

# Immigration Bill

## Report Stage, House of Commons

1 December 2015



### Key messages

#### ***Clause 34 and schedule 6: changes to support for certain categories of migrants***

- Local authorities currently have a statutory responsibility to provide support to vulnerable migrants who face reduced access to the welfare state on account of their immigration status. Local authorities support the continuing power to prevent families and vulnerable adults becoming homeless and at risk of harm within our communities. Local government representatives have therefore been working with Government and parliamentarians to ensure that this essential 'safety net' is retained.
- We are also working to identify, and where possible to mitigate, the impact of the provisions of the Immigration Bill on local government. We are keen to avoid an unfunded transfer of responsibility from the Home Office to local authorities. The changes to the asylum support system set out in Schedule 6 of the Immigration Bill are likely to result in increased referrals to local authorities of families who have been refused asylum in the UK. We therefore welcome the commitment to a new burdens assessment. We are calling for the Home Office to progress applications effectively and expediently from the outset; for local authority supported cases to be prioritised; and for engagement in the voluntary returns process to be secured or returns enforced when appropriate to avoid any cost burden caused by international issues being placed on the local taxpayer.
- We welcome the Government's amendment seven that seeks to address the significant cost burden of local authorities, as part of their leaving care responsibilities, having to pay the tuition fees normally at international rates of former unaccompanied asylum seeking children if they went on to higher education.

#### ***Clause 38 and Schedule 9: availability of local authority support***

- In response to the concerns raised by local government and the charitable sector the Government introduced Schedule 9, availability of local authority support. A key objective of the Bill is to remove financial incentives for refused asylum seekers and other unlawfully present migrants to remain in the UK. Local authorities are concerned that the removal of support will not encourage an increase in the numbers of refused asylum seekers and other unlawfully present migrants leaving the UK in as large as numbers as intended.
- Despite Government's welcome attempts to amend the legislation to alleviate our concerns about safeguarding children and the unfunded transfer of costs from the Home Office to local government, we still remain concerned that the legislation could encourage migrants who have been refused leave to remain to stop engaging with services, with all this means in terms of safeguarding, destitution, community safety and community cohesion. Alternatively, it could lead to a long term period of currently unfunded local authority support. The recognition that there need to be focused efforts to engage with families and adults to promote return prior to terminating support to avoid impacts on refugees, local authorities and local communities is positive.

# Briefing

For more information, please contact:  
Lee Bruce, Public Affairs Manager  
[Lee.Bruce@local.gov.uk](mailto:Lee.Bruce@local.gov.uk) / 0207 664 3097

***Government amendments NC3-NC5, The transfer of responsibility for caring for particular categories of unaccompanied migrant children***

- Local authorities have a strong track record of supporting each other at times of need, and councils across the country stand ready to help ease the burden on port authorities which have long suffered significant resource pressures through their work with unaccompanied asylum seeking children. The LGA therefore supports the provisions made under amendments NC3-NC5, which provide welcome clarity on the transfer of responsibility from one council area to another.

***Government amendment NC6, The scheme for transfer of responsibility for relevant children***

- It is not right however that councils are asked to volunteer support without sufficient funding to cover the considerable costs attached and this is the reason that councils have hesitated in making voluntary offers to Kent. The LGA is concerned that amendment NC6 seeks to compel local authorities to take responsibility for unaccompanied minors who arrive elsewhere in the UK, with no clarity on how their support needs will be funded. If powers to direct local authorities to take legal responsibility for additional children and young people are to be enacted, they must be recognised as a new burden and funded accordingly. No council should be made to choose between supporting unaccompanied asylum seeking children and providing vital services for their local community.
- The majority of councils are willing and able to provide this support and that reserve powers of direction would not be necessary to secure participation in a fully funded voluntary scheme.

***Clauses 38 and 41: English language requirements***

- The proposals in clauses 38 and 41 to require customer-facing public authority staff to speak fluent English will have legal, financial and employment implications for councils, even though the vast majority of council staff speak fluent English. The draft code of practice published by the Cabinet Office is clear that the fluency duty applies to existing staff as well as any newly recruited staff. Although council staff are as diverse as the communities they serve, and councils will always seek to ensure their staff have an adequate standard of English to communicate with residents, the provisions mean councils will need to review their HR policies and practices. The code could also mean they have to offer staff training or redeployment where they do not meet the standard, and will require local authorities to establish and operate appropriate complaints procedures. The Cabinet Office is working with the LGA and councils to properly assess the new burden impact of these measures.

***Clauses 8; 13-19: Illegal working & access to services***

- Clauses 8 and 13-19 seek to criminalise illegal working, allow for migrants with no status to be evicted without a court order, require banks to withdraw accounts from holders who have no immigration status. All these measures are designed to disrupt the survival arrangements of migrants living in the UK without status, and are expected to lead to increased destitution within communities and more referrals into social services for support.

