Refugee and Migrant Children's Consortium

Illegal Migration Bill and age assessments, April 2023

Summary

Taken alongside the removal of all constraints on the detention of unaccompanied children, new clauses added by the government to the Bill for Report Stage pave the way for a system in which a child arrives in the UK and is detained for possibly days or weeks while an age assessment is carried out by the Home Office (either border officials or the Home Office-run National Age Assessment Board). Said 'assessments' would not involve independent child protection experts and could include the compulsory use of x-rays/MRIs. If the child does not consent to these, the Home Office would then simply treat them as over 18. The Bill would significantly reduce opportunities to challenge these flawed 'assessments' with no right of appeal and limitations on judicial review.

New clauses[1]

Clause 55 states there for any person who meets or may meet the conditions for removal under the Bill, where decision on age is made under section 50 or 51 of the Nationality and Borders Act 2022 (i.e. is carried out by "an official of the Secretary of State who is designated by the Secretary of State to conduct age assessments" – usually taken to mean the Home Office-run 'National Age Assessment Board' but this could also include assessments conducted by border officials), there will be no right of appeal. A judicial review can be brought but this would not prevent the government from removing the individual and the court may quash the decision only on the basis that it was wrong in law, not wrong as a matter of fact.

Clause 56 states that the Secretary of State "may make regulations" about the effect of a decision by young person "not to consent to the use of a specified scientific method for the purposes of an age assessment of P where there are no reasonable grounds for [their] decision" and that in these circumstances the person "is to be treated as if the decision-maker had decided that [they were] over the age of 18." Again this applies to those who meet the four conditions in section 2 (duty to make arrangements for removal).[2]

Key concerns

- Home Office decision making on age (based on visual assessment and demeanour) is highly problematic, as has been highlighted by the Independent Chief Inspector of Borders and Immigration.[3] Research by the Helen Bamber Foundation and Humans for Rights Network shows that **in 2022, over 850 children were wrongly 'assessed' to be adults by border officials and sent to adult accommodation/ detention (some for many months) before being referred to local authorities whose social workers found them to be children**.[4]
- The Home Office's own guidance for the National Age Assessment Board makes clear that "physical appearance is a notoriously unreliable basis for assessment of chronological age" and "demeanour can also be notoriously unreliable and by itself constitutes only somewhat fragile material" and yet the government is taking steps to further entrench its harmful policy of border officials deciding age based on "physical appearance and demeanour".[5]

- It is not possible to identify 'genuine' children based on their appearance when they arrive. If the government introduces a formal system of detention for those whose ages are in dispute this will cause hundreds, even thousands, of children significant harm.
- The government claims that 'nearly half' of those whose ages are disputed are "adults posing as children".[6] This claim (based on data for 2016-22) is false because for many years Home Office statistics did not include children wrongly treated as adults. Even now, we don't know how many 'age dispute' cases are those who have been sent into the adult system after a flawed decision on age.
- Even based on the data the Home Office *does* publish, the claim is still false – last year nearly 2/3 of ALL age dispute cases were found to be children (see table below).
- The government-appointed Interim Age Estimation Science Advisory Committee has made clear that scientific methods can only conclude whether an age is 'possible' and should only be used as part of a wider social work assessment that is compliant with existing guidance and case law. Crucially, it has stated that "The person undergoing biological assessment of age should be supported to give a valid informed consent to undergo the biological imaging methods proposed, with information explaining the risks and benefits and they should be free to withhold consent".[7]
- In light of what is clearly flawed decision-making taking place on arrival, it is all the more vital that children are able to legally challenge decisions made on their age. Yet, the Bill would now remove the right of appeal for children arriving spontaneously in the UK, and severely restrict their options to challenge by way of judicial review.

The number of age disputes[8]

	2016	2017	2018	2019	2020	2021	2022	Total
Age disputes raised	929	718	875	798	853	2,539	2,999	9,711
Age disputes 'resolved'	945	673	795	798	701	2,295	1,693	7,900
Found to be under 18	370 (39%)	289 (43%)	367 (46%)	494 (62%)	337 (48%)	1,168 (51%)	1,042 (62%)	4,067 (51%)
Found to be 18 or over	575 (61%)	384 (57%)	428 (54%)	304 (38%)	363 (52%)	1,127 (49%)	651 (38%)	3,833 (49%)

Endnotes

[1] Available at Illegal Migration Bill (parliament.uk)
[2] The explanatory statement states: *"This new clause contains a power to make regulations about the effect of a refusal, by a person to whom the Bill applies, to consent to the use of a scientific method in an age assessment. The regulations may provide that, in certain circumstances, the person may be assumed to be an adult. The Secretary of State will not exercise the power until satisfied that the scientific methods in question are sufficiently accurate to mean that applying the automatic assumption in cases of refusal to consent will be compatible with the European Convention on Human Rights (in particular Article 8 (right to private and family life))."*
[3] Independent Chief Inspector of Borders and Immigration, An inspection of the initial processing of migrants arriving via small boats at Tug Haven and Western Jet Foil
[4] Disbelieved and denied: Children seeking asylum wrongly treated as adults by the Home Office | Helen Bamber
[5] See Home Office, Assessing age for asylum applicants: caseworker guidance
[6] Home Office, New board will strengthen age assessments of small boat arrivals
[7] Interim Age Estimation Science Advisory Committee, Biological methods to assess unaccompanied asylum-seeking children's age, January 2023, p 67
[8] In the data, 'Age dispute resolved' relates to the number of age disputes marked as complete, by date of completion. An age dispute could, for example, be resolved: following a Merton compliant age assessment; receipt of credible and clear documentary evidence of age; a judicial finding on age; following a determination by two Home Office officers that the person's physical appearance and demeanour very strongly suggests they are significantly over the age of 18; or, where the reasons for raising an age dispute no longer apply.

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