi'u cyflwyno i fynd i'r afael â'r pryderon a godwyd gan Lywodraeth Cymru. Mae Llywodraeth y DU wedi cadw ei safbwynt bod y Bil Cenedligrwydd a Ffiniau yn ei gyfanrwydd yn ymwneud â meysydd polisi a gadwyd yn ôl, er bod y Bil yn gwneud darpariaeth ynghylch penderfyniadau awdurdodau lleol ynghylch a ddylid arfer swyddogaethau o dan "ddeddfwriaeth berthnasol i blant" a sut i'w harfer.

Byddai'r darpariaethau hyn yn gymwys i benderfyniadau awdurdodau lleol Cymru ynghylch a ddylid arfer eu swyddogaethau o dan Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 a sut i'w harfer.

Pryderon Llywodraeth Cymru ynghylch y Bil

2 Cyfansoddiad a swyddogaethau'r Bwrdd Asesu Oedran Cenedlaethol, a natur yr effaith negyddol bosibl ar Blant ar eu Pen eu Hunain sy'n Ceisio Lloches yng Nghymru.

Prin yw'r wybodaeth a ddarperir am gyfansoddiad y Bwrdd Asesu Oedran Cenedlaethol (NAAB). Mae'n ymddangos felly nad yw gwasanaethau sydd wedi'u datganoli i Gymru, megis gofal cymdeithasol a gwasanaethau'r Gwasanaeth Iechyd Gwladol, wedi eu hystyried. Nid oes unrhyw gynigion penodol ynghylch cynrychioli Cymru (na'r Alban na Gogledd Iwerddon) yn y Bil.

Yng Nghymru, rydym yn trin pob plentyn ar ei ben eu hun sy'n ceisio lloches fel plentyn sy'n derbyn gofal dan Ran 6 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (Deddf 2014). O'r herwydd, mae ganddynt hawl i'r un gofal a chymorth â phob plentyn mewn gofal yng Nghymru. Mae Deddf 2014 hefyd yn darparu ar gyfer amrywiaeth o swyddogaethau asesu ac rydym yn trin asesiadau oedran fel rhan o swyddogaethau asesu 'yr hyn sy'n bwysig' y darperir ar eu cyfer yn Rhan 4 o Ddeddf 2014.

Mae'r holl swyddogaethau gwasanaethau cymdeithasol wedi'u datganoli'n llwyr i'r Senedd ac, o'r herwydd, y Senedd a Gweinidogion Cymru sy'n gyfrifol am wneud pob penderfyniad deddfwriaethol a pholisi sy'n ymwneud â gwasanaethau cymdeithasol. Byddai'r NAAB yn lleihau rôl arweiniol, awdurdodol gweithwyr cymdeithasol yng Nghymru yn y swyddogaeth hon.

Mae gwahaniaethau amlwg yn safbwyntiau Llywodraeth Cymru a Llywodraeth y DU ynghylch sut y dylid cynnal asesiadau oedran a chan bwy. Er enghraifft, yng Nghymru, mae gennym safbwynt polisi ar asesu oedran[1] nad yw'n argymell nac yn cefnogi'r defnydd o archwiliadau meddygol fel ffordd o bennu oedran ac sy'n ystyried dulliau o'r fath yn foesol anghywir. Bydd y defnydd o 'dulliau gwyddonol' o bosibl yn peri anghytundeb sylfaenol a pharhaol rhwng safbwyntiau awdurdodau lleol Cymru a'r NAAB.

3 Y goblygiadau a ragwelir o ganoli'r broses asesu oedran ar y gwaith o asesu anghenion a darparu gofal a chymorth o dan Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 a pha swyddogaethau pellach, os o gwbl, y gellid eu gosod ar awdurdodau Cymru.

Gallai canoli'r broses asesu oedran fod yn rhwystr i sicrhau'r arferion gorau, gan mai gweithwyr cymdeithasol awdurdod lleol sy'n lleol i'r person ifanc sy'n destun anghydfod

[1] 42834 Age Assessment Toolkit for UASC (llyw.cymru)

sydd yn y sefyllfa orau i weithredu dull cyfannol ac amlasiantaeth. Mae hyn yn mynd yn fwy dyrys yn sgil dull asesu oedran sy'n defnyddio "dulliau gwyddonol" ac sy'n pennu bod hygrededd person yn cael ei ddifrodi os nad ydynt yn cydsynio i'r "dulliau gwyddonol" hyn. Yn ein barn ni, byddai dull gweithredu o'r fath yn gwrthdaro â rhwymedigaethau cyfreithiol rhyngwladol presennol (fel Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn ("CCUHP")) a deddfwriaeth gofal cymdeithasol yng Nghymru.

Fel y cyfeiriwyd uchod, rydym yn trin pob plentyn ar ei ben ei hun sy'n ceisio lloches fel plentyn sy'n derbyn gofal o dan Ddeddf 2014. O dan Ddeddf 2014, maent yn derbyn yr un gofal a chymorth â phob plentyn sy'n derbyn gofal yng Nghymru. Mae'r Bil hwn yn cyflwyno proses statudol ychwanegol ar gyfer asesiadau oedran i blant ar eu pen eu hunain sy'n ceisio lloches yng Nghymru sy'n mynd yn groes i gyfraith Cymru, a fydd yn achosi dryswch ac o bosibl yn dirymu'r gyfraith fel y mae yng Nghymru.

O ran swyddogaethau pellach a osodir ar Awdurdodau Cymru, nid yw'n glir a fydd disgwyl i gyrff Gwasanaeth Iechyd Gwladol (GIG) Cymru gynnal yr asesiad "dulliau gwyddonol" ynteu a fydd hyn yn cael ei roi ar gontract allanol i ddarparwyr iechyd preifat. Os disgwylir i'r GIG yng Nghymru ddarparu'r asesiadau hyn, byddai hyn yn creu llwyth gwaith ychwanegol i fyrddau iechyd sydd eisoes dan bwysau sylweddol ac y mae'r pandemig yn parhau i effeithio'n ddifrifol arnynt. Noder, mae'n bosibl y bydd gwrthdaro rhwng gweithwyr iechyd proffesiynol, NAAB ac awdurdodau lleol eraill lle nad yw gweithwyr iechyd proffesiynol o blaid defnyddio 'dulliau gwyddonol'.

Dangosodd tystiolaeth a gyflwynwyd gennym yn ein hymateb i'r ymgynghoriad ar y 'Cynllun Newydd ar gyfer Mewnfudo' gan Lywodraeth y DU y gwahaniaeth sylweddol yng nghanlyniadau asesiadau oedran diweddar lle'r oedd y Swyddfa Gartref wedi canoli'r prosesau hyn.

Mae datganiad ystadegol Llywodraeth y DU ar 27 Mai 2021, mewn perthynas â phenderfynyddion asesiadau oedran, yn dangos canlyniadau posibl canoli'r swyddogaeth asesu oedran o dan reolaeth uniongyrchol y Swyddfa Gartref gan gynnwys cynnal asesiadau oedran. Mae asesiadau byr o'r fath wedi'u herio a chanfuwyd eu bod yn anghyfreithlon[2] ond maent yn parhau i ddangos bwriadau'r Swyddfa Gartref yn y maes hwn.

Dyddiad yr anghydfod ynghylch oedran	Blwyddyn yn dod i ben Mawrth 2020	Blwyddyn yn dod i ben Mawrth 2021	Newid yn y flwyddyn ddiwethaf	% y newid yn y flwyddyn ddiwethaf
Anghydfodau ynghylch oedran a godwyd [2]	632	791	+159	+25%
Anghydfodau ynghylch oedran a ddatryswyd [3,4] (Cyfanswm)	679	693	+14	+2%
Dan 18 oed (Grŵp oed Anghydfodau ynghylch oedran a ddatryswyd)	420	258	-162	-39%
18+ (Grŵp oed Anghydfodau ynghylch oedran a ddatryswyd)	259	435	+176	+68%

[2] Home Office age assessment policy for asylum seekers is unlawful, High Court rules | The Independent

Yr effaith a ddisgwyliwn yn sgil asesiadau wedi'u canoli yw y gall plant gael eu lleoli mewn llety sydd i fod i oedolion yn unig, gan achosi pryderon o ran diogelwch, perygl y bydd achosion o gamfanteisio ar blant, ac achosion posibl o ddigartrefedd pan fo plant yn dianc rhag sefyllfaoedd peryglus.

Os bydd y plant hynny'n cyrraedd awdurdodau lleol Cymru yn ddiweddarach, rydym yn rhagweld gwrthdaro rhwng safbwyntiau swyddogion gwasanaethau cymdeithasol a fydd yn ystyried bod y person yn blentyn ag anghenion gofal a chymorth a swyddogion y Swyddfa Gartref a fydd yn ystyried bod y person yn oedolyn. Byddai'r gwrthdaro hwn yn arwain at ganlyniadau ariannol i'r awdurdod lleol a fyddai dan rwymedigaeth i ddarparu gofal a chymorth pe byddai asesiadau Deddf 2014 yn canfod bod hyn yn ofynnol, ond heb y cyllid y byddai'r Swyddfa Gartref fel arfer yn ei ddarparu i awdurdodau lleol sy'n gofalu am blant ar eu pen eu hunain sy'n ceisio lloches.

Darperir llety i geiswyr lloches sy'n oedolion ar sail 'dim dewis' gan y Swyddfa Gartref. Os ydynt yn 'dianc' o'r llety hwnnw (terminoleg y Swyddfa Gartref), gall hyn ddirymu eu hachos lloches. Felly, bydd plant sy'n cael eu lleoli mewn llety i oedolion oherwydd yr asesiadau canolog hyn mewn perygl mawr o gael eu hecsbloetio gan geiswyr lloches eraill sy'n oedolion y gallai fod angen iddynt rannu Tŷ Amlfeddiannaeth â hwy (y math mwyaf cyffredin o dai lloches).

4 Pryderon Llywodraeth Cymru ynghylch defnyddio dulliau gwyddonol mewn asesiadau pennu oedran a rheoliadau ynghylch yr asesiadau, gan gynnwys:

a. y broses apelio;
b. unrhyw oblygiadau i weithrediad Llywodraeth Cymru o Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn;
c. unrhyw oblygiadau i iechyd meddwl unigolion sy'n destun technegau gwyddonol o asesu oedran;
d. unrhyw oblygiadau i gydlyniant cymunedol a fyddai'n codi'n uniongyrchol o ganlyniad i roi unigolion drwy dechnegau asesu oedran gwyddonol.

Rydym yn gwrthwynebu defnyddio archwiliadau meddygol i bennu oedran. Mae'r wyddoniaeth sy'n sail i bennu oedran yn amhendant ac yn aneglur. Rydym yn credu bod rhoi pobl ifanc drwy archwiliadau meddygol a fydd yn aml yn defnyddio technegau mewnwthiol yn foesol anghywir. Er enghraifft, cyfeiriaf at yr ymateb uchod gan Gymdeithas Ddeintyddol Prydain i'r ymgynghoriad[3]. Mae Coleg Brenhinol Pediatreg ac Iechyd Plant[4] a'r Coleg Nyrsio Brenhinol hefyd wedi mynegi pryderon yn ddiweddar am y cynigion hyn.[5]

Ar hyn o bryd, nid yw penderfyniadau ynghylch asesiadau oedran a wneir at ddibenion mewnfudo yn rhwymo awdurdodau lleol. Fodd bynnag, o dan gymal 53(5) o'r Bil mae penderfyniad gan Dribiwnlys Haen Gyntaf apêl yn rhwymo awdurdod lleol hyd yn oed pan fo'r apêl yn ymwneud â phenderfyniad gan y NAAB at ddibenion mewnfudo. Gallai hyn arwain at wrthdroi asesiadau cyfannol a manwl a gynhaliwyd yn unol â Phecyn Cymorth Asesu Oedran Llywodraeth Cymru, ar sail penderfyniadau a wnaed ar sail tystiolaeth a gasglwyd gan ddefnyddio prosesau sy'n mynd yn groes i ddull y Pecyn Cymorth, megis "dulliau gwyddonol" sy'n cael eu hamau'n fawr ac sydd â lwfans gwallau mawr. Byddai awdurdod lleol yng Nghymru sydd mewn sefyllfa o'r fath yn ddarostyngedig i ddwy ddyletswydd statudol sy'n gwrthdaro.

[3] British Dental Association written response to the Nationality and Borders Bill (21st September 2021) (parliament.uk)
[4] Refugee and unaccompanied asylum seeking children and young people - guidance for paediatricians | RCPCH
[5] RCN expresses concern over Nationality and Borders Bill | News | Royal College of Nursing

Bydd y Bil yn rhoi'r broses asesu oedran ar sail statudol ar wahân y tu allan i Ddeddf 2014. Sail statudol arall y mae'n ymddangos ei bod yn gwrthdaro â nodau Deddf 2014 a dyletswydd awdurdodau lleol o dan adran 7(2) o'r Ddeddf honno i roi sylw dyledus i Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn wrth arfer swyddogaethau mewn perthynas â phlentyn a allai fod ag anghenion am ofal a chymorth.

Mae'n nodedig yn hyn o beth fod y Pwyllgor ar Hawliau'r Plentyn wedi rhoi arweiniad ar asesu oedran mewn Sylw Cyffredinol yn 2017 a oedd yn cynnwys cadarnhad y dylai Gwladwriaethau ymatal rhag defnyddio dulliau meddygol yn seiliedig ar, ymhlith pethau eraill, dadansoddi asesiadau esgyrn a rhai deintyddol, a all fod yn anghywir a chyda lwfans gwallau mawr, ac a all hefyd fod yn drawmatig ac arwain at brosesau cyfreithiol diangen[6].

Mae awdurdodau lleol yng Nghymru yn defnyddio dull seiliedig ar drawma o gynnal asesiadau oedran. Y nod yw lleihau'r risg o achosi rhagor o drawma, gan geisio canlyniadau cadarnhaol a chefnogi lles meddyliol. Gwyddom o waith ymchwil yng Nghymru fod y profiadau niweidiol y mae plant ar eu pen eu hunain sy'n ceisio lloches wedi'i hwynebu yn cynnwys cael eu gwahanu oddi wrth rieni neu golli rhieni, cael eu cam-drin neu ddioddef o achosion o gamfanteisio, yn enwedig ar y daith, gweld neu brofi trais, a diffyg cymorth cymdeithasol ac emosiynol i ymdopi â'r trallod, sef cymorth y byddent wedi'i gael gan rieni.