**Further information**

**Changes to support for certain categories of migrant (clause 34 and Schedule 6)**

Directors of Children's Services have a statutory duty set out in the Children Act 2004 to secure the best outcomes for all children and young people in a local area and for keeping them safe. Local authorities are required to intervene to prevent and alleviate child homelessness.

Whilst councils support the existence of a safety net for migrants, central government policy and funding decisions must recognise that local authorities already face a considerable cost burden in providing this safety net support. Data from the No Recourse to Public Funds Database (NRPF) highlights that the 34 local authorities who participate are supporting 2,154 households described as being ‘without recourse to public funds’ with accommodation and other financial support. This support is at an average cost of £16,667 which represents an annual expenditure of £32 million.

The table below sets out the numbers of cases and costs to local authority budgets from three separate sources:

- *The NRPF Connect database:* This is a Home Office funded database used by local authorities to record NRPF caseloads, and by the Home Office to verify immigration status and progress supported cases. There is no statutory requirement to use NRPF Connect. To date 34 local authorities have decided to join.<sup>i</sup>
- *A survey of London Boroughs undertaken by London Councils in 2015* focusing on the costs of supporting NRPF cases in the Capital in the financial year 2014/2015.
- *Centre on Migration Policy & Society (COMPAS), Safeguarding Children from Destitution, Local Authority responses to families with NRPF, June 2015.* This is a major study from Oxford University into the area of NRPF service provision, responsibilities under s17 Children Act 1989 and local authority practice.

Data Source	Data period	LAs participating	Number of households reported	Number of dependants	Average per annum cost per household	Annual expenditure
NRPF Connect database	Quarter 2 data – as at 30/09/15	34 local authorities signed-up to use database	2154	3825	£16,667	<b>£32 million</b> (accom. and subsistence expenditure only)
London Councils survey	Financial year 2014/15	32 London Boroughs participating in the survey	Estimated 3200 during the year (2500 at year end)	Not provided	Between £16,000 and £26,000 for majority of local authorities	<b>£50 million</b> (including staff time and other costs)
COMPAS	Financial year 2012/13 – <u>Family cases only</u>	137 local authorities responding to survey	3391	5900	Not provided	<b>£28 million</b> (estimated cost, accom. and subsistence only).

Data from the three sources outlined above confirms that NRPF service provision is not short term in nature, with the average time for a single case to remain on local authority support being in excess of two years. We are concerned that the proposed measures within the Immigration Bill will significantly increase the numbers of destitute adults, families and homeless children within communities, creating safeguarding and cohesion

issues.

### ***Clause 38 and Schedule 9, availability of local authority support***

#### *Transfer of costs*

Previously local authorities have raised concerns about the unfunded transfer of costs from the Home Office to councils and the complexity of applying the exclusions to social services support under Schedule 3, Nationality Immigration and Asylum Act 2002.

In response to the concerns raised in Committee Stage, Members of Parliament agreed the Government's new Clause 38 and Schedule 9 on the availability of local authority support. This seeks to create a new stream of support for destitute families and former looked after children in England who have no immigration status. Accommodation and financial support will no longer be provided to such people under the Children Act 1989, although this will remain accessible to European Economic Area (EEA) nationals and non-EEA nationals who are lawfully living in the UK.

Local authorities would only be supportive of a scheme which allows a local authority to act on safeguarding or child protection concerns for care leavers or children in migrant families without status, and which allows for support to be provided to prevent the care leavers or families from becoming destitute whilst they remain in the UK.

Local authorities will be able to continue to provide safety net support under the new scheme, but this is in the context of increasing referrals (due to asylum support and other measures in the Bill). We need to be assured that the scheme will achieve its aim of reducing the assessment burden on social services and reducing the risk of legal challenge. We would expect any costs associated with the changes being brought forward by this legislation to be funded under the New Burdens doctrine. In addition, the Home Office should maintain engagement with local authorities when drafting regulations and guidance to ensure absolute clarity on how the new responsibilities should be interpreted and how local authority practice should change.

All available data shows that local authorities can be supporting adults and children from vulnerable migrant groups for a number of years. We are therefore seeking assurances that the Home Office will make initial decisions correctly, progress applications expediently and pursue returns when appropriate, prioritising local authority supported cases.

#### *Amendment seven*

We welcome amendment seven tabled by the Government as it means local authorities will no longer have to pay higher education tuition fees of care leavers set at international rates because of their immigration status. The average annual cost of funding a student when overseas fees are paid looks to be around £26,000. This group will now have to qualify under the Student Support Regulations, as with any other migrants who are not in care.

