



Nationality and Borders Act 2022

2022 CHAPTER 36

PART 4

AGE ASSESSMENTS

49 Interpretation of Part etc

- (1) In this Part, “age-disputed person” means a person—
- (a) who requires leave to enter or remain in the United Kingdom (whether or not such leave has been given), and
 - (b) in relation to whom—
 - (i) a local authority,
 - (ii) a public authority specified in regulations under section 50(1)(b), or
 - (iii) the Secretary of State,has insufficient evidence to be sure of their age.
- (2) In this Part—
- “decision-maker” means a person who conducts an age assessment under section 50 or 51;
 - “designated person” means an official of the Secretary of State who is designated by the Secretary of State to conduct age assessments under section 50 or 51;
 - “immigration functions” means functions exercisable by virtue of the Immigration Acts;
 - “immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
 - “local authority”—
 - (a) in relation to England and Wales, means a local authority within the meaning of the Children Act 1989 (see section 105(1) of that Act),
 - (b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994, and

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(c) in relation to Northern Ireland, means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

“public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal;

“specified scientific method” means a method used for assessing a person’s age which is specified in regulations under section 52(1).

(3) In this Part, “relevant children’s legislation” means—

(a) in relation to a local authority in England, any provision of or made under Part 3, 4 or 5 of the Children Act 1989 (support for children and families; care and supervision; protection of children);

(b) in relation to a local authority in Wales, Scotland or Northern Ireland, any statutory provision (including a provision passed or made after the coming into force of this Part) that confers a corresponding function on such an authority.

(4) In subsection (3)—

“corresponding function” means a function that corresponds to a function conferred on a local authority in England by or under Part 3, 4 or 5 of the Children Act 1989;

“statutory provision” means a provision made by or under—

(a) an Act,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of Senedd Cymru, or

(d) Northern Ireland legislation.

(5) In section 94 of the Immigration and Asylum Act 1999 (support for asylum-seekers: interpretation), for subsection (7) substitute—

“(7) For further provision as to the conduct of age assessments, which applies for the purposes of this Part, see Part 4 of the Nationality and Borders Act 2022.”

50 Persons subject to immigration control: referral or assessment by local authority etc

(1) The following authorities may refer an age-disputed person to a designated person for an age assessment under this section—

(a) a local authority;

(b) a public authority specified in regulations made by the Secretary of State.

(2) Subsections (3) and (4) apply where—

(a) 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, or

(b) the Secretary of State notifies a local authority in writing that the Secretary of State doubts that an age-disputed person in relation to whom the local authority has exercised or may exercise functions under relevant children’s legislation is the age that they claim (or are claimed) to be.

(3) The local authority must—

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- (a) refer the age-disputed person to a designated person for an age assessment under this section,
 - (b) conduct an age assessment on the age-disputed person itself and inform the Secretary of State in writing of the result of its assessment, or
 - (c) inform the Secretary of State in writing that it is satisfied that the person is the age they claim (or are claimed) to be, without the need for an age assessment.
- (4) Where a local authority—
- (a) conducts an age assessment itself, or
 - (b) informs the Secretary of State that it is satisfied that an age-disputed person is the age they claim (or are claimed) to be,
- it must, on request from the Secretary of State, provide the Secretary of State with such evidence as the Secretary of State reasonably requires for the Secretary of State to consider the local authority's decision under subsection (3)(b) or (c).
- (5) Where a local authority refers an age-disputed person to a designated person for an age assessment under subsection (1) or (3)(a), the local authority must provide any assistance that the designated person reasonably requires from the authority for the purposes of conducting that assessment.
- (6) The standard of proof for an age assessment under this section is the balance of probabilities.
- (7) 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—
- (a) on the Secretary of State and immigration officers when exercising immigration functions, and
 - (b) on a local authority that—
 - (i) has exercised or may exercise functions under relevant children's legislation in relation to the age-disputed person, and
 - (ii) is aware of the age assessment conducted by the designated person.

But this is subject to section 54(5) (decision of Tribunal to be binding on Secretary of State and local authorities) and section 56 (new information following age assessment or appeal).

- (8) Regulations under subsection (1)(b) are subject to negative resolution procedure.

51 Persons subject to immigration control: assessment for immigration purposes

- (1) A designated person may conduct an age assessment on an age-disputed person for the purposes of deciding whether or how the Secretary of State or an immigration officer should exercise any immigration functions in relation to the person.
- (2) An assessment under subsection (1) may be conducted—
- (a) in a case where subsections (3) and (4) of section 50 do not apply, or
 - (b) in a case where those subsections do apply—
 - (i) at any time before a local authority has referred the age-disputed person to a designated person under section 50(3)(a) or has informed the Secretary of State as mentioned in subsection (3)(b) or (c) of that section, or
 - (ii) if the Secretary of State has reason to doubt a local authority's decision under subsection (3)(b) or (c) of that section.

