

Written evidence submitted by The Children's Society (ISSB22)

Dear Committee Members,

Re: Supplementary information following oral evidence session on 14th February.

I am writing to thank you all for inviting The Children's Society to give evidence on Thursday 14th February at the Immigration and Social Security Bill Committee. I thought it was a constructive session and I wanted to take this opportunity to reiterate The Children's Society's main points regarding the Immigration Bill and white paper given the time constraints within the evidence session and provide references to the data that I mentioned.

Last year The Children's Society worked with over 11,000 children and young people experiencing multiple disadvantages. In addition to our work with British and settled children facing poverty, exploitation and low well-being, we run a number of services across England¹ which specifically support children, young people and families who are subject to immigration control or whose access to services is restricted by immigration legislation. This includes children and young people who are seeking international protection, victims of modern slavery, and others with an irregular, uncertain or unresolved immigration status. Our services support children and young people from EEA backgrounds as well as those from non-EEA backgrounds. Therefore, our thoughts on the proposed Immigration and Social Security Bill come from both a practice-based and policy-based perspective.

A missed opportunity

Whilst we understand that the Bill's main objective is to repeal freedom of movement and associated rights, in providing a framework to deliver the future immigration system The Children's Society believes that in its current form the Bill is a missed opportunity to fundamentally reshape, simplify and improve the current asylum and immigration system. As stated by most of the witnesses, the immigration system which EEA nationals will become subject to is not robust and flexible enough to deal with not only the influx of applications but the varying levels of complexity within these applications. But more broadly, the Windrush scandal should have motivated a fundamental shift in direction to a system based on transparency, accountability, led by evidence, effective policy solutions and rooted in direct experiences of its users. Above all we should be seeking to build a future immigration system which reflects Britain's respect for fairness, human rights and dignity. .

¹ For more information about our services: <https://www.childrensociety.org.uk/what-we-do/our-work/refugee-and-migrant-children/services-supporting-young-refugees-and-migrants>

Without some of these urgent changes, EEA national children, young people and families who will not be able to settle their status or acquire citizenship, will become undocumented and face the same adversarial immigration system, restrictions to services and other damaging policies as other non-EEA children face now. Being undocumented and destitute is a significant safeguarding concern and The Children's Society believes that no child should be barred from vital services and support because of their status or that of their parents; every child should be able to thrive and achieve their full potential.

There are a number of tangible safeguards the government could make to the Bill, and assurances the Minister could give, during the passage of this Bill. In addition, there is an opportunity for a fundamental re-think of our asylum and immigration system which should be considered through a public consultation process on the White Paper.

Children's rights impact assessment

We would urge committee members to call on the Minister to undertake a Children's Right's Impact Assessment of the Immigration and Social Security (EU Withdrawal) Bill and the Immigration White Paper.

There was agreement during the evidence session that this Bill and the Immigration White Paper will fundamentally alter our present and future immigration system. In its current form the Bill will change the status of hundreds of thousands of children already in the UK, who will become subject to immigration control, while also providing the framework for a new immigration system for which the details will be determined primarily through immigration rules and regulations. Despite recent commitments from the Children's Minister reaffirming '*the value that this Government places on the UN Convention on the Rights of the Child and our ongoing commitment to give due consideration to the UNCRC when making policy and legislation*², we were disappointed that no Children's Rights Impact Assessment (CRIA) was undertaken for this Bill or any commitment made to undertake such an assessment as part of the White Paper consultation process. There are also no provisions in the Bill itself to suggest that any such assessments will be made of new immigration rules or regulations set out within the framework.

The Department for Education recently launched training materials for ministers and officials on children's rights and produced a template to be used by government departments when developing new policies and legislation. These have been informed by work by NGOs including those working closely with other nations where conducting CRIAs is common practice³.

