

Refugee and Migrant Children's Consortium

Safety of Rwanda (Asylum and Immigration) Bill - House of Lords Report Stage Amendment on unaccompanied children - March 2024

Introduction

The Refugee and Migrant Children's Consortium is firmly opposed to the Safety of Rwanda Bill in its entirety. The Bill seeks to legislate that Rwanda is safe, despite this having been authoritatively found to be false by the Supreme Court; is likely in breach of international law; and strikes a serious blow to the UK's commitment to the rule of law.

Our specific concern regarding unaccompanied children seeking asylum is that, **despite the Rwanda Treaty¹ (which this Bill sits alongside) setting out that it is *not* the Government's intention to remove unaccompanied children to Rwanda,² there is a significant risk that this will happen.** Time and time again we see unaccompanied children incorrectly assessed by immigration officials to be adults upon their arrival in the UK and treated as over the age of 18, only for them to be determined to be children after challenge and further assessment. **Evidence from local authorities' children's services revealed that in the first six months of 2023 alone, 485 children had been wrongly assessed by the Home Office to be adults.³ Under this Bill, those 485 children would have faced removal to Rwanda.** Should such children seek to challenge the incorrect assessment, Section 57 of the Illegal Migration Act 2023 (IMA) establishes that the Home Secretary can make arrangements to remove a person to Rwanda even while UK courts and tribunals are considering the challenge of the age assessment. There is a real risk that children arriving alone in the UK in search of safety will mistakenly be sent to Rwanda before they are able to access justice.

Amendment 34

BARONESS LISTER OF BURTERSETT
LORD DUBS
THE LORD BISHOP OF CHELMSFORD
BARONESS NEUBERGER

After Clause 4, insert the following new Clause — “Section 57 of the Illegal Migration Act 2023 Section 57 of the Illegal Migration Act 2023 (decisions relating to a person's age) does not apply in relation to removals to the Republic of Rwanda.”

Member's explanatory statement

This amendment disapplies section 57 of the Illegal Migration Act 2023 in relation to removals to the Republic of Rwanda, to restore the ability of domestic courts and tribunals to fully consider suspensive judicial review claims regarding removal decisions taken on the basis of age assessments of unaccompanied children, given that the Rwanda Treaty “does not cover unaccompanied children”.

¹ [UK-Rwanda treaty: provision of an asylum partnership - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-rwanda-treaty-provision-of-an-asylum-partnership) ('Rwanda Treaty').

² Article 3.4 of the Rwanda Treaty states: “The Agreement does not cover unaccompanied children and the United Kingdom confirms that it shall not seek to relocate unaccompanied individuals who are deemed to be under the age of 18. Any unaccompanied individual who, subsequent to relocation, is deemed by a court or tribunal in the United Kingdom to either be under the age of 18 or to be treated temporarily as being under the age of 18, shall be returned to the United Kingdom in accordance with Article 11 of this Agreement.”

³ Helen Bamber Foundation, Humans for Rights Network, and Refugee Council, [Forced Adulthood: The Home Office's incorrect determination of age and how this leaves child refugees at risk](#), January 2024.

Government arguments at Committee stage

At Committee stage, the Minister tried to provide assurance that “[i]n the scenario whereby the Home Office has doubts over a person’s age, they would not be subject to the duty to remove until such time as a final decision on age has been made.”⁴ But our concerns are not related to instances where the Home Office ‘has doubts’. They relate to instances where Home Office officials incorrectly *decide* a young person is an adult and place them erroneously into the adult system. Section 57 is thereby no safeguard against the fundamental problem outlined below – that there are many children, arriving here alone, who are wrongly deemed by a Home Office official to be over the age of 18 and would be at risk of being sent to Rwanda under this Bill. Statistics in the recent *Forced Adulthood* report show just how high that risk is.

As the Minister acknowledged, under Section 57 any judicial challenge of a Home Office decision on age will not suspend removal.⁵ This amendment seeks to ensure children erroneously determined to be adults by Home Office officials are not wrongly removed to Rwanda, by ensuring any judicial challenge they may bring against the age determination is completed before removal proceeds.

