

Committee(s): Community and Children's Services Committee	Dated: 28/07/2023
Subject: Illegal Migration Act 2023	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1, 2 and 4
Does this proposal require extra revenue and/or capital spending?	Unknown at this stage
If so, how much?	Not known
What is the source of Funding?	Not known
Has this Funding Source been agreed with the Chamberlain's Department?	No
Report of: Remembrancer and Children's Services (joint)	For Information
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Summary

This report provides an update on the Illegal Migration Act 2023, which was first introduced into Parliament on 7th March 2023 and received Royal Assent on 20th July 2023.

The purpose of the Act is, amongst other related matters, to make provision about the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control, detention for immigration purposes and the treatment of unaccompanied children who have entered the United Kingdom through these routes. In respect of unaccompanied children, it imposes some new duties on Local Authorities (which for the purposes of the Act includes the Common Council in exercise of its local authority functions). The purpose of this report is to outline what those new duties are, and the possibility of future impact.

Recommendation(s)

Members are asked to note the report.

Main Report

Background

1. In 2022, the Government calculates that over 45,700 illegal entrants entered the UK having crossed the English Channel in small boats; this compares to some 28,500 in 2021 and 8,500 in 2020. The Government has said that in 2022, many of the illegal entrants originated from what it deems to be safe countries, such as Albania (28% of the total), and that all travel through safe countries, such as France or other safe European countries, to get to the UK. The annual cost of the asylum system is the highest it has been in over two decades at £3 billion, with nearly £6 million a day spent housing migrants in over 300 hotels.

2. The Government's intention is that the Act will create a system in which anyone arriving illegally in the United Kingdom will not have their asylum claim, human rights claim or modern slavery referral considered while they are in the UK, but they will instead be promptly removed either to their home country or relocated to a safe third country to have their protection claims processed there: whether workable agreements are able to be put in place as to those relocation arrangements remains to be seen. The only way in which illegal entrants will be able to stay in the UK, and then only on a temporary basis, is if they can provide credible and compelling evidence that they face a real risk of serious and irreversible harm (for example persecution, torture or death) in the specific third country to where they are due to be removed.
3. The Bill, when passing through its Parliamentary process, proved to be a controversial Bill. Members were briefed on its progress through Parliament (via the Remembrancer's weekly Parliamentary Brief).
4. The Government sees the Bill as key to its efforts to stop small boat crossings. In a statement made in the House of Commons towards the end of the Parliamentary process on 17th July, Robert Jenrick, Minister for Immigration, said "*We believe that inaction is not an option, that we must stop the boats and that the Bill is a key part of our plan to do just that. The message and the means must be absolutely clear and unambiguous: if people come to the UK illegally, they will not be able to stay here.*"
5. It is worth noting that other influential organisations that made representations during the passage of the Bill have severely criticised the workability of the scheme proposed (in addition to its impact on human rights and international law obligations of the United Kingdom). The Law Society warned in its statement on Royal Assent that it considers that the Act will prove unworkable in practice because it does not provide solutions to the asylum backlog, and the legal aid sector does not have the capacity to provide the immigration advice needed. It is of the view that as a result, a growing number of people will be left in limbo in the UK, unable to be removed and unable to claim asylum. In this regard, it is worth noting that CoL Children's Services has never had a young person removed from the UK from its care: that includes all who have travelled via safe countries. Children's Services note that a young person being in limbo is the worst possible position in terms of impact on mental health and wellbeing, and there is therefore a risk that it will add to the social work/health work needed for any young person affected, should a limbo situation be created by the provisions of the Act.

