

Welsh Local Government Association evidence to the Senedd Cymru's Children and Young People Committee and the Equality and Social Justice Committee on the UK Government's Illegal Migration Bill

Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.
2. The WLGA is a politically led cross-party organisation, with the leaders from all local authorities determining policy through the Executive Board and the wider WLGA Council. The WLGA also appoints senior members as Spokespersons and Deputy Spokespersons to provide a national lead on policy matters on behalf of local government.
3. The WLGA works closely with and is often advised by professional advisors and professional associations from local government, however, the WLGA is the representative body for local government and provides the collective, political voice of local government in Wales.

Background

4. The Prime Minister has stated tackling small boats is one of his five priorities for 2023 and the Illegal Migration Bill was announced by the UK Government on 7 March 2023. The Bill aims to deal with challenges relating to the UK's asylum process, and in particular arrivals via small boat crossings in the English Channel.
5. Local authorities play a key role in supporting asylum seekers dispersed across the UK and in managing any local impacts. Welsh councils have also played an important role in supporting refugees arriving in Wales under different humanitarian programmes, arranging accommodation and support packages, working closely with local communities and residents in preparing them for arrivals and in supporting their settlement and integration in a variety of ways. The term 'Team Wales approach' was coined reflecting the close partnership working across public bodies evidenced in supporting Afghans evacuated from Afghanistan in 2021, and this approach has continued with the response to supporting guests from Ukraine.
6. Welsh councils are keen to play their part in helping to meet the UK's international and humanitarian responsibilities and are supportive of Welsh Government's ambition to make Wales a Nation of Sanctuary. However, the WLGA, on behalf of Welsh councils, has written to the Home Office on a number of occasions seeking better communication and more effective engagement and planning in relation to the procurement and use of accommodation in Wales. These concerns are also shared by local government across the UK. It is hoped that, should the Bill become law, that

there will be close working and planning *together* to manage and implement changes to the asylum system in partnership so that councils can better prepare and plan and effectively manage any local impacts, with a view to maintaining community cohesion and ensuring that everyone is treated with dignity and respect, regardless of their immigration status.

7. In April 2022, in response to increasing demand and with the aim of reducing the use of hotels, the UK Government wrote to all local authorities in the UK to inform them that they would be moving to a Full Dispersal model with all authorities participating in accommodating asylum seekers while their claims are considered. A Wales Full Asylum Dispersal Plan, with its development led by the Wales Strategic Migration Partnership, was agreed by the WLGA Executive Board in September 2022 and this plan sets out how an additional 2,344 asylum seekers will be accommodated across all Welsh councils with a target date of by the end of December 2023. Progress is being made and since the plan was agreed 279 asylum seekers have been dispersed to Wales with 8 council areas accommodating people for the first time.

Brief overview of the Bill

8. It is clear that the current asylum system is under immense pressure. It currently costs approximately £3bn per year and around £6m is spent per day on hotels. The following facts/figures indicates the scale of the challenge:
 - Over 45,700 people arrived in small boats in 2022 and there were over 40,000 asylum applications in 2022 from those who arrived in the UK via small boats.
 - There were 74,751 asylum applications (main applicants only) in the UK in 2022, more than twice the number in 2019.
 - In 2022, there were 110,171 individuals in receipt of support, 30% higher than 2021.
 - Over 45,000 asylum seekers are currently being accommodated in hotels located across 200 local authorities.
9. We understand the Bill makes a number of proposals:
 - The Bill will change the law so that people who come to the UK illegally will not be able to stay. Instead, they will be detained and then promptly removed, either to their home country or a safe third country. The Home Secretary will be under a legal duty to make arrangements for the removal of illegal entrants falling within the scheme.
 - Detention powers will be strengthened so that people can only apply for bail to the First-tier Tribunal after 28 days (with the aim to make it easier to remove people).
 - People who enter the UK illegally will not have their asylum claim determined in the UK. Once removed, they will not be allowed to come back to the UK again.
 - Changes will be made to last minute legal challenges for those with no right to be in the UK and due to be removed.
 - While those in scope will be able to challenge the decision to remove them from the UK, it will not prevent their removal and any legal challenges will be considered when they have been successfully removed to another

country. If, exceptionally, there is a real risk that someone would suffer serious and irreversible harm if they were sent to another country they would not be removed until it was safe to do so.

- Those subject to the duty to make arrangements for removal will not be able to access the modern slavery system in the UK. If someone is identified as a potential victim of modern slavery, the Government will ensure they are safely returned home or to another safe country.
- The list of countries that are considered safe in law is being expanded. As well as EU member States, the list will now include Albania, Iceland, Liechtenstein, Norway and Switzerland.
- The Bill will provide for the government to commit to resettling a specific number of the most vulnerable refugees from around the world every year, working with local councils to understand their capacity first and following Parliamentary approval.

