Home Office

The Lord Murray of Blidworth
Parliamentary Under Secretary of State
for Migration and Borders

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Baroness Brinton
House of Lords
London
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3 July 2023

Dear Baroness Brinton,

ILLEGAL MIGRATION BILL: HOUSE OF LORDS COMMITTEE STAGE

I am following up on the debate in the Lords during day three of Committee (Official Report, 7 June, column 1552) when Lord Stewart confirmed I would write to set out the legal position whilst unaccompanied migrant children are accommodated by the Home Office.

As a result of the unprecedented rise in unaccompanied children making the dangerous journey across the Channel in small boats and Kent County Council's decision in July 2021 to stop taking these children into their care, the Home Office has had no alternative but to temporarily use hotels to give these young people a roof over their heads whilst local authority accommodation is found. Hotel accommodation is only ever a temporary means to accommodate the increased number of unaccompanied children arriving, not a long-term solution.

On the point of safeguarding, we have procedures in place to ensure all unaccompanied children in hotels are as safe and supported as possible as we seek placements with a local authority. Each hotel has a team of support workers throughout the day and night to ensure children are supported, safe and their daily care needs are met. Additional support is provided on site by teams of social workers and nurses. Staff, including contractors, receive a number of briefings and guidance on how to safeguard children.

All unaccompanied children receive a welfare interview on arrival in the UK. This includes a series of questions specifically designed to understand whether there are any potential indicators of trafficking.

Unaccompanied children being accommodated in temporary hotel accommodation are not detained and are free to leave the accommodation. The movements of under-18s in and out of hotels are monitored and recorded and they are accompanied by support workers when attending organised activities and social excursions off-site, or where specific vulnerabilities are identified.

As was pointed out during the debate, the Home Office does not have “corporate parent” status when accommodating unaccompanied children.

The relevant duties under the Children Act 1989 sit with the local authority in which the young person is physically present. Accommodation of unaccompanied children by the Home Office does not change the obligations of any local authority in respect of assessment and the provision of services and support, including, where appropriate, suitable accommodation.

It is for the local authority where a child is located to assess its statutory duties under the Children Act 1989 in relation to that child and the Illegal Migration Bill does not change this position. The statutory responsibilities owed by local authorities has recently been recognised by the Courts.[1]

It is challenging to say more at this time given ongoing litigation on these matters but I trust this clarifies the position.

Clause 15 of the Bill enables the Secretary of State to provide or arrange for the provision of accommodation in England for unaccompanied children. Whilst we expect local authorities to meet their statutory obligations to children from the date of arrival, the reality of the situation we have been facing on the south coast of England means we have no option but to maintain temporary accommodation for these young people to avoid clear safeguarding gaps.

We have been clear that any time spent in Home Office accommodation by an unaccompanied child is intended to be temporary whilst they await being transferred to local authority accommodation. This will be non-detained accommodation and the support that will be provided will be appropriate to the needs of these young people during their short stay.

We can all agree that children should be accommodated by a local authority as soon as possible. Clause 16 of the Bill confers on the Secretary of State a power to direct a local authority in England to provide accommodation to an unaccompanied child, under section 20 of the Children Act 1989, on a date falling after the end of the period of five working days, beginning with the day on which the local authority was given the direction. Powers relating to accommodation and transfer will initially apply to England, but the Bill includes a power, by regulations, to apply them to Northern Ireland, Scotland, and Wales.

I recently met Dame Rachel de Souza, the Children’s Commissioner for England, to discuss the Bill and my officials have since engaged with her officials. We acknowledge their interest in working with us on how the Bill interacts with local authority statutory duties under the Children Act 1989 and we will seek to engage with them further as work on this matter progresses.

[1] R (on the application of Medway Council) v Secretary of State for the Home Department [2023] EWHC 377 (Admin) and Article 39 v Secretary of State for the Home Department and Secretary of State for Education [2023] EWHC 1398 (Fam)

On the issue of clause 17 of the Bill which confers on the Secretary of State a power to direct local authorities to provide information, Lord Stewart set out in the debate the requirement for this clause being in the Bill and its intention to act as a backstop in relation to information sharing. The policy intention is to ensure there is a legal framework to facilitate the flow of information that would be relevant to a child transferring in or out of local authority accommodation, should directions be made by the Secretary of State. If a local authority failed to provide the necessary information required, the power in clause 17 of the Bill confers on the Secretary of State a power to direct that local authority to do so. We consider it helpful to have this reserve legislation should there be a need to ensure relevant information was forthcoming.

The Home Office does not however have to rely on clause 17 for data sharing with local authorities. Instead, the intention is to continue using data sharing processes under the National Transfer Scheme which rely on already existing legislation and statutory guidance, namely the Children Act 1989, section 55 of the Borders, Citizenship and Immigration Act 2009 and the statutory guidance Working together to safeguard children. I wish to reassure you that we have never had to use the similar existing power in section 70 of the Immigration Act 2016 due to our use of existing legislation and guidance, as well as the excellent collaboration which already exists with local authorities.

Given the above, I trust the inclusion of more details about this backstop provision in the Bill now provides you with some reassurance.

I acknowledge your request during the end of the debate for a meeting between interested bodies in respect of clause 17. I can confirm that my officials will look to make arrangements with your office to arrange a meeting at the earliest convenience.

I am copying this letter to Lord Scriven, Baroness Chakrabarti, Baroness Bennett of Manor Castle, Lord German, Lord Coaker and Baroness Hamwee. I will also place a copy of this letter in the library of the House.

Yours sincerely,

The Lord Murray of Blidworth
Parliamentary Under Secretary of State
for Migration and Borders