



Borders, Citizenship and Immigration Bill
House of Lords Committee
Part 3

Clause 51 Duty regarding the welfare of children
Amendments 116 ‘all children’
The question of age disputes

ILPA supports amendment 116, 114 in the names of the Baroness Hanham and the Viscount Bridgeman.

116 Page 41, line 43, after "means" insert "all"

Presumed Purpose

The amendment would write into the legislation that it covers ‘all’ children who are under 18. It thus provides an opportunity to probe for any lacunae in the clause as drafted, and also to consider the question of age disputes.

Briefing

Current age assessment processes of the Government are wholly inadequate as detailed in ILPA’s Report *When is A Child Not a Child?*¹ and acknowledged by the UN Committee on the Rights of the Child in its in its Concluding Observations of October 2008 on the UK’s report under the Convention². The Committee recommended that the UK:

- ‘(e) **Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts’ guidance on how to determine age’**

The Committee hit upon the most important matter in opening its recommendation with ‘give the benefit of the doubt’. Age assessment is not an exact science; you cannot date stamp a child.

The UK Border Agency’s Asylum Process Guidance on *Disputed Age Cases* states

¹ May 2007.

² Committee On The Rights Of The Child Forty-Ninth Session, Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, October 2008 at www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf paragraph 71(1)(c).

The UK Border Agency will dispute the age of an applicant who claims to be a child but whose physical appearance and/or general demeanour very strongly suggests that they are aged 18 or over, unless there is credible documentary or other persuasive evidence to demonstrate the age claimed. In borderline cases, it is the UK Border Agency's policy to give the applicant the benefit of the doubt and treat them as a child.

*If the applicant's physical appearance/demeanour very strongly suggests that they are **significantly** over 18 years of age the applicant should be treated as an adult and be considered under the process instructions for adults. These cases **do not** fall within the age dispute process.'*

This guidance is not working and should be withdrawn. It is giving officials licence to dispute age in cases of children, or at best, cases that are borderline. All too often the dispute appears to arise as a result of UK Border Agency officials mere assessment of a child's physical appearance. These officials are not qualified to arrive at such decisions. ILPA members continue to see cases where all the evidence is compatible with a child's being a child, as they say they are, but evidence other than the testimony of the child is also compatible with their being over 18. These are being treated as age disputes. They should not be under the guidance above, but they are.

The process of dispute and its contentious resolution is harmful to children. The first and most essential step is confine age disputes to a minimum of cases, not have it as the first thing on the agenda when a child presents to immigration control.

The Government's age assessment working group met for the last time in August 2008. To date we are aware neither of the outcome of the Working Group nor the Government's plans in this area. One subject deliberated by the working group was the question of X-rays as a tool for assessing age. ILPA considers that the use of X-rays for non-therapeutic purposes is unlawful and direct the Committee to the Opinion of then Nicholas Blake QC (now Blake J) and Charlotte Kilroy that:

"No individual, and in particular no child, can lawfully be 'subjected' to a medical examination. This would be an assault."³

Peers may wish to press the government on what has happened to its work on age disputes.

Whatever protection is put in place for children, this avails a child nothing if they are not recognised as a child. There is a very real danger that as the Clause 51 duty begins to bite to raise standards for the treatment of children, the gatekeeping of the category of 'child' will increase. We have seen this happen with those who have been tortured, we have seen it happen with those who have been trafficked, we have seen it happen with children. Giving children the benefit of the doubt in age dispute cases is thus central to ensuring that the Clause 51 duty will bite.

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³ 7 November 2007