10. Initial general concerns about the Bill include:

- Whether it is compatible with UK international obligations under the European Court of Human Rights and the UN Refugee Convention;
- The limited safeguards that, coupled with restrictive timescales for appeal, may diminish access to justice for people caught by its provisions. It is unclear where those in detention will be held and how they will access legal advice;
- The lack of safe and legal routes for people to claim asylum within the UK; and
- The location of large-scale detention centres would have significant local implications. As with currently proposed large sites, local government and their statutory partners should be engaged well in advance on potential locations, with a shared risk assessment, clarity on funding and community engagement process if any site is agreed.

11. Clause 58 of the Bill makes provision for setting an annual cap on the number of people to be admitted to the UK for resettlement through safe and legal asylum routes, to be set by Parliament. The Secretary of State is required to consult representatives of local authorities in the UK to determine their capacity to accommodate and provide integration services for the persons to be resettled each year to determine the country's capacity. The annual number will remain in place until revised by subsequent regulations and may apply for a period of years. The WLGA welcomes the approach of engaging with councils on an annual cap, however, the Bill does not outline how engagement will take place or how councils will be funded for any new routes to the UK. The LGA has raised concerns around being asked to pledge numbers or provide a cap, given the potential cohesion risks and the well-recognised issues with forecasting population change and churn both locally, nationally and internationally.

Concern in respect of the impact of the Bill on separated asylum-seeking children in Wales, including whether you have concerns around existing arrangements for these children.

12. The WLGA has not sought legal interpretation of the Bill, however, the following issues are flagged, based on our best understanding of the provisions and proposals to date:

- *Clause 2: Duty to make arrangements for removal* which places a duty on the Secretary of State to make arrangements for the removal of people from the United Kingdom when they arrive without leave to enter on or after 7 March 2023, where they have come from a "safe" country immediately prior. However, the detention and removal of families may act as a driver for children previously travelling within their families to claim asylum as lone children on arrival in the UK and in turn further increase numbers that need to be taken into care.
- *Clause 3: Unaccompanied children* which clarifies that the Secretary of State is not required to remove a person from the United Kingdom while they are an unaccompanied child, though they retain the power to do so. Children would be removed when they turned 18, in line with Clause 2 of the Bill. In requiring the removal of children as soon as they turn 18, it is not clear how the Bill is compatible with other legislation, in particular the Children Act 1989 and associated guidance. This stresses the importance of consideration of the wishes and feelings of the child, and the need to operate in their best interests. Guidance also requires councils to plan for permanence for children, including developing relationships and ensuring children have a sense of security, commitment and belonging.
- *Clause 15: Accommodation and other support for unaccompanied migrant children* which provides a power to the Secretary of State to provide, or arrange to provide, accommodation and other support to unaccompanied migrant children. The Bill clarifies that the Secretary of State is currently not in the position of corporate parent to any unaccompanied child given the Home Office does not have and therefore cannot discharge duties under Part 3 of the Children Act 1989. It states that the Home Office has always taken the view that these children should be in local authority care and that it is for the local authority where an unaccompanied child is physically located to consider its duties under the Children Act 1989. The Bill does not take the opportunity to clarify however who is the corporate parent of unaccompanied asylum-seeking children placed in hotels by the Home Office. Clarification on the corporate parent role is important to ensure clear accountability for the welfare and safety of all children. If children are placed in Home Office accommodation, the legislation should clarify that this must be regulated accommodation in line with all other accommodation for children in care. Councils would welcome further discussion on key operational issues such as age assessment, reducing the risks of children going missing to avoid detention and removal or as a result of being trafficked, and clarifying the corporate parent role for children in detention. Councils must be consulted on and able to influence the location of any Home Office accommodation for children to ensure the appropriateness of the location and capacity of local services to support children.

- *Clause 16: Transfer of children from Secretary of State to local authority and vice versa* which provides power to the Secretary of State to direct a council to receive a child or to cease looking after a child. The Bill strengthens government's powers to direct councils, this raises a concern that they will be required to take lone children into care, or to stop caring for a child, without consideration of whether that direction is appropriate for individual children. There are also concerns that councils will be directed to accept responsibility for children (including large numbers of children in Home Office accommodation) without the ability to engage on or influence where these children are placed, and without consideration of local capacity to appropriately support those children including social care, health and education services. This clause offers no recognition of pressures on individual councils or the need to ensure the appropriate placement of individual children in line with statutory guidance.
- *Clause 55: Decisions relating to a person's age* which removes the right of people to appeal age assessment decisions including where these are not made by social work professionals. A recent Freedom of Information request to councils found that in 2022, 70 councils reported at least 867 children being identified in adult asylum accommodation as a result of inaccurate age assessments at port. This carries significant safeguarding implications for children where they are being placed with unrelated, unknown adults without access to the support that unaccompanied children are entitled to under the Children Act 1989.

