



Written Response to Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children by The Runnymede Trust, 31 May 2007

We welcome the opportunity to submit our thoughts and views on the proposed changes to the outcomes and support for Unaccompanied Asylum Seeking Children (UASC).

The Runnymede Trust is an independent policy research organisation focusing on equality and justice through the promotion of a successful multi-ethnic society. Our mandate is to promote a successful multi-ethnic Britain – a Britain where citizens and communities feel valued, enjoy equal opportunities to develop their talents, lead fulfilling lives and accept a collective responsibility, all in the spirit of civic friendship, shared identity and a common sense of belonging. Refugee and migration issues are of special interest to us, as recent developments in the ethnic diversification of Britain are intricately linked to changing patterns in global migration.

We have read the consultation with interest, and recognise the importance of planning better outcomes and support for UASC. We agree with a number of points made in the consultation document, such as the need for specialisation amongst practitioners working with UASC, and to identify and provide appropriate safeguards for the victims of traffickers. However, we have some serious concerns and recommendations that we outline below. After considering the issues raised in the consultation document, we would like to comment on the following:

- The general and underlying tone and message running throughout the consultation document, which implies that UASC are abusing the system and that the government is therefore developing mechanisms to fail and deport them in greater numbers.
- The proposed age determination, which is not only unethical from a medical as well as a humanist point of view, but is also highly inaccurate with a too wide a margin of uncertainty to be a reliable age determination technique.

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Underlying tone and message of the consultation document

1. The first comment we would like to make is on the general tone of the consultation document. The majority of issues raised, and the way in which they are discussed, suggest that UASC are pragmatic by default and that abuse of the system is the norm rather than the exception. We are unsure whether the government has any compelling evidence as proof; the evidence cited in the consultation document is tentative at best. For example, the document cites the 2,425 asylum seekers who claimed to be under the age of 18 but were deemed to be adults by immigration officials. While it is acknowledged that a more thorough assessment by social workers confirmed that ‘a proportion’ of these cases were indeed children, the consultation documents omits that over 1,000 UASC are inappropriately treated as adults each year.¹ Thus, rather than taking these age dispute cases as evidence of fraud and “illustrative of a serious level of abuse of the system” (p. 12), it is clear that they are, quite the contrary, illustrative of the government’s determination to fail and deport as great a number of asylum seekers as is possible.
2. Many parts of the consultation document give the impression that the government is preparing to fail a greater number of UASC. For instance, under the heading of ‘The Asylum Application’, the discussion in paragraphs 38-47 seems to suggest that the government *will* start failing more UASC, and consequently that the purpose of the consultation is to devise mechanisms to manage “the needs and expectations of unaccompanied asylum seeking children whose asylum claims fail” (p. 16). The following heading, ‘Return to the Country of Origin’, reinforces the indication that the ultimate goal is to “encourage take up of voluntary return” (p.17), i.e. that the child is to be returned to its country of origin.
3. We strongly object to this line of thought, which reflects a growing trend throughout Europe. The Council of Europe’s Commissioner for Human Rights has recently commented that where asylum seekers are concerned, “minors are surrounded by greater mistrust than adults and are almost systematically regarded as abusing the system”.² We find that this resonates in the general tone of the consultation document, which is mostly concerned with preventing a perceived abuse of the system and further deporting unaccompanied asylum seeking children rather than planning better outcomes and support for them.

¹ Office of the Children’s COMMISSIONER: News. Available at: <https://www.childrenscommissioner.org/adult/news/news.cfm?id=1964&newsid=75>

² Commissioner for Human Rights (2006). Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the Effective Respect for Human Rights in France. Office of the Commissioner for Human Rights, p. 76.

Age determination

4. As we make clear in the previous section, it appears to us that the government is primarily concerned with preventing a perceived abuse of the system. Central to this aim are the proposed and highly controversial age determination techniques. We are concerned that the evidence – cited from *The Health of Refugee Children - Guidelines for Paediatricians*³ – for the accuracy of medical age determination techniques is severely overstated. While the guidelines do state that “estimates of a child’s physical age from his or her dental development are accurate to within + or – 2 years for 95% of the population,”⁴ they also state the following:

In practice, age determination is extremely difficult to do with certainty, and no single approach to this is can be relied on. Moreover, for young people aged 15-18, it is even less possible to be certain about age. There may also be difficulties in determining whether a young person who might be as old as 23 could, in fact, be under the age of 18. Age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side. Assessments of age measure maturity, not chronological age.⁵