At Committee stage, Lord Murray argued that this amendment was unnecessary because Section 57 “applies only if the ‘relevant authority decides the age of a person’.”⁶ However, ‘relevant authority’ as defined by Section 57(6) includes ‘an immigration officer’.⁷ We continually see immigration officers deciding a child is an adult on arrival and placing that child into the adult system. It is only after that age decision is challenged and a further determination is made, that the child is correctly assessed to be a child.

The Minister stated that existing provisions are “entirely necessary to safeguard genuine children and guard against those who seek to game the system by purporting to be adults”. The RMCC is not arguing that all those claiming to be children are accepted as such. Rather, it is the Consortium’s view that in light of the wealth of evidence of poor Home Office decision making that putative children must be able to have their ages assessed by qualified and experienced local authority social workers and where there are grounds for legal challenge that challenge should be heard in the UK. Judicial reviews only proceed if there is a basis for the challenge, guarding against frivolous claims and in this current legal aid crisis, individuals will be unable to secure legal representation if attempting to “game the system”.

The Minister also referred at Committee stage to the introduction of scientific age assessments “to strengthen age assessments further”. However, the Home Office has already made clear that scientific methods should only be used as part of a wider ‘Merton-compliant’ age assessment because, as the Age Estimation Scientific Advisory Committee has stated, scientific methods can only “*consider whether the age claimed by the UASC is ‘possible’ rather than be used to answer the specific question of how old that person is*”. A child deemed to be an adult by the Home Office on arrival will *not* have had a full ‘Merton-compliant’ age assessment. Scientific methods cannot be used on arrival, so they are not relevant to the concerns being raised.

⁴ [Contribution by Lord Sharpe of Epsom \(Con\)](#) on Monday 19 February 2024,

⁵ Ibid. “Instead, under Section 57(4) of the 2023 Act, those wishing to challenge 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.”

⁶ [Contribution by Lord Murray of Blidworth \(Con\)](#) on Monday 19 February 2024,

⁷ See Section 57(6), [Illegal Migration Act 2023 \(legislation.gov.uk\)](#)

The Government's commitment regarding unaccompanied children

Article 3.4 of the Rwanda Treaty states clearly: “*The Agreement does not cover unaccompanied children and the United Kingdom confirms that it shall not seek to relocate unaccompanied individuals who are deemed to be under the age of 18*”.⁸ The Government's commitment is clear: it does not intend to remove unaccompanied children.

Yet, the Rwanda Treaty acknowledges the likelihood of mistakes being made and children in fact facing the nightmare of being removed alone to Rwanda. The very article that sets out that unaccompanied children will not be removed provides that any unaccompanied individual who *is* removed to Rwanda and subsequently found by a UK court or tribunal to be under 18 years of age is to be returned to the UK, with Article 11 setting out the measures that are to be taken to return an individual to the UK.⁹

The Government has thereby recognised the risk that unaccompanied children may mistakenly be removed to Rwanda and would then have to seek redress in UK courts while they wait in Rwanda. This is unacceptable and not in the best interests of any child. The proposed amendment would instead ensure the Bill provides an adequate safeguard against such errors occurring.

Erroneous removals will be the reality

Members of the Refugee and Migrant Children's Consortium repeatedly see the Home Office incorrectly assess unaccompanied children as adults upon their arrival in the UK. These children are wrongly treated as adults by border officials and later determined to be children after further assessment undertaken by local authority social workers.

Data collected through Freedom of Information requests by the Helen Bamber Foundation found that over an 18-month period (January 2022 to June 2023) more than 1300 children were wrongly assessed to be adults by the Home Office and sent to adult accommodation or detention before later (sometimes months later) being referred to local authority children's services.¹⁰ These figures are likely to be an underestimate because not all local authorities collect this data and not all children are being identified and referred to children's services. In the same period, the charity Humans for Rights Network recorded 832 safeguarding episodes nationwide where there were strong reasons to believe that a minor was sharing accommodation with an unrelated adult.¹¹ The Refugee Council's Age Dispute Project assisted 185 children who had initially been determined to be adults, over half of whom were taken into local authority care from an unsafe adult setting.

