Refugee and Migrant Children's Consortium

Illegal Migration Bill House of Lords Committee Stage
Age Assessments, June 2023

Summary

The Nationality and Borders Act 2022 (NABA) introduced a wide range of changes to the current age assessment process, about which the Refugee and Migrant Children's Consortium (RMCC), a coalition of over 80 organisations, raised many concerns. The RMCC feared that the introduction of the National Age Assessment Board and new regulations would give the Home Office too much power to determine how age is assed and by whom, undermining the role of local authority social workers as child protection experts; and that the government was giving itself the power to use scientific methods of assessment that may be inaccurate and harmful, and forcing children to consent to them. The changes in NABA have yet to be fully implemented and now the government is introducing *further* changes in the Illegal Migration Bill that will cause children significant harm:

- The compulsory use of x-rays, MRIs or other scientific methods to assess age - if the child does not consent to these, they would then be treated as if over 18.
- Significant reductions in the opportunities to challenge assessments of age, with no right of appeal, limitations on judicial review and the power to remove a child regardless.

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, 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.

While there may be a small number of adults who claiming to be under 18, the answer cannot be to design a system to catch the more extreme cases at the cost of harming hundreds or thousands of children. Furthermore, in light of the supervision provided in children's placements, the risk of a young adult being placed temporarily in children's accommodation is much lower than the risks facing a child incorrectly treated as an adult and placed in unsupervised accommodation or detention, sharing a room with adults.

Removing options for challenging an assessment of age

Amendment 121

THE LORD BISHOP OF DURHAM
BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER

Clause 55, page 56, line 21, leave out subsection (2)

Member's explanatory statement
This amendment reinstates the right of appeal against age assessments in respect of putative children whom there is a duty to remove under the Bill.

Amendment 122

THE LORD BISHOP OF DURHAM
BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER

Clause 55, page 56, line 30, leave out subsection (4).

Member's explanatory statement
This amendment removes a provision of the Bill that would prevent a judicial review challenge to an age assessment from serving as a barrier to the putative child's removal from the UK

BARONESS BRINTON
BARONESS CHAKRABARTI
BARONESS LISTER OF BURTERSETT

The above-named Lords give notice of their intention to oppose the Question that Clause 55 stand part of the Bill.

Clause 55 states that for any person who meets or may meet the conditions for removal under clause 2 the Bill, where a decision on age is made by a 'relevant authority' (including the National Age Assessment Board, local authority and, crucially, immigration officials) there will be no right of appeal against that decision. The age assessment appeal system provided for by the Nationality and Borders Act 2022 has not yet been introduced, and so the current option for challenging these decisions is still via judicial review. However, clause 55 also outlines that in these cases, an application for judicial review *would not prevent the government from taking steps to remove 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.

This clause allows for children to be wrongly 'assessed' as adults by the Home Office and then swiftly removed from the country without having had the chance to challenge that decision and without ever encountering child protection professionals. 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 who noted, among other issues, the "strong suspicion amongst some staff" that children were being noted as adults "in order 'to pass the problem of minors onto someone else'". Even 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"*. Yet the government has deliberately retained a policy whereby border officials can decide the age of new arrivals based on "physical appearance and demeanour".

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**. If this legislation had been in place last year, those children could have been removed from the UK without having ever been able to challenge those flawed assessments.

CASE STUDY

Abdul, aged 16, arrived by small boat in January 2023. Exhausted after seven hours at sea, he was not offered medical care and waited in a cold marquee for the 'age interview'. This consisted of four immigration officials asking, without an interpreter, for Abdul and others to write their age on a piece of paper whilst in a line. No other questions were asked, and he did not know he had been given a date of birth making him 23 until he arrived at a large asylum hotel. Upon arrival at the hotel, he told a security guard who spoke his native language that he was under 18, but the guard informed Abdul that he had been registered by the Home Office as an adult. No referral to children's services was made by hotel staff and it was a month before Abdul was able to contact the organisation Humans for Rights Network for support. Eventually Abdul was visited by social workers who agreed, after further assessment, that he was 16. He was finally taken into care after three months spent in two different hotels with unrelated adults.

RMCC members have assisted hundreds of children who have been wrongly treated as adult. They have experienced long periods of detention or living in isolated hotels with unrelated adults; and are distressed, traumatised and afraid, with no information about how they can challenge the Home Office's arbitrary decision on their age. These children are reliant on the support of NGOs and lawyers to ensure they receive the support and protection they need, which often includes advocacy to ensure that a local authority takes the referral of the young person and a judicial review of the Home Office decision and/or a local authority assessment/refusal to assess.

In light of what is clearly flawed decision-making taking place on arrival, it is vital that children are able to legally challenge decisions made on their age, and to not be removed before such a challenge is heard.

Forcing children to undergo scientific procedures for assessing age

Amendment 124

BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
BARONESS PRASHAR
THE LORD BISHOP OF DURHAM

Clause 56, page 57, line 36, leave out "may" and insert "must"

Member's explanatory statement
This amendment would mean that it must be set out in regulations that the refusal to consent to scientific measures of assessing age should not be taken to damage credibility.

Amendment 125

BARONESS LISTER OF BURTERSETT
BARONESS NEUBERGER
BARONESS PRASHAR
THE LORD BISHOP OF DURHAM

Clause 56, page 57, line 41, leave out paragraph (b)

Member's explanatory statement
This amendment removes the provision in the Bill that would allow regulations to set out that a person claiming to be a child is to be treated as an adult if they refuse to consent to scientific age verification.

BARONESS BRINTON
BARONESS CHAKRABARTI
BARONESS LISTER OF BURTERSETT

The above-named Lords give notice of their intention to oppose the Question that Clause 55 stand part of the Bill.

The Nationality and Borders Act 2022 (NABA) 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.

NABA also outlines that a child will be seen as less credible if they do not agree to undergo these medical procedures. Clause 56 of the Illegal Migration Bill goes further than this, allowing for an automatic assumption of adulthood. 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 can provide that a person who has not consented will be "treated as if the decision-maker had decided that [they were] over the age of 18."

This undermines the fundamental premise that people should be able to give free consent to medical procedures and examinations, and not be pressured into undergoing them. It also directly contradicts the advice of the government-appointed Interim Age Estimation Science Advisory Committee, which 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, the Committee 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".*

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."

There should be no blanket interpretation that a refusal to undergo age assessment procedures means the individual is not telling the truth and refusal to consent must not have any adverse impact on their age assessment or asylum claim.

Conclusion

Taken alongside the removal of all constraints on the detention of unaccompanied children, these clauses allow for a system in which a child arrives in the UK and is detained for possibly days or weeks while a unreliable visual age 'assessment' is carried out by the Home Office, after which they are removed from the UK without having been able to challenge the decision. It is simply 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.

What we need now is urgent change to the flawed policy of officials assessing age on sight, not the introduction of a system where children are denied access to justice, and are forced to undergo invasive scientific procedures that can't accurately determine how old they are.

Appendix – statistics on age disputes[1]

The government claims that 'nearly half' of those whose ages are disputed are "adults posing as children". 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).

	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%)

For more information contact
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[1] 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.