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Geneva

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Note Verbal No. 159

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its' response to communication AL GBR 5/2024, further to the letter dated 17 April 2024 from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context; the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 14 June 2024

Special Procedures Branch
Office of the High Commissioner for Human Rights



UK Mission
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United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communications AL GBR 5/2024 of 17 April 2024

Thank you for your correspondence on 17 April 2024 regarding the UK's age assessment and protection measures for children in asylum and immigration procedures.

The central points raised in the most recent correspondence of 25 January 2024 have been copied in bold and addressed in turn below, with the Government's responses in plain text.

(1) Please provide any additional information and any comment you may have on the above-mentioned allegations.

Asylum and immigration procedures

In the UK, responsibility for age assessment sits between the Home Office and local authorities. Local authorities are required to determine whether they have obligations towards an individual under the relevant children's legislation and the Home Office needs to establish age for immigration purposes. Both are subject to legal duties to safeguard and promote the welfare of children who are in the UK.

The age of a person arriving in the UK is normally established from the documents with which they have travelled, but many of those who arrive clandestinely who claim to be under 18 years old do not have any definitive documentary evidence to support their claimed age.

Assessing age of unaccompanied children is an incredibly complex and difficult task. There is no current single age assessment method (scientific or not) which can determine an individual's age with precision.

There are also incentives for adults to claim to be under 18 years old as unaccompanied children generally receive a greater level of support than adults in several respects. This includes: the accommodation and the support they are provided; the procedural and substantive treatment of their asylum or immigration claim; the arrangements that would need to be made to secure their possible removal; and the circumstances in which they can be held in immigration detention.

Recent legislative reforms introduced by the UK Government have aimed to make assessments more consistent and robust, to minimise the risk that a person will be incorrectly treated as either an adult or a child and ensure that age-appropriate services and care are reserved for genuine children.

The measures the government legislated for in [Part 4 of the Nationality and Borders Act 2022](#) (2022 Act) are in response to some of the challenges with the current age assessment process. The reforms across four separate but complementary and interdependent workstreams include:

- Sections 50 and 51 of the 2022 Act enabled the creation of the National Age Assessment Board (NAAB) which launched in March 2023 and consists of expert social workers whose task is to conduct full Merton compliant age assessments, upon referral from a local authority or the Home Office, increasing capacity and expertise in the system. "Merton compliant" refers to holistic, social worker-led assessments adhering to principles set out by the courts in several court judgments dating back to 2003. Local authorities also retain the ability to conduct age assessments themselves;
- Section 52 of the 2022 Act enables the Government to specify scientific age assessment methods in regulations to widen the evidence available to decision-makers and improve the accuracy of their decisions. The Immigration (Age Assessments) Regulations 2024 specify the scientific methods (MRI and X-rays

of various body parts) that may be used for the purposes of age assessments under section 50 or 51 of the Nationality and Borders Act 2022;

- Section 53 of the Nationality and Borders Act 2022 enables the introduction of regulations setting out in one place what an age assessment should involve by codifying it, which may include the information and evidence that must be considered and the weight to be given to it to provide consistency and fairness in the way age is assessed; and
- Sections 54 and 55 of the 2022 Act allows for the introduction of a statutory right of appeal, as a route to challenge age assessment decisions. The right of appeal has not been commenced and commencement is under review.

The [Illegal Migration Act 2023](#) ('2023 Act') places a duty on the Secretary of State to make arrangements, as soon as reasonably practical, to remove any person who enters the UK illegally and has not come directly from a country where their life and liberty is threatened. They will be removed to either their home country (if safe to do so) or to a safe third country.

Section 2 of the 2023 Act does not require the Secretary of State to make removal arrangements for unaccompanied children until they turn 18 years old, but there is a power to do so if they meet the four conditions. The power to remove unaccompanied children in Section 4 of the 2023 Act will only be exercised in very limited circumstances ahead of them reaching adulthood, for example amongst others for the purposes of family reunion and/or return to a safe home or third country.

Given that unaccompanied children will be treated differently to adults and the obvious safeguarding risks of adults purporting to be children being placed within the care system, age assessment provisions under the 2023 Act aim to deter adults from claiming to be children and to avoid lengthy legal challenges to age assessment decisions preventing the removal of those who have been assessed to be adults.

