



**Borders, Citizenship and Immigration Bill
House of Lords Committee
Part 3**

**Clause 51 Duty regarding the welfare of children
Amendments 112 and 114 ‘in the UK’
Amendment 124 commencement of s 51**

ILPA supports amendments 112, 114 and 124 in the names of the Lord Avebury, the the Baroness Miller of Chilthorne Dormer, the Lord Ramsbotham and the Baroness Hanham.

112 Page 41, line 16, leave out "who are in the United Kingdom"

114 Page 41, line 34, leave out "who are in the United Kingdom"

Purpose

To ensure that the duty to safeguard and promote the welfare of children covers UK Border Agency staff based abroad, immigration functions at juxtaposed controls, entry clearance points and during escorted removals from the UK.

Page 43, leave out line 2 and insert "the day this Act is passed"

Purpose

To ensure that the clause *Duty regarding the welfare of children* shall come into force on the day that the Act is passed, rather than wait for the Secretary of State to appoint a day.

Briefing

ILPA is a member of the Refugee Children’s Consortium and endorses the Consortium’s briefing on Clause 51. The implications of this clause go beyond refugee children to all children who come into contact with UK immigration control.

Clause 51 imposes a duty only on staff ‘in the UK’. Thus it does not cover UK Border Agency officials based abroad, for example in consular posts and at juxtaposed controls. This is of particular concern given the UK government’s stated intention to remove unaccompanied children whose claims for asylum have failed while they are under 18.

UK Border Agency staff in consulates and embassies abroad

Here the limitation to ‘within the UK’ has particular implications for the early identification and support for trafficked children and gives rise to a risk of a breach of Article 11(1) of the UN Convention on the Rights of the Child, which states:

‘11(1) States Parties shall take measures to combat the illicit transfer and non-return of children abroad’

It has been suggested by UK Border Agency officials in conversations that to impose a duty on those outside the UK would give them wide-ranging obligations to examine and intervene in the situations of children in their countries for example child labourers in factories. This reflects a failure to understand the legislation. The duty is confined to the exercise of functions of the Secretary of State relating to immigration, nationality, customs and the immigration acts.

The British High Commission in Ghana, if it suspects that a document submitted to it as part of an application is not genuine, refers this to the appropriate Ghanaian authority so that prosecution of the person presenting the document can be considered. No one is suggesting that this entails a general duty on the High Commission to seek out false documents in Ghana in general¹.

If this can be done, why cannot a British High Commission or Embassy concerned that a child is at risk make the appropriate referrals in accordance with the Code to child welfare authorities in the country, or consider the implications of that risk for the issuing of a visa?

ILPA members have encountered cases in which UK Border Staff at consular posts have failed to accept applications for refugee family reunion made by children and have instead expected children to travel, alone, to neighbouring countries, without the necessary funds or travel documentation. For example, in one case, the children were refused the right to make an application for family reunion to join a parent who had been accepted as a refugee in the UK. It took several years of litigation before a challenge to this refusal succeeded. During this time the children suffered severe psychological and physical ill health.

The conduct of staff abroad is also part of the problems the limitation of the duty would create in cases involving the removal of children.

The removal of children

The removal of children is another area where we have very grave concerns about the limitations of the duty. We recall the answer given by the Lord West on 14 November 2007²

‘An unaccompanied child under the age of 18 would not be considered for removal from the UK unless it’s been established that the country to which the child is to be removed that adequate reception arrangements are in place. The Home Office must liaise with social services and/or the nominated guardian with responsibility for the care of the child in the UK to ensure the removal is effected in the most sensitive manner possible.’

¹ See the report of the Independent Monitor for Entry Clearance Refusals *Report on my visit to Accra* May 2008 www.ukvisas.gov.uk/resources/en/docs/2258700/2258742/imvisitaccramay08

² *Hansard* HL 14 November 2007 Col WA18

That describes the aspiration, but it is difficult to overstate the shortcomings of the UK Border Agency's current approach to forced returns of unaccompanied children in practice.

We have seen cases under the 'Dublin' procedures which allow people claiming asylum to be sent from one European State to another in which they have already made, or attempted to make, a claim where a child accepted as such by the UK authorities has been returned by them to a country which had previously treated them as an adult, without any assurances that the person would be treated as a child, resulting in the child being left destitute and unsupported there until legal challenges secured return to the UK. 'Dublin' procedures are also of concern because the UK is known to be a transit country for trafficking to other European countries.

