

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT JUSTIFICATION DECISION  
(SCIENTIFIC AGE IMAGING) REGULATIONS 2023

*Monday 20 November 2023*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Friday 24 November 2023**

© Parliamentary Copyright House of Commons 2023

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair:* JAMES GRAY

- |   |  |
|---|--|
| † Allin-Khan, Dr Rosena ( <i>Tooting</i> ) (Lab)                  | † Mann, Scott ( <i>Lord Commissioner of His Majesty's Treasury</i> ) |
| † Argar, Edward ( <i>Minister of State, Ministry of Justice</i> ) | † Pawsey, Mark ( <i>Rugby</i> ) (Con)                                |
| † Bailey, Shaun ( <i>West Bromwich West</i> ) (Con)               | † Skidmore, Chris ( <i>Kingswood</i> ) (Con)                         |
| † Cadbury, Ruth ( <i>Brentford and Isleworth</i> ) (Lab)          | † Stephens, Chris ( <i>Glasgow South West</i> ) (SNP)                |
| † Coffey, Dr Thérèse ( <i>Suffolk Coastal</i> ) (Con)             | † Stevenson, John ( <i>Carlisle</i> ) (Con)                          |
| † Dines, Miss Sarah ( <i>Derbyshire Dales</i> ) (Con)             | † Trickett, Jon ( <i>Hemsworth</i> ) (Lab)                           |
| † Edwards, Sarah ( <i>Tamworth</i> ) (Lab)                        | † Tuckwell, Steve ( <i>Uxbridge and South Ruislip</i> ) (Con)        |
| † Gardiner, Barry ( <i>Brent North</i> ) (Lab)                    | Huw Yardley, <i>Committee Clerk</i>                                  |
| Gullis, Jonathan ( <i>Stoke-on-Trent North</i> ) (Con)            |  |
| † Jones, Gerald ( <i>Merthyr Tydfil and Rhymney</i> ) (Lab)       | † <b>attended the Committee</b>                                      |

# First Delegated Legislation Committee

Monday 20 November 2023

[JAMES GRAY *in the Chair*]

## Draft Justification Decision (Scientific Age Imaging) Regulations 2023

4.30 pm

**The Minister of State, Ministry of Justice (Edward Argar):** I beg to move,

That the Committee has considered the draft Justification Decision (Scientific Age Imaging) Regulations 2023.

It is a pleasure to serve under your chairmanship, Mr Gray. It is also a pleasure in my new brief, as Minister of State for Prisons, Parole and Probation, to be shadowed by the hon. Member for Brentford and Isleworth. We know each other well and, while I suspect there may be occasions in this room or beyond when we disagree, she knows that I have huge respect for her. I look forward to working with her in this role.

The draft statutory instrument sets out the affirmative decision made by the Lord Chancellor and Secretary of State for Justice on the Home Office's application to use ionising radiation, also known as X-rays, as a scientific method of age assessment for age-disputed individuals subject to immigration control. The instrument is technical and legal, but none the less important.

Under the Justification of Practices Involving Ionising Radiation Regulations 2004, the Lord Chancellor has the powers as the nominated justifying authority to determine whether the individual or societal benefits of the practice outweigh the health detriments, and therefore whether it can be justified. Following a thorough statutory application, consultation and decision-making process, the justifying authority has determined that the Home Office's proposed use of X-rays is justified.

If Parliament approves the draft instrument, the Government will bring it into force at the earliest possible date to allow the Home Office to use that justification in bringing forward its age-assessment policies. This SI legally formalises the decision by the justifying authority—the Secretary of State under the 2004 regulations—and sets out the parameters under which the approval is to be granted, which have been communicated to the Home Office.

I recognise that there has been a lively debate more broadly on age assessment, which the draft instrument relates to, but I am sure that hon. Members appreciate that I can speak only to this justification decision, as it is imperative that the justifying authority is functionally separate from other persons concerned with the promotion or utilisation of the practice. I will speak only to the use of X-rays as a scientific method of age assessment; any other method falls outside the scope of this statutory instrument.

I understand that the parallel debate on the Home Office's statutory instrument on scientific age assessment under the Nationality and Borders Act 2022 is due to be held in another Delegated Legislation Committee this

evening. That is the right forum for the Home Office to outline how it intends to use this technical approval to support its policies and to field any questions outside the scope of the draft instrument. It is for the other SI debate to consider the merits of the policy itself.