O'r herwydd, credwn mai gweithwyr cymdeithasol lleol sydd wedi sefydlu cysylltiad â phlentyn a/neu berson ifanc sydd yn y sefyllfa orau i asesu oedran. Mae'r asesiadau hyn yn seiliedig ar asesiadau sy'n cydymffurfio â dyfarniad Merton (*R(B) v London Borough of Merton, 2003*) lle mae gweithwyr cymdeithasol yn debygol o fod wedi treulio cryn amser yn deall gallu'r person ifanc sy'n cael ei asesu. Er nad yw fformat yr asesiadau y byddai'r NAAB yn ei ddefnyddio wedi'i egluro eto, roedd y penderfyniad diweddar a oedd yn nodi bod gwneud asesiadau oedran yn ganolog i'r Swyddfa Gartref yn anghyfreithlon yn ei gwneud yn glir bod asesiadau'n aml yn cael eu cwblhau mewn awr gyda'r person ifanc.

Gall effeithiau o ran cydlyniant cymunedol godi heb droseddoldeb oherwydd gall safbwyntiau croes ynghylch oedran plentyn olygu bod pobl ifanc yn cael eu gadael mewn llety a ddarperir gan awdurdod lleol (a ddarperir oherwydd anghenion gofal a chymorth) oherwydd na fydd y Swyddfa Gartref yn cydnabod oedran y plentyn ac felly na fydd yn derbyn y math o gais am loches a gyflwynir. Mewn amgylchiadau o'r fath, mae plant yn debygol o fod yn fwyfwy ynysig a gallai hynny arwain at ddirywiad o ran iechyd meddwl a chanlyniadau eraill a fydd yn effeithio ar gydlyniant cymunedol dros amser.

Mae perygl hefyd y bydd pobl ifanc aros yn y lloches i oedolion a ddarperir gan y Swyddfa Gartref gan achosi i'r bobl ifanc ddod yn arbennig o agored i achosion o ecsbloetio gan eu bod yn poeni y byddai eu cais am loches yn cael ei ddirymu pe byddent yn gadael yr eiddo.

Pan fo'r Ysgrifennydd Gwladol yn anghytuno â chanfyddiadau asesiadau oedran awdurdodau lleol ac yn cyfeirio'r mater i'r NAAB ar gyfer asesiad oedran pellach, mae hyn yn debygol o danseilio ffydd y cyhoedd mewn sefydliadau. Gall achosion niferus o hyn arwain at brotestio.

Goblygiadau Ariannol

[6] UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, para. 4, available at: https://www.refworld.org/docid/5a12942a2b.html.

5 Gwybodaeth bellach am y goblygiadau ariannol posibl sy'n gysylltiedig â'r darpariaethau yn y Bil, a sut y cânt eu cynnwys yng ngwaith cynllunio ariannol Llywodraeth Cymru.

Nid yw'r asesiad effaith a gynhaliwyd gan y Swyddfa Gartref yn cyfeirio at oblygiadau ariannol y Bil hwn.

Mae'n amlwg y bydd goblygiadau ariannol mewn perthynas â'r defnydd arfaethedig o 'ddulliau gwyddonol' i asesu oedran. Rhagdybir mai dim ond mewn lleoliad iechyd y gwneir hyn, naill ai wedi'i gomisiynu gan ofal iechyd preifat neu o fewn y Gwasanaeth Iechyd Gwladol. Gallai hyn fod â chostau uniongyrchol i awdurdodau lleol ac effeithiau canlyniadol ar gapasiti'r gwasanaeth iechyd.

Mae tebygolrwydd cryf o her gyfreithiol hir a chostus.

Mae'r Swyddfa Gartref yn darparu rhywfaint o arian i awdurdodau lleol i gefnogi plant ar eu pen eu hunain sy'n ceisio lloches. Fodd bynnag, ni fyddant yn ad-dalu pan fo awdurdod lleol yng Nghymru yn ystyried rhywun yn blentyn ond bod y Swyddfa Gartref yn anghytuno.

Byddwn yn ceisio rhagor o wybodaeth am y goblygiadau ariannol gan y Swyddfa Gartref pe byddai'r Bil yn cael ei basio.

Gobeithio y bydd yr ateb hwn o gymorth ichi.

Yn gywir

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Welsh Government Response to the Home Office's New Plan for Immigration – June 2021

Introduction

1. The Welsh Government welcomes the opportunity to comment on proposed changes to refugee and asylum seeker policy. There is shared ground between our organisations – and many other stakeholders – that the system is currently not fit-for-purpose.

2. The following comments provide the Welsh Government's initial views on the Home Office's New Plan for Immigration consultation paper but the pre-election period in Wales which almost exactly coincided with the consultation period, has prevented us gaining a full understanding of the proposals. We would welcome meaningful engagement with the Home Office as we believe some areas of the proposals relate to devolved responsibilities, and other areas will have a significant impact upon Wales.

3. This response provides general reflections on the *New Plan for* Immigration proposals, before outlining specific proposals which the Welsh Government welcomes. This is followed by our significant concerns with the consultation paper proposals. In the final part of this paper we reflect on areas of the immigration system which are in urgent need for reform.

4. Welsh Government proposals to improve, extend or revise proposals will be written **in bold text**.

General reflections

5. The *New Plan for Immigration* sets out many proposals for reforming the immigration system but many of these are vague, and alternative options which could be considered are not explored.

6. We believe that this consultation has not followed the Gunning Principles[1] in several important ways and **the UK Government should further consider the proposals with reference to these Principles and provide a revised paper for consultation**.

[1] Law Wales - What are the requirements for any consultation that is carried out? (gov.wales)

7. The paper uses several inaccurate claims about those claiming asylum in the UK. This includes the suggestion that asylum seekers "should be claiming asylum" in other European states, which is not a legal requirement. The paper repeatedly conflates the terms 'illegal migration', 'foreign national offenders' and 'asylum seekers' which are all different concepts which need a nuanced explanation (Gunning Principle 2).

8. The paper seems to overlook a major cohort of asylum seekers – those who arrive in the UK through clandestine methods but claim asylum at the first opportunity. The Refugee Convention and UK legislation recognise this type of entry and envisage circumstances where imposing penalties may not be appropriate. However, the consultation paper is silent about what provisions will be available to this large cohort. The paper claims that 62% of asylum claims are made by those entering illegally but this is false – individuals may have entered through clandestine methods but not necessarily unlawful. This misrepresentation prevents intelligent consideration and response (Gunning Principle 2).

9. The plan does not present any alternative options for consideration by stakeholders. There are many different ways which the asylum system could be reformed (we provide some throughout this paper) but the UK Government is not providing stakeholders with the information required to make their own judgements on appropriate courses of action (Gunning Principle 2).

10. The consultation paper also makes inappropriate conclusions based upon outlier data relating to 2020. The pandemic and associated travel restrictions means that the asylum estate was forced to swell in size (despite arrivals into the UK reducing) and returns of those refused asylum or foreign national offenders was also bound to reduce. The claim that there was a "rapid intake" of asylum seekers or that 42,000 refused asylum seekers living in the UK shows that the system is broken are misrepresentations of the facts (data from 2019 showed a downturn until the pandemic hit)(Gunning Principle 2).

11. The consultation paper makes frequent claims that individuals are abusing the asylum system, judicial reviews, or the Modern Slavery National Referral Mechanism, but this is only ever backed up by anecdotes. We need to be able to see the quantitative data underpinning these claims, as well as alternative proposals which could be considered, to make intelligent comment (Gunning Principle 2).

12. The lack of clarity in the proposals may suggest that these proposals are at a formative stage but Home Office officials have made clear that the Borders Bill will be introduced to Parliament before summer recess. Therefore, it seems unlikely that these proposals genuinely are at a formative stage, as required by Gunning Principle 1.

Positive aspects of *New Plan for Immigration* proposals

ILR for Refugees

13. We strongly welcome the Home Office's proposal to grant immediate Indefinite Leave to Remain (ILR) to refugees. We know that the vast majority of refugees resettled to Wales cannot return to their country of origin within 5 years of arrival and most will apply for ILR. The current delay in being able to apply for ILR causes uncertainty and prevents refugees from fully rebuilding their lives as quickly as possible in the UK.

14. We would welcome a commitment from the Home Office to **apply eligibility for this policy retrospectively to any resettled refugee already living in Wales**.

15. We would also welcome **this policy being extended to any former asylum seeker living in Wales who has been granted refugee status, as well as any future asylum seekers who are granted refugee status**.

Review of Family Reunion routes

16. We agree with the Home Office that 'safe and legal routes' to International Protection are improved. The proposal to review the refugee family reunion routes is welcome but we expected to see some firm proposals about how family reunion provisions would be strengthened.

17. It is crucial that refugees living in Wales are able to be reunited with family members who they may have been separated from for a variety of reasons. We know that where refugees are able to live in the UK as family units, their outcomes are generally better than those who are unaccompanied.

18. The European Court of Human Rights and UK courts have recognised that family unity is "an essential right of refugees and that family reunion is an essential element in enabling persons who have fled persecution to resume a normal life." Current Family Reunion rules do not reflect the diversity of family units which are likely to have formed due to the very nature of the war and persecution which refugees will be fleeing from. It is more common that dependent relationships will exist between siblings, aunts or uncles, or grandparents, due to the likelihood that parents may have been killed in the country of origin.

19. In our view, the **definition of "family members" must include (at least) a person's**:
    (a) parent, including adoptive parent;
    (b) spouse, civil partner or unmarried partner;

(c) child, including adopted child, under the age of 18;
(d) sibling, including adoptive sibling, under the age of 18;
(e) aunt and/or uncle, where the individual's parent is no longer living or cannot seek International Protection;
(f) grandparent, where the individual's parent is no longer living or cannot seek International Protection;
(g) other persons the Secretary of State may determine as being an important member of the family unit who should be permitted to come to the UK in the best interests of the child.

20. The proposal to restrict family reunion rights to those granted 'temporary protection status' under these measures will also likely cause disastrous unintended consequences. Often male asylum seekers will first make dangerous journeys to the UK to seek International Protection, whilst women and children are more likely to follow on afterwards. The proposal to limit family reunion rights to those who enter the UK through clandestine methods will likely lead to more women and children making dangerous journeys into the UK, as there will be no other prospect of being reunited as a family.

21. We will talk about temporary protection status later in this paper but, at the very least, **we urge the UK Government to drop the proposal to limit family reunion rights**. We believe that this policy is incompatible with the 1951 Refugee Convention and the UK Government's own stated aim to reduce the number of dangerous crossings via these proposals.

Multi-year commitment to resettlement

22. We welcome the UK Government's proposal to develop multi-year resettlement programmes. The Syrian Vulnerable Persons Resettlement Programme was a remarkably successful project and we would welcome further similar schemes to be developed as a safe and legal route to resettlement.

23. We also support the principle of providing a route to settlement in the UK from regions where conflict is happening. Many of the most vulnerable refugees will not be able to make arduous and dangerous journeys to the UK.

24. Nevertheless, resettlement must not come at the expense of supporting the asylum system. Both routes must continue to operate in line with the spirit and letter of the Refugee Convention.

25. The consultation paper provides insufficient details about the multi-year commitment and introduces uncertainty where targets will be "guided by circumstances and capacity at any given time." Having a firm target to aim for was critical in ensuring Welsh local authorities were able to play a full part in this system under the Syrian scheme.

26. We propose that the UK Government sets an unwavering, indefinite minimum commitment for those it aims to resettle to the UK each year. The Syrian resettlement programme has shown that **the UK can support at least 4,000 people per year through this type of scheme** and we would urge the UK Government to be more ambitious than this.

27. The Welsh Government would be very happy to support the UK Government in promoting Welsh local authority participation in a scheme which had **similar financial and coordination support as the internationally renowned Syrian scheme**.

Exceptional discretionary assistance to people in country of origin

28. The consultation refers to building a more flexible system which enabled the UK Government to support those who are at very high risk around the globe. This will enable discretionary assistance to people still in their country of origin.

29. We welcome this proposal as we have seen numerous examples of persecuted minorities living in Internally Displaced People camps who are in need of support but cannot receive it. However, more details need to be provided about how this proposal would work in practice.

30. For those in this situation, there will be a time critical need for resettlement but the current resettlement schemes can take a significant amount of time for appropriate housing, medical and school needs to be assessed and catered for. The UK Government will need to ensure there is ready supply of accommodation and other services to ensure resettlement can happy quickly.

31. It is unclear whether those arriving under this method would be granted ILR or some form of temporary protection. This needs to be clarified.

Tailored support to help refugees to integrate

32. The Welsh Government strongly agrees with the principle that Government should support refugees to integrate more quickly and effectively into society. We are encouraged by the UK Government's proposal to develop tailored and flexible employment support arrangements and packages of support, such as language training and skills development, in England.

33. Responsibility for migrant integration including, amongst other things, language tuition, skills development, community cohesion, and similar integration activities, is **devolved** to the Welsh Government.

34. For several years, the Welsh Government has invested significantly in improving the integration of refugees in Wales, with a primary focus on English language tuition through the development of ESOL Hubs. Our ReStart: Refugee Integration Project has also developed employability programmes and supported the holistic assessment of refugee needs. Similar schemes would be considered by the Welsh Government if consequential funding was made available.

35. The consultation paper makes reference to the 'UK' rather than 'England' when discussing these measures, which we believe to be an oversight. **We understand from meetings with UK Government officials that the intention would be to provide this integration package in England and provide consequential funding to the Welsh Government. We would welcome this outcome**.

Problematic proposals

Temporary Protection Status

36. The consultation paper seemingly aims to redefine the interpretation of Article 31 of the 1951 Refugee Convention but without ever explicitly stating this. Article 31 prohibits the penalisation of refugees on account of their illegal entry or presence if they have come directly from a territory where their life or freedom was threatened, present themselves without delay, and show good cause for their illegal entry or presence. The proposal to introduce a 'temporary protection' status hinges on the definition of the word 'directly' in Article 31.

37. The UNHCR has made clear that the meaning of this word in Article 31 is that it was *"Refugees are not required to have come directly from territories where their life or freedom was threated. Article 31(1) was intended to apply, and has been interpreted to apply, to persons who have briefly transited other countries or who are unable to find effective protection in the first country or counties to which they flee. The drafters only intended that immunity from penalty should not apply to refugees who found asylum, or who were settled, temporarily or permanently, in another country."*[2]

38. UK jurisprudence has similarly interpreted Article 31 in the same way as stated above by UNHCR.[3] Reinterpreting this article with a literal or

[2] Paragraphs 10 (b) and 10(c), *Summary Conclusions: Article 31 of the 1951 Convention*, UNHCR, June 2003: Refworld | Summary Conclusions: Article 31 of the 1951 Convention

[3] R v. Uxbridge Magistrates Court and Another, Ex parte Adimi [1999] EWHC Admin 765; [2001] Q.B. 667, United Kingdom: High Court (England and Wales), 29 July 1999, para. 18, available at: www.refworld.org/cases,GBR_HC_QB,3ae6b6b41c.html; R v. Asfaw [2008] UKHL 31, United Kingdom: House of Lords (Judicial Committee), 21 May 2008, para. 15, available at: www.refworld.org/cases,GBR_HL,4835401f2.html; R. and Koshi Pitshou Mateta and others [2013] EWCA Crim

geographical interpretation undermines the spirit and intent of the 1951 Convention.

