



## Refugee Children's Consortium

### Modern Slavery Bill Committee Stage Briefing – House of Commons September 2014 Clause 43: Presumption of Age

#### Introduction

Clause 43, as it currently stands, provides for a presumption of age where a public authority has reason to believe a person is trafficked and is uncertain about their age: if the authority has reason to believe that the person is under 18, they shall be presumed to be a child. This clause aims to give effect to the UK's international obligations under the Trafficking Directive to provide for a presumption of age where there are reasons to believe that a trafficked person is a child.

The experience of the RCC and research by The Children's Society and Refugee Council has found that trafficked children are frequently age disputed because they will carry false documents or be forced to lie about their age by their traffickers.<sup>1</sup> Children whose age is disputed by the authority are put at risk of re-trafficking, exploitation or serious harm, particularly if they find themselves detained with adults, homeless or placed in adult accommodation and unable to access the services they need. The process of age assessment causes great distress to the child, particularly where they are involved in legal proceedings. Even when age is finally established, valuable time is lost forever to that child and cannot be recovered.

The RCC welcomes the inclusion of this clause but the presumption has four key problems:

1. It is overly limited in scope and in duration;
2. It omits to deal with the situation of child victims of slavery, as distinct from trafficking;
3. It inappropriately assumes that there will be a local authority age "assessment" as a matter of course; something which is not a given, nor indeed desirable in all cases;
4. The duration of the presumption could be as little as a day or two, providing no real value to the child in question. Social services often wrongly age assess children to be adults; where there is a legal challenge to a social services age assessment the presumption should remain in place until the dispute is resolved.

The RCC urges the Committee to support the amendments tabled by Sarah Champion MP (101-106).

#### **A: Proposed Amendment: extension of scope (Amendments 101, 102, 106)**

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##### **(Amendment 101)**

Page 28, line 40, leave out "with functions under relevant arrangements"

##### **(Amendment 102)**

Page 29, delete 43(3)

##### **(Amendment 106)**

Page 29, line 2, leave out from "for" to "that" in line 3.

#### **Purpose**

These changes, taken together, extend the scope of the presumption of age. The first amendment ensures that all public authorities must apply the presumption of age, not just authorities to be

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<sup>1</sup> Franklin, A. and Doyle, L. (2013) *Still at Risk: A review of support for trafficked children*. The Refugee Council and The Children's Society: <http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/young-refugees-and-migrants/trafficking-and-exploitation>

specified in (as yet unseen) guidance under Clause 42. The second amendment ensures that public authorities apply the presumption across all of their functions, not just functions to be specified in the guidance. The third amendment deletes reference to “specified functions” and is consequential upon the first and second amendments.

## **Briefing**

As this clause currently stands only those public authorities to be specified in guidance issued under Clause 42(1) must apply the presumption of age; this guidance does not yet exist. All public authorities should apply the presumption of age to avoid a difference in treatment whereby a person could be treated as a child by one public authority, but an adult by another.

The application of the presumption is further limited as it will only apply to certain functions of the public authorities applying it, as set out in the guidance. Again, this leaves open the possibility of inconsistent treatment. For example a local authority could treat a person as a child in relation to trafficking support, but treat them as an adult for housing purposes.

## **B: Proposed Amendment: inclusion of slavery (Amendment 103)**

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Page 28, line 41, after “trafficking” insert “or slavery”.

### **Case study: Ibrahim\*** **NSPCC**

Ibrahim was 15 years old when he arrived in London from Sierra Leone. After the murder of his father he was preyed on by a trafficker who brought him to the UK using false documents that stated Ibrahim was 35. On arrival in London Ibrahim was handed over to a family as a domestic slave: *“I was told that I had to look after their children and cook and clean the house. I had never cleaned or looked after children before, so when I got things wrong the parents would hit me.”*

Ibrahim was forced to sleep in a broom cupboard and was underfed and physically abused. He escaped and asked people for help and was taken to Social Services, who age assessed him as over 18 the following day, and referred him to a hostel for adult migrants: *“When I was there the Home Office matched my finger prints with my forged passport and said I was 35. They told me I was a liar”.*

Ibrahim’s solicitor successfully challenged the social services assessment that he was an adult and helped him get a foster placement: *“I’ve been granted asylum now and I’m at university hoping to be an engineer one day.”*

An expanded presumption of age would have protected Ibrahim from being accommodated with adults and denied child services for the duration of his age dispute. Many children are preyed upon in adult hostels and re-trafficked internally within the UK before they can be helped. The age presumption as it currently stands would only have remained in place for 1 day in Ibrahim’s place, rendering it ineffective.

\*Names and identifying features have been changed to protect the individual's identity

## **Purpose**

To expand the scope of the application of the presumption of age (i.e. that where there are reasons to believe that a person is a child where age is uncertain, the person shall be presumed a child), to children who may be victims of slavery, not just trafficking.

