Immigration Bill
Second Reading, House of Lords
22 December 2015

Briefing

Key messages

- Councils have an important role in protecting families, children and vulnerable adults who are seeking asylum. We are working to ensure local authorities are able to deliver their duties, keep children safe and prevent families from becoming homeless.

- The LGA remains concerned that Clauses 37/38 and Schedule 8 of the Immigration Bill could result in:

    - Failed asylum seekers choosing not to engage in services
    - Large numbers of referrals of families resulting in increased assessment costs, and potentially then receiving a long period of support from local authorities.

- Although local authorities are keen to support care leavers to meet their aspirations as part of their ongoing leaving care responsibilities, we welcome the provision in Schedule 9 in terms of the cost implications for local authorities no longer having to pay higher education tuition fees for care leavers as a result of their immigration status. We hope the regulations will ensure that any residence criteria is sufficiently broad to allow this group of care leavers to pursue their studies.

- Clause 39 provides important clarity on the transfer of responsibility for caring for an unaccompanied migrant child from one council area to another. 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.

- However we are concerned that Clause 42 seeks to confer powers for the Secretary of State 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 proposals in clauses 47 and 50 require customer-facing public authority staff to speak fluent English and could have legal, financial and employment implications for councils, even though the vast majority of council staff speak fluent English. 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 may require local authorities to review and update their complaints procedures.

- We are keen the Home Office will maintain engagement with local authorities when drafting regulations and guidance to implement those aspects that affect councils. This will help ensure absolute clarity on how the new responsibilities should be

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interpreted and how local authority practice should change, particularly to reduce the risk of expensive litigation and to ensure consistency in support.

Further information

Clauses 39-42, Transfer of responsibility for relevant children

The LGA supports clauses 39 – 40 which introduce a new process for transferring legal responsibility for unaccompanied asylum seeking children between local authorities. Under current legislation, unaccompanied children arriving in the UK remain the legal responsibility of the local authority at which they first present. This has historically placed an unfair burden on a small number of councils, primarily (but not exclusively) port authorities, which retain legal and financial responsibility for children even if they are placed in another local authority area. The existing system also introduces additional costs to the entry authority, which is required to monitor the quality of these distant placements, and additional risk in terms of the distance between the young person and their legal guardians.

However, we are concerned that clause 42 seeks to confer powers for the Secretary of State to compel local authorities to accept the transfer of children from other areas, with no clarity as to how their long-term support needs will be funded. The current system of funding for unaccompanied minors is recognised as insufficient to cover council costs, and the Home Office has subsequently agreed to increase the rates paid to councils taking responsibility for children from Kent County Council if they accept them before the end of this financial year.

If these current arrangements for the dispersal of children from Kent are to be expanded into a national scheme, it must be fully funded to enable councils who have experienced a reduction in their resources to offer support to these children. If the scheme is to be statutory and based on the reserve powers outlined at clause 42, then it is a new burden which must be fully funded as such.

Schedule 9, availability of local authority support

During the House of Commons stages we welcomed amendments to the legislation which allow a local authority to act on safeguarding or child protection concerns for care leavers or children in migrant families without status, and allow for support to be provided to prevent care leavers or families from becoming destitute whilst they remain in the UK.

We have been concerned that the Bill might have the effect of passing costs of supporting failed asylum seekers from the Home Office on to local authorities. Clause 38 and Schedule 9 seeks to clarify the expectations on local authorities and to address our concerns.

Local authorities already face a considerable cost burden in providing this safety net support under current legislation and we appreciate the commitment to explore the impact of any costs associated with the changes under the New Burdens doctrine. We also welcome the aims to streamline and standardise the assessment process, particularly given that we will anticipate that the Bill could lead to an increasing number of referrals to local authority support.

All available data shows that local authorities can be supporting adults and children for a number of years. We are therefore seeking assurances that the Home Office will make initial decisions quickly and correctly, and pursue returns when appropriate swiftly and effectively.

Local authorities do not want to see a rise in homelessness within their communities so it is essential that the Home Office works with the local authority when a family or care leaver can or has to return to their country of origin. This will minimise the risk of families 'going underground', with resulting concerns on safeguarding, destitution, community safety and community cohesion.

Although local authorities are keen to support care leavers to meet their aspirations as part of their ongoing leaving care responsibilities, we welcome the provision in Schedule 9 in terms of the cost implications for local authorities no longer having to pay higher education tuition fees for care leavers as a result of their immigration status. We hope the regulations will ensure that any residence criteria is sufficiently broad to allow this group of care leavers to pursue their studies.

The provisions relating to reductions in support for care leavers will present a significant shift in practice. It will be important for local authorities, in their role as corporate parents, to work with government to resolve any outstanding immigration issues well in advance of a looked after migrant child becoming 18.

More information on the proposed change to support for families and care leavers without immigration status can be found on the 'No Recourse to Public Funds Network' website.[i]

Language requirements for public sector workers (clauses 47 and 50)
The provisions in Clause 47 and 50 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.

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
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.

[i] A further commentary on the proposals is available from the No Recourse to Public Funds website at: www.nrpfnetwork.org.uk/News/Pages/Local-authority-support.aspx.