

# Refugee and Migrant Children's Consortium

## Nationality and Borders Bill – House of Lords Report Stage Briefing on new clause 64A\* (Age assessments: restrictions)

### Summary

Part 4 of the Nationality and Borders Bill contains sweeping changes to the current age assessment process. The [Refugee and Migrant Children's Consortium](#), a coalition of over 60 organisations, has repeatedly set out its [views in detail](#) to the government but to date there has been little proper engagement or response to its key concerns, principally that Part 4 will:

- increase the number of children who have to undergo traumatic age assessments;
- give the Home Office too much power, undermining the role of local authority social workers as child protection experts; and
- give the government power to force children to undergo scientific processes that may be inaccurate and harmful.
- increase the number of children wrongfully treated as adults and placed at risk.

In Bill debates, the government has asked MPs and Peers what they would do *instead* of what is in the Bill. **We urge Peers to support new clause 64A\* which is based on principles from international and domestic law and guidance and sets out what an expert and fair age assessment process *should* look like.** This briefing looks at each of the principles.

### New clause 64A\* (Age assessments: restrictions)

*"(1) Age assessments under section 49 or 50 must only be undertaken if there is significant reason to doubt the age of the age-disputed person.*

*(2) A person conducting age assessments under section 49 or 50 must be a local authority social worker*

*(3) Age assessments must be undertaken in accordance with the Association of Directors of Children's Services Age Assessment Guidance or equivalent guidance in the devolved jurisdictions.*

*(4) When an age assessment is conducted, a process must be used that allows for an impartial multi-agency approach, drawing on a range of expertise, including from—*

- (a) health professionals, (b) psychologists, (c) teachers,*
- (d) foster parents, (e) youth workers, (f) advocates,*
- (g) guardians, and (h) social workers.*

*(5) When making regulations under section 51, the Secretary of State must not specify scientific methods unless the Secretary of State receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate beyond reasonable doubt for assessing a person's age.*

*(6) Any organisation developed to oversee age assessments must be independent of the Home Office.*

*(7) The standard of proof for an age assessment is reasonable degree of likelihood."*

### Member's explanatory statement

This new Clause would place various restrictions on the use of age assessments, to ensure they are scientifically sound and conducted according to recognised standards.

## Context: why age assessments are needed and the current 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.

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](#).

While the Home Office will come to a view on age based on an individual's 'appearance and demeanour', proper age assessments are carried out by local authorities as part of their duty to ascertain whether and what support a child is owed under the Children Act 1989 (or equivalent in devolved administrations). These assessments involve interviews carried out by two trained and experienced social workers as well as the gathering of evidence from a range of other people working with or caring for that individual. The age assessment process itself can also cause a lot of anxiety and confusion for many vulnerable children and young people, and have a negative impact to their already poor mental health. It can prevent them from accessing school or college whilst their age is disputed, and isolate them from peers and prevent them from integrating and accessing educational opportunities. Many young people do not understand the process and feel humiliated and damaged by it.

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.<sup>1</sup>

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<sup>1</sup> 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.

**(1) Age assessments under section 49 or 50 must only be undertaken if there is significant reason to doubt the age of the age-disputed person**

- 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”.
- Clause 48 would change this so that any individual for whom there is “insufficient evidence to be sure of their age” (emphasis added) would have their age disputed. In the absence of formal ID, it is *impossible* to know *for sure* how old someone and this would result in nearly all children without documentation going through the age assessment process.
- The government’s recently published factsheet [highlights that](#) between 2016-2021 there were 6,177 cases where age was disputed and subsequently resolved – in over half of these cases (52%) the individuals were found to be children anyway. This number is probably far higher but statistics are not available to show how many decisions that a child was over 18 were later overturned, following advocacy and/or fact finding reviews by judges.<sup>2</sup>
- The age assessment process is re-traumatising for many vulnerable young people and resource-intensive for local authorities. We must avoid age disputes becoming routine.
- At Committee Stage, Lord Stewart gave the assurance that “[age assessments will be conducted only where there is reason to doubt an individual’s claimed age](#)”. ***This is not what it says on the face of the Bill. Does the government recognise that clause 48 as currently worded 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

**(2) A person conducting age assessments under section 49 or 50 must be a local authority social worker and (6) Any organisation developed to oversee age assessments must be independent of the Home Office**

- 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”. Local authority 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

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<sup>2</sup> 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.

assessments (with input from other agencies vital for a truly multi-professional holistic assessment).

