

Cyflwynwyd yr ymateb i'r [Pwyllgor Iechyd a Gofal Cymdeithasol ynghylch y Cydsyniad Deddfwriaethol: Y Bil Cenedligrwydd a Ffiniau](#)

This response was submitted to the [Health and Social Care Committee](#) regarding the [Legislative Consent: The Nationality and Borders Bill](#)

LCM NBB 06

Ymateb gan: | Response from: Iechyd Cyhoeddus Cymru | Public Health Wales



PHW response to Overall views

Your overall views on part 4 of the Nationality and Borders Bill which involves the age assessment of Unaccompanied Asylum Seeker Children, and includes:

- a. the establishment of a National Age Assessment Board
- b. the making of Regulations by the Secretary of State in respect of procedures to be followed in the age assessment process
- c. the use of scientific methods to establish age; and proposals to reform appeals arrangements.

Public Health Wales supports the ambition of Wales working towards being a Nation of Sanctuary. As such we have concerns about the impact of the Bill on the competence of Welsh Government and partners to implement policy that underpins that vision. Overall, the view of Public Health Wales is that all of these matters need extensive consultation with the Welsh Government, as set out in the memorandum as they may impact on Welsh legislative competence. In addition, to ensure that the process for age assessment does not adversely impact on the health and well-being of the age disputed person, it will be essential to consult with delivery partners in social services and the NHS on how this will work in practice. Engaging with people who have lived experience of the age assessment process would also add significant value, particularly with regards to the making of Regulations and procedures and methods to be used.

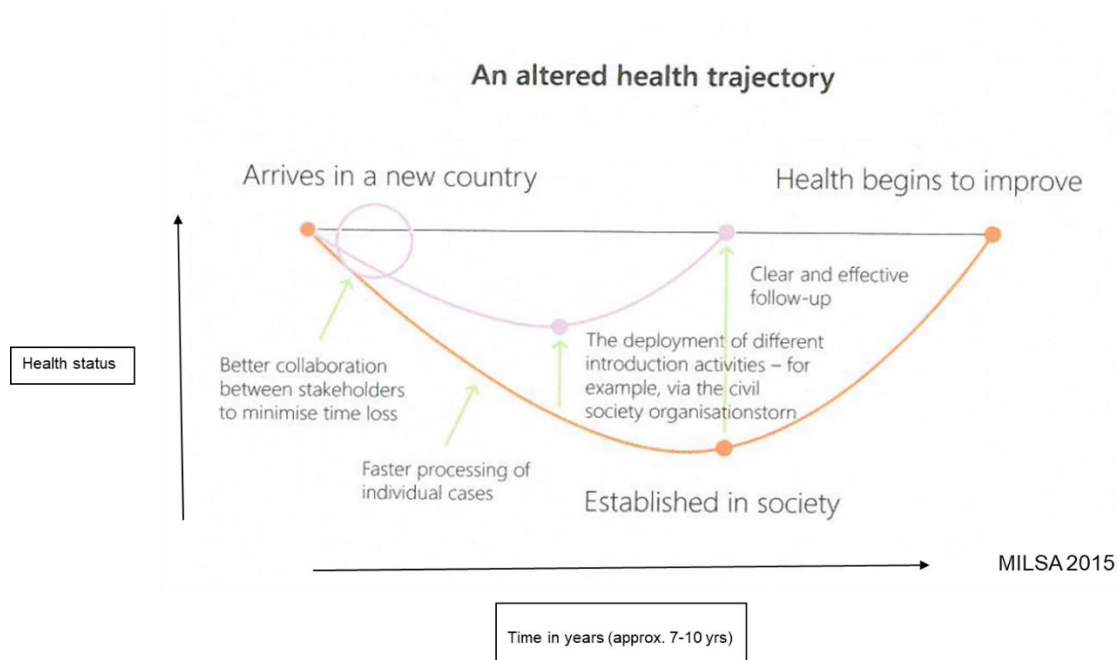
- a) By the very nature of the description, the proposal to establish a 'National Age Assessment Board' immediately suggests that there is either a lack of understanding of the fact that there are four nations of the United Kingdom, or that this is a national board for England only. We agree that however this is interpreted, there would need to be discussions as to how any England-only Board would engage with Wales and take into account the areas devolved to the Welsh Government that are fundamental to any assessment process (regardless of who undertakes it). This is in terms of both the assessment process and the impact of those decisions; namely, education, health, child and adult social services, amongst others. Decisions made by this Board may have an effect in Wales either at a) a legislative competence level, b) a local and regional governance level and c) practical application in Wales. It is entirely possible that a child assessed in England may come to Wales as part of the National Transfer Scheme for example. There would therefore need to be some form of agreement around the acceptance of a decision made in England and endorsed by an England-only Board, which would rely on acceptance of the procedures and methods undertaken. The establishment of this Board would need to involve and consult partners such as the Welsh Local Government Association, NHS Wales, Public Health Wales, third sector providers etc. The impact of not doing so carries the risk of establishing a different approach to the consideration of asylum applications in England and Wales, by definition of how age is assessed.
- b) It is not clear under what powers the Secretary of State would be able to make Regulations that may include areas that are devolved to Wales, namely Health, Local Government and Social Services. There would need to be a legislative process to work through this as identified in the memorandum. Given the UK Government proposals to include use of scientific methods to establish age, which is not based on robust evidence (see below), Public Health Wales would have reservations about the power to make Regulations reverting to UK Government.
- c) Public Health Wales will not support so-called 'scientific' methods to assess age until such a time that compelling evidence is available. Age assessment is an imprecise science and the

