

Jane Hutt AS/MS  
Y Gweinidog Cyfiawnder Cymdeithasol  
Minister for Social Justice



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref JH-/00081/22

Kevin Foster MP  
Minister for Future Borders and Immigration  
2 Marsham Street  
London  
SW1P 4DF  
MinisterforImmigration@homeoffice.gov.uk

17 February 2022

Earlier this week, Senedd Cymru considered a legislative consent motion relating to provisions within legislative competence on the UK Government's Nationality and Borders Bill. Despite your Government's continued position that the age assessment clauses related only to reserved matters, three separate cross-party Senedd Committees concurred with Welsh Ministers' position that these clauses were actually within legislative competence of the Senedd. When put to a vote, the Senedd voted to withhold consent for the UK Government's intention to legislate on these matters. For the avoidance of doubt, the relevant clauses are clauses 48-55 (excluding clause 50) and clause 80 (power to make consequential provision). The debate transcript can be found here:

[Plenary 15/02/2022 - Welsh Parliament \(senedd.wales\)](#)

We urge you to observe the Sewel Convention and the principles of the newly agreed Intergovernmental Relations Review by not legislating on these clauses in relation to Wales. We request that you table a UK Government amendment to the Nationality and Borders Bill to ensure these clauses do not apply to Wales.

In addition to the age assessment clauses, I am making an urgent plea for the UK Government to act reasonably to avert an impending tragedy if the Bill is implemented as currently drafted. Over the months since the Bill was introduced in July, we have raised many concerns and have been disappointed that compromises have not been made to the Bill's drafting.

Our stance on the issues raised has not changed but this letter contains 10 critical clauses which we sincerely hope you will reconsider to avoid what we believe must be unintended but severely damaging effects in Wales:

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Jane.Hutt@llyw.cymru](mailto:Gohebiaeth.Jane.Hutt@llyw.cymru)  
[Correspondence.Jane.Hutt@gov.wales](mailto:Correspondence.Jane.Hutt@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## 1. Clause 12 - Accommodation Centres

We have been clear that we see Accommodation Centres as fundamentally incompatible with our Nation of Sanctuary approach because they prevent effective integration from day one of arrival in Wales. Whilst our position has not changed and our preference would be for UK Ministers to drop Clause 12 in its entirety, we are seeking specific limited mitigating amendments to this clause as an alternative.

Clause 12 has the effect of bringing Accommodation Centres (as established as Part 2 of the Nationality, Immigration and Asylum Act 2002) into force with amendments to provide wide scope for UK Government to accommodate asylum seekers and refused (or failed) asylum seekers. Section 42 of the 2002 Act relates to how such Accommodation Centres would apply to Wales but there is an inconsistency between how Wales will be treated, compared with Scotland (section 40) and Northern Ireland (section 41). We urge you to lay a Government amendment to ensure that section 42 is redrafted to state:

(1)The Secretary of State may not make arrangements under section 16 for the provision of premises in Wales unless he has received the consent of the Welsh Ministers.

(2)Sections 36 does not apply to accommodation centres provided in Wales.

If such an amendment cannot be made, a clear inequity will exist in the legislation as it applies to Wales.

## 2. Clause 11 – Differentiation of refugees

We understand but disagree with the UK Government's rationale for introducing a new Group 2 status with restrictions which do not apply to Group 1 refugees. We believe that this is incompatible with the UN Refugee Convention. In terms of the impact on Wales, we have concerns about the practical impact of this change and the systemic destitution and homelessness which it will create for those who the UK Government has found to have fled a well-founded fear of persecution.

By placing restrictions on access to Public Funds and Family Reunion, the Bill will make it impossible for newly recognised refugees to move from asylum accommodation into sustainable housing and contribute to the local community. The UK Government currently gives refugees only 28 days to move from asylum accommodation into other accommodation and this is a significant challenge, even with access to the local authority Homelessness team support and access to Universal Credit. By removing access to both of those factors there will be systemic likelihood of destitution for Group 2 refugees. This risk will remain any time that a refugee loses employment.