As to returns to the country of origin, it is rather difficult to make people believe the reality, but the judgments of courts and tribunals provide a glimpse of these.

In the recent Court of Appeal case, *CL(Vietnam)* [2008] EWCA Civ 1551, Lord Justice Keene describes what the Home Office did in practice to establish that the country was safe for the child:

6. *There is a Home Office document headed "consideration" and dated 22 July 2002 which concludes by stating:*

"Despite the fact that Applicant is a minor it is considered that he can be returned to Vietnam as it has been established that there are adequate care provisions for children returned to Vietnam. See attached letter from the British Embassy in Hanoi." [...]

8. *The British Embassy letter was one dated 4 July 2001. It stated:*
"The Law on Care, Protection and Education of Children of Vietnam states that all children, including orphans, shall be given appropriate care and education by the state. All children homes are run by the Ministry of Labour, Invalids and Social Affairs. Some receive additional financial assistance from foreign NGOs.
In principle, childcare ceases at the age of 18 but, in practice, continues until individuals have found a job. Vietnam is a secular society with no restriction on religious practices."

Lord Justice Sedley, giving the concurring judgment, stated:

32...I find it disturbing that a document as bland and jejune as the letter which Keene LJ has quoted was relied on by the Home Office when deciding something as important as the safe return of a child to another country. The letter is plainly a recital of a formal answer obtained from the Vietnamese authorities. The Immigration Judge recorded evidence from the Home Office's own in-country information which shows that the reality for tens of thousands of Vietnamese children was very different.

There could be no better illustration of the UN Committee on the Rights of the Child's comment, at paragraph 70 of its 20 October Concluding Observations on the UK's periodic report under the Convention that:

*c) there is no independent oversight mechanism, such a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned;*³

An immigration judge's determination of May 2008 provides further glimpse of the problems⁴. The Home Office did not appeal the decision and recognised the child appellant as a refugee following the determination. In short form the child gave a telephone number stated by the child to be that of the parents in the home country. Local consular staff, at the behest of UK Border Agency officials, tried the number without her informed consent. The person who answered at first confirmed that the speaker was the parent, spoke of being frightened, and hung up. That was the only 'contact' with the supposed adequate reception arrangements. The immigration judge states:

'...it was [] clear that the Respondents were aware of some of the circumstances which [the social worker] was able to describe today but had not seen fit to appraise their Presenting Officer of the situation or to include it in the reasons for refusal letter or appraise the Tribunal.

...

I find it somewhat unfortunate that the different agencies involved do not appear to have had a full and frank exchange of information particularly as this may have led to this young and vulnerable child being returned to a potentially very dangerous situation.

...

I should first consider the claim made by the Respondents that adequate reception arrangements be made in...[...] The whole basis of the Respondents' conclusions in this matter are set out in an email from the British Consulate [...cited in full in the determination] [...] I do not find that this even begins to approach to any reasonable standard to say that adequate reception arrangements have been made for the Appellant.[...] These emails of course need to be read in their entirety so that the true meaning is not distorted. However, heaving read these emails in their entirety it would appear that the emphasis is on the need to remove the Appellant rather than assessment of either her condition or the conditions to which she would be removed.

...

Of even more concern to me is that the fact that the Respondents are very much aware that the Appellant may have been trafficked....[the social worker] was able to tell me that following her full asylum interview the Appellant had been interviewed further by officers on behalf of the Respondent from a specialist unit...there had been liaison between the Home Office, social, services and the police in respect of this aspect of the Appellant's circumstances. What concerns me is that the Respondents have not referred to any of this in the reasons for refusal letter and it would also appear that the

³ Committee on the Rights of the Child, Forty-Ninth Session, Concluding Observations: United Kingdom Of Great Britain And Northern Ireland, CRC/C/GBR/CO/4
www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf20 October 2008

⁴ Cited with permission.

officers dealing with unaccompanied minor [gender] have also not been kept abreast of these developments.'

...[the social worker] went on to say that the keenness and persistence of the people trying to get hold of [the Appellant's] address led her to believe that the Appellant had been trafficked. That information was passed to the port authorities and to the Home Office crime agency and to the airport security...The Respondents have not provided any information about this.'

