

Refugee and Migrant Children's Consortium

Nationality and Borders Bill – House of Lords Committee Stage Part 4 (Age Assessments)

Summary

Part 4 of the Nationality and Borders Bill contains a wide range of changes to the current age assessment process. The [Refugee and Migrant Children's Consortium](#), a coalition of over 60 organisations, has already set out its [views in detail](#) to the government but remains very worried. We urge Peers to support amendments that will help address the following concerns:

- The number of children whose ages are disputed will increase, even when there are no reasons to doubt the age the child says they are;
- The Home Office will have too much power to determine who assesses age, when and how, undermining the role of local authority social workers as child protection experts; and
- The government will have the power to use scientific methods that may be inaccurate and harmful, and children will have no choice but to consent to them.

Why age assessments take place

Children who come to the UK on their own from countries such as Afghanistan, Sudan and Eritrea face a unique problem when asked to prove their date of birth. The registration of births and the importance placed on chronological age [differs across the world](#) and many are unable to show official identity documents, such as passports or birth certificates, because they have either never had them in the first place, have had them taken from them, lost them when fleeing or have had to destroy them en route. Some may have had to travel using false documentation (often suggesting they are an adult) provided by smugglers and traffickers. Disputes over age can also arise from a lack of understanding of how dates are calculated in other cultures, and confusion over what is being said by a child about his or her age. In the absence of documentation, it is extremely difficult to determine a child's age. Even those from similar ethnic backgrounds who have grown up in the same social and economic environment display significant physical, emotional, and developmental differences. These differences can be exacerbated by experiences of adversity, conflict, violence, and the migration process.

For unaccompanied children in the asylum system, age is fundamental to their receiving the support and protection they need. Age determines how or whether they are supported by children's services and provided access to education. Age also determines how their asylum or immigration [application is processed](#).

Given the difficulties with assessing age, occasionally young adults may be treated as children. However, in light of the supervision provided in children's placements this creates a much lower risk than when children are incorrectly treated as adults. Children as young as 14 have been placed in immigration detention and alone in accommodation with adults with no safeguarding measures and at risk of abuse. [Recent media reports](#) have highlighted hundreds of children being placed in hotels, forced to share rooms and even beds with adult men they

do not know. In July to September last year the Refugee Council [assisted over 150 young people](#) into local authority care who had previously been sent to adult accommodation following a decision by an Immigration Officer. Furthermore, a significant number of disputes about age are not over whether the individual is a child or an adult, but over the exact age of the child (for example, whether they are 15 or 17) impacting how they are cared for by local authority children's services and access to appropriate education.ⁱ

Subjecting more children to age assessment processes

Amendment:

Baroness Hamwee and Lord Paddick give notice of their intention to oppose the Question that Clause 48 stand part of the Bill.

- Under Clause 48, any individual for whom there is “insufficient evidence to be sure of their age” (emphasis added) has their age disputed. This bar is far too high.
- Current Department for Education [statutory guidance](#) makes clear that local authority age assessments “should only be carried out where there is reason to doubt that the individual is the age they claim” (emphasis added) and “should not be a routine part” of a local authority’s assessment. This is echoed in Association of Directors of Children’s Services age assessment guidance which emphasises that age assessments should not be undertaken “unless absolutely necessary”.
- In the past three years, [over 3,000 individuals](#) have had their ages disputed ([nearly a third of all children claiming asylum](#) in that period). Nearly half of those whose age dispute was resolved were found to be children anyway (this number is probably far higher but statistics are not available to show how many of these decisions were later overturned, following advocacy and/or finding of fact reviews by judges).ⁱⁱ
- The age assessment process is confusing and frustrating for many vulnerable young people, who do not understand the process, and can find it re-traumatising.
- In the absence of formal ID, it is *impossible* to know *for sure* how old someone is. It is essential we retain the current evidentiary threshold to avoid age assessments become routine, causing children distress and placing additional burdens on local authorities.

Suggested questions

- **What is the government’s reasoning for changing the evidentiary threshold for age assessments that is already set out in statutory guidance?**
- **Does the government recognise that clause 58 will result in far more children having their ages disputed to no benefit?**

Case study: T

T, a young person from Iran, was age disputed and found to be over 18. He abruptly lost his social worker, keyworker, placement, and psychological input from Child and Adolescent Mental Health Services, as well as not being able to access school. He was placed in accommodation with adult men which he found very frightening. This led to an acute mental health crisis that culminated to an attempt to end his life, which led to an inpatient hospitalisation.

Home Office powers to dictate who assesses age, when and how

Amendments no. 142 and 143 (tabled by Baroness Hamwee and Lord Paddick) would allow local authorities to decide whether to refer, conduct and inform the Secretary of State of an age assessment and what, if any, evidence to provide the Secretary of State in line with their statutory duties to children under the Children's Act 1989.

