

Consultation Response

To - Children, Young People and Education, & Health and Social Care Committees

Submitted by Children in Wales, with and on behalf of the Wales UNCRC Monitoring Group

Legislative Consent Memorandum for the Nationality and Borders Bill

Introduction

We welcome the opportunity to contribute comments to inform the joint Health and Social Care and Children, Young People and Education Committees scrutiny of the Legislative Consent Memorandum for the Nationality and Borders Bill.

We note that the UK Government Bill is presently at Committee Stage in the House of Lords, and many suggested amendments have been put forward by a broad range of UK human rights non-governmental organisations, legal professionals and multi-agency coalitions with expertise in this policy area¹. This includes proposals in respect of the creation of two-tier category of asylum seekers which is not in line with the UNCRC².

Consistent with our mandate, our response is principally focused on Children's Rights and the United Nations Convention on the Rights of the Child (UNCRC), and the importance of all Government Ministers observing existing duties in respect of due regard to the UNCRC when discharging all of their functions as prescribed in Wales through the Rights of Children and Young Persons (Wales) Measure 2011.

The UNCRC Monitoring Group response will mainly address the following point of enquiry, although points made within our response will also be relevant to several of the other areas of enquiry.

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 Rights of Children and Young Persons (Wales) Measure 2011 requires Welsh Government to pay due regard to the UNCRC when exercising any their functions.

¹ For example, <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/12/25115540/Nationality-and-Borders-Bill-House-of-Commons-Report-Stage-Refugee-Council-briefing.pdf>

² Nationality and Borders Bill 2021 Briefing by the Refugee and Migrant Children's Consortium House of Lords

Through the Children's Scheme, which sets out the arrangements Welsh Ministers are required to consider to secure compliance with the duty, a comprehensive Child Rights Impact Assessment (CRIA) should be undertaken and published on any decision which will have an impact on children. This is in line with the expectations of the UN Committee in respect of all governments demonstrating compliance with the UNCRC following ratification.

As the UK Government has failed to incorporate the UNCRC into domestic legislation, and as there is no equivalent legislation to that of the Welsh Measure at a Westminster level, ascertaining whether full compliance with the Articles and key principles of the UNCRC, notably non-discrimination (Article 2), best interest (Article 3), protection (Article 19) or participation (Article 12) becomes somewhat more challenging.

We are not aware of any CRIA having been developed or published by the UK Government in respect of this Bill, or any involvement of children and young people in the decision making process or during the detailed drafting (Article 12)

Much has however been written in respect of the threat to the rights of children, and the incompatibility of the Bill to obligations as set out in the UNCRC (including the more detailed CRC General Comment No 6 – Treatment of unaccompanied and separated children outside their country of origin³); the 1951 UN Refugee Convention and the European Convention on Human Rights. This includes significant concerns with regards to the proposed two-tier immigration system; the detention and appeals arrangements, and the measures for age verification through the introduction of 'scientific methods' for assessing the age of asylum-seeking children, which could put vulnerable and traumatised children's wellbeing and protection at greater risk.

Children seeking asylum, especially those unaccompanied and separated (UASC), are extremely vulnerable, often at risk of exploitation, abuse, gender based violence and trafficking. Many have experienced trauma, been victims of criminal exploitation and will require specialist interventions and support on arrival in Wales. The majority of UASC arrive in Wales spontaneously, and precise figures are difficult to obtain.

Wales has a proud tradition of taking a 'child first, migrant second' approach and in welcoming refugees and asylum seekers, recognising the valuable contributions they make to our society. The vision of Wales as a Nation of Sanctuary is to be commended and forms a key strand of the Welsh Governments current Programme for Government. The Nation of Sanctuary Plan⁴ has been endorsed by the UN's High Commissioner for Refugees. The Bill however encroaches on devolved issues and has been accused of

³ <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

⁴ https://gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan_0.pdf

severely undermining this vision⁵. Members of the Senedd tabled a Statement of Opinion calling for the complete withdrawal of the Bill⁶ and the Welsh Refugee Coalition have been vocal in their opposition to the Bill.

Article 1 of the UNCRC ensures that every child under 18 is entitled to all of the rights as prescribed regardless of their characteristics and circumstances. For unaccompanied children, age is a key determinant for being able to access support, protection and interventions to aid their recovery from trauma in line with Article 39.