The suggestion that Family Reunion rights will be restricted for Group 2 refugees is counter-productive because until families are reunited there will remain both mental health challenges for those isolated from family within the UK, as well as the loss of funds to the UK economy as the UK-based family members who are able to access employment are likely to send remittances to their loved ones trapped overseas.

The 30 month period for Temporary Protection Status will also create inescapable uncertainty for Group 2 refugees and will create significant administrative burden on the Home Office and refugees for no real benefit. The situation for most refugee cases is unlikely to change significantly in such a short period of time and, therefore, an

overstretched Home Office, an inadequate immigration legal advice sector, and traumatised individuals in need of protection will all be disadvantaged by this unnecessary development.

Each of these aspects of differentiation of treatment for Group 2 refugees will create homelessness in Welsh communities which we cannot adequately address. These provisions will also exacerbate vulnerabilities and increase the risk of exploitation, including modern slavery risks. Our strong preference is that the UK Government lays an amendment to remove clause 11 in its entirety but, as an alternative we urge you to remove the proposed differentiation in relation to the length of leave to remain (clause 11(5)(a)), the provision of Public Funds (clause 11(5)(c)) and a restriction on Family Reunion rights (clause 11(5)(d)). We would also request the removal of the words “for example” from subsections 5 and 6, as well as a requirement for the rules around differentiation to be subject to affirmative procedure Regulations, rather than via the Immigration rules, as implied by subsection 8.

### **3. Clause 15 - Inadmissibility**

We do not believe that the UK Government’s approach regarding inadmissible asylum claims from those who have travelled through a third country is compliant with the UN Refugee Convention. Our preference would be that the UK Government abandons this approach. However, we recognise that decisions relating to this matter are not devolved to Wales and our central concern is the impact that this approach will have in our Welsh communities. We believe that the proposed system of inadmissible asylum claims will create huge delays, litigation and uncertainty in the asylum system – with consequent detrimental impacts on mental health, community cohesion, and other devolved responsibilities.

We therefore propose three limited amendments to mitigate against this:

- New clause 80B(3) is amended to say that a declaration of inadmissibility is considered to be a rejection of the asylum application. This will go a large way towards preventing ‘limbo’ situations where the status of the individuals concerned is unknown and it will provide for a right of appeal;
- New clause 80C(3) is amended to say remove limb (b) as it is unjust to refuse to consider a claim for asylum on the basis that an asylum claim could be heard elsewhere, even when the UK Government knows that such a claim has been refused. It is also extremely unlikely that that country would accept that person back if they have already refused the asylum claim, meaning that the asylum seeker will be left in limbo in a Welsh community.
- New clause 80C(5) is amended to make clear that under Condition 5 the assessment of whether it would have been reasonable to expect an individual to have made a relevant claim to a safe third State will utilise the UNHCR’s interpretation of Article 31 of the Refugee Convention. That is, individuals do not have to have arrived in the UK directly from their country of displacement.

These three amendments will help to ensure that the UK Government can implement their intended policy without the particularly concerning likely impacts in our communities.

### **4. Clause 17 - Evidence requirement**

We recognise the UK Government’s intention to ensure asylum seekers submit their full evidence underpinning their claim at the earliest opportunity. We also believe that it would be in everyone’s best interests to ensure asylum seekers were able to put a complete case

forward for the Home Office's consideration. However, we believe that the Bill's approach to this issue is counter-productive and will lead to more litigation, rather than less. The Home Office disperses asylum seekers throughout the UK on a no-choice basis, including to areas which have been identified as immigration legal advice 'deserts' such as Wrexham. Placing an asylum seeker in such an area without consideration of this in deciding the specified date could amount to placing those asylum seekers at a systemic disadvantage which is likely to be challenged through litigation.

Clause 17 requires individuals to provide their full case by a specified date set by the Secretary of State or an Immigration Officer. The Bill does not include a minimum period for compliance with such a notice and if an insufficient time period is chosen, this will lead to asylum appeals and fresh claims in future. We propose that a minimum period and safeguards where non-compliance are unavoidable are added to clause 17. Clause 17(2) could be amended to state that a specified date can be "no less than six months after the issuing of an evidence notice". Clause 17(6) could be amended to state that "a person is not considered to have failed to comply with the evidence notice where, through no fault of their own, they have not been able to avail themselves of adequate immigration legal advice, official documentation from their country of origin, or expert medical evidence, to support their case before the specified date."