Baroness Hamwee and Lord Paddick also give notice of their intention to oppose the Question that Clauses 48 and 52 stand part of the Bill.

- **Age assessments are, and should be, a function of the child protection/safeguarding system.** [International guidance](#) has stressed that they “should only be undertaken by independent and appropriately skilled practitioners”. Social workers, by nature of their education, training, experience and specialist skills in working with and interviewing vulnerable children and young people, are uniquely positioned to undertake assessments (with input from other agencies vital for a truly multi professional holistic assessment).
- Yet clauses 48(2), 49 and 52 give the Home Secretary broad powers to designate *who* can undertake age assessments and to compel local authorities to assess the age of a child and hand over evidence to immigration officials, undermining their independence (local authorities do not currently have to conduct a stand-alone age assessment if they are satisfied that the claimant is a child).
- Clause 52 allows the Home Secretary to make its own regulations about how age assessments are conducted, despite the existence of guidance that has been developed by a range of professionals, including experts in child protection, in [England](#), [Scotland](#) and [Wales](#)ⁱⁱⁱ to support the conduct of fair, multi-agency age assessments. Age assessment has been an issue across the world for many years; the process is complicated and nuanced and cannot simply be ‘fixed’ via Home Office regulations.
- The government should be trying to help local authorities understand the process and improve their practice through improved multi-agency working and better support and training for all involved. Instead, these clauses appear to be a vehicle for the Home Office to simply have more power over the age assessment process. Far from giving the Home Office more power, the government should be introducing greater oversight and more safeguards into the process on arrival, where quick decisions are made based on ‘appearance’ and ‘demeanour’. The President of the Association of Directors of Children’s Services (ADCS) [has said it was aware](#) of “too many instances where children have been wrongly assessed as adults” and that local authorities were “picking up the pieces where decisions made by Home Office are found to be incorrect”.
- Part 4 undermines the specialist knowledge and experience of local authority social workers, and risks tying them up in unnecessary age assessment processes at the expense of their stretched resources.

Suggested question:

- **Does the Minister accept that social workers are best placed to conduct age assessments and that local authorities should be able to carry out their child protection work independent of the Home Office?**

New standard of proof for age assessments

Amendments no. 144 and 145 (tabled by Baroness Hamwee and Lord Paddick) will ensure the standard of proof is in line with case law and reflects the evidentiary challenges faced when assessing age and the need to give the benefit of the doubt where appropriate.

The above-named Lords also give notice of their intention to oppose the Question that Clause 49 and Clause 50 stand part of the Bill.

- Clauses 49 (6) and 50 (4) set out the standard of proof for age assessments at the 'balance of probabilities' (that, on the evidence, an individual is more likely than not to be that age claimed). This is a higher standard of proof than the current one used when age is disputed in the context of an asylum appeal (a 'reasonable degree of likelihood').^{iv}
- Years of domestic case law regarding age assessments have determined the burden of proof is not attributed to either the child or the state. It is a matter of decision makers weighing the available evidence.^v
- Given the complicated nature of assessing age, introducing such a high standard of proof would significantly increase the risk of children being wrongly treated as adults.

Suggested question:

- **Given the resultant risk that more children will wrongly be treated as adults, what is the government's reasoning for increasing the standard of proof for age assessments?**

The use of 'scientific methods' to assess age

Amendment no. 146 (tabled by Baroness Lister and Baroness Neuberger) will ensure scientific methods of age assessments are only introduced if they are considered accurate, appropriate and ethical by the relevant professional bodies.

Amendment no. 148 (tabled by Baroness Lister and Baroness Neuberger) would remove the provision in Clause 51(9) which allows the use of scientific methods which were not specified in regulations under subsection (1), which means no scientific advice has been sought as to whether that method is accurate or appropriate for assessing a person's age.

Baroness Hamwee and Lord Paddick give notice of their intention to oppose the Question that Clause 51 stand part of the Bill.

- Clause 51 allows the government to introduce regulations specifying scientific methods to be used to assess age, including 'examining or measuring parts of a person's body' and the analysis of saliva, cell or other samples and the DNA within them. The use of scientific methods to assess age has long been the [subject of debate](#) and professional medical bodies have been [unequivocal in their rejection](#) of use of dental x-rays, bone age and genital examination as being "extremely imprecise" as methods for assessing age. The British Dental Association has voiced its [opposition to the use of dental x-rays](#) stressing they are inaccurate and unethical. [Research](#) has shown epigenetics to have the same inaccuracies.
- The government has referred to "emulating best practice across Europe" but an increasing number of [legal decisions](#) in Europe have held that scientific methodology is not sufficiently sound to be relied upon. The [Council of Europe \(CoE\) has highlighted](#) the

“broad consensus that physical and medical age assessment methods are not backed up by empirically sound medical science and that they cannot be assumed to result in a reliable determination of chronological age... several methods have been evidenced to have a harmful impact on the physical and mental health.”