Under this Bill, such unaccompanied children would now face the exponentially starker consequence of being wrongly removed to Rwanda. Indeed, in 2022 there were a number

⁸ Article 3.4, [Agreement between UK and Rwanda for the provision of an asylum partnership to strengthen internal commitments on the protection of refugees and migrants \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/agreement-between-uk-and-rwanda-for-the-provision-of-an-asylum-partnership-to-strengthen-internal-commitments-on-the-protection-of-refugees-and-migrants.pdf)

⁹ Ibid, Articles 3.4 and 11.

¹⁰ See Helen Bamber Foundation, Humans for Rights Network, and Refugee Council, [Forced Adulthood: The Home Office's incorrect determination of age and how this leaves child refugees at risk](#), January 2024, p. 9 and Helen Bamber Foundation, Asylum Aid and Humans for Rights Network, [“Disbelieved and Denied: Children seeking asylum wrongly treated as adults by the Home Office.”](#) April 2023, p. 4. In 2023 across 69 local authorities there were 1004 referrals to their children's services department of young people who had initially been assessed to be adults and sent to adult accommodation or detention. Of the cases when a decision on age was made/age assessment concluded (847), 57% were found to be children - meaning that in just 6 months at least 485 children had been wrongly placed in adult accommodation or detention at significant risk. In 2022 across 70 local authorities there were 1,386 referrals to their children's services department of young people who had initially been assessed to be adults and sent to adult accommodation or detention. Of these, two-thirds (867) were found to actually be children.

¹¹ Helen Bamber Foundation, Humans for Rights Network, and Refugee Council, [Forced Adulthood: The Home Office's incorrect determination of age and how this leaves child refugees at risk](#), January 2024, p. 9.

of cases of children who, having been detained as adults, had been issued with ‘notices of intent’ to remove them to Rwanda.¹² Assuming these children are identified, their only hope will be that their plight is acknowledged, their challenge, somehow, quickly progressed through UK courts while they remain in Rwanda, and the mistake reversed – all at serious risk to their physical and mental well-being.

Inadequate safeguards

In response to direct queries by Baroness Brinton and Baroness Lister on how the Government intends to avoid unaccompanied children wrongly being removed to Rwanda, the Minister’s response has been:

*The Home Office will treat an individual claiming to be a child as an adult without conducting further inquiries only if two officers—one of at least chief immigration officer grade or equivalent—have separately determined that the individual’s physical appearance and demeanour very strongly suggest that they are “significantly over 18 years” of age.*¹³

This is exactly what happens now, or what is *meant* to happen. According to the Home Office’s guidance on assessing age:¹⁴ “*If your assessment determines that the claimant’s physical appearance and demeanour very strongly suggests they are significantly over 18 years of age, you must refer the case to another officer to act as a ‘second pair of eyes’.*”¹⁵ That second officer is to be a Chief Immigration Officer, higher executive officer, or higher officer.

It is precisely this practice with two officials that has resulted in hundreds of children being incorrectly assessed as adults. The failings of this practice have also been highlighted by the former Independent Chief Inspector of Borders and Immigration¹⁶ and HM Chief Inspector of Prisons, with the latter setting out very clearly the risk of these processes:

*There was no formal governance or quality assurance of CIO [Chief Immigration Officer] age assessments... Given the lack of assurances around the process, we could not be confident that minors had not been wrongly age-assessed and sent to adult accommodation.*¹⁷

Nonetheless, the Government now presents this established practice as though a new solution. Practice to date shows it is no safeguard at all.