Application to the City Corporation

6. The Act has some impact on the duties of local authorities (defined as including the Common Council in the exercise of its local authority functions). The revised duties can be found in sections 16 to 21 of the Act (these sections are annexed to this report), which deal with unaccompanied children.
7. The principle effects of these sections of the Act can be summarised as:-

- a duty to accommodate unaccompanied migrant children if required to do so by the Home Secretary,
 - a duty to stop accommodating any such child if required to do so by the Home Secretary (and transfer that child back to Home Secretary accommodation),
 - a duty to provide information to the Home Secretary (on request) in relation to accommodating unaccompanied migrant children,
 - the possibility of a Home Secretary order being given to a Local Authority if there is a perceived failure (by a Local Authority inc. Common Council) to force compliance with the duties (ultimately enforceable by a mandatory order from a Court).
8. These provisions of the Act are not yet in force (except the power to make regulations under section 18 as to the information etc that may be requested by the Home Secretary from a local authority). The substantive provisions will be brought into force (switched on) by Regulations (secondary legislation) and it is not yet known when that will be. The minimum period is usually two months after Royal Assent but that is a minimum period: a “not before” date. The Government has repeatedly stated however that this Act and the policies it represents are at the top of the Government’s priority list so early implementation is expected.
9. It is very difficult to predict whether, and if so, to what extent, these new duties will impact the Corporation. Whilst the Corporation generally has very low numbers of looked after children in its care, it is not yet clear how local authorities will be selected in terms of the power to direct under section 17 of the Act, nor as to the potential numbers of children that might be covered by any such direction. However, some initial observations are set out below.

New duty to accommodate if required by home secretary

10. The fair distribution of Unaccompanied Asylum Seeking Children (UASC) is measured, under the National Transfer Scheme for UASC (NTS) Guidance, by the proportion of the Local Authority area child population that they represent. The target level according to that guidance is that the allocation should be no more than 1.1% of that population – this figure being used to identify capacity to accommodate or where additional UASC would overburden local services. Currently, the City of London has over 1.1% of it’s child population as UASC. This means that the City does not currently take young people from the NTS due to the ratio. The City of London sends young people arriving in the City to other LAs via the NTS. It is unclear whether any transfer under the Illegal Migration Act 2023 provisions would be subject to the parameters of the NTS or not. If the 1.1% cap did not apply that may require additional capacity dependant on the numbers. The NTS system is starting to have delays now as regions across the UK struggle to find placements.

New duty to stop accommodating if required by home secretary

11. From a child centred and Corporation social care practice perspective, the duty to stop accommodating causes difficulty. Further guidance is required and will no doubt be given as to the circumstances in which this power might be exercised. The overarching standard for our support is ‘would this be good

enough for my own child?' Children's Services are required to create and update Pathway Plans for children aged 15¾ to age 25. The Pathway Plan is a legal document setting out support, and ensuring a child knows the plans for the next period of time. A duty to stop accommodating will be difficult to care plan for and would present a cultural challenge in the City of London, where the social care practice is rated as outstanding. It is difficult to see how outstanding care planning can be compatible with the provisions of this Act.

New duty to provide information to the Home Secretary regarding UASC

12. The Corporation currently shares basic information with the Home Secretary for financial and case management purposes (CoLC receives a home office financial grant). CoLC would not want to share the full detail of our assessments with the home office if the purpose was to check against asylum applications for veracity. This would be highly undesirable as it is not the purpose of the assessment and would seriously risk undermining a social worker's relationship with the children they are caring for. It is difficult to see what other information would be sought: again, we will need to await the Regulations that are to be made and such further guidance as is given at that time.

Conclusion

13. The Committee is asked to note the duties in the Illegal Migration Act 2023 and the potential implications of the new duties on Local Authorities as regards unaccompanied children who fall within the scope of the Act, insofar as it is possible to predict them at this stage.

Appendices

Appendix: sections 16 to 21 of the Illegal Migration Act 2023.

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APPENDIX: sections 16 to 21 of the Illegal Migration Act 2023

Unaccompanied children

16 Accommodation and other support for unaccompanied migrant children

(1) The Secretary of State may provide, or arrange for the provision of, accommodation in England for unaccompanied children in England.

(2) In this section, “accommodation for unaccompanied migrant children” means accommodation provided under [this section](#).

(3) While a child is residing in accommodation for unaccompanied migrant children, the Secretary of State may provide, or arrange for the provision of, other types of support to the child.

(4) Subsections [\(1\)](#) to [\(3\)](#) are to be treated as having had effect at all times on or after 7 March 2023.