A CRIA, done properly, could show where the pinch points within the EU settlement scheme are or where a future immigration system could leave children and young people

² <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-11-20/HCWS1093/>

³ <https://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/childrens-rights-impact-assessments/?lang=en>

particularly vulnerable, and therefore would enable targeted improvements to be made to avoid children becoming undocumented or destitute. As the government embarks on its 12-month consultation programme around the White Paper, there is ample opportunity to conduct this kind of assessment and NGOs would welcome the opportunity to work with the government to inform this process. **Settled Status for EEA National Children and Families**

Repealing freedom of movement will plummet an unprecedented number of children into our more complex and layered immigration system. According to analysis by the Migration Observatory, there were more than 900,000 children of non-Irish EU citizen parents living in the UK in 2017, over half of whom were born here (524,000 children). This includes 285,000 UK-born children whose parents report that them as EU citizens and 239,000 UK-born children whose parents report that they are UK citizens. However, as the Migration Observatory analysis highlights, the available data from the Home Office suggests that tens of thousands of the latter cohort of children may not be British as their parents report and that in fact many parents may wrongly believe their children will be British, for example by virtue of being born in the UK⁴.

The Migration Observatory has highlighted that there were 1.2 million non-Irish EU parents with dependent children residing in the UK in 2017⁵. Given that most children will be entirely dependent on their parents to resolve their immigration status, it is essential that appropriate communication is targeted at parents and communities, as well as at children and young people themselves, to make sure that not only do parents settle their own status but also that they are properly informed and supported to secure their children's status or citizenship. We are already working with government officials to develop better messaging and resources aimed at children and families.

While the government has done a great deal to make the EU Settlement Scheme straightforward and importantly has waived the EUSS fee, given the evidence from other settlement schemes abroad and examples from other contexts such as the take up welfare benefits, it is unlikely that this EUSS scheme will be 100% effective in getting settled status for all those who need it. But the consequences of not doing so are huge. If even a small proportion of the 900,000 children do not obtain settled status or secure citizenship, we will still be looking at a doubling of the undocumented children population in the UK. Although there is no official government data available, estimates from academic research suggest that there are 120,000 undocumented migrant children in the UK⁶. The Compas research as well as our own⁷ highlights that undocumented migrant

⁴ Sumption, M. & Kone, Z. (2018) 'Unsettled Status: Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?' Migration Observatory, Oxford: <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexite/>

⁵ <https://migrationobservatory.ox.ac.uk/non-irish-eu-nationals-by-position-in-family-unit-2017/>

⁶ Sigona, N. & Hughes, V. (2012) 'No Way Out, No Way In. Irregular Migrant Children and Families in the UK'. Compas, University of Oxford: https://www.compas.ox.ac.uk/2012/pr-2012-undocumented_migrant_children/

⁷ Pinter, I. (2012) 'I Don't Feel Human: Experiences of destitution among young refugees and migrants'. The Children's Society, London: https://www.childrensociety.org.uk/sites/default/files/tcs/research_docs/thechildrensociety_idontfeelhuman_final.pdf ; Capron, L., Dexter, Z. & Gregg, L. (2016) 'Making Life Impossible: How the needs of destitute migrant children are going unmet'. The Children's Society, London: <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/making-life-impossible-how-the-needs-of-destitute-migrant>

children are at risk of destitution, social exclusion and exploitation so the stakes for thousands of children and young people are extremely high.

Securing citizenship

We would urge committee members to call on the Minister to waive citizenship fees to ensure that decisions about whether children secure settled status or citizenship are made in their best interests, not the ability of a family to pay.

As highlighted earlier, while many children will be able to apply through the EU settlement scheme, a significant proportion will potentially also have rights to British citizenship, either automatic rights based on being born in the UK to parents who have gained settled status prior to their birth or rights to register as British citizens. Migration Observatory analysis shows that of the 285,000 UK-born children of EU parents in the UK in 2017, 169,000 children were born after the parents had been in the UK for 5 years or more. This suggests that a significant number of children *could* have an automatic right to citizenship⁸ and may only need to apply for a passport, though few are likely to be aware of these options or how to secure this for their children. Others will have rights by entitlement or discretion to register as British citizens and while in many cases, it will be in their best interests to get the greater protection of citizenship, the current citizenship fee of £1,012 per child will make this prohibitive for many families.