Lack of effective due process

Section 57 of the Illegal Migration Act 2023¹⁸ provides that any application to judicially review an age determination is non-suspensive: the child’s removal will proceed even if they assert that the Home Office’s initial assessment is wrong and take steps to legally challenge this assessment by judicial review. This allows for children to be

¹² The Guardian, [UK accused of attempting to deport children to Rwanda](#), 5 June 2022

¹³ Contribution of Lord Sharpe of Epsom, 29 January, 2024, [https://hansard.parliament.uk/Lords/2024-01-29/debates/BCBA2022-FFD6-412C-9B2D-A4DBB2E85456/SafetyOfRwanda\(AsylumAndImmigration\)Bill#contribution-D2546C61-1594-4498-8068-8C32CBF4956B](https://hansard.parliament.uk/Lords/2024-01-29/debates/BCBA2022-FFD6-412C-9B2D-A4DBB2E85456/SafetyOfRwanda(AsylumAndImmigration)Bill#contribution-D2546C61-1594-4498-8068-8C32CBF4956B)

¹⁴ See Home Office, [Assessing Age](#), Version 6, published 31 March 2023.

¹⁵ Ibid, p. 17

¹⁶ See Independent Chief Inspector of Borders and Immigration, [An inspection of the initial processing of migrants arriving via small boats at Tuq Haven and Western Jet Foil, December 2021-January 2022](#), published July 2022, p. 40, §6.31 and §6.29 citing the HMIP reports.

¹⁷ [Report on an unannounced inspection of the detention of migrants at Dover and Folkestone by HM Chief Inspector of Prisons 8 October and 1–3 November 2021 \(justiceinspectors.gov.uk\)](#), p. 17, §§2.22, 2.23.

¹⁸ Section 57, [Illegal Migration Act 2023 \(legislation.gov.uk\)](#)

wrongly ‘assessed’ as adults by the Home Office and then swiftly removed from the country without having had the chance to challenge that decision and without ever encountering child protection professionals. The Rwanda Treaty envisages as adequate such challenges proceeding in the UK while the child is forcibly removed to Rwanda. This can neither be effective due process nor in the best interests of the child. As the Joint Committee on Human Rights stated, this provision is ‘clearly not in the best interests of any child and is likely to breach the child’s rights under Articles 6, 8, and 13 of the European Convention on Human Rights’.¹⁹

The Secretary of State bears a duty to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009. It is through Section 55 that the spirit of the UK’s obligation to the best interests principle – as set out in Article 3 of the UN Convention on the Rights of the Child 1989 – has been translated into UK law for children affected by immigration control.²⁰ A child’s best interests cannot be upheld when they are located more than 4,000 miles away from the proceedings with little, if any, access to legal representation and no support from services dedicated to children.

The proposed amendment makes provision for a legal challenge against an age assessment to be completed *before* a young person is removed to Rwanda, to ensure that no unaccompanied child wrongly determined to be an adult by the Home Office is removed and that the UK upholds its commitment to give due weight to the best interests of the child.

CASE STUDY

Abdul, aged 16, arrived by small boat in January 2023. Exhausted after seven hours at sea, he was not offered medical care and waited in a cold marquee for the ‘age interview’. This consisted of four immigration officials asking, without an interpreter, for Abdul and others to write their age on a piece of paper whilst in a line. No other questions were asked, and he did not know he had been given a date of birth making him 23 until he arrived at a large asylum hotel. Upon arrival at the hotel, he told a security guard who spoke his native language that he was under 18, but the guard informed Abdul that he had been registered by the Home Office as an adult. No referral to children’s services was made by hotel staff and it was a month before Abdul was able to contact the organisation Humans for Rights Network for support. Eventually (after three months) Abdul was taken into care, the local authority deciding that he was 16.

If this Bill passes, and under the Illegal Migration Act 2023, Abdul would face the risk of removal to Rwanda before he had even had the chance to be seen by a social worker. Even if he had managed to find a lawyer to challenge the Home Office’s decision, he could have been removed from the country while that challenge was ongoing.

It is entirely unclear what would happen to him, if he was subsequently found to be 17 by a UK court, and a request was made for his return under Article 11 of the Rwanda Treaty. If he turned 18, whilst in Rwanda, it is unclear whether he would be returned to the UK. If he was returned to the UK, it is unclear whether he could then be sent to Rwanda as an adult, subject to the cyclical traumatising process of forcible removal once more.

For more information contact

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¹⁹ JCHR, [Legislative Scrutiny: Illegal Migration Bill](#), 6 June 2023 §228.

²⁰ [ZH \(Tanzania\) v Secretary of State for the Home Department](#) – Lady Hale at §23