



## Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 5<sup>th</sup> May 2021

Subject / Pwnc: Home Office Immigration Plan

Whilst immigration is not a devolved issue, as the Children's Commissioners for Northern Ireland, Scotland and Wales, we wanted to respond in brief to this consultation, insofar as we can see the issues affecting children and their families in the devolved nations.

The proposals within this plan, notwithstanding the length of the published documentation, are severely lacking in detail and remain at an extremely high level. We would expect a White Paper to be presented for proposals as extensive as these, as the present consultation does not give sufficient detail in order to be able to fully respond and scrutinise the proposals. Even without further detail however, there are some particular points that we would like to strongly raise at this stage.

### **Age assessment**

The proposals to revise the age assessment process to make it more 'robust' give us great concern. It is unclear what the authority and role of the proposed National Age Assessment Board would be around this, what the background or expertise of members would be and what their influence would be in resulting policies and processes.

The main reason for our concern around this aspect of the proposals is the suggestion of the use of “new scientific methods” to assess age “swiftly”. In addition, the current Home Office guidance indicates the need to treat someone as a child unless they very strongly appear to be above 25; these proposals would consider changing this to appearing to be “significantly over 18”. This would be a major shift in practice.

There are no tried and tested medical assessment models that we are aware of that would be able to perform the sort of assessment being suggested in this paper. The fact that there is no detail beyond this only serves to confirm this. We would be very concerned at the introduction of invasive or intrusive physical or medical examinations for children and young people, particularly as there is no clear consensus or reliable methodology for this.

The plan says “Various scientific methods are used to assess age in, among others, Sweden, Norway, France, Germany and the Netherlands” but does not give details of these methods. Notably, there was a Swedish case in 2019 involving analysis of wisdom teeth and knee joints, leading to conflicting conclusions on the young person’s likely age. Ultimately, on appeal, with further examination and on production of some personal documents and a second medical opinion, it was determined that the young person was a minor. This case highlighted the controversial and mixed nature of the various medical approaches, and the unnecessary use of scans when, as in this case, a variety of social evidence was able to establish age more reliably. X rays of joints are used in some countries but there are children’s rights issues around exposure to radiation unnecessarily, as well as similar concerns to the Sweden case about the uncertain nature of any such results. In General Comment 24, the UN Committee on the Rights of the Child say that in situations where there is doubt as to a child’s age: “*States should refrain from using only medical methods based on, inter alia, bone and dental analysis, which is often inaccurate, due to wide margins of error, and can also be traumatic. The least invasive method of assessment should be applied. In the case of inconclusive evidence, the child or young person is to have the benefit of the doubt.*”

The leading case in the UK is the ‘Merton’ case, which requires a multitude of factors to be taken into consideration, with young people given the benefit of the doubt and treated as a child in need until otherwise decided. The approach does not recommend medical assessments, and the current Home Office guidance on age assessments (2020) says “All accessible sources of relevant

information and evidence must be considered, since no single assessment technique, or combination of techniques, is likely to determine the individual's age with precision." It is therefore concerning to see new Home Office proposals being suggested which mark a significant shift from their own existing guidance, without any evidence for this apparent about-turn. We would anticipate strong and vociferous challenge to these proposals, including legal challenge through the courts, should such assessment methods be proposed.

In Scotland, national Age Assessment Practice Guidance was developed as a requirement of the implementation of the Trafficking and Exploitation (Scotland) Act 2015<sup>1</sup>. This is grounded in a human rights based approach and builds on the existing caselaw, including *Merton* and places responsibility for age assessment with the local authority. We note the involvement of the Home Office in the development of this guidance.

### **Social work and devolution**

Work in this area largely falls into social work practice, and this *is* a devolved area. In Wales, social work practice is underpinned in legislation by a statutory duty for public bodies to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) in exercising their functions. Whilst it has not yet received Royal Assent, the UNCRC (Incorporation) (Scotland) Bill will introduce similar requirements for public authorities in their everyday practice which will include social work and housing. It is therefore surprising and a significant omission that there is no mention of the UNCRC within the published plan. In developing a White Paper and any further details of these plans, we would expect to see express reference to the UNCRC and how children's rights have been considered in developing the proposals, as this is a convention ratified by the UK Government and clearly applicable. In addition we would expect to see details as to how the context and individual legal positions in the devolved nations will be involved and taken into consideration in developing proposals further. The latter point will be particularly relevant if proposals to move some aspects of the National Referral Mechanism (NRM) to local authorities, as we understand that this may include oversight of the functions around age assessments. It is presently unclear how this would fit with the proposals currently subject to consultation including a National Board.

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<sup>1</sup> <https://www.gov.scot/publications/age-assessment-practice-guidance-scotland-good-practice-guidance-support-social/>

## Children's rights in the overall proposals

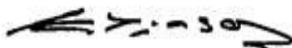
Lastly, to further the points in relation to the UNCRC, there will be wider areas of these plans where children's rights are relevant. In fact, almost every single one of the 42 Convention Rights would be actively engaged when considering proposals in relation to migration and asylum.

Again there is little detail to know what sits behind this plan at present, but we'd expect children's rights to be a key and relevant consideration in any proposals around changes to family reunification and entitlements, any proposals that would affect a child's nationality or status as a result of their parents' status, and any changes to the rules around arrival in the UK and securing safe passage for unaccompanied asylum seeking children. One of the key principles stated in this plan is around deterring illegal entry to the UK and this is backed up by proposals to limit the attainable status for those who have entered illegally. We do not think that the current paperwork presents sufficient consideration of the position for children in this regard and therefore expect to see this being worked through in detail before any further steps are taken to bring forward legislation.

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