The application of the age assessment process in Wales is undertaken by children's social services, informed by case law and underpinned by existing duties prescribed by Welsh legislation, most notably the Social Services and Well-being (Wales) Act 2014. All persons determined to be children are granted looked after status, and should have access to a range of care and support services to aid recovery and the statutory entitlements that this status offers. This extends to the added safeguards and protections the UNCRC provides, including the requirement that all decisions made by professionals are always made in the child's best interest.

Social service functions delivered by Welsh local authorities are subject to the due regard duty to the UNCRC under Part 1 of the Social Services and Well-being (Wales) Act 2014. To satisfy compliance with UNCRC legislative requirements, employees conducting age assessments should have the required expertise, experience and skills when making decisions, acquired through training and peer-learning opportunities, and informed by the recently revised Welsh Age Assessment Toolkit⁷. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques.

The introduction of a new National Age Assessment Board (NAAB), and the lack of detail around its function, power, constitution and independence, as well as its interaction with the age assessment process in Wales raises several concerns, given that Welsh legislation is far stronger in Wales in respect of the incorporation and application of the UNCRC as described above.

We would not wish to see any diminution of existing rights and entitlements through any centralisation of the age assessment decision making processes or the use of disputed methods of age assessment practices, which could result in the rights of asylum seeking children, including child victims of trafficking and criminal exploitation, being undermined and the best interest principle compromised.

⁵ <https://gov.wales/written-statement-uk-nationality-and-borders-bill>

⁶ <https://record.senedd.wales/StatementOfOpinion/238>

⁷ <https://gov.wales/unaccompanied-asylum-seeking-children-age-assessment-toolkit>

The UK Parliamentary Joint Committee on Human Rights (JCHR)⁸ have described the use of scientific age assessments for asylum seeking children as being unethical, with medical experts questioning the accuracy of such methods to test the age of children. Children wrongly assessed as being an adult would be denied access to education (Article 28); additional support and protection from children's services (Article 20), and could be accommodated in inappropriate settings, including adult detention centres and thus subject to heightened risks. This would be a clear breach of international protections. The British Association of Social Workers⁹ have warned that plans to reform age assessments will put the safeguarding and wellbeing of children at risk.

An additional concern is that any refusal to consent to potentially invasive medical procedures would be taken into account when determining the credibility of an age-disputed individual who could in fact be a child. The Refugee and Migrant Children's Consortium believe that this may force some children to undergo harmful assessments for fear of negatively impacting on their asylum claim.¹⁰¹¹ Again, this would be incompatible with the UNCRC.

Conclusion

The Bill as currently introduced should be amended to ensure that it is fully compatible with international obligations and domestic Welsh law which incorporates the UNCRC and fully adheres to the best interest principle. A CRIA should be urgently undertaken, published and subject to periodic review to demonstrate compliance with the UNCRC and to safeguard from any regression of existing rights entitlements and protections.

Depending on whether further changes are to be made to the current Bill, the Welsh Government may be required to introduce protective measures to mitigate any negative impact on vulnerable children, and to engage with the UK Government in respect of the implications of many strands applying in Wales to children and young people.

NB This response is written from a policy, not a legal perspective.

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About

The **Wales UNCRC Monitoring Group** (est. 2002) is a national alliance of non-governmental and academic agencies, tasked with monitoring and promoting the United Nations Convention on the Rights of the Child

⁸ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/160367/asylum-reforms-would-undermine-uks-human-rights-obligations/>

⁹ <https://www.basw.co.uk/media/news/2022/jan/basw-uk-welcomes-jchr-report-age-assessments>

¹⁰ https://www.childrenslegalcentre.com/wp-content/uploads/2021/10/RMCC-briefing-Committee-stage-NC29_37-Age-assessments-Nationality-and-Borders-Bill.pdf

¹¹ <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=82080fd5-6c8f-4f54-8ab8-92c525159910>

(UNCRC) in Wales and is facilitated by Children in Wales. The Group has engaged with the UN Committee on the Rights of the Child and submitted civil society reports to inform successive UK State Party Examinations in 2002, 2008 and 2016, and is currently engaged in the 2020-23 reporting cycle. The Groups most recent State of Children's Rights in Wales report to inform the UNs priorities can be accessed [here](#). The Group is also engaged in other opportunities to forward children's rights, through other UN treaty mechanisms, Welsh Government and Senedd policy and legislative processes.

Further information on the work of the Wales UNCRC Monitoring Group can be found here <http://www.childreninwales.org.uk/our-work/rights/wales-uncrc-monitoring-group/>