benefit of the doubt must be granted, especially if welfare and access to essential services is to depend on this. Those who have been subject to stress/trauma with natural high steroid responses to these may appear older as impact on ageing process is accelerated. We have previously advised that methods such as dental examination, bone density and other previously suggested methods of scientific evaluation are not underpinned by robust and scientific evidence to merit an intervention that would be supported by Welsh partners. The following guidance the Royal College of Paediatrics and Child Health should be heeded: 'The use of radiological assessment is extremely imprecise and can only give an estimate of within two years in either direction, and the use of ionising radiation for this purpose is inappropriate. The British Society for Paediatric Endocrinology and Diabetes are clear that it is not possible to accurately assess a child's age based on physical examination or bone age assessment. It is therefore important for paediatricians, when contacted, to explain to social workers that dental x-rays, bone age and genital examination will currently not add any further information to the assessment process. However, this may change in the future if there is new evidence.' ([RCPCH](#), 2021)

There is additional evidence from various sources about the inappropriateness of medical examination as part of age assessment in the Welsh Government's [Age Assessment Toolkit](#) (see more below).

We agree with the position in the Memorandum and in addition we would have significant concerns around any procedure that may, inadvertently or deliberately, 1) re-traumatise individuals who have already experienced significant adversity and trauma in their lives, 2) suggest that there is clarity around what is still an debated procedure for determining age in terms of the evidence base (notwithstanding the traumatic effect of the procedure itself) and 3) lead to practice that does not take into account the significant physical and mental impact that toxic stress and trauma can have on children and young people that may affect their physical appearance and their survival instinct. This may have helped them overcome trauma and accelerated emotional maturity, or the need to take on more adult roles which again may be perceived as an indicator of age rather than something that has taken their childhood from them.

It is essential that the age assessment process is efficient and effective, leading to a rapid and accurate decision so that the age disputed young person can begin the process of integration and settling into their new lives. Research from MILSA (2015) demonstrates the impact of collaboration between stakeholders to minimise time loss and the deployment of introduction activities in building an altered health trajectory; one which minimises the negative impact on health and speeds up the time it takes for health to start to improve as they establish themselves in society. These factors must be taken into account when considering changes to the appeals process.



Impact on areas of devolved competence

To what extent the proposals set out in the Bill could undermine the Senedd's Devolved responsibilities by requiring referral of age-disputed children to other decision-makers, including the establishment of a National Age Assessment Board?