## **Briefing**

The Bill aims to protect victims of slavery as well as trafficking. The application of the presumption of age should be extended to the former group. There are instances where there is no evidence that a child has been moved, either to the UK or within the UK, but they have nonetheless been exploited as a slave. Where such a person’s age is uncertain and there are reasons to believe that s/he is a child, such a person should also be given the benefit of a presumption that they are a child.

## C: Proposed Amendments: removal of implied duty to assess age (Amendments 104-105)

### (Amendment 104)

Page 29, line 1, after (2) insert “Unless and”

### (Amendment 105)

Page 29, line 2, after “determined” insert “and no challenges to that determination are pending”

## Purpose

The purpose of the first amendment is to remove any implied requirement for a local authority age assessment or other determination to take place. The purpose of the second amendment is to ensure that if a dispute as to age arises, the child is protected by the presumption remaining in place until a final resolution of the dispute.

## Briefing

Sub-section 43(2) as it stands assumes that there will necessarily be a local authority age assessment or other “determination” of a person’s age. This is not the case. There is no statutory obligation to carry out age assessment, an imprecise and often problematic calculation of age. We strongly believe that age assessments should not be a routine part of a local authority’s assessment of an unaccompanied or trafficked child. Age can never be scientifically or otherwise conclusively determined<sup>2</sup>. Age determination is an inexact science; there is no single reliable method for making precise estimates and the margin of error with respect to medical assessments can sometimes be as much as five years either side, especially around the time of puberty.<sup>3</sup> Where a person states that they are under 18 and there is reason to believe this, this should be accepted instead of putting the child through a formal assessment which may lead to a dispute, litigation, and stress for the child<sup>4</sup>.

To protect children, if a dispute does arise, the presumption of age should remain in place until the final resolution of that dispute. Children have been wrongly assessed to be adults and detained with adults or otherwise put at risk<sup>5</sup>. In view of the risk of error, children must be protected while any dispute is on-going.

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The Refugee Children’s Consortium (RCC) is a group of over 40 NGOs. Members of the RCC are: Action for Children, Asphaleia Action, Asylum Aid, Association of Visitors to Immigration Detainees (AVID), Bail for Immigration Detainees, The British Association of Social Workers (BASW), Brighter Futures, British Association for Adoption and Fostering (BAAF), Catch22 National Care Advisory Service, Children and Families Across Borders (CFAB), Coram Children’s Legal Centre, Children England, Child Poverty Action Group (CPAG), Children’s Rights Alliance for England, The Children’s Society, DOST, ECPAT UK, Family Rights Group, The Fostering Network, Family Service Units (FSU), Freedom from Torture, Gatwick Detainees, Kent Refugee Action Network, Klevis Kola, The Immigration Law Practitioners’ Association (ILPA), Islington Law Centre, JCORE, Law Centres Network, Medical Justice, NCB, NSPCC, The Prince’s Trust, RAMFEL, Refugee Action, Refugee Council, Refugee Support Network, Royal College of Paediatrics and Child Health, Scottish Refugee Council, Student Action for Refugees (STAR), UNICEF UK, Voice, The Who Cares? Trust, and Welsh Refugee Council.

Barnardo’s, British Red Cross, Office of the Children’s Commissioner (England) & UNHCR all have observer status.  
<http://www.refugeechildrenconsortium.org.uk/>

**The RCC is happy to have the support of The Anti-Trafficking Monitoring Group on this issue.**

<sup>2</sup> See, e.g. the comments of Collins J in *AW (A Child), R (on the application of) v London Borough of Croydon* [2009] EWHC 3090 (Admin) (16 November 2009) at para. 1.10: “[I]t is known that age assessment is an imprecise art. It is not possible ever to be entirely sure that the decision reached is the correct one, and social workers, indeed anyone concerned with age assessments, has to appreciate that, and to recognise that ...”

<sup>3</sup> Aynsley-Green, A. et al. (2012) „Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control”:

<sup>4</sup> See *When is a Child not a Child?* ILPA (2007) <http://www.ilpa.org.uk/data/resources/13266/ILPA-Age-Dispute-Report.pdf>

<sup>5</sup> See, e.g., *J, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 3073 (Admin) (24 November 2011) Available at: [www.bailii.org/ew/cases/EWHC/Admin/2011/3073.html](http://www.bailii.org/ew/cases/EWHC/Admin/2011/3073.html); *Durani v Secretary of State for Home Department & Anor* [2013] EWHC 284 (Admin) (19 February 2013) Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2013/284.html>; *AN & FA (Children), R (On the Application Of) v Secretary of State for the Home Department* [2012] EWCA Civ 1636 (11 December 2012) Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2012/1636.html>