The provisions within [Section 57 of the 2023 Act](#) deal with age assessment legal challenges and applies to individuals who meet the four conditions under Section 2 of the 2023 Act:

- The right of appeal for age assessment decisions made under sections 50 or 51 of 2022 Act is disapplied;
- Anyone challenging a decision on age will be able to do so through judicial review which will not suspend removal and can continue from outside the UK after they have been removed, in line with other non-suspensive challenges under the Act; and.
- Age assessment judicial reviews can only be considered on normal public law principles (such as, rationality and procedural fairness) and the court cannot grant relief because a decision is wrong as a matter of fact and will no longer be able to substitute their own decision on age, distinguishing from the case law [R\(A\) v Croydon LBC \[2009\] UKSC 8](#).

[Section 58 of the 2023 Act](#) introduces a regulation-making power which would allow the Secretary of State to set out the effect of a decision by an individual not to consent to the use of a specified scientific method for age assessment without reasonable grounds. Regulations may include that, if they refuse to consent a person is to be treated as if the decision-maker had decided that they are over 18. This power will not be used unless and until the Secretary of State of the Home Department determines the science and analysis is sufficiently accurate to support providing for an automatic assumption of adulthood.

Statistics

The Home Office is unable to confirm the statistics contained in pages 2 and 3 which appear to be derived from reports from the Refugee Council, Humans for Rights Network and the Helen Bamber Foundation. The data from these reports is derived from over 100 local authority responses to FOI requests in relation to individuals initially assessed as adults and referred for a further assessment. These statistics cannot be usefully compared with the official published Home Office figures, which cover all 211 local authorities and aggregate the outcomes of initial age decisions by the Home Office, comprehensive age assessments and any subsequent legal challenge.

Between 2016 and September 2023, there were 11,977 asylum cases where age was disputed and subsequently resolved, of which nearly half (5,651 assessments) were found to be adults. 'An age dispute could, for example, be resolved: following a Merton compliant age assessment; receipt of documentary evidence of age; a judicial finding on age; following an initial decision on age; or where the reasons for raising an age dispute no longer apply. Further details can be found at Asylum and resettlement datasets - GOV.UK (www.gov.uk).

Criminal Proceedings

In terms of the allegations made in relation to migrant children being sentenced for criminal offences and detained in adult prisons, any decision on age made by the Home Office for immigration purposes is not binding on the UK courts (either civil or criminal). Where an individual is charged with a criminal offence the Crown Prosecution Service should be advised of any age dispute issues that have arisen and will decide if it is in the public interest to pursue a prosecution or not. Once proceedings are instigated should the presiding judge have doubts whether the individual is a child, the courts can take a decision on the age of an individual before them based on the available evidence or request that a substantive age assessment is undertaken. This decision determines the type of detention facility someone is sent to if given a custodial sentence or remanded in custody. If an individual is sent to an adult prison and is later found to be a child, they can be moved to the youth custody estate if there continues to be a need to detain them.

(2) Please provide details on steps envisaged or already undertaken by the Home Office or other relevant entities within your Excellency's Government to provide full and effective reparation to migrant children prosecuted as adults in criminal proceedings and those who would have spent time in adult prisons or adult accommodations. Please provide information on any measures taken and assistance provided to victims in relation to their restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

If an individual is treated as an adult and detained in an immigration removal centre on that basis, they may bring a legal challenge against the decision to detain. If a court later finds, or the Home Office later accepts that an individual who has been treated as an adult was, in fact, a child at the time, then any period of detention not in line with the restrictions in paragraph [18B of Schedule 2 to the Immigration Act 1971](#) will have been unlawful and damages may be awarded.

(3) Please provide information on the health services, including psychological services available to migrant children.

Local authorities have a statutory duty under children's legislation to ensure that they safeguard and promote the welfare of all children, regardless of their immigration status or nationality. Under this legislation, in recognition of their vulnerability, unaccompanied children are provided with access to all their needs in relation to education, accommodation or health, as would be provided to any other resident looked after child in the UK.

All asylum seekers have access to health and social care services from point of arrival in the UK and regardless of the type of accommodation, have the same access to free NHS services as in the same way as British citizens and other permanent residents. This includes children who enter the UK accompanied by their parents or carers.

The Home Office and its contractors work closely with the NHS, local authorities and non-governmental organisations to ensure that individuals can access the health care

and support they need, including operating a Safeguarding Hub to support vulnerable individuals in accessing these services.