The justifying authority has determined that the proposed practice by the Home Office is justified. This draft instrument provides the legal basis for the use of that practice. The justification decision was made through thorough review of the proposed practice. It considered and weighed the individual and societal benefits, such as preventing children from being misidentified as adults and ensuring that individuals are treated appropriately within the immigration system, as well as addressing the financial costs to the state against the detriments of the practice.

In reaching a decision, the Ministry of Justice—as set out in the additional background document supplied to the Committee—stated that the justifying authority

“has determined that the proposed practice was a new class or type of practice and that this can be justified, subject to the following conditions:

Biological age assessment involving ionising radiation is limited to radiography of the third molar and/or of the hand/wrist only. The use of computed tomography for the purposes of assessing age is not permitted.

The results of radiography of the third molar and/or of the hand/wrist must only be used to assess whether there is more support of the claimed age of the age disputed person, or the assigned age social workers have assessed them to be following a Merton compliant age assessment. A likelihood ratio approach must be used to compare the weight of evidence.

In reaching this determination the JA”—  
the Secretary of State—

“has taken into account the views of the JLG and the conclusions of its deliberations on this application. The Health & Safety Executive (NI), Office for Nuclear Regulation, Environmental Agency, Scottish Environmental Protection Agency, Natural Resources Wales and Department of the Environment for Northern Ireland have confirmed that this application falls outside of their regulatory interests.”

The UK Health Security Agency, the Health and Safety Executive, and the Food Standards Agency were also consulted, and they noted a number of points. Alongside that, of course, we consulted the Ministry of Justice's own science department. The Lord Chancellor wishes to thank the consultees for their detailed and wide-ranging contributions in helping him make this technical legal decision. On that basis, I commend the draft instrument to the House.

4.35 pm

**Ruth Cadbury (Brentford and Isleworth) (Lab):** It is a pleasure to serve under you, Mr Gray, and to follow the right hon. Member for Charnwood. It is unusual for me, having only been in my post for two months, to not be the newbie in the room.

The change made by the draft statutory instrument allows the Government to seek to verify the age of unaccompanied asylum seeking children. It is more than 18 months since the legislative framework was set in the Nationality and Borders Act 2022 for these assessments to take place, yet we have still not had some rather straightforward questions answered. We have had, by my count, four different Home Secretaries since then, so it is strange that we have not had these answers.

While I accept the limitations of our business here today, I cannot avoid the fact that several questions remain, among them the cost and impact to the NHS, which is already massively under pressure. We would expect the Government to address those questions in the impact assessment, but as far as I am aware no such assessment has been provided. Don't worry, though, because the Government have said that

“the policy and design are still under development”.

They appear to be building the bridge as they cross it.

It is unclear to me, as it was to the Secondary Legislation Scrutiny Committee in the other place, why this instrument is being moved forward while the policy and process are still being developed. Looking at the SI, I was surprised to see that the Government do not know what the cost of the new imaging process will be. My hon. Friend the Member for Aberavon (Stephen Kinnock) asked the then Home Secretary, the right hon. and learned Member for Fareham (Suella Braverman), about it in December 2022, and she said she did not know. Does the Minister now have an estimate for the cost to the public purse of rolling out the policy?

In the submissions made to the Lords Committee, the lack of an assessment was a major issue for several stakeholders, some of whom the Minister has already named. That matters because of not only the costs, but the wider policy implications that the policy poses. The SI says the Secretary of State has a power to make regulations specifying a scientific method, but that is conditional on the Secretary of State having determined that the method is appropriate for assessing age after seeking scientific advice. The Minister will point to the Age Estimation Science Advisory Committee that has been set up, but beyond that, what steps have the Home Office taken to see the opinions and views of other stakeholders on this practice?

I have read the very real concerns that the Royal College of Paediatrics and Child Health has about the policy. The House of Lords Committee expressed palpable frustration about trying to get basic information about this case and the consultation between the Government and the wider medical community. These questions matter as there is by no means any evidence of a clear consensus among experts. In fact, a report in the *New Scientist* suggested that the widely held view among experts is that age verification is based on “pseudoscience”. The Government claim that 49% of asylum claims with a disputed age were found to be adults. Has the Home Office assessed how accurate this new method will be?

Additionally, what consultations were made with local authorities and medical authorities, both of which will be on the frontline of dealing with age assessments? I know from talking to the chief executive of my own local authority, Hounslow, the cost and difficulty of carrying out these age assessments, because it is the duty of local authorities to carry them out.

