Refugee and Migrant Children's Consortium

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

Summary

Clause 56 removes a child's right to appeal a decision made on their age and places significant limitations on their ability to challenge such a decision via judicial review (a court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body). It allows the government to remove a child from the country even if they are in the process of challenging an age assessment. This will leave children who have been wrongly 'assessed' as adults at risk of being removed from the UK and at risk of serious harm.

The age assessment process

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.

Age determines the support an individual receives and how their asylum/immigration application is processed. The Home Office will come to a view on age simply based on an individual's 'appearance and demeanour' – deciding either to:

* Treat them as a child but 'dispute' their age and refer them to a local authority for further assessment; OR

* Treat them as an adult (if their "physical appearance and demeanour very strongly suggest they are significantly over 18") and move them straight to adult accommodation/detention.

Much more detailed age assessments are carried out by local authority social workers as part of their duty to support children under the Children Act 1989 (or equivalent in devolved administrations).

While there may be a small number of adults who claiming to be under 18, the answer must not be to design a system under this Bill 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 157

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

Clause 56, page 58, line 34, 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.

Clause 56 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 56 (as amended by Lord Murrays amendments 158, 159 and 160) 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 'grant relief' only on the basis that it was wrong in law, not wrong as a matter of fact. This effectively overrules the 2009 Supreme Court decision in *A v Croydon*,[1] which made clear that it falls to the court to decide the age of the young person, not only determining whether they are a child or an adult, but also ascribing a date of birth.[2] The Supreme Court decided the final decision should rest with the court as this would "assist in reducing the number of challenges".[3] If the Bill passes unamended, it will be significantly harder for children to challenge incorrect assessments of their age.

Clause 56 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

[1] *R (A) v LB of Croydon*, [2009] UKSC 8
[2] The court's decision is then binding on the local authority and also the Home Office.
[3] *R (A) v LB of Croydon*, para 54

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.

Indeed, last year there were a number cases of children who had been detained as adults being issued with 'notices of intent' to remove them to Rwanda.

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.

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.

We urge Peers to support amendment 157 which will go some way to reducing the risk of children being treated as adults and missing out on the protections and support they should be afforded in the UK.

Appendix – statistics on age disputes[4]

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
Kamena Dorling, Head of Policy, Helen Bamber Foundation at kamena.dorling@helenbamber.org
Laura Durán, Head of Policy, ECPAT UK at l.duran@ecpat.org.uk,
or Marieke Widmann, Policy & Practice Adviser, The Children's Society at
marieke.widmann@childrenssociety.org.uk

[4] 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.