#### *Behavioural change*

A key objective of the Immigration Bill is to remove financial incentives for refused asylum seeking families and other unlawfully present migrants to remain in the UK and, as a result, will return to their countries of origin. Local authorities are concerned that this behavioural change will not take place as widely as intended. We are also concerned about the implications for families or young people that may then have no contact with any statutory services in the event they do not choose to leave or are removed. Local authorities will have significant safeguarding concerns following a period of destitution and dependency on informal and potentially exploitative living arrangements. It is therefore likely that costs to local authorities will be ultimately be higher where families have 'gone underground' and then present to councils at a later stage.

We are calling for Government to explore why there are currently low rates of enforced removals and family returns. We welcome the recognition from government that more focus needs to be given on the requirement of the Home Office to engage with refused asylum seeking families to promote return prior to terminating support. We look forward to local authorities' role in the process being further clarified.

### **Language requirements for public sector workers (clauses 38 and 41)**

The provisions in Clause 38 of the Immigration Bill requiring public authority staff in a customer-facing role to speak fluent English will have legal, employment and financial implications for local authorities given the diverse range of services provided by councils and the diverse workforce they employ, which reflect the communities' councils serve.

The Cabinet Office published the draft code of practice which will apply to public sector workers on 19 October 2015, and is seeking views on the proposals set out in it. The draft code covers which workers might be considered to be in a customer-facing role, what standard could be required to meet the fluency duty, what action public authorities could take where staff do not meet the fluency requirements, and the introduction of a complaints system to cover the duty.

The draft code defines a customer-facing role as one where regular and anticipated interaction with the public is an intrinsic part of the job. The code suggests that staff in a council's call centre or a teaching assistant would be caught by this definition, but a council street cleaner would not be. Being fluent means having a command of spoken English or Welsh (in Wales) which is sufficient to enable the effective performance of their role. Ultimately it will be up to councils to decide themselves what roles the new duty applies to and what levels of fluency are required in what roles. The code though applies to existing staff as well as newly recruited staff.

Although councils make every effort to ensure their staff have an adequate standard of English to communicate with residents, councils will need to review their HR practices and policies, revise selection and appointment practices as well as employment contracts so they are compliant with the code and ensure consistency when advertising for similar types of customer-facing roles. Where a member of staff does not meet the required standard, councils will have to consider providing training or re-training so staff have the opportunity of meeting the standard. If the member of staff is unable to meet the necessary standard adjustments to their role will need to be considered, such as moving them to a non-customer-facing role. Councils will also need to have procedures in place to allow members of the public to complain where they feel a worker is not fluent enough in English or Welsh.

The impact assessment produced by the Cabinet Office for the draft code anticipates that between 0.4-1.2 per cent of public sector workers might be affected by the introduction of the new duty, but they do not have all the information needed to properly assess the financial impact of introducing the new duty. The LGA and councils will be working with the Cabinet Office so there is a proper assessment of the impact and to ensure that the new burdens on councils are fully funded.

### **Licensing**

Clause 10 and Schedule 1 of the Immigration Bill introduce amendments to the Licensing Act 2003 which require licensing authorities to make additional checks on applicants for personal and premises licences.

While illegal working does occur in some licensed premises, it more commonly involves sales staff or auxiliary workers and almost never involves someone licensed to run the premises. The LGA's joint work with the National Fraud Initiative in the Cabinet Office during the past year did not reveal any illegal workers licensed to run an alcohol premises.

The LGA has held constructive discussions with the Home Office to refine these proposals

and target them more effectively. Councils already work closely with the Border Agency and the new powers of entry and closure will simplify this work, which is to be welcomed. We are less convinced that the additional checks on applications will identify significant numbers of illegal workers, but they are not burdensome and we do not oppose them.

Proposals were also brought forward at Committee Stage to introduce comparable checks into the taxi and private hire vehicle licensing regime, although they do not currently apply to Plymouth. Licensing authorities inform us that there are more instances of illegal working discovered when checking applicants to be a taxi driver, with around 330 applicants revealed to have no right to work by the National Fraud Initiative during the last year. The additional checks set out in the Bill should provide an additional tool for councils in ensuring that applicants are 'fit and proper' people to be driving licensed vehicles.

It is important that the additional requirements for alcohol and taxi licensing remain light touch and do not impose requirements that run counter to councils' obligation to accept all applications for alcohol licences online (under the Provision of Services Regulations 2009). It is also important that the Home Office commits to providing effective training for licensing authorities on identifying forged documents, as this will be a new skill for them to apply.

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<sup>i</sup> A full list of participating local authorities is available at [www.nrfnetwork.org.uk/nrfconnect](http://www.nrfnetwork.org.uk/nrfconnect)