## **5. Clauses 29-34 – Compliance with Refugee Convention**

The UK Government has claimed that the Bill accords with the UN Refugee Convention but the UN Refugee Agency (UNHCR) themselves state that, *"[we] must therefore regretfully reiterate [our] considered view that the Bill is fundamentally at odds with the Government's avowed commitment to upholding the United Kingdom's international obligations under the Refugee Convention and with the country's long-standing role as a global champion for the refugee cause."*

We urge the UK Government to listen to the widespread concern that the re-interpretation of the Convention will undermine our standing in the world and erode other States' compliance with the Convention too. The UK's global reputation for promoting human rights may be fatally undermined by these provisions. In Wales, we see these changes leading to more waste of human potential as Home Office decision-makers and the Courts explore how to implement these new provisions and maintain compliance with the Convention, leaving many asylum seekers in limbo with trauma. At the very least, we urge UK Ministers to amend clause 36(6) to explain that "stopped" in clause 36(1) means "for at least 3 months."

## **6. Clause 80 – Transitional and Consequential provision**

The Bill also does not make clear how asylum applications which have already been lodged will be treated. We urge UK Ministers to lay an amendment to clause 80 to clarify that existing asylum applications are not subject to the Nationality and Borders Bill regime.

## **7. 56 Day Move On period**

The Home Office currently operates a 28 day 'grace period' to enable newly recognised refugees to find alternative accommodation and sources of income after their asylum application has been granted. The 28 day period is not currently on the statute book and is insufficient in some cases, as well as inconsistent with both the Housing (Wales) Act 2014 and the UK Homelessness Reduction Act 2017, which both place duties on local housing authorities to support those at risk of homelessness within 56 days.

The destitution experienced by newly recognised refugees being made homeless within 28 days of their persecution being recognised is unacceptable but this situation will be exacerbated by the proposed introduction of Group 2 refugee status, which will make homelessness likely for most. We therefore call upon UK Ministers to lay an amendment to ensure the 56 day 'Move On' or grace period is placed on the face of the Nationality and Borders Bill, with a power to increase that period by negative procedure statutory instrument if required in future.

Similarly, we request that the UK Government introduces an amendment that the 21 day grace period for refused asylum applications is put onto the statute book with a similar power to extend as necessary in future, and a restriction that the grace period can only be exercised once the refused asylum seeker has been offered voluntary return to their country of origin or a safe third country.

## **8. Asylum Right to Work**

The Bill is also a missed opportunity to address a major source of mental health trauma and skills shortages across the UK. We urge the UK Government to amend the Bill to provide a right for asylum seekers to work in any occupation in the UK if their application has taken more than 6 months after their full evidence has been submitted. The 6 month threshold would help UK Ministers to achieve three key objectives:

1. The Home Office already has a notional target of assessing asylum applications within 6 months. If the UK Government has concerns that the right to work for asylum seekers may distort the local labour market, this risk can be removed entirely by resourcing Home Office decision-making effectively to meet the 6 month target. This right to work would drive continual improvement within the Home Office;
2. The UK Government wants asylum seekers to submit their full asylum case as quickly as possible. By placing a 6 month right to work after the submission of this full case, asylum seekers will be incentivised to do everything possible to comply with this requirement;
3. Other Home Office priorities include combatting modern slavery and tackling illegal working in our communities but we know that the current system of asylum seekers waiting very long periods for a decision and no right to work has driven some into illegal working and exploitation. Traffickers and unscrupulous employers would be dealt a major blow by ensuring the right to work. To overcome modern slavery, another key measure would be ensuring that all survivors of modern slavery have the automatic right to live and work in the UK. Providing an automatic leave to remain, without requiring a separate asylum claim, and a right to work would help survivors to rebuild their lives. It would also mitigate risks of re-trafficking and other forms of exploitation.

There is widespread support for this change, from Migration Advisory Committee to the Lift the Ban Coalition and Conservative politicians. The right to work would be a boost to avoid harmful mental health and skills erosion outcomes which asylum seekers currently face whilst awaiting decisions in Wales.