39. The *New Plan for Immigration* does not explicitly state that the UK Government intends to reinterpret the meaning of the word 'directly' in Article 31. However, the consultation implies that those who arrive through clandestine methods and then seek asylum at the earliest opportunity will only be eligible for 'temporary protection' status and be considered to have illegally entered the UK. Current UK law recognises that individuals may have needed to travel to the UK through clandestine methods to seek international protection.

40. **If the UK Government intends to introduce a 'temporary protection' status it must only apply to those who could not be considered to have transited through other countries on their way to the UK in the manner which has been accepted as 'direct' through previous jurisprudence relating to the 1951 Convention**.

41. It is not clear whether the temporary protection status would confer any rights for recipients to work, claim homelessness assistance, social security payments or any other 'Public Funds'. **Our view is that those seeking asylum who have been granted this status should not be subject to a 'No Recourse to Public Funds' condition**. If such a condition is applied it will substantially undermine their ability to integrate with Welsh communities and undermine our ability to implement **devolved** responsibilities in this area.

Asylum Reception Centres

42. We have substantial concerns regarding proposals for 'asylum reception centres' in the UK. Whilst '*immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens'* is a reserved responsibility of the UK Government, **the integration of migrants with host communities is devolved to the Welsh Government in Wales. With the detail provided in the *New Plan* we cannot see how the proposal for reception centres is compatible with our *Nation of Sanctuary Plan* which seeks to integrate asylum seekers into Welsh communities from day one of arrival**.

43. If asylum seekers are located in facilities which prevent easy formation of neighbourly relationships with those ordinarily resident in Wales and

1372, United Kingdom: Court of Appeal (England and Wales), 30 July 2013, LJ Leveson, para. 21(iv), available at: www.refworld.org/cases,GBR_CA_CIV,5215e0214.html; Decision KKO:2013:21, Finland: Supreme Court, 5 April 2013, available at: www.refworld.org/cases,FIN_SC,557ac4ce4.html; also see UNHCR, Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers, para. 39, September 2019, www.refworld.org/docid/5d8a255d4.html.

difficulties accessing mainstream services, **we would oppose the development of such facilities in Wales**.

44. The Planning system is devolved to the Welsh Government and **we would need further details of the proposed design and operation of these reception centres to understand how they would comply with our Planning Policy Wales** and associated Technical Advice Notes.

45. Our recent troubling experience of Home Office use of the Penally army training camp as asylum accommodation has given us serious cause for concern. Many individuals were inappropriately transferred into the site and welfare considerations were not given the paramount importance they merit. **Any reception centre would need to have ready and appropriate access to specialist services, from post-traumatic stress counselling, to legal advice, medical services and English language tuition, as well as internet access to connect with family and wider support services**.

46. The *New Plan* does not explain how those claiming to be children, those who have faced persecution due to their gender identity or sexual orientation, or those who claim to have experienced trauma would be considered for relocation to reception centres. **It would always be inappropriate to locate anyone where age is disputed in these centres, whilst many in the other cohorts should also not be accommodated in this way – with very carefully considered safeguards for those who are**.

Streamlining asylum claims and appeals

47. Firstly, it is important to state that the flowchart on page 25 gives an unhelpful and confusing picture which undermines any consultation responses which may have been received. The flowchart is titled '*Simplified typical asylum appeals process: at a glance'* and therefore gives the impression that this is how the Home Office intends the process to operate if *New Plan* proposals are implemented. In fact, the flowchart shows the existing system.

48. There is currently theoretically a 'one-stop' process for asylum claims but claimants' circumstances, access to good legal advice and expert evidence very often prevent full evidence being provided upfront. Though there are undoubtedly some unmeritorious or spurious claims put forward, many genuine claims are ultimately successful following submission of new evidence which could not be presented earlier. **In theory, providing more generous access to legal advice sounds positive but we need to understand what this would amount to in practice**.

49. The proposal to extend the 'Fixed Recoverable Costs' regime to immigration-related judicial reviews does not appear to be fair when it is considered that those bringing such claims are likely to be destitute. The risk of costs being

awarded against such individuals is likely to have a chilling effect on claimants and undermine the principle of an appeals process. **The UK Government should abandon this proposal**.

50. We are concerned by the proposal to introduce a "panel of pre-approved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by the parties." It appears contradictory that the independence of experts would be put beyond doubt by the Home Office creating such a panel. If the panel of experts does not contain the necessary expertise required for a particular case, this could itself be grounds for a legal challenge, undermining the rationale for making such a change.

Inadmissible claims and removal

51. The *New Plan* proposals around inadmissible claims relate to the reinterpretation of Article 31 of the Refugee Convention, as detailed above. The UNHCR have stated that "international refugee law prohibits penalisation of irregular entry" and these proposals appear to flout this.

52. Where individuals have been considered to have inadmissible claims for UK asylum, the UK Government would seek to rapidly return them to 'another safe country'. Part of the UK Government's rationale for this is that those seeking asylum here could have claimed asylum in other EU Member States from where they have embarked. However, due to EU Withdrawal there are no return agreements in place with these countries and some countries have explicitly ruled this out without the UK adopting reciprocal arrangements.

53. The *New Plan* also states that '*we will also pursue agreements to effect removals to alternative safe third countries.'* We do not agree with the general principle of the UK Government off-shoring our responsibilities to third countries. If this proposal was implemented, we would at least expect there to be clear connections between those seeking asylum in the UK and the third country where they may be relocated. A clear framework for when this could and could not be used would also be required. **International refugee law opposes the externalisation of international protection responsibilities without necessary safeguards.**

54. The *New Plan* proposes amending sections 77 and 78 of the Nationality, Immigration and Asylum Act 2002 to enable asylum claims and appeals to be processed outside the UK. The paper claims that this is simply to "*keep the option open, if required in the future, to develop the capacity for offshore asylum processing."* The off-shoring of the UK's asylum responsibilities to third countries would encourage other nations to do likewise and thereby undermine the international standing which the UK currently has in terms of providing international protection. It will be far harder for the UK to utilise 'soft power' in its foreign diplomacy if such policies are implemented.

55. Furthermore, we are concerned that such proposals may impact upon continuity of care or legal advice where asylum seekers who were located in Wales are transferred abroad.

56. As a general point of principle, legislation should be a last resort where other policy levers are insufficient. The consultation paper suggest that alternative levers have not been exhausted as this power would only be held in reserve for the future. If the legislative powers are not required now then statute should not be amended in such a far-reaching way now. **We urge the UK Government to withdraw this proposal, at least until such time that the evidence demonstrates that it is required and it has been developed further with alternative options put forward for consultation.**

Age assessment

57. We note the proposals to establish a National Age Assessment Board (NAAB) and the potential use of 'scientific' methods to determine age. There are references to legislating for age assessment criteria, staff who are not qualified social workers undertaking such assessments and potentially requiring social workers to refer to the NAAB in respect of age disputes. Also, for a new appeals process.

58. In Wales, we treat all unaccompanied asylum seeking children as looked after children in line with Part 6 of the Social Services and Well-being (Wales) Act 2014. The Act also provides for a range of assessment functions and we treat the assessment of age as part of the 'what matters' assessment functions provided for in Part 4 of the Act. **Social services, including social are is a devolved matter and as such, all legislative and policy decisions relating to social services are for Senedd Cymru and the Welsh Ministers**. The New Plan proposals as currently set out, do not recognise the devolved context therefore it is important for us to state that **any legislation to be made which impacts on these devolved functions would be subject to Legislative Consent Memoranda being made in the Senedd. And of course, any legislation UK Government creates is required to be informed by existing case law in this area**, not least *Merton* but also, for example, AB v Kent County Council (2020) EWHC 109 (Admin).

59. While we understand from our officials meeting with Home Office officials on 27 May, that the NAAB is to be an England-only body, we still feel it important to comment on the proposal. Little information is provided about the constitution and functions of the NAAB. Again, the full devolvement of social services functions to Wales appears not to have been considered in that there are no specific proposals about the representation of Wales (or Scotland and Northern Ireland). The function of assessment is a core duty for social workers and the assessment of age is part of this**. We do not support any diminution of the lead, authoritative role for social workers in this**

function and this includes legislating for officers without the required expertise, experience and skill in conducting these assessments. Over recent years, we have asked for information about the training immigration officers receive in assessing age in line with Welsh social services and UNCRC legislative requirements. This has never been provided. Overall, we are concerned about any UK Government centralising of processes which could diminish existing Welsh national duties and functions in this space. **We need to see detailed draft clauses to understand more about what you are trying to achieve and to enable a more detailed response**.

60. The UK Government's statistical release on 27 May in respect of age assessment determinations, reveals an interesting picture. It demonstrates the potential consequences of centralising the age assessment function under the direct control of the Home Office including carrying out age assessments. We understand that such shorter form assessments are being challenged and the outcome of that challenge together with existing case law as mentioned above, will no doubt inform any future guidance you produce.

Date of age dispute	Year ending Mar 2020	Year ending Mar 2021	Change in the latest year	% change in the latest year
Age disputes raised [2]	632	791	+159	+25%
Age disputes resolved [3,4] (Total)	679	693	+14	+2%
Under 18 (Age group of Age disputes resolved)	420	258	-162	-39%
18+ (Age group of Age disputes resolved)	259	435	+176	+68%

61. While we could consider supporting a legislative basis for guidance in respect of the age assessment function, any legislation would be made via the 2014 Act. Wales has its own Age Assessment Toolkit (first published in 2015) which is well recognised and used by social workers. An updated version is to be published imminently. In it, there are clear statements about the use of medical reports, specifically in respect of the unreliability of and lack of any evidential basis to medical examinations as a means of determining age. Such reports are not to be requested or used as part of the age assessment process unless in very narrow circumstances and then only as part of a multiagency, holistic process which draws on a wide range of factors. **We also strongly believe that such examinations are morally unjustifiable, degrading and are in conflict with individuals' human rights.**

62. We also agree with the UNHCR's view 'that medical age assessment methods remain highly contested and are subject to a high margin of error.

The evidential value of such methods remains contested by UK courts and in other jurisdictions, and by medical professionals and associations. In addition to being subject to a high margin of error, medical methods used for age assessment can be potentially harmful (such as those that involve exposure to radiation through x-rays). For this reason, dental x-rays have previously been ruled out for use in assessing age in the UK by the UK Home Office citing the British Dental Association's views[4] that they are "inaccurate, inappropriate and unethical". **The Committee on the Rights of the Child further confirmed in 2017 that "States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes".'[5]**

63. The Royal College for Paediatrics and Child Health further state: *"there is no single reliable method for making precise age estimates. The most appropriate approach is to use a holistic evaluation… It is therefore important for paediatricians, when contacted, to explain to social workers that dental x-rays, bone age and genital examination will currently **not** add any further information to the assessment process."* [6] The College adds *"the margin of error can sometimes be as much as five years either side with medical tests."* And the British Medical Bulletin research[7] highlights that the influence of ethnicity, genetic background, nutrition, deprivation, previous and current illnesses - especially endocrine diseases – can all have profound effects on physical development, skeletal and dental maturity.

64. Your Equality Impact Assessment will, we are sure, have established the same and other significant concerns in all of these regards.

65. In terms of a new appeals process, any new process which is or appears to have a lesser standing or is limited in any way by comparison with JR, would not be one we would support. Again, we need to see further detail by way of draft clauses to enable a more detailed response. We do, however, **agree that introducing an appeals process where currently none exists, is a desirable proposal**.

66. In conclusion, we agree with Refugee Rights Europe that the proposals are 'too concerned with the over-publicised myth of an adult being placed in a school...' and 'dangerously exacerbates existing narratives and myths that depict asylum-seeking adults posing as children as a common occurrence.'[8] We also agree with UNHCR's view that 'policy or legislation which allows

[4] https://www.ein.org.uk/news/british-dental-association-says-x-rays-should-not-be-used-establish-age-young-asylum-seekers
[5] UNHCR - UNHCR Observations on the New Plan for Immigration UK
[6] https://www.rcpch.ac.uk/resources/refugee-unaccompanied-asylum-seeking-children-young-people-guidance-paediatricians#age-assessment
[7] https://academic.oup.com/bmb/article/102/1/17/312555
[8] New Age Assessment Rules for Asylum- Seeking Young People – Refugee Rights Europe (refugee-rights.eu)

asylum-seekers to be treated as adults based on brief assessments of physical appearance and demeanour by immigration officials creates a considerable risk of children being subjected to adult procedures and of a violation of their rights under the Convention on the Rights of the Child and the 1951 Convention.'[9]

67. Finally, we wish to remind you that the Rights of Children and Young Persons (Wales) Measure 2011 brought into Welsh domestic a requirement to have regard to the UNCRC. Welsh Ministers were clear in their Senedd election manifesto that they will 'continue to uphold the rights and entitlements of unaccompanied asylum seeking children.' We are proud to take a 'child first, migrant second' approach which upholds the best interests, rights and entitlements of children in Wales. **Any policy proposal which appears to diminish this statutory position is not one which we would support.** This includes the large majority of those set out in the New Plan.

Supporting victims of Modern Slavery

68. We do not oppose the proposal to consult on a definition of "public order grounds". However, we urge the UK Government to reconsider the proposal to focus on "*serious criminality (specifically, where there is a prison sentence of 12 months or more) or risks to national security."* Given that trafficking victims are likely to have been forced to participate in serious criminality in many cases, this seems wholly inappropriate.

69. The *New Plan* cites the example of Germany as an inspiration for consulting on a new definition of "public order grounds" but Germany chose to define this as *"the continued stay of the foreign national would be detrimental to public safety and order or other substantial national interests."* **We would urge the UK Government to consult on a similar definition, rather than create an unfair barrier to victims who have committed serious criminality through duress**.

70. It is positive that temporary leave to remain will be possible for modern slavery victims and survivors who are helping the police with prosecutions but **we would urge UK Government to offer ILR instead to enable victims and survivors to finally rebuild their lives after the trauma they have experienced**. This will also likely undermine the ability of perpetrators to control victims by encouraging further victims to come forward.

[9] UNHCR - UNHCR Observations on the New Plan for Immigration UK

Removal of failed asylum seekers

71. The *New Plan* states that the Home Office will be "*working with local authorities and partners [to] seek to enforce returns – including removing asylum support for individuals who fail to comply with our attempts to return them."* It is unclear how local authorities are expected to support this objective but many functions undertaken by Welsh local authorities relate to devolved responsibilities – including community cohesion, homelessness and social services. **We need further information about how the Home Office intends Welsh local authorities to support their intention to remove refused asylum seekers**.