- It has long been clear that scientific methods are not a ‘silver bullet’ for solving the question of age. The UK’s approach has been seen as a gold standard. It is vital that if any new scientific techniques are developed they must be shown to be safe and accurate and only used as part of a holistic, multi-agency age assessment. However, the Bill will still give significant latitude to the Home Office to define in due course what constitutes an appropriate ‘scientific method’ of age assessment.
- There must be a commitment in primary legislation that any new methods must be formally approved by the relevant professional medical body before being introduced and be binding on any designated person permitted to make a decision on a person’s age.

Suggested question:

- **The Minister confirmed in Committee stage that the Government will determine that any scientific method “is appropriate for assessing a person’s age” and “comply with all relevant regulatory frameworks in relation to the scientific methods chosen” – in which case, why not put a commitment to obtain written approval from the relevant medical bodies on the face of the Bill?**

Compelling children to consent to ‘scientific methods’

***Amendment no. 147** (tabled by Baroness Lister, Baroness Ludford and Lord Dubs) would give effect to the recommendation of the Joint Committee on Human Rights that refusal to consent to scientific procedures to assess age should not be taken into account when assessing the credibility of an age-disputed person who may be a child.*

***Amendment no. 149** (tabled by Baroness Hamwee and Lord Paddick) would remove the provision in section 52(1)(f) to allow the Government to make regulations about how age assessments should be conducted which would include damage to the person’s credibility due to lack of co-operation with the assessment.*

Baroness Hamwee and Lord Paddick give notice of their intention to oppose the Question that Clause 52 stand part of the Bill

- Clause 51 also outlines that a child will be seen as less credible if they do not agree to undergo these medical procedures. This undermines any sense the fundamental idea that people should be able to give free consent to medical procedures and examinations, and not be pressured into them. Similarly, it undermines the principle that such a procedure should happen only if it delivers a scientific benefit for that person. There should be no blanket interpretation that a refusal to undergo age assessment procedures means the individual is not telling the truth and should not have any adverse impact on their asylum claim.

Suggested question:

- **At Committee stage in the Commons, Craig Whittaker MP asserted “where a person has reasonable grounds for refusing to undergo a scientific age**

assessment, they will not be required to undertake one. That decision will not then count against them” – what would these ‘reasonable grounds’ include?

Case study

F arrived in the UK in a lorry in November 2020 was held in Home Office Kent Intake Unit for two days. After a ‘short’ age assessment (without the usual safeguards and lawful process) at Kent Intake Unit he was placed in Yarl’s Wood detention centre before being moved to adult accommodation in a hotel. He was finally age-assessed again by the local authority, found to be 15 and placed in foster care. He described his experience as follows:

“Whilst I was here [in Home Office Kent Intake Unit] I remember being asked some questions about my age and how I had got to the UK. There were two ladies at one point who came and looked at me and seemed to be looking at my height and body. It was just me, the two ladies and a telephone interpreter. They weren’t with me for very long – I’m sure it was only about 10 to 15 minutes... I tried to answer the questions they asked me but I didn’t understand what was happening and I didn’t know all of the answers... These two ladies told me that they didn’t believe I was 15 years old and that they were going to say I was 22 years old.

[I was sent to] a big hotel with lots of people in there. They were all much older than me. There was no one else my age. I was all alone and I spent most of my time in my room. I didn’t know where to go or what to do. I was too scared to go outside. I was struggling to sleep whilst I was there because I was so scared of the older people who were there and anxious about being there. There was also a lot of noise, banging and loud music playing which also stopped me from sleeping and made me more anxious.

Eventually my age was accepted by Liverpool City Council. I now live with a foster family and I am much happier. They have registered me for school. I feel well looked after and safe now. I have agreed to provide this statement because I don’t want anyone else to go through what I had to go through. It was a horrible experience to have my age disbelieved, being sent to detention and then having to live in loud and scary hotel accommodation with lots of people.”

For more information please contact:

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Endnotes

ⁱ Under the Children Act 1989, placement decisions should be based on need, however many children seeking asylum over the age of 16 will be placed in unregulated semi-independent accommodation with more limited support rather than in family based foster care. It will also have an impact on leaving care support – particularly for those young people who do not meet the 13 week criteria.

ⁱⁱ Figures taken from Home Office data for 2019, 2020 and the first 3 quarters of 2021. In this period, there were 10,244 asylum applications made by children and 3,267 children had their ages disputed. Of the age disputes that were resolved (2,970), 56% were found to be over 18 and 44% found to be under 18.

ⁱⁱⁱ There is currently no age assessment guidance in Northern Ireland.

^{iv} *Rawofi (age assessment - standard of proof) Afghanistan* [2012] UKUT 197 (IAC) (20 June 2012)

^v *CJ v Cardiff* [2011] EWCH 23 (Ousley J)