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- (3) An age assessment under this section is binding on the Secretary of State and immigration officers when exercising immigration functions.

But this is subject to section 54(5) (decision of Tribunal to be binding on Secretary of State and local authorities) and section 56 (new information following age assessment or appeal).

- (4) The standard of proof for an age assessment under this section is the balance of probabilities.

52 Use of scientific methods in age assessments

- (1) The Secretary of State may make regulations specifying scientific methods that may be used for the purposes of age assessments under section 50 or 51.
- (2) The types of scientific method that may be specified include methods involving—
- (a) examining or measuring parts of a person's body, including by the use of imaging technology;
 - (b) the analysis of saliva, cell or other samples taken from a person (including the analysis of DNA in the samples).
- (3) A method may not be specified in regulations under subsection (1) unless the Secretary of State determines, after having sought scientific advice, that the method is appropriate for assessing a person's age.
- (4) A specified scientific method may be used for the purposes of an age assessment under section 50 or 51 only if the appropriate consent is given.
- (5) The appropriate consent is—
- (a) where the age-disputed person has the capacity to consent to the use of the scientific method in question, their consent;
 - (b) where the age-disputed person does not have the capacity to consent to the use of the scientific method in question, the consent of—
 - (i) the person's parent or guardian, or
 - (ii) another person, of a description specified in regulations made by the Secretary of State, who is able to give consent on behalf of the age-disputed person.
- (6) Subsection (7) applies where—
- (a) the age-disputed person or, in a case where the age-disputed person lacks capacity, a person mentioned in subsection (5)(b), decides not to consent to the use of a specified scientific method, and
 - (b) there are no reasonable grounds for that decision.
- (7) In deciding whether to believe any statement made by or on behalf of the age-disputed person that is relevant to the assessment of their age, the decision-maker must take into account, as damaging the age-disputed person's credibility (or the credibility of a person who has made a statement on their behalf), the decision not to consent to the use of the specified scientific method.
- (8) Regulations under this section are subject to affirmative resolution procedure.
- (9) This section does not prevent the use of a scientific method that is not a specified scientific method for the purposes of an age assessment under section 50 or 51 if the

decision-maker considers it appropriate to do so and, where necessary, the appropriate consent is given.

53 Regulations about age assessments

- (1) The Secretary of State may make regulations about age assessments under section 50 or 51, which may in particular include provision about—
 - (a) the processes to be followed, including—
 - (i) the information and evidence that must be considered and the weight to be given to it,
 - (ii) the circumstances in which an abbreviated age assessment may be appropriate,
 - (iii) protections or safeguarding measures for the age-disputed person, and
 - (iv) where consent is required for the use of a specified scientific method, the processes for assessing a person’s capacity to consent, for seeking consent and for recording the decision on consent;
 - (b) the qualifications or experience necessary for a person to conduct an age assessment;
 - (c) where an age assessment includes use of specified scientific methods—
 - (i) the qualifications or experience necessary for a person to conduct tests in accordance with those methods, and
 - (ii) the settings in which such tests must be carried out;
 - (d) the content and distribution of reports on age assessments;
 - (e) the communication of decisions to the age-disputed person and any other person affected by the decision, and notification of appeal rights (see section 54); and
 - (f) the consequences of a lack of co-operation with the assessment by the age-disputed person, which may include damage to the person’s credibility.
- (2) The regulations may also include provision about—
 - (a) referrals under section 50(1) or (3)(a), including the process for making such a referral and about the withdrawal of a referral;
 - (b) how and when a local authority must inform the Secretary of State as mentioned in section 50(3)(b) and (c);
 - (c) evidence that the Secretary of State may require as mentioned in section 50(4).
- (3) Regulations under this section are subject to affirmative resolution procedure.

54 Appeals relating to age assessments

- (1) This section applies if—
 - (a) an age assessment is conducted on an age-disputed person (“P”) under section 50 or 51, and
 - (b) the decision-maker decides that P is an age other than the age that P claims (or is claimed) to be.
- (2) P may appeal to the First-tier Tribunal against the decision-maker’s decision.
- (3) On the appeal, the Tribunal must—
 - (a) determine P’s age on the balance of probabilities, and
 - (b) assign a date of birth to P.

- (4) In making the determination, the Tribunal may consider any matter which it thinks relevant, including—
 - (a) any matter of which the decision-maker was unaware, and
 - (b) any matter arising after the date of the decision appealed against.
- (5) A determination on an appeal under subsection (2) is binding—
 - (a) on the Secretary of State and immigration officers when exercising immigration functions in relation to P, and
 - (b) on a local authority that has exercised or may exercise functions under relevant children’s legislation in relation to P.
- (6) This section is subject to—
 - (a) section 55 (appeals relating to age assessments: supplementary), and
 - (b) section 56 (new information following age assessment or appeal).