(4) Please provide detailed information on the channels and procedures for migrant children to follow when there is an age dispute. Please include detailed information on the safeguards set in place to protect age-disputed migrant children who are placed in accommodations for adult asylum seekers. Please specify whether it is considered to place age-disputed migrant persons in facilities for unaccompanied minors until proven otherwise.

There are very serious safeguarding risks if individuals over 18 years of age are treated as children and placed in settings with children. It also reduces the valuable resource and support available to help genuine children. Similarly, there are serious safeguarding risks in treating children as adults.

Where an individual arrives claiming to be a child without any documentary evidence, and there is reason to doubt their age, immigration officers are required to make an initial age decision based on their physical appearance and demeanour to determine whether the individual should be treated as a child or an adult.

This is an important first step to prevent individuals who are clearly an adult or child from being subjected unnecessarily to a more substantive age assessment and ensure they are routed to the correct adult or child immigration process. This decision aims to swiftly identify any individuals who could be or are very clearly minors.

Current guidance provides that immigration officers may only treat an individual as an adult where two members of Home Office staff independently assess that their physical appearance and demeanour very strongly suggests they are 'significantly over 18'.

This is a deliberately high threshold, and the principle of the benefit of the doubt is key and means that where there is doubt, an individual will be treated as a child pending

further observation and consideration by a local authority, usually in the form of a 'Merton compliant' age assessment.

Where an individual is housed in accommodation for adult asylum seekers, the local authority may determine further consideration of their age is required. This would involve the local authority accommodating that individual if they consider a full "Merton compliant" age assessment is required and treating them as a child pending the outcome of a more substantive age assessment. Equally where staff in adult accommodation setting have concerns in relation to the age of an individual, a referral can be made from the Home Office to the local authority.

Information sharing has been improved with local authorities so that we are more routinely sharing reports for initial decisions on age with LAs when they inform us of an age dispute in their area.

The welfare and safety of children must be the primary concern for all those involved in the assessing age process, including Home Office officials. The assessing age policy has in-built safeguards to ensure it is compliant with the duty under [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of children. Where there are concerns or further evidence comes to light the Home Office can refer on to local authority.

(5) Please provide information on the measures taken by the Government of your Excellency to review all age disputed claims. Please provide information on how your Government collects or plans to collect and review evidence and data on age disputed claims.

Age disputes and assessments are a complex system and can arise at any point in the immigration system. Our current data recording process aggregates the raising and resolution of initial decisions, Merton age assessments and legal challenges. Further details on the Home Office's official statistics can be found at Asylum and resettlement datasets - GOV.UK (www.gov.uk).

The Home Office is improving how age assessment data can be disaggregated in internal national systems. Improvements to our internal data management and our ambitions to improve the information flows between Home Office and local authorities will enable the Home Office to distinguish more easily how age disputes are resolved and conduct more robust analysis on trends.

The Home Office, with support from the Department for Education, is carrying out user research into initial decisions on age and the presentation of claimed children in adult accommodation. This work is being led by a Home Office team known as 'CoLab' that works collaboratively to solve problems and improve outcomes through design, innovation and human-centred approaches. A range of stakeholders are participating in this research including Home Office staff who conduct initial age assessments, accommodation providers, a representative sample of local authorities and NGOs with experience of supporting young people with these issues. The research will provide an evidence base to inform potential future improvements.

(6) Please include detailed information on the protocols and methods of age determinations in the United Kingdom and explain how these are compatible with applicable international human rights standards, including in relation to the rights of the child.

Initial decisions on age

Upon arrival, where an individual claims to be a child but who has no documentary evidence with them to verify their claimed age and where there is reason to doubt their claimed age, immigration officers are required to make an initial age decision to determine whether the individual should be treated as a child or an adult. This is an important first step to prevent individuals who are clearly an adult or child from being subjected unnecessarily to a more substantive age assessment and are routed to the correct adult or child process for assessing their asylum or immigration claim.

The '[Assessing Age](#)' guidance details the Home Office's age assessment policy for immigration purposes. It provides that immigration officers may only treat that individual as an adult where that individual has no credible and clear documentary evidence proving their age, and two members of Home Office staff assess that their physical appearance and demeanour very strongly suggests that the individual is 'significantly over 18.'

This is a deliberately high threshold, and the principle of the benefit of the doubt is key and means that where there is doubt, an individual will be treated as a child pending further observation and consideration by a local authority, usually in the form of a 'Merton compliant' age assessment.

