

Briefing – Illegal Migration Bill (Second Reading HL)

Royal College of Paediatrics and Child Health

Wednesday 10 May

Introduction

Ahead of Second Reading of the Illegal Migration Bill on 9 May, the **Royal College of Paediatrics and Child Health** (RCPCH) has prepared this briefing which focuses on new clauses added to the Bill at Report Stage in the Commons on **age assessment of unaccompanied asylum-seeking children**.

While this is our focus, the **College is concerned**, particularly in the absence of an impact assessment, **about the entirety of the Bill** and what it means for **children's rights** which this briefing references further below. The College also [supports a briefing prepared by the Refugee and Migrant Children's Consortium](#).

Clauses 55 and 56 – age assessments

Clause 55 (Decisions relating to a person's age) and **Clause 56 (Age assessments: power to make regulations about refusal to consent to scientific methods)** would provide a power to make regulations about the consequences of a person refusing consent for their age to be assessed by a "specified scientific method". People subject to the duty to arrange removal would be prevented from appealing against an age assessment decision, subject to the availability of judicial review.

RCPCH concerns – Clause 55

- We are concerned by government amendment Clause 55 which, in conjunction with Clause 56 would make the appeals process near impossible for children who have been incorrectly assessed as adults. The NC sets out that someone subject to the duty to arrange removal under the Bill cannot appeal against an age assessment decision. They would be permitted to apply for judicial review, but the application would "not prevent the exercise of any duty or power under this Act to make arrangements for the person's removal".
- All children and young people should have the right to appeal decisions made about them, in particular when these can have such catastrophic consequences on their safety where deportation is considered.
- In its report, 'Identity crisis: how the age dispute process puts refugee children at risk', the Refugee Council highlights the cases of 233 children it supported last year, 94% of whom the Home Office wrongly judged as adult and housed with other adults.
- The removal of the appeals process, which was set out in the government's own Nationality and Borders Act last year, could see children deported back to unsafe countries and denied their UNCRC-afforded rights to shelter and protection.

RCPCH concerns – Clause 56

- The RCPCH is concerned with Clause 56 to the Illegal Migration Bill which could result in a person being treated as an adult if they refused consent to scientific age assessment methods.
- It contradicts [the recommendations made by the Home Office Age Estimation Scientific Advisory Committee](#) (AESAC) who recommended in their 2022 report on age assessments:
 - *"unaccompanied asylum-seeking children should be provided with clear information explaining the risks and benefits of biological evaluation in a format that allows the person undergoing the process to give informed consent and no automatic assumptions or consequences should result from refusal to consent."*
- We are concerned that the Clause 55 will remove children's right to informed consent as the potential consequences of detention and removal (notwithstanding the trauma they have likely already suffered) place them under duress to consent to the process.
- It [remains our position](#) that:
 - exposure to radiation (used in x-rays for the biological assessment of age) for a non-medical purpose is an unethical and unreliable indicator of age. Therefore, paediatricians should not engage in this work.

- Children and young people arriving in the UK seeking safety and shelter need to be met with care and dignity. Children should be given the benefit of the doubt with regard to their age and supported appropriately.

Questions

- On what basis has the Home Office decided to ignore advice and recommendations, made October 2022, on age assessments from the scientific advisory committee it itself appointed?
- On what basis has the Home Office decided to remove the right of appeal for those who state their age has been incorrectly assessed?
- Does the Minister recognise that an unaccompanied asylum-seeking child may have witnessed or experienced trauma from their own homeland's government institutions and may view all authority with suspicion and fear? Would they agree that this constitutes "reasonable grounds" for refusal? If not, in reference to NC25(1)(b), can the Minister define what are considered reasonable grounds for a decision not to consent?

RCPCH policy position on age assessments

9,000 unaccompanied children have applied for asylum in the UK since 2016. By definition a refugee is someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country". Following that experience, all unaccompanied asylum-seeking children have to navigate the UK legal system and their new surroundings alone.

In terms of health care and access to NHS services, refugee and unaccompanied asylum-seeking children and young people have the same rights to care as UK nationals. Age will have implications for the outcome of an asylum claim and for ability to access health services, education and welfare support. This is why determining asylum-seeking children's age is currently under discussion as part of the Nationality and Borders Bill.