There needs to be an urgent conversation between the UK and Welsh Government to determine where this Bill crosses into areas of devolved competence, around the expectations that may be placed on Welsh public servants, which may not be in the power of the UK government, and the interface with existing Welsh Government legislation; namely the Social Services and Wellbeing Act 2014, the Wellbeing of Future Generations Act 2015, and related legislation in regards to social care, homelessness and housing, children and adult mental health and safeguarding amongst others.

There also needs to be a clear understanding on the issue of the term 'National' and how that applies to the nation of Wales; which is separate to the nation of England.

To what extent it could undermine the requirements placed on Welsh local authorities set out in the Social Services and Wellbeing (Wales) Act 2014 which determines whether children have care and support needs which need to be met?

As above there needs to be an urgent conversation between UK and Welsh Government to determine legal competence issues. The SSWB Act 2014 is clear that the responsibility of the support and care for children and adults who seek sanctuary in Wales is the responsibility of Welsh Government, regardless of whether they are migrants, asylum seekers or refugees. The age assessment in Wales is currently carried out by Social Services who treat UASC in the same way as it would any looked after child, under the competence of the Act. It is supported by a toolkit developed with the Wales Strategic Migration Partnership, of which PHW is a member: [42834 Age Assessment Toolkit for UASC \(gov.wales\)](#) We believe that it is not in the competence of the UK Government to designate other bodies to do an assessment that would interfere with the Welsh Government competence in social care, as set out in the SSWB Act 2014, without consent. This would not change regardless of the method of identification of age.

As part of our commitment to the ambition of Wales being a Nation of Sanctuary, Public Health Wales is involved in discussion with government and partners around support in Wales for people with No Recourse to Public Funds. We see some synergy with the competence issues raised in this memorandum and suggest that there may be an opportunity to consider learning from both exercises together, in particular around strengthening awareness of what the SSWB Act 2014 already enables Welsh public services to do. We are concerned that the proposals set out for age assessment may increase the numbers of those who have No Recourse to Public Funds, as distrust in service becomes a barrier to accessing them as well as wider implication of the Bill as a whole. Our work on violence against migrant, refugee and asylum seeking women highlights the increased risk such an outcome for this group. [Uncharted Territory Review - World Health Organization Collaborating Centre On Investment for Health and Well-being \(phwwhocc.co.uk\)](#)

UN Convention on the Rights of the Child

Your views on whether the proposals will undermine compliance with the UN Convention on the Rights of the Child to act in the best interests of children.

Public Health Wales is committed to the child first, migration second approach in Wales. The approach outlined by UK Government does not seem to be in line with that commitment or the UNCRC, as set out in the Memorandum. There are various rights that may be threatened by the UK Government approach, some of which are enshrined in Welsh legislation. For example, the Social Services and Well-being Act imposes a specific duty requiring those exercising any function under the Act to have due regard to the UNCRC including Article 12 which affords children with the right to be listened to and participate in decisions affecting them. The UNCRC appears to be undermined by any proposal to include 'scientific' methods, as the Committee on the Rights of the Child confirmed in 2017 that: "States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes" ([Age Assessment Toolkit](#), 2021).

'Scientific' methods and assessments

Your views on the use of use of "scientific methods" to determine age.

As above.

The anticipated implications for local authorities and the NHS who may be required to carry out "scientific" assessments of age.

In addition to concerns around the interplay between this Bill and existing legislation in Wales, notably the Social Services and Well-being Act, we are also concerned that requiring the NHS to carry out any element of age assessment would further increase the current issues around access to healthcare for this group. In particular, this would have major implications for the ability of unaccompanied asylum seeking children to develop a trusting relationship with healthcare providers. Trusting relationships between health professionals and patients are a key enabler of access to health. The [Health Experiences of Asylum Seekers and Refugees in Wales \(HEAR\)](#) report (PHW & Swansea University, 2019) found that challenges to building trust between health professionals and people seeking sanctuary included suspicion by patients that health professionals might contact immigration authorities. This will be entrenched if health professionals are part of an age assessment process overseen by the Home Office. Lack of trusting relationships will further encourage hesitancy in seeking healthcare or public health interventions such as vaccinations. The HEAR study also suggests that a compassionate, non-judgemental approach to providing care

supports people seeking sanctuary to access healthcare with potential to reduce health inequities. Involving the NHS in age assessments which by definition have an element of judgement, will be counterproductive in this regard.

