

CYPE(6)-06-22 - Paper to note 27

Russell George MS

Chair, Health and Social Care Committee

Jayne Bryant MS

Chair, Children, Young People and Education Committee

Welsh Parliament

Cardiff Bay

Cardiff

CF99 1NA



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national youth
advocacy service

27 January 2022

Nationality and Borders Bill – NYAS Cymru letter to Committee Chairs

Dear Russell and Jayne,

To inform the Health and Social Care and Children, Young People and Education Committees' scrutiny of the Legislative Consent Memorandum ("the LCM") on the Nationality and Borders Bill ("the Bill"), please see below NYAS Cymru's views on the matters listed in your communication requesting organisational responses.

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.

At NYAS Cymru we work to protect, support, empower and safeguard every child and young person who we come into contact with. We support the commitments of Welsh Government in the current Refugee and Asylum Seeker Plan, and have worked constructively through our '[Place of Safety?](#)' campaign to improve the 'asylum journey' for unaccompanied asylum-seeking children in Wales. NYAS Cymru currently provide both independent advocacy and "Independent Persons" for children and young people to uphold their rights and entitlements during age assessment processes. This role will become even more critical throughout Wales with the implementation of this Bill and guidance will need to be produced on the processes and rights of the individual.

The Nationality and Borders Bill currently says that an 'age disputed person' is a person who the Secretary of State, public authorities, and local authorities have insufficient evidence to be sure of their age. This places the burden of proof on a child to prove that they are under 18. NYAS Cymru feel this presumption should be reversed. Instead, an 'age disputed

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person' should be where an authority or the Secretary of State or an authority has significant doubt about the child's age.

NYAS Cymru has significant concerns regarding the accompanying policy proposal of a National Age Assessment Board (NAAB), see response to Q2 and Q3, as well as the use of "scientific methods" to determine age, see response to Q5 in particular.

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?

In broad terms, the Bill taken risks undermining the compassion that Welsh Government have committed to, for Wales to be a nation of sanctuary for all asylum-seeking people.

A specific impact is that the proposed NAAB will be able to overrule a local authority age assessment and carry out their own if required to by the Secretary of State or a designated person on their behalf, rather than just act in a supportive or advisory capacity to local authorities. We share the concerns of the [British Association of Social Workers](#) (BASW) that age assessments could be used as a political tool by the UK Government to order age assessments on persons who have attracted media attention. NYAS Cymru is concerned at the lack of transparency and accountability of the NAAB, including to Welsh Government or Senedd Committees. Levels of independence from the Home Office in this process are also currently unclear.

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?

The powers set out in our response to Q2 could also be used to override professional judgement, undermining the responsibilities and duties of Welsh local authorities.

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.

The duty to act in the best interests of children certainly does not appear to be the foundation of this legislation. The risk that best interests are undermined becomes greater if decision-making is not child-centred. If inflexible processes are developed to mandate so-called 'scientific' methods to determine age or allow the Secretary of State to make sweeping determinations or policy changes, this risk becomes greater.

Article 22 of the UNCRC sets out that child refugees have the same rights as children born in the country they move to.

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In all actions concerning children, States should be guided by the overarching UNCRC principles of non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right of the child to express his or her views in all matters affecting him or her, and to have those views taken into account (Article 12).

NYAS Cymru are unaware of any attempt to involve children and young people in the development of this legislation, as would reflect Article 12, nor to enhance this right within any new processes or structures.

‘Scientific’ methods and assessments

5. Your views on the use of “scientific methods” to determine age.

NYAS Cymru has significant concerns about the vaguely termed “scientific methods” set out in the Bill to determine the age of people seeking asylum. We understand there is no known scientific method that can precisely determine age, and that the preference in Wales has always been for a multi-agency approach. “Scientific methods” can be very invasive and traumatic for the individual. This is especially true for those who have suffered torture, inhuman and degrading treatment before arriving in Wales. We support the [British Association of Social Workers](#) (BASW) position on this:

“We are opposed to the use of the term ‘scientific methods’ as a panacea for age assessments, and as a safeguard, we are calling for the requirement of the relevant professional body to approve the use of a ‘scientific method’ as a valid way to determine age assessment before it is used. We also do not agree that the Secretary of State should be able to determine appropriate ‘scientific methods’, and fear that this could result in methods around sexual maturity or other invasive, traumatic procedures.”

NYAS Cymru also wish to echo the recent recommendation of the UK Parliament’s [Joint Committee on Human Rights](#) (JCHR) on this point:

“The Government must ensure holistic assessments are undertaken and will not be able to rely upon scientific methods as a replacement for holistic assessments. The use of scientific methods as set out in any regulations in the future will need to be scrutinised to ensure that they do not breach the right to be free from inhuman and degrading treatment (Article 3 ECHR) and the right to privacy (Article 8 ECHR). If it is the case that scientific methods will not offer any greater accuracy than the current holistic methodology, the use of such methods may not constitute necessary and proportionate incursions of the right to privacy. Further, we suggest that where holistic assessments already exist as an alternative, it would not be in the best interests of the child to subject them to scientific procedures.”

Consent is required from the age disputed person before a “specified scientific method” is used, as long as they have capacity to give it. However, if the age disputed person should choose to refuse to consent, there appear to be no legal protections or principles that

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prevent their decision from negatively influencing the state's view of their asylum application or age assessment.

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

Local authorities automatically assume a corporate parenting responsibility for unaccompanied asylum-seeking children, regardless of whether their age is disputed at that time. Potentially invasive or traumatic procedures are not compatible with the role of a corporate parent. A similar conflict exists for NHS colleagues, and NYAS Cymru has been campaigning for a 'do no harm' principle that extends across agencies to recognise and reduce the likelihood of traumatising or retraumatising young people with certain policies and decision-making.

Implications for mental health and community cohesion

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

NYAS Cymru worked closely with Welsh Government last year on our call for unaccompanied asylum-seeking children to be provided with clear summaries in their first language as to the mental health and wellbeing offer in Wales, including how to access that support.

Our concern is if this new legislation negatively affects unaccompanied asylum-seeking children's mental health, which is more likely if it includes so-called "scientific methods and assessments", then signposting to mental health services afterwards appears to contradict the stated aims of early intervention and prevention in local authorities and the NHS.

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

Any legislation or policy that publicly emphasises an institutional lack of trust between governments and asylum-seeking children could undermine community cohesion. The UK Government messaging around the Nationality and Borders Bill has often contradicted the attempts in Wales to be inclusive and welcoming as a 'nation of sanctuary'.

Best regards,

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