- Part 4 gives the Home Secretary broad powers to designate *who* can undertake age assessments. The Home Office is proposing the development of a new National Age Assessment board, the functions of which would include “carrying out direct age assessments itself where required or where invited to do so by a local authority” with its decisions binding on both the Home Office and local authority. The RMCC has significant concerns about this board not being truly independent and not being hosted by a body able to provide professional supervision and oversight.
- Part 4 also gives the Home Secretary powers to compel local authorities to assess the age of a child and/or hand over evidence to immigration officials, undermining their independence and tying them up in needless age assessment processes, unnecessarily using their stretched resources.
- **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 highlighted](#) that there are “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”.**
- **Properly carried out age assessments must remain a function of local authority social workers, adhering to all national statutory guidance and subject to oversight by bodies responsible for local authority employed social workers.**

### **(3) Age assessments must be undertaken in accordance with the Association of Directors of Children’s Services Age Assessment Guidance or equivalent guidance in the devolved jurisdictions**

- Clause 52 allows the Home Secretary to make its own regulations about how age assessments are conducted – the [justification for this](#) is that currently “the requirements and standards expected [case law] from a Merton assessment are not set out in a single place”. This ignores the fact that there already exists extensive, authoritative guidance that has been developed by a range of professionals, including experts in child protection, in [England](#), [Scotland](#) and [Wales](#)<sup>3</sup> to support the conduct of fair, multi-agency age assessments, which also captures changes from case law and can more easily be updated on an ongoing basis.
- This guidance is (rightly) detailed and comprehensive. The idea that current variation in age assessment practice can be addressed by merely ‘simplifying’ the process in regulations ignores the fact that it is complicated and nuanced – this complexity cannot simply be ‘written away’ in legislation. For example, the Association of Directors of Children’s Services guidance was written over a number of months by a group of specialist social workers and practitioners from local authorities and non-governmental refugee and legal sectors and was overseen by a group that included representatives from the Home Office, Department for Education, Department of Health, Office of the Children’s Commissioner for England, Royal College of Paediatrics and Child Health, UNHCR, National Policing, the Refugee and Migrant Children’s Consortium and the Refugee

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<sup>3</sup> There is currently no age assessment guidance in Northern Ireland.

Council. **Does the Home Secretary know more than this expert group? Why does the government feel that it is the Home Secretary's place to dictate how age assessments should be undertaken?**

- These changes to age assessment criteria would be introduced via secondary legislation. Concerns have repeatedly been raised about the use of delegated powers and statutory instruments (SI) by government to amend laws without first facing detailed parliamentary scrutiny – while SIs have the ‘technical approval’ of parliament, scrutiny is often perfunctory, particularly for those passed under the negative resolution procedure.

**(4) When an age assessment is conducted, a process must be used that allows for an impartial multi-agency approach, drawing on a range of expertise**

- International guidance and best practice makes clear that when an age assessment is conducted, a process must be developed that allows for a holistic, impartial multi-agency approach, conducted over an adequate period of time, drawing on the expertise of those who play a role in the child's life, including health professionals, psychologists, teachers, foster parents, youth workers, advocates, guardians and social workers. In good local authority assessments, this is the process that is followed and in many ways the UK's process is the ‘gold standard’ in Europe.
- At Committee stage, Lord Stewart rightly emphasised that [“methods \[of assessment\] are complementary to one another and build up the available data”](#). This commitment to a multi-agency should be on the face of the Bill, to avoid the development of a system that is fixated on a non-existent ‘silver bullet’ in the form of scientific methods for assessing age and on assessing age based on physical appearance. We already see too many decisions made on the basis of appearance alone, with children having their Adams apples and necks measured as if that tells the assessor anything meaningful about their age. A recent [court judgment](#) found that the guidance developed for social workers employed by the Home Office in Kent Intake Unit was unlawful because the ‘short assessments’ used did not include the necessary procedural safeguards for a fair and appropriate age assessment process.

**(5) When making regulations under section 51, the Secretary of State must not specify scientific methods unless the Secretary of State receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate beyond reasonable doubt for assessing a person's age.**

- 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”. The British Dental Association has voiced its [opposition to the use of dental x-rays](#) as 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 the [Council of Europe \(CoE\) has highlighted](#) 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.”*

- 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. The Home Office has recently set up an interim scientific advisory committee and has made clear that it will “comply with all relevant regulatory frameworks in relation to the scientific methods chosen” and will decide about scientific methods only after considering the Home Office chief scientific adviser’s advice”. **But this safeguard must be on the face of the Bill. There should be a clear commitment in primary legislation that any new methods must be formally approved by the relevant professional medical body before being introduced.**

### **(7) The standard of proof for an age assessment is reasonable degree of likelihood**

- 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’).
- **Despite amendments being laid to address this issue in both the Commons and the Lords, the government has provided no justification for introducing the higher standard of proof. Doing so, given the complicated nature of assessing age, would significantly increase the risk of children being wrongly treated as adults.**

### **Conclusion**

There is no denying that efforts are needed to ensure that the age assessment process is fair, holistic and operates in the best interests of children. What the government *should* be doing is helping local authorities to understand the process and improve their practice through improved multi-agency working; better support and training for all involved; and appropriate funding. Instead, it is trying to make the process stricter which will only lead to yet more children being treated as adults and suffering significant harm as a result. The only reassurance the government has given to concerns that children will be treated as adults is that they “will also have a full right of appeal (including access to legal aid) to the First Tier Tribunal where they have been assessed as an age other than that claimed”. Appealing to the Tribunal can be a lengthy and often traumatic process and this is not a sufficient safeguard against the risk of placing children in immigration detention or unsupervised accommodation with adults.

Exceptional cases should not shape the whole system for children who do not have proof of their age, and should not excuse a process that does not adequately consider the needs and rights of children within it.

## 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."*

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