



Royal College of Nursing Wales response to Health and Social Care Committee's inquiry into the Legislative Consent Memorandum Nationality and Borders Bill

The Royal College of Nursing Wales (RCN Wales) welcomes this opportunity to respond to Legislative Consent Memorandum of the Nationality and Borders Bill. This written evidence outlines two key areas of concern: restricting access to secondary care and age assessments.

The Nationality and Borders Bill creates a two-tier system for individuals applying for asylum and allows for differential treatment based on method of arrival to the UK. This includes aspects such as granting leave to remain, the requirements an individual applying for asylum status must meet in order to be granted leave to remain, access to public funds, and also to have access to family reunification.

It is the Royal College of Nursing's view that these proposals significantly narrow access to the asylum system for those arriving through irregular routes. Irregular migration is defined as migration which takes place outside the laws, regulations, or international agreements governing the entry into a State.¹ However, the presence of irregular migration does not relieve States of their obligations to uphold the rights of refugees.²

The United Nations Refugee Agency (UNHCR) has raised that the proposal for differential treatment contravenes international law (1951 Refugee Convention) by denying refugees access to the rights enshrined in the Convention and the right to family reunification.³

Across the UK there are currently 131,640 registered international nurses.⁴ This information is not published for Wales, but we know health boards and social care providers are reliant on international nurses to provide care. The Welsh Government is currently developing an All-Wales International recruitment process.

In June 2019 Aneurin Bevan University Health Board had 350 Full Time Equivalent (FTE) registered nurse vacancies. In May 2021 the health board had only 165 and expected

¹ [Key Migration Terms, Migration Glossary | IOM, UN Migration](#)

² [Key Migration Terms, Migration Glossary | IOM, UN Migration](#)

³ [UNHCR - UNHCR Summary Observations on the Nationality and Borders Bill, Bill 141, 2021-22](#)

⁴ [The NMC Register Mid-year update: 1 April to 30 September 2021](#)

this to decrease further to 121 by August 2021. This success is largely due to a successful international recruitment campaign. The health board has extensively engaged with overseas recruitment companies and since September 2019, the health Board has appointed 160 FTE overseas nurses. Cwm Taf Morgannwg University Health board have also successfully attracted international nurses to the health board. The health board commenced an overseas nurse recruitment campaign in June 2019 and has since recruited 213 FTE nurses.⁵

Social care is also reliant on international nurses and care workers as we don't have a big enough population to provide care for the ageing population. In Wales it is projected that by 2038 1 in 4 of the population will be over 65.⁴ Between 1998 and 2018, the proportion of the population aged 65 and over has increased from 17.4 per cent to 20.8 per cent, while the proportion of the population aged 15 and under has fallen from 20.6 per cent to 17.9 per cent.⁵

As there may not be enough working age people in Wales to provide social care in the near future we need to ensure routes of international recruitment remain open. To meet the growing demands of the sector it is imperative that international care workers are given a workable route to employment in Wales and are not hindered by unachievable salary thresholds. Without a significant pay rise, the current salary threshold of £20,480 is unworkable. Care workers should be added to the Shortage Occupation List.

Every day international nurses and care workers make enormous contributions within the health and social care sector across the UK and are a vital part of the workforce. International nurses and care workers arrive to the UK through several immigration routes, including sometimes as refugees.

In March 2020 the Royal College of Nursing signed the Welsh Government's position paper on migration⁶

Key area of concern

The Bill creates additional barriers for individuals navigating the system for applying for asylum status, including those who might be internationally qualified as nurses. The Bill also presents a challenge to these registered nurses as professionals in age assessments.

Age assessments

It is important that any changes to age assessments, including regulations, use of scientific methods and appeals, that may impact on the devolved functions and legislative remit of the Social Care and Wellbeing (Wales) Act 2014 would be subject to Legislative Consent Memoranda.

⁵ <https://ctmuhb.nhs.wales/about-us/our-board/board-papers/2021-board-papers/27-may-2021/2-2-14b-appendix-a-annual-assurance-report-on-compliance-on-the-nurse-staffing-levels-wales-act-2019-2020-1-pdf/>

⁶ <https://gov.wales/wales-position-paper-migration>

The Royal College of Nursing would seek to ensure scientific methods of age assessment would not be used in Wales.

The practice of assessing age is primarily carried out to determine an individual's right to child social services. It applies in relation to the arrival of unaccompanied asylum seeking individuals in the UK without proof of age documentation. The Royal College of Nursing Wales is concerned about the lack of recognition that social services is devolved and there is existing Welsh social services legislation that provides guidance for age-assessments.