## **9. Expanded Family Reunion**

The UK Government's Family Reunion scheme provides a crucial lifeline for families ripped apart by war and persecution. It is a great example of the UK's humanitarian approach but it

could be enhanced further and benefit our community and economy. Many families affected by war are no longer traditional parent-child units. Nevertheless, familial ties remain strong and separation is a lifelong source of trauma. We propose an expanded Family Reunion scheme to include:

- “1) Family members of a person granted refugee status or humanitarian protection will be eligible for leave to enter and remain in the United Kingdom.
- 2) In this section, “family members” include a person’s -
  - a) parent, including adoptive parent;
  - b) spouse, civil partner or unmarried partner;
  - c) child, including adopted child, who is either – i) under the age of 18, or ii) under the age of 25 but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum;
  - d) sibling, including adoptive sibling who is either – i) under the age of 18, or ii) under the age of 25, but was wither under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum; and,
  - e) aunt and/or uncle, where the individual’s parent is no longer living or cannot seek International protection;
  - f) grandparent, where the individual’s parent is no longer living or cannot seek International Protection;
  - g) such other persons as the Secretary of State may determine, having regard to – i) the importance of maintaining family unity; ii) the best interests of the child; iii) the physical, emotional, psychological or financial dependency between a person granted refugee status or humanitarian protection and another person; iv) any risk to the physical, emotional or psychological wellbeing of a person who was granted refugee status or humanitarian protection, including from the circumstances in which the person is living in the United Kingdom, or; v) such other matters as the Secretary of State considers appropriate.”

The Welsh Government has enshrined the UN Convention on the Rights of the Child (UNCRC) in law and it is our duty to make representations on behalf of children to urge family reunion. We believe the definition above incorporates the spirit of Article 10 of the UNCRC.

## **10. Four Nations approach to Public Funds regime**

The Welsh Government is legally required to aim to eliminate discrimination, advance equality of opportunity, and foster good relations between people seeking sanctuary and others in our community. We provide support, as far as we are able, within the framework set out by UK Government under the Immigration Rules. However, the current approach to UK Government unilaterally deciding what schemes and legislation across the UK can be considered ‘Public Funds’ and provided to migrants causes a legislative ‘chilling effect’. The Welsh Government does not intend to undermine UK Government immigration policy and actively seeks to avoid that perception. However, we urge amendment to the Bill to ensure the ‘Public Funds’ regime is overhauled and a collaborative Four Nations approach is instilled in its place. This approach will give us confidence to legislate and develop schemes in Wales, with clear mechanisms to ensure our governments can resolve any concerns without wasted costs, effort, or unintentional impacts on individuals’ immigration status.

Finally, when the final Bill, as amended, receives Royal Assent our Governments will need to work closely together to ensure it is implemented as effectively and compassionately as possible. For this reason, I note that the commencement period for most aspects of the Bill (clause 83) will need to be not less than six months to ensure full preparations can be made

and solutions found to the issues raised above which are not addressed through amendments.

I also note the commitment in clause 79 that the financial implications of the Bill will be met by the UK Parliament. If the issues raised above are not addressed through amendments, we foresee costs falling to the Welsh Government in relation to managing community cohesion, provision of education and health services, ensuring local authorities receive appropriate training, provision of support for the voluntary sector to ensure no one is left destitute, support for social services departments to understand their obligations and options in relation to age assessment of children, and in other areas. Should clause 11 (differentiation of refugees) remain as drafted we expect large costs to be incurred by Welsh social services departments in accommodating and supporting any Group 2 refugee families with children and those who have care and support needs as a result of the risks of homelessness. We will expect consequential funding to be made available to us to ensure such services can be established as a result of the new burdens imposed by the Bill.

I sincerely hope you will engage positively with these reasonable requests. These are not 'wrecking' amendments and relate directly to impacts which will affect the operation of our devolved responsibilities. These are necessary amendments to ensure the system does not create a crisis in Welsh communities. I reiterate my previous offer in December to meet urgently with UK Ministers and discuss these proposed solutions.

**Jane Hutt AS/MS**

Y Gweinidog Cyfiawnder Cymdeithasol  
Minister for Social Justice