A range of expert bodies representing everything from social work to dentistry have warned that these medical procedures for non-therapeutic purposes are unethical. Even if we leave aside the questions of morals and ethics, we can all surely see that the full implementation of the changes foreseen by these regulations will likely face formidable barriers on an entirely practical level. What thought have the Government given to those barriers, and what steps does the Department plan to

take by way of mitigation? Those are just two further questions to which I believe the Government have an absolute duty to provide clear answers. I am always open to the chance, however remote, that the Minister may surprise me and let me know what consideration the Home Office and the Ministry of Justice have given to those questions.

That brings me to the issue of the review mechanism. I can see that the Ministry of Justice will review the use of X-rays by the Home Office. Will the Minister be able to let us know what steps will be taken as part of this review mechanism? What information will be made public and when will the review take place?

I will finish more broadly, on a point about migration and the approach taken by the Government. Just last week, we saw their flagship policy on Rwanda rejected by the Supreme Court, despite years and years of claims—

**The Chair:** Order. I fear those matters are beyond the scope of the statutory instrument we are discussing today, so perhaps the hon. Lady might like to return to that.

**Ruth Cadbury:** Thank you, Mr Gray. That was one example of a scheme which the Government were warned would be costly and would not work. We fear that that will also be the case for this statutory instrument. From my own casework experience, I must confess that I am deeply sceptical about the Home Office's claims about its ability to deliver its policies.

In summary, I hope that the Minister can enlighten us about the costs, the lack of an impact assessment, the review process, and the engagement that will take place with groups such as the Royal College of Paediatrics and Child Health especially, which has raised its own concerns about this policy. I hope that we can see some much-needed transparency on this issue.

**Jon Trickett** (Hemsworth) (Lab) *rose*—

**Chris Stephens** (Glasgow South West) (SNP) *rose*—

**The Chair:** I call the hon. Member for Hemsworth to speak. [*Interruption.*] Perhaps I should call the Scottish National party spokesperson, the hon. Member for Glasgow South West, to speak first. I did not realise that he was planning to speak.

**Chris Stephens:** I have been bobbing, Sir James.

**The Chair:** I beg your pardon. It is also very kind of you to call me Sir James, but I am afraid that Mr Gray is all I get.

4.42 pm

**Chris Stephens:** Thank you, Mr Gray. I have been bobbing, and I would have thought that a Glaswegian would have spotted a fellow Glaswegian. It is a pleasure to see you in the Chair.

As the Minister has outlined, this is perhaps a warm-up act for the Delegated Legislation Committee at 6 o'clock, which I will certainly attend. I will try to obey your earlier guidance, Mr Gray. I think it is sufficient to say

[Chris Stephens]

that this decision is not without controversy. It has been criticised by a number of human rights groups. Their concern is particularly for people who have suffered incredible trauma. The Age Estimation Scientific Advisory Committee looked at this. Its evidence is worth noting and it is even included in the explanatory memorandum; I will certainly refer to points 7.5 and 7.8.

As I understand it, someone would have to consent to this particular test. Could the Minister tell me how the Government will take a view, if someone does not provide consent? We are being told by the Age Estimation Scientific Advisory Committee that there is no method, biological or social worker-led, which can protect age precision. It can only determine whether the age claimed is possible. That is what it says in the explanatory memorandum. It suggests to me that there is a lack of justification for putting forward this particular statutory instrument. As the shadow Minister, the hon. Member for Brentford and Isleworth, said, what is the cost? There will certainly be a cost to the reputation of the country if it goes through. The Royal College of Paediatrics and Child Health, which has been referred to, has said that

“x-ray imaging for a non-medical purpose is not ethical”.

Where does that leave the justification that the Department has come up with? It has also said that

“x-rays to determine age can be widely inaccurate”.

Does that not suggest that for someone who is going through a potentially life-changing decision like seeking sanctuary in the United Kingdom, having a test that is unethical, cannot predict properly and could be widely inaccurate surely cannot be justified? Is that not the case, Minister?

4.44 pm

**Jon Trickett:** I will try to be reasonably brief, although I need to repeat some of the points that have been made. First, we are not dealing with a huge number of people—over six years, from 2016 to 2022, there were only 700 people a year who were said to be under the age they were claiming to be. Seven hundred a year—that is perhaps two a day. Most of those people have already been identified using other techniques. It is therefore hard to see what the Minister thinks will be added by doing this very unethical and slightly dangerous procedure. Will he tell us how many people he thinks are escaping scrutiny at present?

Secondly, Professor Andrew Rowland, the officer for child protection at the Royal College of Paediatrics, says that the evidence shows that using X-rays to determine age is “widely inaccurate”, and that the “practice is ultimately unethical”. He goes on to say that we will be exposing children to radiation.