72. We agree that the current system too often leaves refused asylum seekers (who are appeal rights exhausted) in a limbo situation in Welsh communities, leaving them vulnerable to exploitation and destitution. However, **our suggestion would be for enhanced support for voluntary returns packages with increased funding support available**.

Opportunities for improvements which should not be missed

Asylum seeker Right to Work

73. The Immigration White Paper (2018) included a commitment to review the right to work for asylum seekers whilst they await a decision on their claim. **The Welsh Government fully supports a proposal to extend the right to work for all asylum seekers from 6 months of arrival in the UK, regardless of Shortage Occupation List roles or any other requirements.** It makes good economic, social and well-being sense to make this alteration – as articulated by the Lift the Ban campaign.

74. This Right to Work would extend until an individual has become Appeal Rights Exhausted or been removed from the UK. After three years, there appears no sign of the review promised in 2018. However, this legislative vehicle provides a golden opportunity to make this positive change. If UK Ministers are concerned about potential unintended consequences, **we propose that a sunset clause is added to the Borders Bill which enables this change to be reversed after 5 years or the sunset clause removed by secondary legislation if enacted before then**.

Case management system for asylum seekers

75. A major obstacle for a well-functioning asylum system is that many asylum seekers simply do not understand what the status of their case is. Many voluntary organisations devote substantial time and effort to help increase understanding and resolve issues but the job is difficult and time-consuming. **We propose the development of an accessible case management system which asylum seekers can utilise (along with their case workers**

with consent) to enable them to track the progress of their case and more easily understand if any actions are required.

British citizenship for children born to migrant parents

76. The *New Plan* includes a section seeking to end anomalies and deliver fairness in British Nationality laws. **The most significant improvement which we believe the UK Government should make – but which is missing from this paper – is to bestow a clear right to British citizenship to any child born in the UK to migrant parents.** From Windrush to the EU Settled Status system (and many other examples along the way), the current lack of a right to UK citizenship for children in these circumstances has led to unfair and unforeseen hardship.

77. 'Birthright citizenship' (also known as '*jus soli'* citizenship) exists in many other countries (including the USA and Canada) but has not existed in the UK since the British Nationality Act 1981. Growing up in the UK without the guarantee of citizenship (or at least Settled Status) is not in the best interests of children and these members of society should not be penalised by any choices which were made before they were born.

'Public Funds' regime

78. It is clear that prohibiting access to specified 'Public Funds' in the Immigration Rules is a cornerstone of UK Government immigration policy and the principle is likely to be retained. We understand the policy intention behind the use of 'No Recourse to Public Funds' (NRPF) conditions but we urge the UK Government to revise the way it implements this concept.

79. The current system creates confusion because the list of Public Funds includes both specific funds and general areas of prohibited support. **We urge the UK Government to only feature specific funds in this list and make it clear that any support which is not listed is permitted**.

80. We have been prevented from exercising our powers sufficiently to fully implement our *Nation of Sanctuary Plan* (devolved integration strategy). This is because our strategy is to support integration from day one of arrival in Wales, regardless of immigration status. Although we have general legislative powers to support the well-being of anyone living in Wales, the (sometimes vague) prohibitions listed in the Immigration Rules make positive interventions sometimes incompatible with UK Government policy. Therefore, **we urge the UK Government to consult with Devolved Administrations to seek agreement before adding a specific Public Fund to the list in the Immigration Rules**.

81. The current NRPF regime creates negative outcomes which we do not believe was the UK Government's policy intent when drafting these rules. **Where an individual cannot be returned to their country of origin for no fault of their own, we do not believe that it is ethical or conducive to public health and community cohesion for these individuals to be subject to NRPF conditions**.

82. It is also imperative that children from migrant families living in Wales are not disadvantaged because of NRPF conditions. The Welsh Government has enshrined the United Nations Convention on the Rights of the Child in law and acting in the best interests of children guides all our work. NRPF conditions which prevent children accessing Free School Meals, Healthy Start vouchers or similar initiatives are opposed by the Welsh Government. **We urge the UK Government to ensure that such prohibitions are outlawed in future**.

Respect for Devolved Administrations

83. Immigration control is a reserved responsibility to the UK Parliament but migrant integration is not (the former is listed in Schedule 7A to the Government of Wales Act 2006[10] but the latter is not). Unilateral UK Government decisions to add public funds to the NRPF regime or to spend funds on integration activities in Wales undermine the Welsh Government's devolved responsibilities.

84. The Welsh Government already spends considerable amounts to support the integration of migrants in our communities but sometimes the UK Government suggests it will fund potentially duplicate or contradictory schemes in Wales. In recent times, we have successfully managed to explain to Home Office colleagues that **this undermines the devolution settlement** and ensured that instead, consequential payments are made to the Welsh Government relating to integration activities implemented in England. Nevertheless, **the UK Government should ensure that their officials adopt this approach as standard**.

85. The UK Government will often refer to a 'tripartite relationship' in the delivery of its migration initiatives. This is intended to mean: (1) the Home Office; (2) Home Office-funded partners (e.g. Clearsprings Ready Homes); and (3) Local Authorities. Though we do not dispute the central importance of these partners, there is a fundamental lack of recognition of the Welsh Government's devolved responsibilities and support services provided to address shortcomings in the existing system.

86. We are very often not involved in the way we would expect. For example, we will be told of major policy changes via the Wales Strategic Migration

[10] Paragraph 29 of Schedule 7A to the Government of Wales Act 2006 "Immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British Citizens".

Partnership rather than through Inter-Ministerial engagement between UK and Welsh Governments.

87. The Home Office will also develop policies with England-only departments (such as the Department of Health, Department for Education or Ministry for Housing, Communities and Local Government), before sharing these policies and expecting them to apply to Wales, despite divergent legislation, policies and structures operating in Wales. The Welsh Government should be involved at an earlier stage on policies and guidance which include or impact on devolved responsibilities.

88. When we request Home Office data to support the Welsh Government to develop policies and initiatives which we believe are necessary for migrant integration in Wales (a devolved responsibility), we are never provided with this in a timely manner. We are currently awaiting anonymised data on the demographic characteristics of asylum seekers in Wales and this process has so far taken well over a year.

89. In recent times, the Ministry of Housing, Communities and Local Government has been given inappropriate responsibilities to coordinate migrant integration initiatives in Wales. These are devolved responsibilities and the role of the MHCLG is not needed or understood.

90. **We request and expect a fundamental improvement in the way the UK Government engages with the Welsh Government in relation to migrant integration**. Initially we expect the issues above to be resolved and then to see improved timely collaboration between our two Governments.

Asylum accommodation

91. The quality of asylum accommodation is one of the most negative aspects of the asylum system at present. An inspection of asylum accommodation in 2018 by the Independent Chief Inspector of Borders and Immigration (ICIBI) showed serious inadequacies in the quality of accommodation in Wales and the implementation of new Asylum Accommodation and Support Contract (AASC) does not appear to have improved things in any meaningful way.

92. **We recommend that the UK Government transfers responsibility for routine inspections of asylum accommodations to either the ICIBI or the soon to be established Office of Migrants' Commissioner**. Such a transfer will need to be accompanied with sufficient resources to enable more regular inspections which includes photographic evidence of findings. Publication of findings should be made via the Home Affairs Select Committee, rather than the Home Secretary.

93. **We also recommend that the Office of Migrants' Commissioner be transferred the resources and operation of the 'independent complaints process' which is currently operated by Migrant Help under the AIRE contract**. The current process is not seen to be independent and the service has so far failed to live up to expectations in terms of service standards and applying accountability to the operation of the AASC contract.

94. **We further recommend that Clearsprings Ready Homes are required to submit photographs to the Home Office showing property conditions before and after asylum seekers have been living in each property and these should be made available on request where complaints are lodged**.

95. The Welsh Government was initially heartened with UK Government confirmation that the new asylum accommodation contracts would comply with the Welsh Housing Quality Standards. These standards make it clear that forced room sharing of adults is not acceptable (amongst other standards). However, despite several attempts to draw attention to this breach of the contract, forced room sharing remains a feature of asylum accommodation in Wales. **The UK Government must ensure Clearsprings Ready Homes discontinue the policy of forced room sharing of adults**.

96. The current arrangements make insufficient provision for asylum seekers who are likely to be exceptionally vulnerable. This particularly includes those who are LGBTQ+ and are forced to share properties with those who have discriminatory views on the basis of sexual orientation or transgender identity. It also includes those who have experienced domestic or sexual abuse, either in the UK or on the journey to the UK. Those with physical or mental impairments may also be disabled by the Home Office's failure to centrally consider these impairments in selecting the location of accommodation. Those who may have been forced to seek asylum due to apostasy or non-traditional religious beliefs may also be placed in a vulnerable position if forced to share properties with those who do not share their beliefs.

97. **We urge the UK Government to overhaul the policy for allocating accommodation – putting the well-being of asylum seekers at the heart of its allocation policy.** Ensuring a better compatibility between those living in shared properties will help the general well-being of all involved.

98. This would mean ensuring there are **LGBTQ+-only properties** available in each area, as well as ensuring **dedicated domestic or sexual abuse counselling and bedspaces** are made available as required. It means ensuring **reasonable adjustments** are made – not only to properties themselves, but also to the location of those properties – to ensure disabled people are properly supported. It also means **ensuring the situations which led to someone fleeing their country of origin are not replicated here in**

Houses of Multiple Occupation, by carefully considering the compatibility of religious views.

Widening asylum dispersal

99. The asylum system has long been founded on the principle of local authority cooperation and consent. Recent experience with the Penally army training camp in Wales was a concerning departure from this long-accepted principle. **We urge the UK Government to recommit to the importance of local authority consent for the placement of asylum seekers in their boundaries**.

100. The Welsh Government is actively involved in seeking to widen asylum dispersal to new areas in Wales. However, we have been clear with UK Government colleagues that the availability of funding to 'pump-prime' new areas to receive asylum seekers is essential. Funding would enable the local authority to build internal expertise and professional capacity, to build required partnerships with relevant local stakeholders, to assess gaps in key services and to bridge these gaps as quickly as possible. **We recommend that the UK Government creates a new fund which local authorities can access for at least the first few years of asylum dispersal to their area**.

The 'Move On' grace period

101. The UK Government provides a continuation of asylum support when someone is granted refugee status for a 28 day period. **We urge the UK Government to extend this period to 'up to 56 days', which would align with Homelessness legislation in both England and Wales**.

102. The current situation means that many recognised refugees fall into destitution and homelessness soon after leaving asylum accommodation. In turn, this undermines the ability of individuals to integrate into Welsh communities.

103. The Welsh Government specifically funds a 'Move On' service with comparable services missing in many parts of England, yet we still see these negative outcomes too often. This is a perverse situation where the UK Government recognises an individual's right to international protection after many months of consideration but then expects them to rebuild their lives within 28 days.

104. **We believe that in most cases the full 56 day period will not be required** – newly granted refugees will be motivated to move onto Universal Credit or into employment at the earliest opportunity as asylum support rates are so low. However, 56 days will provide the necessary breathing space to find sustainable solutions for individuals.

Asylum support rates

105. Asylum support rates are set at an exceptionally low level which intends to meet “essential living needs.” Whilst the Home Office follows a methodology accepted by the Court of Appeal as lawful in setting these rates, that judgement was made in 2014. Since that time, there has been an inexorable change in the needs of all members of society to access online services – particularly but not exclusively during the Covid-19 pandemic.

106. The current setting of rates does not adequately address this fundamental change in circumstances. It seems impossible to claim that access to the internet for asylum seekers during the pandemic was not an essential living need – how else would individuals have accessed translated public health messaging, kept in touch with families, and been able to heed Covid-19 control measures through staying inside?

107. Despite a £20 top-up provided to Universal Credit claimants, this top-up was not provided to asylum seekers. The Welsh Government has intervened to provide free unlimited internet access in all asylum accommodation in Wales for the next stage of this pandemic, in the absence of Home Office provision.

108. The *New Plan* and other Home Office policies are also making a default move to remote hearings and reporting requirements for many situations. Without internet access delivery of this change will be difficult to achieve.

109. **We urge the UK Government to look again at the asylum support rates methodology – to add additional funds to ensure access to internet services and also to consider funds to support the integration of individuals in our communities (e.g. increased transport costs).**

110. The Immigration Act 2016 introduced a provision to enable the cessation of asylum support for families with children who had been refused asylum. A new Section 95A was introduced as an alternative form of support but had to be applied for within 90 days. Thankfully, this change has not been implemented but **we urge the UK Government to abandon it altogether at this opportune moment. We will not tolerate children sleeping rough in Wales** and should Home Office support stop, it is likely that Welsh Social Services duties would be engaged instead. However, this will incur costs on Welsh public services which are avoidable and are only necessary to abide by basic children’s rights requirements.

Data and information sharing

111. It is **imperative that where asylum seekers are transferred to a local area, the Home Office provides relevant information to the local authority and local health board** (Welsh principle local structure responsible for healthcare)

to ensure appropriate considerations can be made for care, well-being and integration support.

112. Information must be shared quickly on a confidential and secure platform to ensure this support is put in place quickly. Where the Home Office needs to move an individual to another area, they should update all relevant partners in both the receiving area and the area of departure – facilitating continuity of care.

113. Where individuals receive refugee status, the local authority housing team will need to be made aware urgently to start the move on process as quickly as possible. Similarly, where an individual is refused asylum local authority social services teams need to be made aware as they will need to consider whether alternative accommodation must be provided under the Social Services and Well-Being (Wales) Act 2015.

114. The Welsh Government does not need to receive details relating to personally identifiable individuals but **we do expect to receive anonymised data on asylum seeker demographics and trends in support required**. As yet, we have not been provided with the information we have been requesting for over a year.

Quality of decision-making

115. The *New Plan* does not discuss a crucial change which needs to be made to improve the asylum system – the quality of decision-making. In the year ending December 2020, 38% of appeals were allowed, demonstrating the high number of initial decisions which were not as robust as it should have been.

116. We acknowledge that focusing on a 'one-stop' legal process is intending to increase the availability of relevant evidence at the initial decision stage but the process of evidence gathering cannot be rushed. There is a dearth of good immigration legal advice in many parts of the UK, including much of Wales, and this needs to be enhanced to ensure the evidence at initial decision stage is improved.

117. **We recommend that the UK Government works with the Legal Aid Agency and Office of the Immigration Services Commissioner to increase the supply of immigration legal advisors and relevant Legal Aid to support better quality decision making in future**.

118. **We further recommend that the UK Government adopts a less adversarial approach to asylum interviewing**. LGBTQ+ individuals, those sexually assaulted and torture survivors have all previous expressed views

that interviews re-traumatised them and undermined the objective of building a complete case history at this initial stage.

John Davies
Head of Inclusion, Cohesion and Brexit Coordination
Communities Division
Welsh Government

XX August 2021

Dear John,

Welsh Government Response to the Home Office's New Plan for Immigration

Thank you for your email of 22 June, which contained the Welsh Government Response to the Home Office's New Plan for Immigration. I apologise for the delay in replying.

