

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 13

Ymateb gan: | Response from: WLGA, ADSS Cymru and All Wales Heads of Children's Services

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**ADSS Cymru**

Yn arwain Gwasanaethau  
Cymdeithasol yng Nghymru  
Leading Social Services in Wales

## **Legislative Consent Memorandum for the Nationality and Borders Bill – Response submitted on behalf of Welsh Local Government Association (WLGA), Association of Directors of Social Services (ADSS) Cymru and All Wales All Wales Heads of Children’s Services (AWHOCS)**

### **Overall views**

1. 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.

### **Response**

Asylum seeking children arriving in this country are children and young people fleeing desperate situations and arrive here alone in search of safety, and many arrive in the UK due to their connections to this country, such as family members. The safety, well-being, meeting care and support needs, and the Best Interests of asylum-seeking children are paramount and must be at the heart of any reforms or decisions made. All eligible children and young people deserve to be given the right support to meet their needs and welfare, which means that any assessment carried out must also be child-centred, thorough, holistic, and timely. And whilst the age of an individual is in doubt they should be supported and accommodated as a child. We are clear that any reforms must focus on improving the asylum system, and not seek to find new ways to make the system ever more challenging, and the process more bureaucratic for people seeking sanctuary.

As part of the Nationality and Borders Bill, the UK Government is proposing a National Age Assessment Board (NAAB) which would set the criteria, processes, and requirements of age assessment, including the use of ‘scientific’ methods. On the face of the Bill, there is however a lack of detail on what this will mean in practice. For example, it is not clear what these ‘scientific’ methods are. The Bill also sets out that the new agency would be empowered to undertake age assessments, and whilst the proposals appear to envisage age assessments would continue to be undertaken by local authorities, and therefore social workers, the role of the NAAB in overseeing this is unclear, and raises some concern.

For example, the Explanatory Memorandum sets out that the NAAB can be asked to undertake an age assessment “if the Secretary of State has reason to doubt an age assessment conducted by a local authority on an age-disputed person or has reason to doubt a local authority’s decision not to conduct an age assessment”. This is an extremely broad power and one that has the potential to undermine the critical role that local authority social workers play; rather the focus should be on equipping social workers to perform their role well with adequate

guidance, training, and support. It is essential that social workers are conducting age assessments using a multi-agency and holistic approach, which requires social work managers, legal teams and partner agencies to engage with the [Welsh Government's Age Assessment Toolkit](#). Social workers are best supported in their assessments when all participants in the age assessment process are knowledgeable and competent – this must be the focus rather than creating a system where one part can question the decisions made by other parts of the system.

If this Board is to sit within the Home Office, there is also concern regarding the required impartiality in such decision-making, and the Governance of the Board. Any National Board would also need to be adequately resourced to ensure young people's asylum claims are not impacted on due to a delayed age assessment process; delays in determining age can have negative impacts on young people's mental health and well-being.

A recent [High Court judgment](#) in *(MA and HT) v Secretary of State for the Home Department* ruled the Home Office's process for age assessing young asylum seekers when they arrive in the UK was unlawful. Here, the Home Office recruited its own social workers to carry out "short" age assessments at the Kent Intake Unit if they were of the view that the individual claiming to be a child was potentially an adult. These assessments generally lasted no more than an hour and there was no "appropriate adult" present to support the young person, as is policy during age assessments by Children's Services. If judged to be over the age of 18, the young person was referred on to adult accommodation, usually asylum hotels rather than dispersed accommodation, due to pressures in the asylum system. Mr Justice Henshaw found that the age assessment process was "inherently unlawful in the sense that it lacks essential safeguards", and that the decision to detain young people for an age assessment and to assess them immediately upon arrival was also unlawful. It is essential that lessons are learned from this, and in light of the judgment there is a need both to clarify and provide further detail on some aspects of the Bill, including when and how 'abbreviated age assessments' would be used. We need to ensure that any changes or reform are driven by a child-centric approach.

It is a matter of great concern that the way in which the Home Office undertook such assessments - as detailed above - was ruled unlawful, while at the same time seeking powers to set standards for age assessments across the UK through a NAAB. This does not inspire confidence in the revised age assessment policy and processes outlined in the New Plan for Immigration.

Given that different legislation applies in Wales accompanied with specific guidance for councils on carrying out an age assessment, we believe that referrals to the National Age Assessment board should not be mandatory for councils in Wales.

### **Impact on areas of devolved competence**

2. 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?
3. 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?

## **Response**

While immigration legislation and policy itself is not devolved to Wales, most services that children/young people receive in Wales are the responsibility of Welsh Government, local councils, and other public bodies. Any changes to procedures to be followed by social workers conducting age assessments, should be in line with all Welsh legislation and the All-Wales Age Assessment Toolkit.

The Social Services and Wellbeing (Wales) Act (SSWBA) places clear responsibilities and legal duties on local authorities in relation to promoting the wellbeing of children and young people who need care and support and meeting their needs. In relation to children looked after local authorities must safeguard and promote the child's well-being.

The SSWBA does not specifically set out a duty to assess age. However, the duty to support children entails a duty to assess eligibility for children's social services. If there is no doubt about a young person's claimed age, there is no need to assess age, however, if there is doubt then an age assessment should be carried out to determine eligibility to access Children's social services.