This approach to initial decisions on age has been considered by the UK's Supreme Court in [BF \(Eritrea\) v Secretary of State for the Home Department \[2021\] UKSC 38](#) and held to be lawful.

The majority of these initial decisions on age are conducted at the Western Jet Foil in Dover on those who arrive to the UK via small boat, although the policy applies nationally and across arrival modes to help establish age where new arrivals are first encountered.

It was stated in 'Para. 3 of the *asylum and immigration procedures*' section of the report that migrants are not provided with an interpreter or provided one in a language that they do not understand. The Home Office refutes this claim as interpreters **are** available for migrants on arrival and although not mandatory, social workers are routinely present to provide advice to immigration officers and assess the welfare of the child.

As highlighted above, the Home Office's age assessment processes already have in-built safeguards to ensure our ongoing compliance with the duty under [section 55 of the Border, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of children - this duty is how Article 3 of the UNCRC is given expression within UK law in the field of Immigration and asylum. For example, where there is doubt over whether claimants are adults or children, they will initially be afforded the benefit of the doubt and treated as children. This safeguard takes into account the difficulty of assessing age with precision and to allow for the possibility that valid documentary evidence may subsequently become available showing that they are a child.

Merton age assessments

If doubt remains about whether the claimant is an adult or a child, they are treated as a child for immigration purposes until further consideration of their age by a local authority. This will usually entail a careful, holistic age assessment, known as a 'Merton compliant age assessment'. A 'Merton-compliant' age assessment is a holistic, social worker-led assessment which must adhere to principles that have been set out by the courts in the case of [R\(B\) v London Borough of Merton \[2003\] EWHC 1689 \(Admin\)](#) as well as subsequent case law. The current approach to Merton-compliant age assessments conducted by local authorities and the National Age Assessment Board (NAAB) typically involves interviews between the individual and two appropriately qualified and experienced social workers. They should also consider any other information obtained, including the views of other individuals with a role in the young person's life.

Assessing age is a difficult task and the reforms made (under the Nationality and Borders Act 2022) aim to make decision-making more consistent and robust, bringing

together all the relevant information including through the introduction of scientific measures.

The Home Office sought impartial scientific advice from the Age Estimation Science Advisory Committee (AESAC), who have recommended the use of MRI and Radiography (x-ray) methods on specific body parts. Recommendations from AESAC were published in their report¹ on the “Biological evaluation methods to assist in assessing the age of unaccompanied asylum-seeking children” on 11 January 2023. The UK is one of few ECHR signatories that does not make use of scientific methods of age assessment.

The Home Office has a statutory duty under [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to ensure that its immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. Scientific age assessments will be conducted according to the same principles – and meetings and appointments for triage and imaging will be conducted in a child friendly manner. The Home Office are clear that any methodology used for the assessment of age involving the specified scientific methods should respect and prioritise the health and wellbeing of the individual and minimise any health risk to the individual being assessed.

It should be noted that the UK is one of very few European countries that does not currently employ scientific methods of age assessment. Although scientific age assessments under section 52 of the Nationality and Borders Act 2022 are not yet taking place, the Immigration (Age Assessments) Regulations 2024 came into force in January 2024 to specify analysis of X-ray and MRI images of certain body areas for the purposes of age assessment. The Home Office is now working to operationalise these methods.

Independent support through the age assessment process is encouraged for safeguarding purposes such as the use of appropriate adults. Appropriate adults provide assistance to the young person with understanding, support, helping

¹ [Biological methods to assess unaccompanied asylum-seeking children’s age - GOV.UK \(www.gov.uk\)](#)

communication etc and offering comfort. Individuals will also have access to interpreters, if necessary, through the age assessment process.

Both the case law and the [guidance](#) on age assessments issued by the Association of Directors of Children's Services (ADCS), which is generally considered the principal guidance on conducting Merton age assessments in the UK, specify that appropriate adults should be independent from the assessing authority, and local authorities or the NAAB will always need to make arrangements for this service provision in their area. Appropriate adults play an important role in supporting the age disputed person, assisting with understanding, and ensuring there is fairness in the process.

Individuals can challenge their age assessment through judicial review. As part of their challenge, individuals may apply for interim relief to be treated as a child pending the outcome of their judicial review.

Individuals also have access to legal aid to support them through the process of legally disputing any decision on age.