I begin by thanking you and colleagues in the Welsh Government for the constructive discussions we have been having on the New Plan for Immigration and the Nationality and Borders Bill. I look forward to further discussions as the Bill moves through the UK Parliament.

The New Plan for Immigration policy statement and consultation

The New Plan for Immigration policy statement, which was published on 24 March, set out in detail proposals for controlling both legal and illegal migration to the United Kingdom. It contained multiple sources of analysis and evidence.

The Home Office considered carefully how to conduct the consultation and a detailed and thorough consultation exercise was conducted. In total, there were 8,590 respondents to the online consultation questionnaire, which included 7,399 individuals who identified themselves as members of the public and 1,191 who identified themselves as stakeholders. There were also extensive engagements, with stakeholder groups, with public focus groups and with groups of those with lived experience of seeking asylum in the UK and with those who were victims/survivors of modern slavery. The consultation was run in line with established principles, and legal duties. The UK Government response to the consultation was published on 22 July.

The Plan included evidence for particular proposals, including sufficient data, to allow those consulted to give intelligent consideration and an intelligent response. We do not agree that the Plan contains any misleading statements or inappropriate conclusions. We also do not agree that the Plan overlooks the position of those who enter the country illegally. Our intention is indeed to reduce the number of individuals who illegally enter the United Kingdom.

The Plan was published when policies were at a formative stage. The objective of the consultation was to listen to a wide range of views to further inform the proposals set out in the New Plan for Immigration, to enable us to reach a decision on the

content of legislation to be introduced to Parliament. Our consideration of all consultation responses took place before the introduction of the Bill.
The Bill was introduced into the House of Commons on 6 July and passed its Second Commons Reading on 20 July. Commons Committee Stage will commence following summer recess in the autumn. Those interested in the proposals contained in the Bill will of course be able to make representations on the detailed provisions in the Bill in the usual way as the Bill progresses through the UK Parliament.

ILR for Refugees

From October, refugees arriving through the UK Resettlement Scheme will be granted indefinite leave to remain upon their arrival to the UK. Once this change takes place, anyone resettled under the UK Resettlement and Community Sponsorship Schemes from March 2021 will have the option to benefit from the change, free of charge. This will only apply to resettled refugees.

The previous Vulnerable Persons Resettlement and Vulnerable Children's Resettlement Schemes both closed in February 2021. Refugees resettled through these schemes were granted five years' leave to remain, after which they can apply for indefinite leave to remain, free of charge.

Review of Family Reunion routes

The UK family reunion policy has seen over 29,000 family reunion visas issued in the last 5 years, with more than half issued to children. Our policy makes clear that there is discretion to grant visas outside the Immigration Rules, which caters for extended family members in exceptional circumstances – including young adult sons or daughters who are dependent on family here and living in dangerous situations. There are separate provisions in the Rules to allow extended family to sponsor children to come here where there are serious and compelling circumstances.

The UK Government committed to review safe and legal routes to the UK and had a statutory duty to conduct a public consultation on family reunion for unaccompanied asylum-seeking children (UASC) in the EU. This consultation was completed as part of the wider consultation on the New Plan for Immigration. We have carefully considered the responses. A report on the outcome of the review of safe and legal routes was laid in Parliament on 22 July. This includes details of the UK Government's ambition to strengthen our existing policy by providing additional clarity in the Immigration Rules on the exceptional circumstances where we would grant leave to a child seeking to join a relative in the UK.

We will continue to allow those arriving in the UK via safe and legal routes to reunite with family in the UK. The UK Government's position is that reducing family reunion entitlements for those granted temporary protection status is a proportionate way of encouraging people to claim asylum in the first safe country they reach and not to undertake dangerous journeys to the UK. But importantly, these individuals will still be able to reunite with family where refusal would breach our obligations under Article 8 of the European Convention on Human Rights. These proposals comply with the 1951 Refugee Convention.

Multi-year commitment to resettlement

We are committed to continue welcoming refugees through resettlement in the years to come. This commitment will ensure we continue to offer safe and legal routes to the UK for vulnerable refugees in need of protection.

This is a multi-year commitment with number of refugees we resettle every year dependent on a variety of factors, including local authorities' capacity for supporting refugees and the extent to which Community Sponsorship continues to grow.

We are grateful to Welsh local authorities for their contribution to the success of our previous resettlement schemes and welcome your offer of help promoting future participation in the new UK Resettlement Scheme.

Our Afghanistan Citizens' Resettlement Scheme aims to welcome 5,000 Afghans in year one, with up to a total of 20,000 in the long-term. We are working urgently to open this route. Further details will be announced in due course.

Exceptional discretionary assistance to people in country of origin

Resettlement programmes provide protection in the UK to those who have been recognised as refugees outside their country of origin. But there can be circumstances whereby someone faces immediate danger whilst in their country of origin and is therefore not eligible under our refugee resettlement programmes. This proposal is designed for such circumstances. In truly exceptional and compelling cases, the Home Secretary will be able to act swiftly to allow internally displaced persons into the UK, using their discretion under Section 3 of the Immigration Act 1971 to grant leave outside the rules to enter the UK. More details regarding subsequent entitlements once in the UK will be set out in due course.

Tailored support to help refugees to integrate

We recognise that integration is devolved in Wales, and we are grateful for the work the Welsh Government has been undertaking over the past few years. We believe there is much that we can learn from each other. We note your comments about funding and look forward to further discussions.

Temporary Protection Status

In line with Article 31 of the Refugee Convention, we will pursue differential treatment of those who do not come directly to the UK, do not claim asylum without delay, or fail to show good cause for their illegal entry/presence in the UK. This is aimed at deterring dangerous journeys and upholding the first safe country principle.

A person granted temporary protection status will not be provided with recourse to public funds unless they are destitute or at risk of destitution.

Asylum Reception Centres

Clause 11 of the Bill would allow the Secretary of State to take account of the stage an individual's asylum claim has reached in deciding the particular type of accommodation that might be suitable for their needs. It also allows the Secretary of State to take account of their past compliance with bail conditions and other conditions attached to the provision of support. Full-board accommodation centres are already used to provide housing and other support to asylum seekers and failed asylum seekers who would otherwise be destitute. Expansion of their use will help to increase efficiencies within the asylum system, for example through onsite case working. Faster decisions are in the interests of those with a genuine claim for asylum and help to facilitate their integration into UK society. Individuals accommodated at the centres will have appropriate access to the services they need, either on site or locally.

Plans for accommodation centres are at an early stage of development. At present, however, there are no plans for couples and families to be accommodated at the centres. We welcome further dialogue with the Welsh Government as the proposals develop.

Streamlining asylum claims and appeals

We do not accept that the flowchart on page 25 of the policy document is misleading.

The current appeals system can be slow. As of May 2020, 32% of asylum appeals lodged in 2019 and 9% of appeals lodged in 2018 did not have a known outcome.

The Bill will seek to prevent sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law.

There will be expanded access to civil legal aid for those in receipt of a Priority Removal Notice. There will also be expanded access to civil legal aid for potential victims of modern slavery, to enable advice on referral into the National Referral Mechanism (NRM) to be provided as 'add-on' advice where individuals are in receipt of civil legal services for certain immigration and asylum matters.

Proposals around Fixed Recoverable Costs will look to create certainty of costs for all parties, including claimants and their representatives. This will therefore also fix at a reasonable rate the amount of costs that the Home Office can potentially claim from other parties when it successfully defends litigation. The proposals are designed to create a fairer and more reasonable costs schedule for all parties involved in immigration litigation.

It should also be noted that most immigration Judicial Reviews are brought by legal representatives on behalf of claimants, rather than litigants in person, so the notion that the majority of litigants in Judicial Review proceedings are destitute or are without legal representation is not accurate.

We are also now giving further consideration to proposals regarding experts and can confirm that these proposals are not being taken forward through the Nationality and Borders Bill.

Inadmissible claims and removal

We remain committed to upholding our international obligations. The UK Government is clear that asylum seekers should claim in the first safe country they reach – that is the fastest route to safety and it is compliant with the 1951 Refugee Convention.

The UK Government expects our international partners to engage with us, building on our good current cooperation. We will continue to highlight the importance of having effective returns agreements to stop people making perilous crossings.

The UK and EU agreed a joint political declaration which made clear the UK's intention to engage in bilateral discussions with the most concerned Member States, to discuss suitable practical arrangements on asylum, family reunion for unaccompanied minors or illegal migration. We continue to engage in discussions with other countries.

In respect of proposals to permit the processing of claims outside the UK, the UK Government's position is that we must explore every option to tackle illegal migration. We will continue to work with our international partners to meet this joint challenge.

Age assessment

There are very serious safeguarding risks if people over 18 are treated as children and placed in settings with children. Local authority 'Merton' age assessments demand a significant amount of time and resources. Even when completed, assessments are frequently subject to costly legal challenges. In light of this we are committed to supporting local authorities to better achieve swift and sustainable assessment outcomes – including through the establishment of a National Age Assessment Board (NAAB).

The NAAB will be able to undertake age assessments upon the request of local authorities and will work with local authorities to set out the criteria, process and requirements to be followed to assess age.

Welsh colleagues will have noted the recent Supreme Court judgment in the case of BF Eritrea regarding initial age assessments carried out by immigration officers on the basis of a 'significantly over 18 threshold'.

The UK is one of very few European countries that does not currently employ scientific methods of age assessment. Assessing someone's age is an extremely challenging task and it is only right we explore how the current system can be improved by harnessing scientific evidence alongside existing methods.

Regarding the proposed introduction of a statutory right of appeal, we welcome the positive response from Welsh colleagues.

On the detailed substance of the proposed measures, Home Office officials have already initiated further discussions with Welsh counterparts and look forward to continued constructive engagement over the coming weeks and months.

Our current devolution analysis, which is set out in the explanatory notes to the Nationality and Borders Bill, is that the age assessment clause contained in the Bill as introduced deals with reserved matters. However, as the Home Secretary noted in her letter to the First Minister of 6 July, we intend to replace this clause with substantive clauses in due course, as policy is finalised. We will continue to engage with you on this, noting your comments about a Legislative Consent Memorandum.

Supporting victims of Modern Slavery

We welcome your engagement on the public order measure and note your concerns. We would like to reassure you that the circumstances of each case will be carefully considered when making decisions about withdrawing support or protections. We are conscious that potential and confirmed victims of modern slavery may be suspected or accused of committing criminal offences as part of their exploitation. The UK Government will continue to engage with partners when operationalising this measure.

We also welcome your positive views on the temporary leave to remain measure. This clause ensures that all confirmed victims without immigration status will be considered for a grant of temporary leave to remain in line with specific criteria. The provision provides for a grant of leave for those victims with ongoing recovery needs stemming from their exploitation, those assisting the authorities with investigations and prosecutions relating to their exploitation and those seeking compensation linked to their exploitation. Temporary Leave to Remain is one form of leave and individuals may be entitled to Indefinite Leave to Remain through other routes.

Removal of failed asylum seekers

We recognise that rough sleepers are some of the most vulnerable people we encounter, and therefore our approach to rough sleepers with insecure immigration status is firstly to engage with them and encourage their compliance with Immigration Rules, through either regularisation of their stay or to voluntary return.

We will indeed continue to signpost individuals to the Voluntary Returns Service (VRS) where support can be provided for their return home. VRS introduced an enhanced reintegration provision in April this year, increasing funding for those who are eligible to between £1500 and £3000. The support differs based on whether the returnee is returning to a country in receipt of overseas development funding or whether they have additional assistance needs. Both failed asylum seekers and those identified as rough sleepers are entitled to reintegration support. Rough sleepers should be referred to VRS by their support worker wherever possible.

The enforced return of rough sleepers would be pursued only as a last resort. The Department is keen to work with local authorities that are engaged with non-UK rough sleepers to work collaboratively in addressing their situation in the UK.

I understand you have an ongoing dialogue with the Home Office Homelessness team regarding the interaction between Welsh local authorities and Immigration Enforcement with regards to rough sleepers. We will be consulting with local authorities and look forward to further discussion with the Welsh Government and Welsh local authorities.

Asylum seeker Right to Work

Asylum seekers are allowed to work in the UK if their claim has been outstanding for 12 months or more, through no fault of their own. Those permitted to work are restricted to jobs on the Shortage Occupation List, which is based on expert advice from the independent Migration Advisory Committee.

It is important to distinguish between those who need protection and those seeking to work here, who can apply for a work visa under the Immigration Rules. Our wider policy could be undermined if migrants bypassed work visa rules by lodging unfounded asylum claims here. Unrestricted access to employment could act as an incentive for more migrants to choose to come here illegally, rather than claim asylum in the first safe country they reach.

The policy remains under review. We thank you for your suggestions and our findings will be communicated in due course.

Case management system for asylum seekers

The Home Office is currently undertaking significant changes to its case management system. This includes a transformation programme. We have no plans at the present time to develop a user interface along the lines you suggest, but the outcome of this programme of work – and the other changes we are making through the Plan – will be a streamlined asylum system with quicker outcomes for claimants.

British citizenship for children born to migrant parents

A child born in the United Kingdom will only be a British citizen if either parent is a British citizen or settled in the United Kingdom (or from 13 January 2010, a member of the armed forces). “Settled” is defined in the British Nationality Act 1981 as being ordinarily resident in the United Kingdom and not subject to an immigration time restriction on their stay. This effectively excludes those whose parents only have limited leave to remain or are here illegally. This means that children whose families have an ongoing connection with the UK can acquire citizenship, and will be able to pass that status on to their own children born overseas, but those whose parents are here temporarily will not.

However, a child born in the United Kingdom who is not a British citizen at birth has an entitlement to register as a British citizen if their parent becomes a British citizen

or settled, or the child lives here for the first 10 years of their life. If a child does not have an entitlement to registration, an application could be made under Section 3(1) of the Act, which is at the Home Secretary's discretion. Whilst we would normally expect one of the parents to be a British citizen, the child could be registered if there were compelling circumstances. In addition, there are provisions for children born in the UK who would otherwise be stateless to acquire citizenship, which enable us to meet our obligations under the Convention on the Reduction of Statelessness. The UK Government has no plans to amend this. Citizenship should be acquired by those with an ongoing connection with the UK. This is the approach taken by many European countries and Australia and New Zealand.

'Public Funds' regime

It is a well-established principle that migrants coming to the UK should be able to maintain and support themselves and their families without posing a burden on the welfare system. Successive UK Governments have taken the view that access to benefits and other publicly funded services should reflect the strength of a migrant's connections to the UK and, in the main, only become available to migrants when they have become settled here with indefinite leave to remain (ILR).

These restrictions are an important plank of immigration policy designed to ensure public funds are protected for the residents of the UK and assure the public that immigration brings real benefits to the UK.