In Wales, unaccompanied asylum seeking children are looked after in line with the Social Services and Well-being (Wales) Act 2014. The Act provides a range of assessment functions including a 'what matters' assessment that includes a holistic, multi-agency age assessment approach. The Welsh Government recently published a toolkit to provide guidance for age-assessments.⁷ The toolkit does not recommend or support the use of medical examinations as determinants of age. This is in contrast to the Bill which suggests plans to use dental x-rays to determine age.

The Royal College of Nursing shares the Welsh Government's concern in regard to the UK Government centralising processes which could diminish existing Welsh national duties and function. For example, the UK Government's New Plan for Immigration (NPfI) set out proposals relating to the age assessment of unaccompanied asylum seeking children and young people through the establishment of a National Age Assessment Board (NAAB). While it is our understanding that the NAAB is England-only there is little acknowledgement to the fact social care is devolved and age assessments are already established in Wales.

Considering the powers granted to the Home Secretary to determine methods for age assessments and the lack of clarity regarding the functions and constitution of the Bill and NAAB, it is the Royal College of Nursing's view that there is a risk that health and care professionals such as registered nurses may be asked to use methods which are scientifically disputed and could harm patients where they are exposed to radiation without medical benefit.⁸

The Royal College of Nursing is concerned that potential changes to age assessments at a UK level could place registered nurses at odds with their professional requirements under The Nursing and Midwifery Council (NMC) Code to always act in the best interests of people, and to always practise in line with the best available evidence.⁹ Nurses are non-judgemental and follow an evidence-base approach to ask them to do otherwise would challenge their profession. Furthermore refugee or asylum

⁷ <https://gov.wales/sites/default/files/publications/2021-06/unaccompanied-asylum-seeking-children-age-assessment-toolkit.pdf>

⁸ [Nationality and Borders Bill \(21st September 2021\) \(parliament.uk\)](https://www.parliament.uk/bills/2021-22/nationality-and-borders-bill-2021)

⁹ [nmc-code.pdf](https://www.nmc.org.uk/standards/nmc-code/)

seeker without recourse to public funds are amongst the most vulnerable people in society and registrants will bear some emotional burden for these decisions.

The Royal College of Nursing urges caution regarding Clause 51 which allows for the Home Secretary to introduce regulations specifying scientific methods to be used in age assessments.

Clause 49 - Persons subject to immigration control: referral or assessment by local authority etc.

This clause requires a local authority or public authority as specified in regulations made by the Secretary of State to refer an age-disputed individual for an age assessment, or to conduct an assessment themselves.

Subsection (4)(a) makes note that ‘a local authority needs to know the age of an age-disputed person for the purposes of deciding whether or how to exercise any of its functions under relevant children’s legislation in relation to the person’.¹⁰ In this case, the relevant children’s legislation would be the Social Services and Wellbeing (Wales) Act 2014.

Subsection (7) provides that ‘an age assessment of an age-disputed person conducted by a “designated person” following a referral from a local authority under subsection (1) or (3)(a) is binding on a local authority’.¹¹ This means that a decision made by a designated person would be binding for a Welsh local authority. A designated person is simply defined as an official of the Secretary of State who is designated by the Secretary of State to conduct age assessments. As mentioned above Wales already has existing legislation and age-assessment guidance in place. Currently age assessments are carried out by social workers as part of a multi-agency effort. If a designated person is assigned by the Secretary of State for an age-disputed person in Wales, they must ensure Welsh legislation and guidance is followed. It is the Royal College of Nursing agrees with the Welsh Government that legislative consent is required for this provision because it impacts the devolved area of social care and imposes functions on devolved Welsh authorities.

¹⁰ [Nationality and Borders Bill \(HL Bill 82\) \(parliament.uk\)](#)

¹¹ [Nationality and Borders Bill \(HL Bill 82\) \(parliament.uk\)](#)

About the Royal College of Nursing (RCN)

The RCN is the world's largest professional organisation and trade union of nurses, representing around 465,000 nurses, midwives, health visitors, healthcare support workers and nursing students, including over 27,000 members in Wales. RCN members work in both the independent sector and the NHS. Around two-thirds of our members are based in the community. The RCN is a UK-wide organisation, with its own National Boards for Wales, Scotland and Northern Ireland.

The RCN represents nurses and nursing, promotes excellence in nursing practice and shapes health and social care policy.