



HOUSE OF LORDS – COMMITTEE STAGE BRIEFING  
Immigration Bill - Clauses 15-32  
Accommodation from or involving local authorities

**Introduction**

Shelter, The Children's Society and Coram Children's Legal Centre have serious concerns about clauses 15 to 32 of the Immigration Bill. These restrict non-EEA nationals, without the necessary form of leave to enter or remain in the United Kingdom from accessing private rented accommodation. They will require private landlords to check the immigration status of their tenants or prospective tenants and to refuse to let their properties to these groups.

***Despite specific exemptions for those accommodated from, or involving a local authority (as set out in [Schedule 3, paragraph 7](#) of the bill) four key groups of vulnerable children, young people and adults are not clearly exempt. This briefing suggests questions which could be asked to seek clarity. It also suggests a possible amendment- please see the Annex.***

**However, ultimately this requirement is unworkable and should be scrapped.** It will simply restrict access to good quality accommodation from people with every right to rent a home in this country.

**Key question this briefing highlights**

***Can the Secretary of State confirm that, under Schedule 3, paragraph 7, the following groups normally accommodated by the local authority would be exempt from the restrictions outlined in Clauses 15 to 32?***

1. Children accommodated under section 20 of the Children Act 1989.
2. Children accommodated with their family under section 17 of the Children Act 1989.
3. Adults requiring community care assistance, where a restriction of support would breach the European Convention on Human Rights (as detailed under Schedule 3 of the Nationality, Immigration and Asylum Act 2002).
4. Care leavers, over the age of 18, accommodated under Section 23C, 24A and 24B of the Children Act 1989.

**Details of each group not clearly exempt in Schedule 3, paragraph 7**

**1) Children accommodated under section 20 of the Children Act 1989**

Section 20 of the Children Act 1989 places a duty on local authorities to provide accommodation for any child in need within their area, for example because they have been abandoned. Younger children accommodated under Section 20 will usually be in foster care or residential homes. However, children's services have a duty to accommodate older children under this provision and will often place 16 and 17 year old children in independent or shared accommodation. A young person under 18 cannot legally hold a tenancy for any independent accommodation; it would have to be rented for them by Social Services or by a Trustee.

***Explanation of issue and questions for the Minister***

Duties in Schedule 3 of the bill are provided to a 'child' not a 'person'. Currently they are assumed to still apply to young people being encouraged towards independent living.

- *Should 'person' in the bill be assumed to mean child and young person? And would young people being assisted towards independent living be covered by this exemption? If so please can the Secretary of State issue a clarification?*

- *Would Social Services or a nominated Trustee be in breach of the legislation if they secured accommodation for a young person without the necessary leave to remain?*

## 2) Children accommodated with their family under section 17 of the Children Act 1989

Where the families have no recourse to public funds local authorities often arrange accommodation for children and families under section 17 of the Children Act 1989. The Supreme Court has recognised in the case of *ZH (Tanzania)* that the interests of the children are a primary consideration in decisions made by public bodies, even where their mother had a complex immigration history. When local authorities arrange accommodation for these children, to keep them with their families, it is usually in private rented accommodation. They commonly lease the property from a private landlord and a parent is given a licence or occupation agreement.

### ***Explanation of issue and questions for the Minister***

The accommodation provided under Schedule 3 of the bill is not provided through a duty, but as the result of a 'relevant power'. This relevant power is not for the 'purposes of providing accommodation to a person who is homeless or is threatened with homelessness' as stated in schedule 3. Rather it is 'providing a range and level of services appropriate to... children's needs (Part III, section 17, paragraph (1), Children Act 1989)'. Therefore, in contradiction to the Home Office's European Convention on Human Rights Memorandum, paragraph 92, Schedule 3 is **NOT** sufficiently broad to cover arrangements made by local authorities pursuant to 'any statutory obligation'.

- *Please may the Secretary of State issue a clarification of the government's position on this point?*
- *Should 'person' here as with section 17 also be assumed to mean child and adult? If so please can the Secretary of State issue a clarification?*

### **Case Study**

**Claire, a lone mother from Jamaica with two young children** was referred to The Children's Society at aged 19 because she was homeless and destitute, and was pregnant at the time. She is a Jamaican national who was sent to the UK as a child on a visa when she was 12 years old to stay with her older sister following the death of her father, but she was kicked out of home at 14. She was abused by older men and became pregnant, but stayed with them because she had no place to go. When she came to The Children's Society she did not know her immigration status. With support from a partner organisation she received legal aid to help resolve her immigration status and to challenge the decision of social services not to her with provide accommodation. Eventually, social services provided her with accommodation and she has now been granted leave to remain by the Home Office. Social Services found Claire a private rented home. Under the provisions in this Bill a private landlord may not be willing to rent to someone in Claire's position.<sup>1</sup>

## 3) Adults requiring community care assistance, where a restriction of support would breach the European Convention on Human Rights

Where a person is without leave to remain they will not be entitled to social housing or homelessness assistance from the local authority. However, in limited circumstances a very vulnerable person may be accommodated by social services under community care legislation because of their disability or ill health and where restricting this support would constitute a breach of an individual's human rights.