The Home Office has published detailed guidance in respect of public funds at Public Funds guidance (publishing.service.gov.uk). This provides clarity that benefits and services considered to be public funds are those listed at Section 115 of the Immigration and Asylum Act (1999) or Rule 6 of the Immigration Rules.

The Home Office is committed to consulting widely in understanding how No Recourse to Public Funds (NRPF) policy impacts different migrant groups, including all four nations. We have therefore set up a national NRPF stakeholder forum to work constructively and collaboratively with stakeholders in developing and reviewing policy. This forum includes representatives from the Welsh Local Government Association, other devolved administrations, central government, the NRPF Network, and other third sector organisations with a specific interest in the subject.

Free school meals are not listed as public funds under immigration legislation and the Home Office does not prevent migrants from accessing them. Rather, eligibility for free school meals policy is the prerogative of the Department for Education in England and of the devolved administrations in Wales, Scotland and Northern Ireland.

Respect for Devolved Administrations

We are committed to working with Welsh Government. Our dedicated Wales Team in Cardiff provides the strategic interface between Wales and Whitehall, so that due account is taken of the Welsh context in policy development and implementation, strategy and operations. As you will know, to ensure there is continued meaningful

engagement around immigration matters, the Deputy Director of the team is represented at your Ministerial Refugee and Asylum Seeker Taskforce and Wales Strategic Migration Partnership's Executive Board. The team also meets with you on a monthly basis. If you have any suggestions as to how to further strengthen our interaction, our Wales Team is happy to pick up with you.

Asylum accommodation

Planning to establish a Migrants' Commissioner is at an early stage and we welcome your views, both about the role of the new Commissioner and their relationship with the Independent Chief Inspector of Borders and Immigration. An independent working group is considering next steps and we will put you in touch with them do that you can feed in your views directly.

Clearsprings Ready Homes work with Rainbow International to support people who are LGBTQ+ and currently there are 6 such specific properties in Wales, with more being sourced. We do not currently room share anywhere in Wales, including initial accommodation and have no plans to do so. If you believe this is being breached, then we would welcome examples of where this is the case.

Widening asylum dispersal

The UK Government recognises the importance of working with local authorities in respect of asylum dispersal

We are grateful to local authorities in Wales for their response to the launch of the new National Transfer Scheme (NTS). Local authorities in Wales have committed to accepting a fair proportion of UASCs and have successfully delivered the necessary care placements for vulnerable new arrivals, since the launch of the new scheme on 26 July, in accordance with the new UK wide rota mechanism.

The 'Move On' grace period

The UK Government has no plans to increase the "move-on" period from 28 days to 56 days, but will consider any practical ideas to ensure those granted refugee status are able to access mainstream benefits if they need them and assistance to secure alternative housing.

We have already implemented a number of such changes over the past few years. Most importantly, Migrant Help were awarded the Advice, Issue Reporting and Eligibility (AIRE) contract, under which they are required to contact newly recognised refugees at the start of the move-on period to provide practical assistance. As your letter indicates, this service is arranged via the Refugee Council in Wales and our understanding is that it is working effectively.

Newly recognised refugees also receive their Biometric Residence Permit (BRP) before the 28-day period starts. The BRP provides evidence of their eligibility to apply for benefits and take up employment and the National Insurance Number, an issue in the past, is also printed on the back of the BRP. Further, integration loans can be applied for, which can be used for essentials to help people integrate into UK

society. For example, such a loan can be used to assist with access to housing, education or work.

Asylum support rates

The UK Government does not accept the support rates are set at an exceptionally low level. Last year, the standard allowance provided to each member of a supported household increased from £37.75 per week to £39.63 per week, an increase of around 5%, which was well over inflation.

Officials have commenced this year's review of the asylum support rate and as a first step have reached out to the main voluntary sector groups representing asylum seekers for their views. The costs of meeting needs related to travel and communication will be taken into consideration in the normal way. Currently, the £39.63 rate includes provision for the cost and maintenance of a mobile phone that provides access to the internet.

We plan to consult later this year on implementing the support provisions of the Immigration Act 2016 and will consider the impact on local authorities carefully, However, it is important to recognise that any failed asylum seekers who would otherwise be destitute, including those with children, will be able to obtain Home Office support if there is a genuine obstacle that prevents them from leaving the UK.

Data and information sharing

The Home Office are working on a data sharing agreement which will see Realtime move-on (departure following a grant of leave) data shared with Local Authorities via the secure Move IT portal.

Uploading data across circa 150 participating Local Authorities across the UK is challenging so we are developing an automated platform to do so.

In relation to demographic data, that is shared on a monthly basis with the Strategic Migration Partnership for Wales who should share that with Welsh Government and brief on developments.

Quality of decision-making

We know that some people who make a protection claim or who are identified as potential victims of modern slavery have complex needs and histories. Case Workers who interview individuals have guidance and the training required to assist them conducting interviews which makes it clear that trauma and other factors may be relevant in conducting the interview. We ask individuals before interview if they would be more comfortable talking to an interviewer / interpreter of the same gender, and where possible these wishes will be accommodated.

Under the new Bill, as noted, there will be expanded access to civil legal aid for those in receipt of a Priority Removal Notice. There will also be expanded access to civil legal aid for potential victims of modern slavery to enable advice on referral into the National Referral Mechanism (NRM) to be provided as 'add-on' advice where

individuals are in receipt of civil legal services for certain immigration and asylum matters.

I hope this letter has been helpful. I would welcome further discussions.

Yours sincerely,

Dan Hobbs,
Director, Asylum, Protection and Enforcement Directorate
Migration and Borders Group
Home Office

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG
GAN
LYWODRAETH CYMRU

TEITL	**Bil Cenedligrwydd a Ffiniau y DU**
DYDDIAD	**06 Rhagfyr 2021**
GAN	**Jane Hutt AS, y Gweinidog Cyfiawnder Cymdeithasol, a Mick Antoniw AS, y Cwnsler Cyffredinol**

Mae Cynllun Mewnfudo Newydd Llywodraeth y DU a'i Bil Cenedligrwydd a Ffiniau, sydd ar hyn o bryd yn gwneud ei ffordd drwy ddau Dŷ Senedd y DU, yn llwyr danseilio ein gweledigaeth o Gymru fel Cenedl Noddfa.

Cytunwn fod y system lloches yn ddiffygiol ac mae llawer o wendidau y mae angen mynd i'r afael â hwy. Er hyn, mae'r Bil hwn yn mynd yn gwbl groes i'r hyn sydd ei angen a bydd yn hytrach yn gwaethygu'r annhegwch ac yn peri niwed i gymunedau.

Credwn y bydd llawer o'r darpariaethau yn y Bil yn torri confensiynau rhyngwladol ac egwyddorion cyfiawnder, gan osod amodau eithafol ac anorchfygol yn eu hanfod ar bobl sy'n troi atom i'w diogelu.

Bydd nifer o ddarpariaethau'r Bil yn effeithio ar weithrediad cyfrifoldebau datganoledig, a byddwn yn cyflwyno Cynnig Cydsyniad Deddfwriaethol mewn perthynas â'r rhain. Byddant hefyd yn effeithio ar ein gallu i arfer swyddogaethau sy'n ymwneud â chydraddoldeb, cynllunio, gwasanaethau cymdeithasol, cydlyniant cymunedol ac integreiddio mudwyr.

Mae'r Bil yn cynnig system dwy haen newydd a fydd yn cynnwys ffoaduriaid "grŵp un" a ffoaduriaid "grŵp dau". Ni chredwn fod y system hon yn gydnaws â chyfraith ryngwladol o dan Gonfensiwn y Cenhedloedd Unedig ar Ffoaduriaid.

Bydd ffoaduriaid grŵp dau yn cael eu gwahardd rhag cael arian cyhoeddus, eu hatal rhag ailymuno â'u teuluoedd yn y DU, a'u cyfyngu i ddim ond 30 o fisoedd o loches yn y DU wrth aros am adolygiadau pellach o'u hamgylchiadau. Rhoddir y cyfyngiadau hyn arnynt ar sail eu dull o deithio i'r DU ac nid ar sail teilyngdod eu hachosion.

Bydd hyn yn achosi effeithiau anghymesur na ellir eu rhagweld ar bobl sy'n cyrraedd Cymru a'r DU ac yn effeithio'n andwyol ar ein gallu i ddarparu cymorth integreiddio yng Nghymru. Bydd yn gwaethygu cyni ac yn cynyddu achosion o ecsbloetio mudwyr a gwaith anghyfreithlon yn ein cymunedau – gan achosi i'r boblogaeth hon fod hyd yn oed yn fwy agored i niwed.

Bydd hefyd yn cynyddu achosion o ddigartrefedd ac o bosibl yn peryglu iechyd y cyhoedd, gan ei bod yn debygol y bydd y rhai nad ydynt yn cael cymorth arian cyhoeddus yn ofni ceisio gofal iechyd. Bydd darparwyr gwasanaethau yn wynebu penderfyniadau moesegol a chyfreithiol anodd o ran i bwy y dylent neu y gallent ddarparu gwasanaethau. Mae hi'n anorfod y bydd rhai yn cael eu gwrthod, yn amhriodol, wrth geisio ffynonellau cymorth hanfodol.

Yng nghyd-destun yr heriau hyn, bydd hi'n anos cynnal cydlyniant cymunedol a chefnogi'r gwaith o integreiddio mudwyr yn effeithiol. Bydd y newid hwn yn gymwys i bobl y mae Llywodraeth y DU eisoes wedi derbyn eu bod yn ffoi oherwydd pryder rhesymol o erledigaeth.

Mae'n anodd deall y rhesymeg dros beidio â darparu arian cyhoeddus i bobl sydd wedi cael lloches yn y DU, a'u hatal rhag bwrw gwreiddiau a chael cyfleoedd i ailymuno â theulu, a hynny dim ond oherwydd y ffordd y maent wedi teithio i'r DU.

Ar ôl y sgandal Windrush, sicrhaodd Llywodraeth y DU y byddai'n ystyried yr unigolion sydd y tu ôl i achosion ac yn gweithredu mewn ffordd fwy tosturiol. Nid yw hi wedi cadw at yr ymrwymiad hwnnw o ystyried goblygiadau'r Bil hwn.

Chwaraeodd y DU rôl allweddol o ran datblygu egwyddorion Confensiwn y Cenhedloedd Unedig ar Ffoaduriaid, a lofnodwyd ganddi 70 o flynyddoedd yn ôl. Bydd y Bil Cenedligrwydd a Ffiniau yn mynd yn groes i'r egwyddorion hyn ac yn chwalu hygrededd a grym cymell tawel y DU o amgylch y byd.

Fel un o lofnodwyr Confensiwn y Cenhedloedd Unedig ar Ffoaduriaid, mae'r DU yn derbyn yn benodol y dylai pobl allu hawlio lloches yn y wlad hon. Er hynny, mae'r Bil hwn yn rhoi'r argraff anghywir bod ceiswyr lloches yn dewis a dethol y wlad fwyaf manteisiol i geisio lloches ynddi. Mewn gwirionedd, ac yn fwy aml na pheidio, mae unigolion sy'n ceisio lloches yma yn gwneud hynny am eu bod yn fwy tebygol o allu integreiddio'n heddychlon yn y DU nag yn unrhyw le arall.

Bydd cynnig y Bil i agor "canolfannau llety", gan gynnwys yng Nghymru, yn tanseilio ein gweledigaeth o Genedl Noddfa. Byddai'r ceiswyr lloches hynny'n cael eu lletya mewn cyfleusterau mawr – a hynny am gyfnod amhenodol o bosibl – ar wahân i'r gymuned ehangach yng Nghymru. Mae hyn yn eu hatal rhag datblygu rhwydweithiau cymorth cymdeithasol a chaffael iaith yn anffurfiol, ynghyd ag atal cyfleoedd i rannu diwylliannau, sy'n elfennau hanfodol wrth integreiddio.

Yn anffodus, rydym wedi gweld drosom ein hunain pa mor niweidiol y gall “canolfannau llety” o’r fath fod. Y llynedd, penderfynodd y Swyddfa Gartref ddefnyddio gwersyll hyfforddi’r Fyddin ym Mhenalun yn Sir Benfro fel canolfan loches. Tarfodd hyn ar gydlyniant cymunedol a chafwyd protestiadau y tu allan i’r gwersyll, gan achosi niwed i iechyd meddwl y bobl a oedd yn lletya yno. Rydym wedi gweld gwaddol gweithgarwch eithafiaeth asgell dde yn Sir Benfro ymhell ar ôl cau gwersyll Penalun.

Nid yw’r Bil yn gosod cyfyngiadau ar ddefnydd y canolfannau hyn. Byddai modd eu defnyddio i letya plant neu bobl â hanes o artaith neu gaethiwed gormesol, neu i letya pobl LHDTC+ ar y cyd â phobl a chanddynt safbwyntiau atgas, ymysg canlyniadau annerbyniol eraill.

Mae’r Bil yn cynnig peidio â rhoi hawl apelio i geiswyr lloches, gan olygu eu bod yn ddibynnol ar adolygiad barnwrol. Mae hyn yn gyfystyr ag amddifadu pobl o hawl i achos teg o dan Erthygl 6 o Ddeddf Hawliau Dynol 1998.

Mae’r Bil yn ei gwneud yn ofynnol i bobl gyflwyno seiliau dros hawliadau hawliau dynol a gwarchodaeth o fewn cyfnod penodedig. Fodd bynnag, gall gymryd amser i bobl sy’n dianc rhag cyfundrefn ormesol nodi eu hachos yn llawn. Mae diffyg cynrychiolaeth gyfreithiol yn y DU er mwyn helpu ceiswyr lloches i lunio’r achosion hyn, ac nid yw pobl sydd wedi dioddef yn sgil achosion o fasnachu pobl bob amser yn datgelu eu hachosion yn syth.

Rydym yn cydnabod ac yn cefnogi ffocws Llywodraeth y DU ar gael gwared ar rwydweithiau troseddol sy’n arfer caethwasiaeth fodern. Er hyn, credwn y gallai’r cynigion sy’n ymwneud â chaethwasiaeth fodern yn y Bil achosi i bobl ddod yn fwy agored i niwed, gan beri rhagor o drawma a straen i ddioddefwyr, ynghyd â’i gwneud yn anos eu canfod. Yn hytrach na chael effaith ataliol ar rwydweithiau troseddol cyfundrefnol, mae’n bosibl y byddai’r Bil yn creu rhagor o rwystrau rhag mynd i’r afael â chaethwasiaeth fodern yng Nghymru, gan ein hatal hefyd rhag rhoi cymorth i ddioddefwyr a goroeswyr.