Implications for mental health and community cohesion

The recent experience of the use of Penally camp in West Wales is an example of how divisive the issue of 'age' and legitimacy' can be, and how age assessment can exacerbate this in the community. By definition, those who come to Wales to seek sanctuary and claim asylum are entering the UK through so-called 'spontaneous' routes, which means there are uncertainties not just about age, but about identity and motivations for coming.

These uncertainties can translate into fear for some 'host' communities who already perceive the 'spontaneous route' as an abuse of UK protection, welfare system etc., while others perceive this group to be the most vulnerable, placing themselves at the most risk to seek sanctuary. This leads to a polarised set of views, that can manifest as we have seen in Penally, in the expression of extremist, racist views. In some cases this leads to distress and self-harm within an already traumatised group; and the infiltration of outside influences into small, close-knit and in this case rural communities that do not have the infrastructure to support unrest or disturbance of this nature. Many of the people who travel to the UK to seek asylum are single young men, and the continued focus on whether they are or are not deserving of compassion and support on account of their age is a damaging and dehumanising position that values the life of one person over another. This has implications for Public Health in terms of protecting and improving health at the population level and system leadership of health services who are trying to support and help all members of the community. Examples of this include requirements for police support to protect NHS staff and further strain on healthcare services as mental health declines.

There are also implications in terms of taking a perceived 'scientific view' of age assessment; that it therefore must be right and anyone who may have claimed to be a child would be seen as someone who has lied or tried to cheat their way to the UK. Our position is child first, migration second. So-called 'scientific' methods do not take into account cultural differences in understanding of the definitions of children and adult (but which often define adults at a much lower age for the purposes of marriage, for example).

Health and community cohesion are devolved matters in Wales, so we agree that consent may be required for anything that affects these areas as a result of the proposals within this Bill.

The potential mental health impact for those who are age-disputed.

The definition of a 'child' in terms of traumatised people is more complex than the day that they turn 18. Young people who have experienced significant trauma including witnessing and experiencing violence, parental separation, severe deprivation, exploitation etc. may also be suffering from mental a physical health issues. The transition from children to adult mental health services and the difference that mesa in terms of how they are treated and what services they access may not reflect that persons' social, emotional and educational attainment. Safeguarding concerns aside (of placing an adult in a child setting) it is simply not clear cut in terms of the experience of these young people to define some as a child one day and an adult the next. See the work of Sara Wood et al [ACES-in-Child-Refugee-and-Asylum-Seekers-Report-English-final.pdf](https://phwwhocc.co.uk/ACES-in-Child-Refugee-and-Asylum-Seekers-Report-English-final.pdf) (phwwhocc.co.uk)

Also there is learning from historical experience of the children of 1930s: [ACEs and the Child Refugees of the 1930s in the UK: History Informing the Future by ACESupportHub - Issuu](#)

Some age assessments carried out by the Home Office have been subject to dispute with some young people subsequently assessed to be minors. Further information about age disputes is available from the [Coram Children's Legal Centre](#). Inaccurate age assessment leads to a delay in the person being able to access the essential services that they need, which delays the integration process and has subsequent impacts on health and well-being. This has implications for the young person, but also on the resources of the NHS as the opportunity to avoid escalation and more resource-intensive intervention is required to protect and improve the mental health of those who are age-disputed. Although focused on adults seeking sanctuary, it is relevant to note that the *Health Experiences of Asylum Seekers and Refugees in Wales* study (PHW and Swansea University, 2019) found that some asylum seeking participants reported the stress of being an asylum seeker or refugee contributed to their poor physical and mental health; delays and disputes in the asylum process compound this.

To what extent the proposals would undermine community cohesion in Wales.

See above.