As the updated RCPCH position statement on age assessments outlines, many asylum-seekers will have no documentary evidence of their birth date and therefore other methods of age assessment are currently being undertaken within the UK to establish whether they are under the age of 18 years. The two main factors to consider regarding age assessment of young people are the accuracy of age assessments and the ethics of undertaking these assessments. The key points in this position statement include:

- Paediatricians should not be involved in age assessments since the scientific evidence shows that pubertal assessment and bone age assessment are unreliable indicators of age and therefore cannot be used.
- The RCPCH considers it unethical to expose anyone to radiation from x-rays unnecessarily for non-clinical purposes.
- Age assessments require informed consent, which has to be freely given, and it is difficult to ensure this is taking place if vulnerable young people are assessed under duress: consent is not valid if coerced.

RCPCH wider concerns

- Dr Camilla Kingdon, President of RCPCH, alongside our International Child Health Group, shared our position on the Bill in an article available in The Lancet. They state:
 - The Illegal Migration Bill will violate the rights of children seeking asylum, undermine the Children Act, create safeguarding risks, and exacerbate the toxic stress experienced by children seeking asylum who arrive in the UK by irregular routes.
 - It breaches human rights commitments, including those laid out in the UNCRC and the 1951 Refugee Convention.
 - It is a U-turn in policy to end child immigration detention – known to harm child health.
 - Threat of removal from the UK impacts a child's mental health and their ability to integrate. It's also a risk factor for unaccompanied children who go missing – the Bill therefore risks increasing vulnerability to exploitation, trafficking, and mistreatment.
 - Formalising the Home Office's role as a potential accommodation provider for unaccompanied minors risks exclusion from the protection of the Children Act. Evidence suggests current Home Office accommodation does not meet safeguarding and wellbeing needs.

- The Bill disqualifies potential victims of modern slavery and human trafficking from support and protection from removal from the UK - creating a risk of ongoing exploitation, disruption of recovery from trauma, and reduced opportunity to assist perpetrator prosecution.
- The College is deeply concerned with this Bill from the perspective of children's rights, the provision of healthcare and associated workforce implications.
- No parent or guardian would send a child on such a dangerous journey without good reason, and we know that at least six out of ten (60%) of all those who made the dangerous channel crossing to the UK in small boats last year would be recognised as refugees through the asylum process.
- It must also be considered that many unaccompanied children will have been trafficked to the UK. Denying these people with an opportunity to seek safety from legitimate harm is inexcusable. Seeking safety for you and your child should not be a crime nor should we abandon our obligations to protect children who have been exploited and trafficked.
- We once again remind the Home Secretary that the rights of children and young people, as set out in the United Nations Convention on the Rights of the Child (UNCRC), must be protected.
- We call on the Government to reconsider this Bill and to stand up to prevent vulnerable children and young people from coming to further harm.

Case study

Our members are increasingly highlighting their concerns as to the implications of this bill, including around access to initial health assessments and other statutory welfare provisions and the implications for children:

One member shared a case study with us where an unaccompanied asylum-seeking child waited four months for their initial health assessment, despite being unwell while in hotel accommodation. At the assessment, the child presented with concerning symptoms, immediately admitted to hospital and later diagnosed with leukaemia.

For any child in the UK, four months delay in diagnosis of a cancer is very concerning and we need to be aware that this case happened under the current system and highlights significant concerns and delays already present within our care of these children. If this bill is indeed further actioned by the current government, it would significantly increase the risks of missing further cases such as this. The consequences for this child, by this bill, could in fact be life threatening. The fact they would not be having a comprehensive health assessment by a person clinically trained to differentiate between common presentations of tiredness and lack of energy related to their traumatic journey versus presentations of tiredness and lack of energy due to an underlying cancer would be a significant harm.

Supporting materials

- As members of the Refugee and Migrant Children's Consortium, [the College supports the briefing they have prepared ahead of Second Reading](#) which covers: Children and the duty to remove / inadmissible asylum and human rights claims; Child detention; Children in Home Office-run accommodation; Children and exclusion from modern slavery protections; Ban on leave and child citizenship; age assessment.

About us

The Royal College of Paediatrics and Child Health is the membership body for paediatricians, and we have over 22,000 members across the UK and internationally. We are responsible for education, training and setting professional standards and informing research and policy. We work to transform child health through knowledge, research and expertise, to improve the health and wellbeing of infants, children and young people across the world.