5. It should be noted in this instance that the consultation document further cites as evidence to support their case the practices of some of Britain’s EU partners, “who regularly use these techniques for immigration purposes” (p. 13). This is not necessarily a reliable source of best practice, as the Commissioner for Human Rights made clear in his report on France:

the techniques adopted – clinical observation of pubescent development and bone tests – are considered scientifically unreliable. On 23 June 2005 the National Consultative Committee on Ethics expressed reservations on the bone and tooth tests conducted to determine young foreigners’ age. It declared these techniques unsuitable, especially as they are usually practised [sic] on young people between the ages of 15 and 20, when uncertainty is greatest. This controversy, which is not specific to France, raises the distressing problem of classifying some minors among adults, which in practice deprives them of the administrative and judicial safeguards afforded to them.⁶

The sentiment of French physicians is indeed echoed by their British counterparts. The guidelines for paediatricians make it clear that the older the child, the wider the margin for error. As the age determination techniques are presumably intended for the age group 15 to 20, as is the case in France, this becomes highly problematic as this is exactly the age group where margin for error is greatest. For this reason, the guidelines

³ The Health of Refugee Children - Guidelines for Paediatricians: Royal College of Paediatrics and Child Health – November 1999. Available at: http://www.rcpch.ac.uk/doc.aspx?id_Resource=1758

⁴ Ibid., p. 14.

⁵ Ibid., p. 13.

⁶ Commissioner for Human Rights (2006), p. 76.

state that this margin of uncertainty make it unwise to rely on dental age in age determination.⁷

6. The proposition that a refusal to undergo an x-ray examination is somehow evidence of reprobate motives on part of the child, and should therefore “strongly inform the final decision on age” (p. 13), is untenable. There may be a number of reasons why a child would not wish to undergo an x-ray examination; making a direct correlation between refusal and system abuse would be based on assumption, not fact, and therefore be wholly unjustifiable.
7. Although we realise that it is the government’s firm intention to introduce x-rays as an age determination practice, we strongly urge the government to reconsider its stance.

In a media response to the controversies of the current consultation document, Liam Byrne MP has recently stated that “to have adults in the children’s system I believe poses a serious threat to our obligation to protect children effectively”.⁸ We would agree with this statement in principle if this was indeed the pressing difficulty facing the Immigration and Nationality Directory. However, the evidence to support this claim – as presented in the consultation document – is unconvincing at best. The arguments put forth appear to be based on perceptions rather than facts, which suggests to us that there are other motives for the proposed changes. Indeed, when asked the simple question: “how many unaccompanied asylum seeking children arriving in the UK in (a) 2005 and (b) 2006 were the subject of an age dispute; and how many of those were subsequently found to be minors,”⁹ Mr Byrne himself admitted that:

Information is not available on how many of those asylum applications lodged in 2005 and 2006 from Unaccompanied Asylum Seeking Children (UASCs) were at some time the subject of an age dispute. The number of age dispute cases who were subsequently found to be minors would only be available by examination of individual case-files at disproportionate cost.¹⁰

Given this lack of data, we can only reach the conclusion that the policies suggested in the consultation document are ill-founded and can have precarious consequences for unaccompanied asylum seeking children. Contrary to Mr Byrne’s statement, we would argue that to have children treated as adults – which will inevitably and increasingly be the case if the majority of the propositions of the consultation document are realised – will deprive them of their rights as children and subsequently severely undermine Britain’s obligation to protect children in need.

⁷ The Health of Refugee Children Guidelines for Paediatricians (1999), p. 14.

⁸ BBC News (2007). *Asylum youths face X-ray checks*. Available under: http://news.bbc.co.uk/1/hi/uk_politics/6382081.stm

⁹ Asylum: Children: 23 Mar 2007: Written answers (TheyWorkForYou.com). Available at: <http://www.theyworkforyou.com/wrans/?id=2007-03-23a.127535.h>

¹⁰ Ibid.

Thank you for considering our response and the concerns and issues we highlight. We look forward to learning the result of the consultation process and the intentions of government on implementing the changes.

If you would like to discuss any aspect of this response, please contact Michelynn Laflèche (Director) at the Runnymede Trust, 7 Plough Yard, Shoreditch, London EC2A 3LP Tel: 020 7377 9222.

The Runnymede Trust
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Further information about the Runnymede Trust can be found on our website –
www.runnymedetrust.org