

House of Lords briefing on draft Justification Decision (Scientific Age Imaging) Regulations 2023 and draft Immigration (Age Assessments) Regulations 2023

Summary

The Nationality and Borders Act 2022 (NABA) introduced a wide range of changes to the current age assessment process, including the government giving itself the power to use scientific methods of assessment that may be inaccurate and harmful, and forcing children to consent to them. While the Justification Decision (Scientific Age Imaging) Regulations 2023 and draft Immigration (Age Assessments) Regulations 2023 implement the changes set out in NABA, they do so without sufficient justification of the use of types of practices that result in exposure to ionising radiation. They fail to recognise a number of recommendations made by the government's own scientific advisory committee, and they fail to include the necessary safeguards that could mitigate the harm caused by the introduction of scientific age imaging.

Furthermore, as [highlighted by the Secondary Legislation Scrutiny Committee](#), key elements of the policy design process and the explanatory material - namely, an impact assessment and a public consultation – are still missing and yet the government is proceeding with introducing these regulations in the face of widespread concerns. HBF co-chairs the Refugee and Migrant Children's Consortium (RMCC), and also supports the [joint briefing from the RMCC, Refugee Council and Royal College of Paediatrics and Child Health](#).

The use of scientific methods to assess age

The Nationality and Borders Act 2022 (NABA) allows the government to introduce regulations specifying scientific methods to be used to assess age, including 'examining or measuring parts of a person's body' and the analysis of saliva, cell or other samples and the DNA within them.

The use of scientific methods to assess age has long been the subject of debate and professional medical bodies have been unequivocal in their rejection of use of dental x-rays, bone age and genital examination as being unethical and extremely imprecise as methods for assessing age.¹

¹ See for example [RCPCH responds to UK Government plans to authorise the use of x-rays in age assessments of children seeking refuge and asylum](#) | RCPCH and [The Use of Biological Methods in Asylum Age Assessments - POST \(parliament.uk\)](#)

While scientific methods are used in some European countries, an increasing number of legal decisions in Europe that have held that scientific methodology is not sufficiently sound to be relied upon.² Furthermore, [the Council of Europe has made clear](#) that:

"There is a broad consensus that physical and medical age assessment methods are not backed up by empirically sound medical science and that they cannot be assumed to result in a reliable determination of chronological age. Experts agree that physical and medical age assessment methods enable, at best, an educated guess... several methods have been evidenced to have a harmful impact on the physical and mental health."

'Justification' for the use of scientific age imaging and missing safeguards

The Justification Decision (Scientific Age Imaging) Regulations 2023 are health and safety regulations, made in accordance with regulation 4 of the Justification Decision Power (Amendment) (EU Exit) Regulations 2019. The explanatory memorandum to these regulations states that the regulations laid down "basic safety standards for protection against the dangers arising from exposure to ionising radiation" and required that "new classes or types of practice resulting in exposure to ionising radiation are 'justified' before being adopted. For these purposes, 'justified' means that the individual or societal benefit resulting from the practice outweighs the health detriment that it may cause.

The Home Office has received [advice from the Interim Age Estimation Science Advisory Committee](#) (IAESAC) which found that "*biological age assessment can be carried out using an appropriate combination of dental and skeletal methods; assessment of development of the third molar using radiography, radiography of the hand/wrist or MRI of the knee, and MRI of the clavicle*". However, it also makes very clear that "*if biological age assessment is implemented it should be used to assess whether the age claimed by UASC is possible*" (emphasis added) and should only be used as part of a wider social work assessment that is compliant with existing guidance and case law.

While part 4 of the Justification Decision (Scientific Age Imaging) Regulations 2023 notes that that scientific age imaging can only be used to determine whether there is "more support for the age which the age-disputed person has been assessed to be" or not, HBF would argue that, given the lack of weight that can be given to these forms of assessing age, they cannot be justified as having sufficient individual or societal benefit to outweigh the health detriment that they may cause. Furthermore, the regulations ignore the Committee's additional recommendations that:

- *Any methodology used for the assessment of age must respect and prioritise the dignity of the individual being assessed and should minimise physical or psychological harm.*
- *The use of ionising radiation must be limited, with the ultimate aim of eradicating its use.*

Why has the government decided to implement one of the Committee's recommendations but not the others?

² See, for example, OCHRCR, [Spain's age assessment procedures violate migrant children's rights, UN committee finds](#)

Consent

Section 52 of NABA outlines that if a child decides not to consent to the use of a scientific process, this should be seen as 'damaging' their credibility. Furthermore, Clause 58 of the Illegal Migration Act 2023 (introduced *after* the IAESAC's report was published) goes further, allowing for an automatic assumption of adulthood if a person refuses to consent. The government's intended approach is not consistent with IAESAC's recommendation *that "no automatic assumptions or consequences should result from refusal to consent"*. This is extremely concerning.

Further questions for the Minister

- Given that the IAESAC has made clear that scientific methods can only ascertain whether an age might be *possible*, what is the *real* benefit of adding another, costly and time-consuming, element to an existing system that is already lengthy and onerous?
- What assessment has the government made of the cost of introducing the use of x-rays and MRIs into the age assessment process?
- We have yet to see an impact assessment for these regulations – this was highlighted as a key concern by the Secondary Legislation Scrutiny Committee. Why is the government moving forward with legislation when the process and operational details are still being developed?

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