## 4) Care leavers, over the age of 18, accommodated under Section 23C, 24A and 24B of the Children Act 1989.

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<sup>1</sup> I don't feel human': Experiences of destitution among young refugees and migrants, The Children's Society, 2012: [http://www.childrenssociety.org.uk/sites/default/files/tcs/research\\_docs/thechildrenssociety\\_idontfeelhuman\\_final.pdf](http://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/thechildrenssociety_idontfeelhuman_final.pdf).

The Children's Act 1989 places a duty on local authorities to accommodate (in certain circumstances) a post-18 care leaver known as a 'former relevant child'. The Courts have clarified that local authorities have a general duty to provide a former relevant child with accommodation to the extent that his or her welfare requires it and that in considering whether a former relevant child's welfare requires the provision of accommodation, the local authority is not permitted to take account of whether or not that former relevant child might be eligible for accommodation and support from the Home Office pursuant to its asylum support functions. Therefore in most cases care leavers, awaiting decisions on applications for leave or asylum, will continue to be supported by local authorities. Although some of these young people may be able to remain in foster care beyond 18, the majority are likely to be in independent or shared accommodation.

### ***Explanation of issues (in points 3 and 4) and questions for the Minister***

Paragraph 7, Schedule 3 of the Immigration Bill appears to prevent local authorities complying with these obligations detailed in points 3 and 4. As a result, local authorities may be subject to expensive legal challenges if they fail to meet their responsibilities, but will also be breaking the law if they do.

The majority of the accommodation provided by local authorities to these vulnerable adults and care-leavers when preventing a breach of the European Convention on Human Rights is either in private rented accommodation, or other temporary accommodation. Under the provisions of the Immigration Bill, in order to fulfil their obligations under the relevant community care legislation, the local authority would be requiring private landlords to break the law, or would need to place those requiring accommodation in hotels or other exempt premises at greater cost.

- *Please may the Secretary of State issue a clarification of the government's position on this point?*

### **Case Study**

**Peter is a young Kurd who came to the UK alone from Iran to seek protection.** His asylum claim was rejected just before his 18<sup>th</sup> birthday and six months later social services stopped his support. He was made homeless for 9 months, regularly experiencing violence and abuse on the streets and ultimately trying to commit suicide more than once. Eventually, he was supported in getting legal assistance to challenge the local authority's refusal to rehouse him and was successful in getting rehoused. He has an Article 8 claim still pending with the Home Office so is lawfully present in the UK. Peter was housed in private rented accommodation. The current restrictions in the Immigration Bill could prevent a landlord from renting to another young person in Peter position.<sup>2</sup>

### **Case Study**

**Hasan came to the UK from Bangladesh 13 years ago and overstayed.** He supported himself working in the building trade but in 2010 fell from faulty scaffolding and lost his right leg and his left foot. He has been in and out of hospital and still needs to use a wheelchair as he is in constant pain and has very limited mobility. He cannot look after himself in ordinary accommodation without practical help. He has been accommodated in supported housing arranged and funded by Social Services and is now awaiting the outcome of his application for leave to remain and his personal injury claim against the owner of the property. The current restrictions in the Immigration Bill could prevent a local authority from finding accommodation from someone in Hasan's position.

### **For more information please contact:**

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<sup>2</sup> Ibid.

## **Annex- Suggested Amendment**

In order to assure clarity, Shelter, Coram Children's Legal Centre, and the Children's Society suggest the following amendment:

*"7 (1) An agreement—*

- (a) under which accommodation is provided to a person as a result of a duty or relevant power that is imposed or conferred on a local authority by an enactment (whether or not provided by the local authority), and*
- (b) which is not excluded by another provision of this Schedule.*

*(2) "Relevant power" means a power that is exercised for, or in connection with, a purpose of providing accommodation to a person:*

- (a) who is homeless or is threatened with homelessness; or*
- (b) who has a welfare or community care need.*

*(3) In sub-paragraph (2)(a) the references to a person who is homeless or is threatened with homelessness is to be read in accordance with—*

- (a) in relation to England and Wales, section 175 of the Housing Act 1996;*
- (b) in relation to Scotland, section 24 of the Housing (Scotland) Act 1987;*
- (c) in relation to Northern Ireland, Article 3 of the Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23))S.I. 1988/1990 (N.I. 23)).*

*(4) In sub-paragraph (2)(b) the references to a person who has a welfare or community care need is to be read in accordance with—*

- (a) section 21 and section 29 National Assistance Act 1948;*
- (b) section 45 of the Health Services and Public Health Act 1968;*
- (c) section 12 or 13A of the Social Work (Scotland) Act 1968;*
- (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));*
- (e) section 254 of, and Schedule 20 to, the National Health Service Act 2006, or section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006;*
- (f) section 29(1)(b) of the Housing (Scotland) Act 1987;*
- (g) the Children Act 1989;*
- (h) the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));*
- (i) the Children (Scotland) Act 1995;*
- (j) section 1 of the Localism Act 2011*