Rydym yn bryderus ynghylch y cynigion, sy’n bwriadu defnyddio’r broses asesu oedran. Gan fod y ffordd y cofrestrir genedigaethau yn amrywio o amgylch y byd, mae llawer o blant a ddaw i’r DU yn methu darparu dogfennaeth fel tystiolaeth. Mae hynny naill ai oherwydd nad ydynt erioed wedi cael y ddogfennaeth yn y lle cyntaf, neu oherwydd ei bod wedi’i dinistrio.

Profwyd hyn dros flynyddoedd lawer o gyfraith achosion, ond mae’r Bil yn diystyru’r achosion pwysig hyn. Rydym yn annog Llywodraeth y DU i ymgynghori â phwyllgorau moesegol y cyrff proffesiynol meddygol, deintyddol a gwyddonol perthnasol, a chyhoeddi adroddiad cyn gwneud rheoliadau.

Croesawn gynnig y Swyddfa Gartref i roi caniatâd amhenodol i aros i ffoaduriaid grŵp un. Ni fydd y rhan fwyaf o ffoaduriaid sy'n ailsefydlu yng Nghymru yn gallu dychwelyd i'w gwlad wreiddiol cyn pen pum mlynedd ar ôl cyrraedd yma, felly bydd y rhan fwyaf yn gwneud cais am ganiatâd amhenodol i aros. Mae'r oedi presennol o ran gallu gwneud cais am ganiatâd amhenodol i aros yn achosi ansicrwydd ac yn atal ffoaduriaid rhag ailadeiladu eu bywydau yn llwyr.

Fodd bynnag, dylai'r rhesymeg a argyhoeddodd Llywodraeth y DU i wneud y newid hwn hefyd fod yn gymwys i bobl yng nghategori grŵp dau, sydd â'r un angen. Byddai unrhyw ffordd arall o weithredu yn anwybyddu'n greulon wir natur trawma'r ffoaduriaid.

Nid yw'r Swyddfa Gartref yn llwyddo i fanteisio ar sgiliau ceiswyr lloches gan nad ydynt yn caniatáu iddynt weithio. Byddai'r newid hwn yn golygu y gallai ceiswyr lloches gyfrannu at ein heconomi, gan helpu i lenwi bylchau yn y farchnad lafur, ynghyd â'u helpu i ddal gafael ar eu sgiliau ac integreiddio. Mae achos moesegol, economaidd a chymdeithasol amlwg dros wneud y newid hwn.

Rydym yn ddiweddar wedi gweld pa mor gyflym y gall y DU weithredu i helpu'r rhai sydd angen lloches, wrth inni symud miloedd o bobl o Affganistan. Mae hyn yn pwysleisio'r anghysondebau yn y Bil.

Bydd unrhyw Affganiaid na chafodd le ar awyren achub ond a lwyddodd i wneud y daith hir ac anodd i'r DU drwy gyfrwng smyglwyr pobl yn dod yn droseddwyr yn ôl y cynigion yn y Bil, er iddynt ffoi oherwydd yr un bygythiad gan y Taliban.

Yng Nghymru, rydym yn falch o fod yn Genedl Noddfa. Rydym yn falch o'r holl asiantaethau ac unigolion sy'n cydweithio i greu profiad unedig a chroesawgar i bobl sydd wedi ailsefydlu yma.

Mae Cymru yn wlad groesawgar a byddwn bob amser yn sefyll gyda'r rhai sydd ein hangen ni fwyaf. Rydym am i Lywodraeth y DU newid cyfeiriad er mwyn gwella – nid gwaethygu – sefyllfa gyfreithiol, foesegol a chyfiawn y Deyrnas Unedig.

Ein cyf/Our ref MA/JH-/4169/21

Rt Hon Priti Patel MP
Home Secretary

By email only.

09 December 2021

Dear Home Secretary,

We write jointly following the tragedy which occurred in the English Channel on 24 November, where 27 people lost their lives seeking to cross to the UK. Whilst this is the biggest loss of life in one incident this year we know that there are numerous reports of other individual deaths, with the International Organisation for Migration, reporting that 166 people have been recorded as dead or missing after undertaking this perilous journey since 2014.

Our three Governments agree that we must ensure people do not attempt to make the English Channel crossing by small boats and that the influence of people smugglers must be curtailed. However, we do not believe that increased marine or beach patrols, diversion, criminalisation, changes to legal status or reduced support to those who arrive in the UK, that the UK Government proposes will solve this issue.

We therefore want to offer to work together constructively with you on proposals which can seek to end any further tragic waste of human life and ensure a humanitarian solution and seek an urgent meeting to fully discuss.

Safe and legal routes

People do not make dangerous journeys to the UK because they believe our welfare system will support them. They arrive because of existing family or kinship ties in the UK, their ability to speak English or as a consequence of cultural connections linked to former British colonialism. The UK has moral and international legal obligations to uphold the 1951 UN Refugee Convention, to which the UK was a founding signatory. The UK must recognise our moral duty to enable people to seek safety and also help ease pressure in countries of initial displacement with the highest numbers of refugees.

It is therefore clear that the UK Government must reconsider its hostile environment strategy and, vitally, develop sufficient safe and legal routes for asylum seekers to claim asylum from outside the UK, negating the need for perilous journeys and disrupting the business model of people smugglers. As Zoe Gardner from the Joint Council for the Welfare of Immigrants told the Home Affairs Committee “until we provide people with a regulated alternative means of travel to the UK, every round of security spending we throw at this and every attempt at this failed model of

deterrence and pushbacks will be celebrated by the smugglers, because it simply lines their pockets."

The 'Dubs Scheme' was one such legal route which closed a number of years ago and we urge you to reopen – with an expanded offer to ensure the scheme is seen as accessible for those who need it. Properly funded successor schemes must support many thousands per year, as opposed to the 480 people who were accommodated through the previous scheme. Those considered to have meritorious claims can and should be brought safely to the UK, avoiding any further loss of life.

The Dublin Regulations also provided a safe and legal route for people seeking asylum to be reunited with family members they had become separated from and for their asylum application to be considered in the country their family were already living in. Home Office data shows that 882 people were transferred into the UK under Dublin Regulations in 2020. As the UK is no longer subject to Dublin regulations this safe route to be reunited with family and have an asylum claim considered here in the UK has been lost and a replacement is urgently required.

EU Withdrawal has made it harder to return migrants to France and other European countries. This was confirmed when the UK Minister for Immigration, Compliance and Courts told the Home Affairs Committee on 17 November that only five people have been returned so far this year compared to several hundred the previous year. As yet, no returns agreements have been made between the UK and other Member States. Progress requires a joint UK-EU response and we urge the UK Government to do more to work effectively with our European neighbours.

National Transfer Scheme

We recognise the pressure which various parts of the asylum system are currently operating under and note your recent decision to mandate local authority participation in the National Transfer Scheme to try to alleviate pressure to support unaccompanied asylum seeking children. We have unresolved concerns about the way the Scheme will operate but with Ministerial willingness, we believe that suitable compromises can be made to ensure the Scheme works effectively across the UK. Our governments and local authorities are keen to ensure our Nations play a full part, but we urgently need clarity that adequate funding and flexible arrangements will be put in place to ensure the operation of the Scheme works in a devolved context.

Asylum dispersal

We are extremely concerned by the Home Office's recent approach to procuring contingency accommodation for asylum seeking adults and families without consultation with our Governments or local authorities. We understand the time pressures involved but there is ample time for proper consultation if these conversations are prioritised in the Home Office operational delivery. In Wales, we were recently able to avert a disaster, where the Home Office wanted to open a hotel very close to the office of a far-right organisation which would have caused major disruption and safeguarding risks. We can offer this local knowledge if involved early enough but this is not happening at present.

The current approach will undo all of our good work in the last year in bringing new local authorities into the asylum dispersal system and we urge you to take action to prevent this. Similar significant concerns about the procurement of hotels as contingency initial asylum accommodation in Scotland were set out in 21 October correspondence. The offer for our three Governments to have meaningful discussions on asylum dispersal with the Convention Of Scotland's Local Authorities (COSLA), the Welsh Local Government Association (WLGA) and our combined 54 local authorities remains.

Nationality and Borders Bill

Finally, we have far-reaching concerns about the impact of the provisions included in the Nationality and Borders Bill on our Nations. Although we understand that you have different policy intentions to our Governments, we also believe the current provisions will have a counter-productive effect in achieving the aims you have outlined. People seeking asylum should be accommodated within communities and have access to the support and services they need to rebuild their lives.

- The UK government claims that this legislation contains measures that will prevent migrants crossing the English Channel in small boats, including the barbaric suggestions for "push-back" exercises involving enforcement officials seeking to repel small boats. Rather than help matters, these measures will delay rescues and endanger lives. It is an obligation under maritime laws and conventions to guarantee people's safety. As reported by the UK Parliament's Joint Committee on Human Rights a "policy of pushbacks fails to comply with the obligations to save those in distress, contrary to the right to life and international maritime law." Our governments wholeheartedly support the Joint Committee's position and call again for this policy to be urgently reviewed.
- Provisions which penalise Group 2 refugees will inevitably lead to more illegal working and exploitation of refugees (other Home Office priority areas to tackle) in our communities, a point reinforced by a range of experts who presented to the Public Bill Committee.
- Differentiation between refugees based on how they arrived rather than their protection needs is entirely counter to integration. Focus should be on improving the asylum system, not finding new ways to make the system more challenging and prolonged for people seeking safety.
- Restrictions on Family Reunion rights will lead more family members to attempt the Channel crossing.
- The provisions aimed at ensuring asylum seekers put their full case together at the first opportunity will lead to increased litigation for the Home Office if asylum seekers are dispersed to immigration legal advice 'deserts' unless there is a radical increase in Legal Aid support.
- Provisions relating to the operation of accommodation centres will lead to the rise in far-right extremism (another Home Office priority to address), as we saw in Penally in West Wales.

Our officials and ministers have repeatedly sought engagement on the matters raised in the Nationality and Borders Bill, the impact that they will have in our nations and the possible need for legislative consent. This includes key considerations on

issues relating to unaccompanied asylum seeking children and human trafficking but meaningful engagement on these matters has not been forthcoming. Welsh Ministers have now decided that a Legislative Consent Memorandum will be required to be laid at Senedd Cymru in relation to the age assessment clauses in the Bill, whilst Scottish Ministers still require urgent clarity from the Home Office to ascertain whether similar legislative competence issues need to be addressed in Scotland.

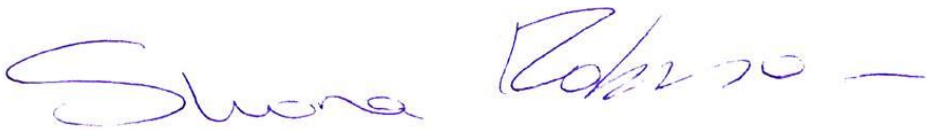
We further note that, on 1 December, less than a week before report stage, the Home Office have tabled some 80 amendments, again, without any advanced notice or meaningful engagement. This approach makes cooperative working virtually impossible and we would urge the UK government to engage constructively to address our real concerns.

Next steps

Scotland and Wales have always played their part in providing sanctuary to those fleeing conflict and persecution and we stand ready to do so again. We are committed to working with you to build cross-party support around revisions to the Bill which could make it workable and effective in achieving your policy aims whilst also ensuring effect integration of all arrivals within our Nations.

It is notable that we have had no Ministerial meetings in relation to these matters and we urge you to meet with us before the end of the year to discuss how we can work together on these vitally important issues.

We are keen to follow a Four Nations approach to this issue so we are also copying this letter to the First Minister and Deputy First Minister of Northern Ireland and we urge you to include us all when the meeting is convened.



Shona Robison MSP
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Scottish Government

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DECS Reference: MIN/0220001/21
Your Reference: MA/JH-/4169/21

18 January 2022

Dear Shona and Jane,

Thank you for your joint letter of 9 December to the Home Secretary about asylum and immigration. I also thank Shona for her letters of 4 November and 25 November, and Jane for her letters of 18 November and 10 December. I am replying as the Minister for Safe and Legal Migration.

Last November's tragic loss of life is yet another reminder of how lethally dangerous journeys across the Channel are, and why they must be stopped. The criminals who facilitate these journeys have no regard for life, and we will use every tactic in our disposal to break their business model. We must also recognise illegal immigration from safe and democratic countries in Europe undermines our efforts to help those most in need who are in the first safe country they can reach. Controlled resettlement via safe and legal routes is the best way to protect such people and disrupt the organised crime groups who exploit migrants and refugees.

This is a complicated issue and there is no simple fix. The Nationality and Borders Bill and the New Plan for Immigration are both essential elements in finding a multi-pronged solution to a long-term problem which successive Governments have faced over decades.

Safe and legal routes

The UK has a proud history of welcoming refugees through resettlement, and this will continue to be the case. Yet with worldwide displacement now standing at around 80 million people, we cannot help everyone. However, we will maintain clear, well-defined routes for refugees in need of protection. When they arrive in the UK, we will ensure refugees have the tools to properly integrate and contribute to society. The number of refugees we can resettle has to be based on the UK's capacity to support them.

Since 2015, we have resettled over 25,000 men, women and children seeking refuge from persecution across the world. This is more than any other European country. Our doors

remain open to the people who most need our help through our commitment to resettlement.

Following the successful completion of the Vulnerable Persons Resettlement Scheme in February 2021, we have launched the new global UK Resettlement Scheme. This builds on the success of previous schemes and sees the UK continue to welcome refugees in need of protection. Equally, the UK will continue to work closely with international partners such as the United Nations High Commissioner for Refugees to target those in greatest need of our support. This includes people requiring urgent medical treatment, survivors of violence and torture, and women and children at risk. We also continue to resettle refugees through our Community Sponsorship and Mandate Resettlement Schemes.

We have also relocated over 7,000 people under the Afghan Relocations and Assistance Policy (ARAP), with many more continuing to arrive. ARAP offers relocation to current or former staff, and certain others who worked alongside or in partnership with the UK Government. They are assessed to be at risk because of this work. In addition, on 6 January, the Afghan Citizens Resettlement Scheme (ACRS) formally opened. It will provide up to 20,000 women, children and others at risk with a safe and legal route to resettle in the UK.

The scheme will prioritise those who have assisted UK efforts in Afghanistan and stood up for British values such as democracy, women's rights, freedom of speech and the rule of law. Furthermore, we are also prioritising vulnerable people such as women and girls at risk, and members of minority groups (including ethnic/religious minorities and people who are LGBT+). The ACRS is a clear demonstration of the Government's New Plan for Immigration in action, as we expand and strengthen our safe and legal routes to the UK for those in need of protection.

In very exceptional circumstances, the Home Secretary can use her discretion to allow someone whose life is at direct risk to come to the UK, where the unique facts of the case merit this. As we committed to in the New Plan for Immigration, those coming to the UK through resettlement routes now receive immediate indefinite leave to remain.