ILPA members have experience of cases in which UK Border Agency officials have got in touch with adults in the child's country of origin without the informed consent of the child and also without a proper assessment of the child's protection claim, which may involve the implicit involvement of the family in case of a trafficked child and/or failure to assess possible ill-treatment a child's ill-treatment at the hands of family members. As these examples illustrate, there continues to be reliance upon unsubstantiated evidence to justify forced returns. A lack of full and frank disclosure of sources when considering adequate reception arrangements and treatment on return may be explained by the paucity of that information when, as in the cases above, it is brought to light by the determined efforts of representatives.

The Government continues to focus its work on forcibly returning unaccompanied asylum seeking children to their country of origin as described in the consultation paper *Planning Better Outcomes and support for unaccompanied asylum-seeking children*⁵. It has not been easy to obtain information about what is happening but it is ILPA's understanding that the Home Office is looking at the possibility of returning children other than to members of their family/primary caregivers, i.e. returning them to orphanages, whatever names these are given, in the country of origin. On 9 October 2008 ILPA succeeded in obtaining the following comment from Mr Oppenheim, the then UK Border Agency 'Children's Champion'

'We have been looking at returning unaccompanied young people to a number of countries and, as part of this, officials have recently visited Pakistan, Afghanistan and Bangladesh. We are now considering the issues arising from these visits.'

One of ILPA's concerns is that this will develop into returning children to orphanages in their country of origin before their family has been traced, and then 'attempting' to trace them from there. In these circumstances, it would not be responsible to confine the duty to those in the UK.

Juxtaposed controls

The House of Lords may recall having been promised the earth during debates on the bill that became the Immigration, Asylum Nationality Act 2006 as to the treatment of children at juxtaposed controls, especially their treatment by private contractors working there. Peers may wish to take advantage of this debate to audit those promises.

5

All contractors will be required to submit to the Secretary of State detailed procedures for handling vulnerable groups, including unaccompanied minors. Authorisation will be granted to individuals and will be suspended or revoked if there are any concerns. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

The training that must be included involves, among other things, managing detention anxiety and stress, including the detention of vulnerable trainees [sic]; health and safety; suicide and self-harm prevention; and race relations, cultural awareness, and human rights issues. The safety and security of those who will be in the care of the authorised person is of the utmost importance—I want that to be on the record—and must not be jeopardised. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC231

...we will ensure that there is a period of training before authorisation that will include the care of vulnerable persons, including children. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

*We have to make a differentiation here. On training in relation to children, we want to make sure that those who will deal with such children or people in a vulnerable situation are properly trained in issues like human rights, racial awareness, dealing with vulnerable people in traumatic circumstances, and of course all the issues around children. That is quite different from the kind of skills needed by immigration service officers as a part of their professional training. While they will have the skills I have outlined, they will have other skills as well.*The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC235

One issue to address is to ensure that staff are properly trained to hold a child. The noble Earl knows well from our discussions on children with special needs and behavioural issues that this is an important point. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC237

I understand noble Lords' need to ensure that the contractors are properly trained. They will have to provide the Immigration Service and the appointed monitors with access to the course material and the opportunity to attend the training they provide to ensure that there is high quality. I am happy to [make] that training document available to noble Lords, if they would find it of value. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 576-577

Authorisation will be granted only following stringent checks against a number of criminal record databases in the UK and in France, because people operating in France may be French. That will include the Sex Offenders' Register, as the Committee would expect. They will mirror existing procedures that apply to current contractors who already hold detention and escort contracts. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

Of course the checks will be as rigorous as those made in the public sector; that is the whole point. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC234

We do not want anyone to be given access to children who should not have it. I am absolutely determined on that point and I speak on behalf of Home Office Ministers in saying it. The checks must be rigorous and done properly because we have to protect children in all circumstances. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC234

Peers will recall the debates on that Bill as an one of the instances when imposing the section 11 duty was said to be impossible:

It is possible, legislatively, that if this were inserted [UK Border Agency to be included within list of those who must have regard to safeguarding and promotion of the welfare of children under s.11 Children Act 2004] it would become virtually impossible to return any family with children or any accompanied child or young person. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 646

It is necessary to be vigilant to ensure that the limitation of the duty to the UK and a delay in implementation are not the last vestiges of this resistance to the UK Border Agency being under a duty to safeguard and promote the welfare of children.

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