(5) For the purposes of this section and section [17](#), a person (“C”) is an unaccompanied child if—

(a) C meets the four conditions in section [2](#), reading subsection [\(3\)](#) of that section as if it referred to a person entering or arriving in the United Kingdom as mentioned in subsection [\(2\)](#) of that section on or after 7 March 2023,

(b) C is under the age of 18, and

(c) at the time of C’s entry or arrival in the United Kingdom by virtue of which C meets the condition in section [2\(3\)](#), no individual (whether or not a parent of C) who was aged 18 or over had care of C.

17 Transfer of children from Secretary of State to local authority and vice versa

(1) The Secretary of State may decide that a child is to cease residing in accommodation for unaccompanied migrant children on a certain date (the transfer date).

(2) On making that decision, the Secretary of State must direct a local authority in England to provide accommodation to the child, under section 20 of the Children Act 1989, from the transfer date.

(3) The transfer date must be 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.

(4) The Secretary of State may decide that an unaccompanied child who is being provided with accommodation by a local authority in England is to cease being provided with that accommodation on a certain date (the transfer date).

(5) On making that decision, the Secretary of State must direct the local authority to cease providing the child with accommodation from the transfer date.

(6) The transfer date must be 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.

(7) When a local authority ceases providing a child with accommodation in compliance with a direction under [subsection \(5\)](#), the Secretary of State must arrange for the child to reside in accommodation for unaccompanied migrant children from the transfer date.

(8) In this section and sections [18](#) and [19](#)—

- “accommodation for unaccompanied migrant children” has the same meaning as in [section 16](#);
- “local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);
- “working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

18 Duty of local authority to provide information to the Secretary of State

(1) The Secretary of State may direct a local authority to provide information to the Secretary of State for the purposes of helping the Secretary of State to make a decision under [section 17\(1\)](#) or [\(4\)](#) (decision to transfer unaccompanied migrant child from Secretary of State to local authority or vice versa).

(2) The information that the Secretary of State may direct a local authority to provide is—

- (a) information about the accommodation and support provided to children by the local authority;
- (b) such other information as may be specified in regulations made by the Secretary of State.

(3) A local authority which is directed to provide information under this section must provide it—

- (a) in such form and manner as the Secretary of State may direct, and
- (b) before such time or before the end of such period as the Secretary of State may direct.

19 Enforcement of local authorities’ duties under sections [17](#) and [18](#)

(1) If the Secretary of State is satisfied that a local authority has failed, without reasonable excuse, to comply with a direction under [section 17](#) or a duty under [section 18](#), the Secretary of State may make an order declaring that authority to be in default with respect to that direction or duty.

(2) An order under [subsection \(1\)](#) must give the Secretary of State’s reasons for making it.

(3) An order under [subsection \(1\)](#) may contain such directions for the purpose of ensuring that the direction or duty is complied with, within such period as may be specified in the order, as appears to the Secretary of State to be necessary.

(4) Any such direction may be enforced on an application made on behalf of the Secretary of State, by a mandatory order.

20 Extension to Wales, Scotland and Northern Ireland

(1) The Secretary of State may make regulations enabling sections [16](#) to [19](#) to apply in relation to Wales, Scotland or Northern Ireland.

(2) The regulations may amend, repeal or revoke any enactment (including an enactment contained in this Act).

(3) The regulations may not confer functions on—

(a) the Welsh Ministers,

(b) the Scottish Ministers,

(c) the First Minister and deputy First Minister in Northern Ireland,

(d) a Northern Ireland Minister, or

(e) a Northern Ireland department.

(4) In this section, “enactment” includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

(b) an enactment contained in, or in an instrument made under, an Act or Measure of Senedd Cymru;

(c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

21 Transfer of children between local authorities

(1) Section 69 of the Immigration Act 2016 (transfer of responsibility for relevant children) is amended as follows.

(2) In subsection (9) (definition of “relevant child”)—

(a) omit the “or” at the end of paragraph (b), and

(b) after paragraph (c) insert “, or

(d) an unaccompanied child, within the meaning of section [16](#) of the Illegal Migration Act 2023.”

(3) In subsection (10), at the end insert “(a) to (c)”.