55 Appeals relating to age assessments: supplementary

- (1) This section applies to an appeal under section 54(2).
- (2) The appeal must be brought from within the United Kingdom.
- (3) If the person who brings the appeal leaves the United Kingdom before the appeal is finally determined, the appeal is to be treated as abandoned.
- (4) The person who brings the appeal may make an application to the First-tier Tribunal for an order that, until the appeal is finally determined, withdrawn or abandoned, the local authority must exercise its functions under relevant children’s legislation in relation to the person on the basis that they are the age that they claim (or are claimed) to be.
- (5) Subsection (6) applies if it is alleged—
 - (a) that a document relied on by a party to an appeal is a forgery, and
 - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (6) The First-tier Tribunal—
 - (a) must investigate the allegation in private, and
 - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (5)(b).
- (7) Subsection (8) applies in relation to—
 - (a) proceedings on an appeal, and
 - (b) proceedings in the Upper Tribunal arising out of proceedings within paragraph (a).
- (8) Practice directions under section 23 of the Tribunals, Courts and Enforcement Act 2007 may require the First-tier Tribunal or the Upper Tribunal to treat a specified decision of the First-tier Tribunal or the Upper Tribunal as authoritative in respect of a particular matter.
- (9) For the purposes of this Part an appeal is not finally determined if—
 - (a) an application for permission to appeal under section 11, 13 or 14B of the Tribunals, Courts and Enforcement Act 2007 could be made (ignoring any possibility of an application out of time) or is awaiting determination,

- (b) an application for permission to appeal to the Supreme Court from—
 - (i) the Court of Appeal in England and Wales,
 - (ii) the Court of Session, or
 - (iii) the Court of Appeal in Northern Ireland,could be made (ignoring any possibility of an application out of time) or is awaiting determination,
- (c) permission to appeal of the kind mentioned in paragraph (a) or (b) has been granted and the appeal is awaiting determination, or
- (d) an appeal has been remitted under section 12 or 14 of the Tribunals, Courts and Enforcement Act 2007, or by the Supreme Court, and is awaiting determination.

56 New information following age assessment or appeal

- (1) This section applies where—
 - (a) an age assessment has been conducted on an age-disputed person (“P”) under section 50 or 51,
 - (b) an appeal under section 54(2) could no longer be brought (ignoring any possibility of an appeal out of time) or has been finally determined, and
 - (c) the decision-maker becomes aware of new information relating to P’s age.
- (2) In this section, the age assessment referred to in subsection (1)(a) is referred to as the “first age assessment”.
- (3) In a case where the first age assessment was conducted by a designated person, they must—
 - (a) decide whether the new information is significant new evidence, and
 - (b) if they decide that it is, conduct a further age assessment on P.
- (4) In a case where the first age assessment was conducted by a local authority, it must—
 - (a) decide whether the new information is significant new evidence or refer the new information to a designated person for a decision on that matter, and
 - (b) if it is decided that the new information is significant new evidence—
 - (i) conduct a further age assessment on P, or
 - (ii) refer P to a designated person for a further age assessment.
- (5) For the purposes of subsections (3) and (4), new information is “significant new evidence” if there is a realistic prospect that, if a further age assessment were to be conducted on P, taking into account the new information, P’s age would be assessed as different from the age determined in the first age assessment or in the appeal proceedings.
- (6) A further age assessment conducted by a designated person under subsection (3) or (4)(b)(ii) is to be treated—
 - (a) in a case where the first age assessment was conducted under section 50, as an age assessment conducted by the designated person following a referral under subsection (3)(a) of that section;
 - (b) in a case where the first age assessment was conducted under section 51, as an age assessment conducted under that section.
- (7) A further age assessment conducted by a local authority under subsection (4)(b)(i) is to be treated as an age assessment conducted by a local authority under section 50(3)(b).

- (8) A person conducting a further age assessment under this section does not need to revisit matters that were considered in the first age assessment if they do not think it is necessary to do so.

57 Civil legal services relating to age assessments

- (1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services) is amended as follows.
- (2) In Part 1 (services) after paragraph 31A insert—

“Appeals relating to age assessments under the Nationality and Borders Act 2022

31B (1) Civil legal services provided in relation to—

- (a) an appeal under section 54(2) of the Nationality and Borders Act 2022 (appeals relating to age assessments),
- (b) an application for an order under section 55(4) of that Act (order for support to be provided pending final determination of appeal), and
- (c) an appeal to the Upper Tribunal, Court of Appeal or Supreme Court relating to an appeal within paragraph (a) or an application within paragraph (b).

Exclusions

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.”
- (3) In Part 3 (advocacy: exclusions and exceptions), in paragraph 13 (advocacy in proceedings in the First-tier Tribunal), after “31A,” insert “31B,”.