Since 2012, children's citizenship registrations fees have increased by almost 84% from £551 in April 2012⁹ to £1,012 in April 2018¹⁰, without any published assessment undertaken each year as the fees have increased to understand the impact on children's rights. With the fee as it currently stands this route to regularisation is simply not a viable option for many families, particularly given that children in both EEA and non-EEA recent migrant families are more likely to be living in poverty and material deprivation than children in British or long-term resident families¹¹. There is also a fear among civil society organisations supporting migrant children and families that eliminating the EUSS fee will lead to increases to citizenship and other immigration application fees in April, which is when the fees are normally increased.

Under section 55 of the Borders, Citizenship and Immigration Act 2009, the Secretary of State has a duty to safeguard and promote the welfare of children in respect to all his functions including nationality. We would not be adhering to our own principled laws to act in a child's best interests if we do not take this opportunity now to reduce or eliminate this fee.

⁸ A child will have an automatic right to British citizenship if they are born in the UK and have at least one British or settled parent: <https://www.gov.uk/british-citizenship>

⁹ <http://www.emcouncils.gov.uk/write/UKBA%20Fees%20from%206th%20April%202012.pdf>

¹⁰ <https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-2018>

¹¹ Vizard, P., Burchardt, T., Obolenskaya, P., Shutes, I. & Battaglini, M. (2018) 'Child poverty and multidimensional disadvantage: Tackling "data exclusion" and extending the evidence base on "missing" and "invisible" children'. LSE, London: <http://sticerd.lse.ac.uk/dps/case/cr/casereport114.pdf>

Reaching the most vulnerable children

We would encourage MPs to probe the Minister on the government's plans to ensure that settled status or citizenship is secured for all looked after children and care leavers, with best interests being the overriding decision.

We welcome the Home Office recognising that some vulnerable group will need extra support during the EU re-settlement process. We do not take a view on whether £9 million is commensurate to the size and scale of the challenge before us, though we welcome the support to vulnerable cohorts. The Children's Society primarily works with children facing multiple disadvantages including families facing domestic violence, Roma families as well as looked-after children and care leavers.

We have a number of concerns over the current number of EEA looked-after children in care and how these changes will affect them. For example, we are concerned that local authorities may not be aware of their responsibilities in helping children to settle their status or secure their citizenship. We are concerned that local authorities may not be putting processes in place, for example finding out the nationality of the children in their care to know if they are EEA nationals and finding out whether they have identity documents which will be needed to settle their status or apply for citizenship. The second private beta testing phase which included five local authorities provides very little information on how this testing worked for children and does not include a break down of numbers. However, it highlights that '*Local Authorities taking part in PB2 found that not all their cohort of 'looked after' EU citizen children had a passport and were therefore unable to take part in PB2.*'¹² The Home Affairs Select Committee heard evidence from Waltham Forest Council on 12th February that the council – which was a test site during the second phase – was not able to make any successful applications for children in their care, because young people did not have identity documents¹³. So far no publicly available guidance has been issued to local authorities about what they should be doing to prepare for this process and to support the children and young people in their care effectively.

Despite repeated concerns raised by us and other NGOs over the last two years with officials and the former Immigration Minister, we still have no centrally available data on how many European children there are in local authority care currently or are transitioning out of care as a care leaver. Not knowing where young people are means that NGOs and government departments are unable to reach out to relevant local authorities to help develop resources or provide support. As part of their duties to care leavers and under the local offer, local authorities may also need to think about young people who have left

¹² <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report>

¹³ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/eu-settlement-scheme/oral/96447.pdf>

their care, who are likely to find themselves among other vulnerable groups e.g. homeless, NEET and facing other challenges.

We would urge the committee to act in the best interests of these children and explore ways in which regularising these children's statuses could be made simpler. This could be explored through changing the level of documentation needed, waiving citizenship fees to reduce financial pressures on and disincentives for local authorities, providing declaratory or automatic rights to looked-after children and care leavers, providing local authorities with expert legal advice for children involved in their care as well as granting appeal rights for these children.