The SSWBA requires a person-centred approach to assessing and meeting need. Described as a 'what matters' conversation to be used with children and young people, it sets the basis for a refreshed approach to the relationship between people who use social care services and those who provide them.

The Nationality and Borders Bill has several areas in which it confers power on the Secretary of State to make regulations imposing functions on devolved Welsh authorities. For example, there is a clause that enables the Secretary of State to make regulations about age assessments under clause 49 or 50. These regulations could establish the processes for age assessment which must be followed by councils, circumstances where 'abbreviated age assessments' may be appropriate, protections and safeguarding measures, required qualifications of the person conducting age assessments, procedures for scientific methods and consequences of non-compliance. The regulations may also make provision about how and when a local council must inform the Secretary of State.

Given the devolved nature of health and social care in Wales our view is that the Bill confers power on the Secretary of State to make regulations imposing functions on devolved Welsh authorities which could potentially undermine the requirements placed on Welsh local authorities set out in the SSWBA, thereby treating asylum seeking children differently to other children in Wales. The full devolvement of social services functions to Wales does not appear to have been considered, with no specific proposals about the representation of Wales or the impact of decision-making on Welsh devolved services.

The function of assessment is a core duty for social workers and as highlighted above the assessment of age is part of this. We are concerned that the Bill as laid could diminish the lead, authoritative role social workers play, with the potential for the Bill to result in officers without the required expertise, experience, and skill conducting such assessments, including abbreviated assessments. This remains a considerable concern following the recent court case, rather than local authority's own social workers following nationally agreed approaches and good practice.

## **UN Convention on the Rights of the Child**

4. 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.

## **Response**

As highlighted above the SSWBA sets out the requirements placed on Welsh local authorities in determining whether children have eligible care and support needs to be met. As a result, there is legislation in place in Wales which complies with the UNCRC. The Bill would place requirements around the referral of age-disputed children to other decision-makers or mandating evidence or methods of age assessment which are not considered good practice in Wales, and indeed are not supported by the Welsh Government's Age Assessment Toolkit. As such we have concerns that the Bill may undermine the existing Welsh legislation, which could in turn impact on our ability to be compliant and able to act in the best interests of children.

Article 3 of the UNHCR states that the best interests of the child principle should be at the heart of any decision and, therefore, this must be considered in any age assessment system. The principal of Best Interests has also been incorporated into Welsh Government's Age Assessment Toolkit. The Toolkit also emphasises that age disputes should only be raised for those young people where there is significant doubt about their age.

## **'Scientific' methods and assessments**

5. Your views on the use of use of "scientific methods" to determine age.
6. The anticipated implications for local authorities and the NHS who may be required to carry out "scientific" assessments of age.
7. The potential mental health impact for those who are age disputed.
8. To what extent the proposals would undermine community cohesion in Wales.

## **Response**

It is important to recognise that in Wales there is already a nationally agreed Toolkit in place to support the conducting of age assessments. This Toolkit considers the use of 'scientific' methods and medical reports in age assessments, concluding that,

"This Toolkit does not recommend or support the use of medical examinations as determinants of age. The science underpinning the determining of age is inconclusive, unclear and in any event, subjecting young people to invasive medical examinations is judged to be morally wrong."

The use of 'scientific' methods is contested by a number of other organisations, for example the Royal College for Paediatrics and Child Health state: "there is no single reliable method for making precise age estimates. The most appropriate approach is to use a holistic evaluation." The College adds "the margin of error can sometimes be as much as five years either side with medical tests."

In 2017, a case in Europe was taken to the European Court of Human Rights in which the use of medical age assessments is alleged to be a violation of Article 8 of the Human Rights Act. The main argument in this application was that there is no scientific way of accurately determining age, and that exposing young people to radiation for no health benefit is invasive and unethical.

A recent legal case has also been brought before the courts in Sweden making similar points about dental x-ray age assessment conducted by the National Board of Forensic Medicine (RMV).

As evidenced, the UK Government's plans to introduce scientific methods for assessing age are not supported by the scientific community and are likely to lead to more children being incorrectly identified as adults, losing the support they need and exposing them to risk. Current [Home Office guidance](#) states that it is not policy to commission dental checks or x-rays to inform an age assessment and that scientific methods "can only estimate age and as a consequence there will always be a margin for error".

It must be recognised that age assessment is not a scientific process and so the benefit of any doubt must always be given to the unaccompanied asylum-seeking child. Given the existing policy and guidance on 'scientific' evidence in Wales, we do not support the proposals to undertake 'scientific' assessments of age.

An incorrect age assessment for an unaccompanied minor can have serious consequences for their care and support and detrimental mental health implications, given the trauma these young people will have encountered in their home countries, and on their journeys to the UK. Being subjected to intrusive methods of scientific age assessment, which does not provide an exact age, may be detrimental to their well-being, potentially unethical, and may not provide a 'silver-bullet' determination. An incorrect determination of the child as an adult will lead to young people being deprived of the support, care, and safeguarding procedures they are entitled to as children. Importantly, the significant margin of error in so-called scientific age assessment methods will increase the likelihood of children being detained in Immigration Removal Centres.