



Immigration Bill 2015

Briefing on Part 3 Clause 30: Power to cancel leave

Amendment 215 - Page 33, line 26, leave out clause 30

Introduction

Section 3C of the Immigration Act 1971 automatically extends a person's leave to enter or remain in the UK where they have limited leave to enter or remain. Their leave is extended on the same terms and conditions as their existing leave to cover the period until the Home Office decides their application. Leave under section 3C is vital for children and young people who claimed asylum as unaccompanied children or who have been trafficked into the UK for exploitation and abuse as they often need to apply to extend the limited leave they are granted (UASC leave or leave to remain under Article 8 right to family or private life).

Clause 30 gives the Home Office the power to cancel leave extended under section 3C where it considers that the applicant has failed to comply with a condition of the leave or has used deception in obtaining it. We are concerned that this will have a harmful impact on unaccompanied and trafficked children, who are not protected from this provision on the face of the Bill, and could therefore see their leave cancelled and be left without any status. This could happen if, for example, false documents had been used to bring them into the country, which will be the case for many such children, or if they had failed to comply with a condition of their leave such as reporting requirements, even where the Home Office had made a mistake in making the decision to cancel the leave. **Rather than tackling irregular migration this measure would result in more individuals being left in the UK without status even though they will have an application with the Home Office pending and therefore we oppose this clause altogether.**

3C leave is essential for unaccompanied children and young people

Unaccompanied children who are unsuccessful in obtaining asylum or humanitarian protection are usually granted 'UASC Leave' for a period of 30 months or until the child is 17.5 years of age whichever is shorter where there are no adequate reception arrangements for a child if they were to be returned to their country of origin¹. Between 2010 and 2014, half of the young people who claimed asylum as unaccompanied children and received an initial decision were granted a temporary form of leave – in most cases on the basis that there are no adequate reception facilities in their country of origin. In 2014, 30% of all initial decisions on unaccompanied children's cases were grants of UASC leave. Despite this being a temporary form of leave, less secure than refugee status and humanitarian protection, our research shows that many children are not advised to appeal the refusal of their original asylum application² and so after 30 months or when they reach 17.5 years old they must make an application to extend their leave under section 3C of the Immigration Act 1971 before their existing leave expires. If they apply whilst their existing leave is still current, the conditions of their leave remain the same while their application is pending, including throughout any appeals. This means they can continue in education and receive support from the local authority, work or apply to the mainstream benefits system. Our research¹⁰ has highlighted that this extension enables solicitors and advocates to communicate with employers, colleges and universities to ensure they understand that a young person is still here lawfully and to ensure their rights and entitlements are upheld.

Trafficked children

Similarly this provision could apply to children who have been trafficked¹¹ in the UK and will often be granted 'UASC Leave' while they are under 18. Trafficked children are often brought into the UK on false documents but many remain unidentified. Research commissioned by the Home

¹ Home Office. *Processing an asylum application from a child*:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf

² Gregg, L. & Williams, N. (2015) 'Not Just a Temporary Fix: The search for durable solutions for separated migrant children':

<http://www.childrenssociety.org.uk/what-we-do/resources-and-publications/not-just-a-temporary-fix-durable-solutions-for-separated>

Office estimates that there are 10-13,000 potential victims of slavery in the UK³ while official statistics show that of the 2,744 potential victims of trafficking identified through agencies in 2013, 602 (22%) were children⁴ many of whom will be subject to immigration control. Our research on the care arrangements of trafficked children¹² highlighted that despite an acknowledgement that a young person had come into the UK through an 'agent' or 'trafficker' some young victims we interviewed were criminalised for offences they were forced to commit by their traffickers including documentation offences¹³.

Children are not aware of documentation offences

Our practitioners tell us that many young people who arrive in the UK as children and go into the care system often do not know whether the passport or documents they have arrived with are their own or are false, because they have been organised by an adult. This would mean that young people could have their leave in the UK cancelled through no fault of their own. It could mean that a young person would be left without status, rendering them liable for removal even though they will still have an application pending. Without a legal status in the UK, young people would be at risk of destitution and homelessness when they turn 18 and are caught by immigration provisions under Schedule 3 of the Nationality, Immigration and Asylum Act 2002. Our research shows that refugee and migrant care leavers are increasingly experiencing destitution due to Schedule 3 leaving them exposed to exploitation, violence and abuse⁵. This measure could mean that more young people will be left without status or support.

Compliance with conditions of leave

Removing an individual's leave and rendering their status in the UK unlawful is a severe measure, particularly for lone children and young people. While our experience is that most young people comply with Home Office conditions on their leave, we have seen cases where unreasonable restrictions and an inflexible approach by the Home Office have meant that compliance is not always possible particularly due to sickness or lack of resource. For example, we know that some young people who are required to report to the Home Office as part of their leave condition have had their local authority support terminated when they have missed a reporting event leaving them entirely without subsistence and therefore unable to attend future appointments. Furthermore, it is unclear what safeguards will be in place for young people and families in cases where the Home Office has made errors in recording and assessing information on compliance.

Section 55 duty to promote the welfare of children

Despite the Home Office's Section 55 duty to promote the welfare of all children through its immigration and enforcement functions⁶, there is no specific safeguard on the face of the bill to protect children and young people including those who came here as unaccompanied children or were trafficked. The UN Convention on the Rights of the Child states that every child without discrimination must be afforded these rights, regardless of their status and their best interests must be a primary consideration in all decisions that affect them. It is difficult to see how withdrawing a young person's status could ever be in their best interests.

More information

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³ Silverman, B. (2014) 'Modern Slavery: an application of Multiple Systems Estimation': <https://www.gov.uk/government/publications/modern-slavery-an-application-of-multiple-systems-estimation>

⁴ National Crime Agency Strategic Assessment: The Nature and Scale of Human Trafficking in 2013: <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

⁵ Pinter, I. (2012) 'I don't feel human - Experiences of destitution among young refugees and migrants': https://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/thechildrenssociety_idontfeelhuman_final.pdf

⁶ Every Child Matters - Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children to safeguard and promote the welfare of children. Issued under section 55 of the Borders, Citizenship and Immigration Act 2009: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf
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