Building fairness into the system

We would urge MPs to secure a commitment to the provision of legal aid and an appeal right through committee stage of the Bill.

The Children's Society has worked closely with the Ministry of Justice to ensure that separated young people are brought back within the scope of legal aid for all non-asylum immigration matters. However, we remain concerned that children who are being cared for by their families will remain ineligible for legal aid for advice and representation with their immigration claims including whether they are applying through the EU Settlement Scheme. While providing support with applications under the scheme is accredited at Level 1 OISC¹⁴, there will be a significant number of cases where families may need advice to ensure that they are making the right choices for their children as well as support to make the necessary applications.

For example, some families will have rights derived from EU law which they may need help to evidence. One cohort of families, which I highlighted during the evidence session, will be 'Zambrano carers': these are non-EU citizens who are primary carers of a British citizen in the UK. Zambrano carers currently derive a right of residence from wider EU law and will be provided for in the Immigration Rules: *'Their current rights do not lead to a right of permanent residence under EU law, but further details will be provided in due course on the new status available to them'*¹⁵. However, this has not yet been clarified and there are likely to be several thousand children and families in this situation. Other families will have difficulties securing settled status for myriad reasons to do with the availability of documentation, their individual vulnerabilities, levels of education, literacy, disability and so on. While we welcome the government's fund to support vulnerable groups, this cannot take the place of good quality free legal advice and representation that families will need in order to secure their status.

¹⁴ <https://www.gov.uk/government/news/dedicated-immigration-advisers-to-give-eu-settled-status-advice>

¹⁵ Statement of Intent – EU Settlement Scheme:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf

The Children's Society are clear that free access to legal advice and a right to appeal the decisions made by a public body are fundamental parts of Britain's fair and just society. The government has committed to providing an appeal right to the EUSS in its statement of intent for the scheme¹⁶ and we believe this Bill would provide a good opportunity to secure this safeguard.

No recourse to public funds

We would urge committee members to ask questions about how EEA children and families will be safeguarded through benefits and support, especially when they do not secure EUSS.

Unfortunately, there was not a clear opportunity to raise the potential risks and challenges faced by families currently living in the UK who cannot access public funds including EEA nationals whose access to public funds is limited because of their residence status (i.e. they are not considered to be exercising treaty rights)¹⁷. This is a concern for The Children's Society because without a change in direction, these policies will continue to affect children already in the UK as well as those who will find themselves in the UK without access to a vital safety net. For children this represents essential support provided to families on low income to help narrow the gap of their disadvantage, for example, through the provision of free school meals, disadvantaged nursery places to support parents into employment, and pupil premium to support children's education.

The Children's Society is concerned that children and families who are left without a settled status as well as those coming to the UK after 2021 through a future immigration system, will face the same hardship as thousands of other families¹⁸ already in the UK because of the application of the 'no recourse to public funds' condition on their status or their 'leave to remain'. The White Paper makes clear that limiting access to benefits for families with children and maintaining the ten-year route to settlement will continue to be a feature of our immigration system. As these policies will be maintained through immigration rules without no public consultation or parliamentary scrutiny, it is important for parliamentarians to highlight these concerns now. Not only does preventing children and families from accessing key mainstream benefits lead to destitution and homelessness, but it also has significant consequences for children's safety and well-being including keeping some parents dependent on abusive partners. Furthermore, by preventing families from accessing mainstream benefits, the government is shifting responsibilities and costs on already-struggling local authorities.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf

¹⁷ <http://www.nrpfnetwork.org.uk/information/Pages/eea-nationals.aspx>

¹⁸ Capron, L., Dexter, Z. & Gregg, L. (2016) 'Making Life Impossible: How the needs of destitute migrant children are going unmet'. The Children's Society, London: <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/making-life-impossible-how-the-needs-of-destitute-migrant>

I very much valued the opportunity to give oral evidence to the committee. I do hope that the contents of this letter provides some further information to the committee, to aid in making decisions about amendments. As part of the Refugee and Migrant Children's Consortium, we will be submitting written evidence to the committee in due course.

Warm Regards,

Ilona Pinter, Policy and Research Manager

February 2019