It is also worth noting over 88,800 British Nationals (Overseas) (BN(O)) status holders and their family members have now applied for the BN(O) route we created in January 2021. It reflects the UK's historic and moral commitment to those people of Hong Kong who choose to retain their ties to the UK. The route offers a choice which affords long-term safety and stability for these individuals and their families via settlement in the UK.

<u>Dubs Scheme</u>

I note your comments about the Dubs Scheme. The Government met its one-off commitment to transfer 480 unaccompanied asylum-seeking children from Europe to the UK under the Dubs Scheme. We have no plans for a new transfer scheme specifically from countries in Europe, which are all safe and democratic nations, for unaccompanied asylum-seeking children (UASC), reflecting our new global approach to the Immigration system.

In addition to our resettlement schemes, since 2015 we have issued over 39,000 visas under the Refugee Family Reunion Rules. Around half of these were issued to children. Separately, we have already committed to provide additional clarity in the Immigration Rules on the exceptional circumstances where we would grant leave to a child seeking to join a relative in the UK.

Dublin Regulation and returns agreements

I also note your comments about the Dublin Regulation and about returns agreements with EU states.

All countries have a moral responsibility to tackle the issue of illegal migration. We expect our international partners to engage with us, build on our good current co-operation, and continue to highlight the importance of having effective returns agreements to stop people making perilous crossings.

The UK and EU have therefore agreed a joint political declaration which makes clear the UK's intention to engage in bilateral discussions with the most concerned Member States to discuss suitable practical arrangements on asylum, family reunion for unaccompanied minors and illegal migration. We also continue to work with other international partners to meet this joint challenge.

National Transfer Scheme (NTS)

A new voluntary National Transfer Scheme rota was launched on 26 July 2021 and was initially successful in enabling us to transfer children into the care of local authorities. However, the high number of UASC arrivals over recent months, particularly as a result of small boat crossings, alongside limited local authority participation, placed the scheme under unprecedented pressure. The NTS was unable to keep up with the demand and pace of new arrivals. Out of necessity, with the children's best interests in mind, we therefore accommodated UASC on an emergency and temporary basis in hotels whilst placements with local authorities were vigorously pursued.

Whilst many local authorities provided support under the voluntary scheme, this is a national issue which requires all local authorities to play their part. The Government therefore decided to direct local authorities to participate in the NTS, as a measure to address this current crisis. On 14 December 2021, participation in the scheme therefore became mandatory for the majority of local authorities in the UK with children's services.

We are continuing to consider remaining representations made by local authorities, including from those local authorities in Scotland and Wales, and expect to issue the outcome of those shortly. The scheme will be kept under review and the length of time it will remain mandatory will be determined by a range of factors, including intake levels and how long it takes to end the use of hotels for UASC.

We are very grateful to local authorities in Scotland and Wales, as well as the Convention of Scotland's Local Authorities (COSLA) and the Welsh Local Government Association (WLGA), for their commitment to the scheme and for providing vital care placements for UASC.

Wherever possible within the mandatory framework, we will support any nation or region wishing to make alternative local operating arrangements where it is in the best interests of the children. We have previously shown flexibility in this area and aim to continue discussions to ensure the best outcome for vulnerable children.

I recognise the importance of funding in this area. We have significantly increased the additional funding which the Home Office pays to local authorities in each of the past three years. In particular, from April 2021 local authorities receiving a child transferred under the NTS receive the higher rate of £143 per day for the child, to recognise the contribution made by the authority. In addition, I have made available a £3 million exceptional costs fund, to which I have invited local authorities to apply in relation to any additional costs they might incur.
Details of the application process are included in the UASC funding instructions to local authorities and available at:

https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-uasc-grant-instructions

Asylum dispersal

I agree we need to limit the use of contingency accommodation such as hotels and the importance of local areas participation in accommodating asylum seekers and their dependants to help us do this.

It is therefore very disappointing only 1 out of 32 local authorities in Scotland currently participates in the national dispersal scheme. Whilst I am extremely grateful to Glasgow City Council for their immense work in this area, others need to step up and play their part.

It is further disheartening how some local authorities in Scotland are picking and choosing who they will support by taking in those resettled from Afghanistan, but not those resettled via other safe and legal routes. I hope we can in future ensure a more balanced approach.

Cessation of asylum support

It is important any support provided to those who receive a negative asylum decision is conditional on the individuals concerned taking reasonable steps to leave the UK or show there is a practical or legal obstacle which prevents their departure. This is why the legal framework means support is stopped ('negative cessations') if the individuals concerned are able to leave the UK but choose not to. Negative cessations were paused across the UK for most of the period since March 2020 because of COVID-19 factors, but have now resumed in England. It is important the same system is applied in the rest of the UK as soon as possible, but before any final decision is made, we will advise the devolved administrations.

Access to work

We allow asylum seekers to work if their claim has been outstanding for 12 months or more, through no fault of their own.

Those permitted to work are restricted to jobs on the Shortage Occupation List (SOL), which is based on expert advice from the independent Migration Advisory Committee. It is important to distinguish between those who need protection and those seeking to work here, who can apply for a work visa under the Immigration Rules. It is crucial to prevent our wider policy from being undermined by migrants seeking to bypass work visa Rules by lodging unfounded asylum claims.

Asylum seekers are provided with accommodation and support to meet their essential living needs if they would otherwise be destitute whilst their claim is considered. We strongly encourage all asylum seekers to consider volunteering, so long as it does not amount to unpaid work. Volunteering provides a valuable contribution to their local community and may help them to integrate into society if they ultimately qualify for protection.

Relaxing our right to work policy is not the correct approach as this would simply encourage more people to make dangerous journeys across the Channel in order to undercut our visa routes and gain unfair access to our labour market. We have been clear those in need of protection and who wish to come to the UK must do so through safe and legal routes, such as our resettlement schemes. Where reasons for coming to the UK include family or economic considerations, applications should be made via the relevant route; either through the new points-based immigration system, or via the refugee family reunion rules. Otherwise, asylum seekers should claim asylum in the first safe country they reach, which is their fastest route to safety.

Finally, comparing different jurisdictions is unhelpful. Our policy responds to circumstances unique to the UK and must complement our wider asylum and immigration system. The same goes for other European states, and looking more closely at European countries is instructive. Austria allows asylum seekers to work after three months, but they are restricted to seasonal roles on six-month visas in forestry, tourism, and agriculture. Meanwhile in France, the right to work is permitted after six months but is contingent on having a work permit, which itself requires a job offer. In practice, this means many asylum seekers in France cannot work.

Nationality and Borders Bill

The Nationality and Borders Bill has now been passed by the House of Commons and is before the House of Lords. The principle behind the Bill, and the wider New Plan for Immigration, is simple. Access to the UK's asylum system should be based on need, not on the ability to pay people smugglers to leave safe countries like France and Belgium. Those in genuine need will be protected, while illegal migration will be prevented and those with no right to be in the UK should be removed.

Differentiation

We are creating powers to differentiate entitlements between those refugees who came directly to the UK, claimed asylum without delay, and, where applicable, showed good cause for their illegal entry or presence, and those who did not. This is intended to deter migrants from undertaking dangerous journeys from safe countries facilitated by criminal smugglers and to uphold the first safe country principle. This policy complies with our international obligations under the Refugee Convention and the European Convention on Human Rights.

You say provisions in the Bill will "inevitably lead to more illegal working and exploitation of refugees". All recognised refugees, regardless of whether they are in Group 1 or Group 2, will have the right to work in the UK. More broadly, I hope you would agree with me the best way to tackle illegal working and the exploitation of refugees is by tackling the criminal gangs who are doing the exploiting, which is exactly what we are doing through our New Plan for Immigration.

I would also like to clarify family reunion for refugees in Group 2 will be permitted where a refusal would breach our international obligations. Policy will be set out in guidance and in Immigration Rules in due course.

Accommodation centres

The Government has a statutory obligation to provide safe and secure accommodation whilst meeting the essential living needs of asylum seekers who would otherwise be destitute. Hotels are currently being used to meet some of these duties, but this is not sustainable in the longer term. Part of the solution is to increase the stock of dispersal accommodation (flats and houses), but accommodation centres are also a key part of our on-going work to build capacity in the asylum estate.

Those accommodated at the centres will receive support to cover their essential living needs – generally through 'in-kind' provision but supplemented by some cash where appropriate. People who are resident at the centres will also have the same access to services in the local community as those in other existing accommodation.

There are no plans to require all asylum seekers and failed asylum seekers to live in this type of accommodation. Those who can obtain accommodation with friends or family will continue to be able to so. Individuals who require accommodation because they would

otherwise be destitute will have the opportunity to provide information and supporting evidence as to why they should not be housed in accommodation centres because of their particular circumstances. The normal 'dispersal accommodation' will be available for these cases.

I note your comments seeking to link the operation of accommodation centres with a rise in far-right extremism. I deplore the possibility there would be any attacks on those housed in the centres, and I reiterate the accommodation will be safe and secure, as has been seen in other European Countries.

Priority Removal Notices and legal aid

It is often the case those facing removal or deportation from the UK raise late protection or human rights claims which could have been made at an earlier juncture. This causes unnecessary delay and expense to the taxpayer.

We will therefore strengthen the existing one-stop process by establishing a Priority Removal Notice (PRN) which may be issued to a person who is liable to removal or deportation from the UK. The PRN will require a person to raise any new or additional grounds for why they should remain in the UK before the date specified in the notice. This includes information relevant to whether the person is a victim of modern slavery or trafficking. Any supporting evidence must be provided at the same time.

I note your questions about legal aid, which is devolved in Scotland and Northern Ireland. I would therefore respectfully suggest these are questions for the Scottish Government and the Northern Ireland Executive. I can, however, advise all recipients of a PRN in England and Wales will receive an additional provision of between 3-7 hours of legal aid advice, which may cover advice on anything relating to their immigration status and also include advice on the National Referral Mechanism process. This will ensure all claims can be considered sufficiently in advance of the person's removal, reducing the extent to which removal can be frustrated, and allow those in need of international protection to be identified and supported as early as possible.

The Legal Aid Agency monitor the legal aid market regularly and take concerns about capacity seriously. However, at the moment, to say there are not enough legal aid lawyers is simply not correct. Each procurement area in England and Wales has immigration legal aid providers, which in June 2021 totalled 263 offices.

Assisting people at sea

We are clear the Bill does not change the UK Government's approach to existing obligations under international maritime law, including the duty to protect lives at sea.

We tabled an amendment to the Bill at Commons Report Stage to make clear organisations such as HM Coastguard and RNLI will be able to continue to rescue those in distress at sea as they do now. I understand our officials are picking up your specific questions about the interaction of the Bill with the Human Trafficking and Exploitation (Scotland) Act 2015 , and the further questions your officials have raised about the meaning of the term "danger and distress" as used in the Bill.

Maritime tactics

Our priority first and foremost is to save lives. This is why every action Border Force take is safe and in accordance with domestic and international law obligations. However, clearly it is important we have a maritime deterrent in the Channel. We are therefore strengthening Border Force maritime powers in response to the increased threat posed by

cross-Channel illegal migration over the past few years. Consequently, Border Force will gain additional powers to intercept vessels in international waters as well as UK seas.

If Border Force suspect a vessel is entering UK seas to facilitate the entry of illegal migrants, they are able to stop the vessel to investigate. Border Force would have the option to divert the vessel out of or away from UK seas or to return the vessel and those on board to the country they had left, subject to the country agreeing to their return.

Vessels used to facilitate illegal entry by sea to the UK will be liable to be seized and be quickly disposed of, including through donation to charities if appropriate.

Age assessment

The new National Age Assessment Board – with expert social workers specialising in age assessments – will improve the quality and consistency of decision making.

I did note your comments about scientific methods, yet we are one of the very few European countries which does not currently use such methods of age assessment. The Home Secretary will seek scientific advice directly from the Home Office Chief Scientific Adviser, and determine whether a method, or combination of methods, is appropriate for the purposes of an age assessment. The Home Office Chief Scientific Adviser will consult a wider group of experts on the accuracy and reliability of various scientific methods.

I note on 6 December 2021, the Welsh Government tabled a legislative consent memorandum before Senedd Cymru in respect of some of the age assessment provisions in the Nationality and Borders Bill. It remains our position the legislative consent of the devolved parliaments is not required, but I have asked my officials to write to you to provide more detail.

Working in UK waters

All foreign nationals require permission to work in UK territorial waters unless they are covered by an exemption.

The Bill clarifies the legal framework requiring foreign national workers to obtain permission to work in UK waters, therefore the effect of this clause should be negligible as this has always been the UK Government's position. Foreign nationals intending to work in UK territorial waters will need to apply for the appropriate visa under the points-based system, in the same way as when coming to work on the landmass. I

I note your comments about transit visas, particularly in respect of fisheries, and would reiterate our longstanding position. This position stipulates foreign nationals require permission to work in our territorial waters, including those working in fisheries. Transit visas do not give someone permission to work in the UK either on the landmass or within UK territorial waters. They can be used, however, to transit the UK to work outside of the UK.

Visa penalties

The UK accepts returning nationals who lose the right to be in a foreign country, and we expect other countries to do the same for their nationals. This is part of a functioning migration relationship between countries.

The Bill makes it clear when determining whether to impose visa penalties, the Secretary of State must consider factors relating to the lack of co-operation and "matters as the Secretary of State considers appropriate." If appropriate, this could also include matters raised by the devolved administrations.

Electronic Travel Authorisations

I welcome Shona's support in principle for the new Electronic Travel Authorisation scheme, which will strengthen our borders and enhance our ability to prevent the travel of those who pose a threat to the UK.

I agree we need to carefully consider how to operationalise the scheme and this work is making progress.

Engagement

I know our officials have been engaging regularly on the New Plan for Immigration and the Nationality and Borders Bill, most recently to address detailed questions your officials have had on age assessment and modern slavery.

The Minister for Justice and Tackling Illegal Migration has also been sending written updates on Government amendments to the Bill to the First Minister of Scotland, the First Minister of Wales and the First Minister and Deputy First Minister of Northern Ireland.

Legislative consent motions

The Bill does not require the legislative consent of the Scottish Parliament, the Welsh Parliament or the Northern Ireland Assembly, and so we will not be seeking legislative consent motions.

Next steps

We stand by our moral and legal obligations to help innocent people fleeing cruelty around the world. Our long-term plan will prioritise bringing over the most vulnerable people currently living in refugee camps around the world through safe and legal routes. However, we must take action to address long-term pull factors and to smash the criminal gangs which treat human beings as cargo. We must send a clear message using dangerous, illegal routes is not the way to come to our country.

I note your letter of 9 December was copied to the First Minister and the Deputy First Minister of Northern Ireland, and so I am copying this letter to them as well. I am also copying this letter to the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Northern Ireland, the Chancellor of the Duchy of Lancaster and the Secretary of State for Levelling Up, Housing and Communities.

Yours sincerely,

Kevin Foster MP
Minister for Safe and Legal Migration