13. The WLGA has highlighted a range of concerns around the current operation of the National Transfer Scheme (NTS) for unaccompanied asylum seeking children in Wales which have been shared with both Welsh Government and the Home Office. In summary, we do not believe that the current approach always maintains the best interest of the child, with children and young people sent to areas where they have little information, can feel isolated and any specific religious or cultural needs may not be met. At this time, the majority of unaccompanied asylum seeking children transferred to Welsh councils are placed out of county and out of country, due in part to the limited number of appropriate and available placements and transfers having to be made within 5 days of a referral. This raises additional safeguarding concerns and means social workers are travelling to many different places to provide appropriate care and support to children in their care. Information about children to be transferred is often limited and is sometimes incorrect or incomplete. The WLGA would welcome an opportunity to share its views of the NTS and any proposals for improvements with the Committee, ensuring that the best interest of the child remains at the heart of the system.

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

14. The Social Services and Wellbeing (Wales) Act places clear responsibilities and legal duties on local authorities in relation to promoting the wellbeing of children and young people who need care and support and meeting their

needs. In relation to children looked after local authorities must safeguard and promote the child's well-being. In Wales, all unaccompanied asylum-seeking children are treated as looked after children in line with Part 6 of the 2014 Act. The Act also provides for a range of assessment functions to help councils to consider the care and support needs of children in their area.

15. However, the Illegal Migration Bill provisions, as introduced, do not necessarily recognise the devolved context, with Clause 19 enabling the Secretary of State to extend Clauses 15-18 to Wales without the consent of Welsh Ministers. Given the devolved nature of health and social care in Wales our view is that the Bill confers power on the Secretary of State to make regulations imposing functions on devolved Welsh authorities which could potentially undermine the requirements placed on Welsh local authorities set out in the 2014 Act, thereby treating asylum seeking children differently to other Welsh children.
16. Local authorities have concerns over any changes which could lead to the diminution of the lead, authoritative role for social workers in assessing what is in the best interests of children in their care.

Whether the Bill is compatible with the Rights of Children and Young People (Wales) Measure 2011 and any impact on 'child first, migrant second' approach which underpins delivery of support to child asylum seekers in Wales

17. The 2011 measure places a duty on Ministers to have due regard to the Convention on the Rights of the Child when exercising any of their functions. The 2014 Act then brings into Welsh domestic law compliance with the UN Convention on the Rights of the Child, where any person exercising functions under this Act in relation to a child falling within section 6(1)(a), (b) or (c) must have due regard to Part 1 of the United Nations Convention on the Rights of the Child.
18. Welsh Government's Programme for Government includes a commitment to 'continue to support and uphold the rights of unaccompanied asylum-seeking children and young people', supporting a 'child first, migrant second' approach which aims to uphold the best interests, rights and entitlements approach to providing care and support to children in Wales.
19. There is therefore already legislation in place in Wales to ensure the needs of child asylum seekers are met. The Bill has the potential to undermine this existing legislation with concerns over the UK Government being able to require the transfer of unaccompanied children to other accommodation or parts of the UK, irrespective of the care and support needs assessed by local authority social services.

Any concern relating to the Bill and compatibility with Convention Rights

20. There are some concerns that the Bill may be incompatible with the United Nations Convention on the Rights of the Child to which the UK is a signatory, in particular Article 3 (best interests of the child), Article 12 (respect for the

views of the child), Article 22 (refugee children) and Article 39 (recovery from trauma and reintegration). This incompatibility would place councils in the position of trying to comply with two competing sets of legislation as they attempt to fulfil their duties towards children.

Conclusion

21. Local authorities have a positive record on welcoming and supporting new arrivals in local areas, stepping forward at times of crisis to offer accommodation and support, often as people restart their lives in the UK. This is not without its challenges however and maintaining community cohesion is a key aim of the way in which councils wish to manage and oversee the impact of migration at the local level. The Bill is likely to add further complexity as to how councils undertake this role. Councils are fully aware of the pressure on the current system as this pressure is felt by local areas, particularly those with a number of hotels, including those for unaccompanied asylum-seeking children (none of which are currently in Wales). It is imperative that the UK Government works closely with councils, and other public services, in responding to the current challenges and in how changes required by the Bill, should it receive Royal Assent, will be taken forward, with joint planning and good communications and partnership working.