There is, surprisingly—perhaps not surprisingly, given the nature of the British establishment—the Age Estimation Science Advisory Committee, presumably to provide advice to the Government. It talks about informed consent, which is my third point. How on earth can we explain to people, many of whom will be below the age of majority, and who may be frightened and may not have English as their mother tongue, in a way they can understand, the risks of radiation exposure engaged in the procedure—x-raying a single tooth—that they are

about to undergo? It raises the question in my mind that informed consent, which is a basic requirement imposed on medics generally and on the health service, will be lacking in significant numbers of cases. That is why I am not convinced by the Minister’s arguments, and why I could not possibly vote for this measure, given the arguments he has made.

What are the Government doing? They are effectively taking the power to bully these people by saying, “If you don’t have this X-ray, there will be a presumption that somehow you are not under the age of consent.”

**Dr Thérèse Coffey (Suffolk Coastal) (Con):** It is the Age Estimation Scientific Advisory Committee which recommended the use of MRI and X-ray methods. The hon. Gentleman refers to this procedure being a potential risk to somebody’s life—would he suggest to that same person that they never have an X-ray, ever? It feels as if we are stretching the argument that he is trying to put across.

**Jon Trickett:** I am complaining about the fact that this procedure will be done to children, who are not capable of giving informed consent, which is a basic principle of medical practice. That is my point. Here is the thing: there is no evidence whatsoever that these X-rays will demonstrate the age of the person—the victim. The scientists are not saying that to the Minister. If he can say otherwise, let him say so, but the people who are responsible for this and the advisory committee do not think the procedure produces sufficient evidence.

I will just make one further point. Where are the practitioners doing these x-rays coming from? According to the Royal College of Radiologists, there is a massive under-supply of clinical radiologists in our country. In fact, by 2027, we are going to need an additional 3,365 clinical radiologists. We are already massively under capacity. I can only imagine that this will mean diverting people from looking after the health of ourselves, our friends, our neighbours and our citizens in order to carry out a practice that is unethical, impractical and unscientific. Where will these radiologists come from, and how long will it take to examine each individual?

I will refer to the report that the Minister has referred to, which says:

“Biological age assessment involving ionising radiation is limited to radiography of the third molar”

and/or of the wrist. This is hardly a great operation, is it? The final sentence on page 6 says that the authority notes all this, and says that the applicant—that is, the Government—should

“cease using X-rays when alternative methods are validated.”

If the justifying authority has major reservations about the use of X-rays in this unethical and unscientific way, what are the Government doing to look into alternative examinations, which the JA is clearly proposing we should do?

4.51 pm

**Edward Argar:** The vast majority of points made by the shadow Minister, the hon. Member for Brentford and Isleworth (Ruth Cadbury), and the hon. Member for Hemsworth (Jon Trickett) are outside the scope of this debate. This debate is not about the policy, the

implementation or staffing of that policy, or otherwise. It is about a technical legal decision to allow the Home Office, in another Delegated Legislation Committee in just under an hour and a half's time, to bring forward the actual policy proposals and put them before a Delegated Legislation Committee for debate. There is a very good reason for that: as I set out very clearly, under the Justification of Practices Involving Ionising Radiation Regulations 2004, the justifying authority is required to be functionally separate from any decisions made on how the policy will operate and the decision made on it. I appreciate the points made by both the shadow Minister, the hon. Member for Brentford and Isleworth, and the hon. Member for Hemsworth. They made their points well and I suspect that they are at least in scope of the debate because the Chair did not stop them. They are on the record.

**The Chair:** Be careful.

**Edward Argar:** The point I would make in respect of the vast majority of cases, the justifying authority is looking to see whether, under those regulations, it is possible for the Home Office to proceed in this way. The hon. Member for Hemsworth quoted from page six of the report. I would also highlight another quote on page six:

“The decision to use X-ray imaging appears well considered and appropriate to minimise any individual's radiation exposure.”

That is what the Secretary of State has been looking at in this context: whether the measure meets the threshold of those regulations for the Home Office as the applying authority to bring forward specific proposals, which it will do.

The shadow Minister, the hon. Member for Brentford and Isleworth, did make one point that is directly relevant to these regulations, which concerned how a review would work. As the justifying authority, we will undertake a review if, for example, new or important information is acquired about efficacy or consequences, other techniques or technologies that have the same objectives become available, or there are any obvious relevant changes in practice, science or technology. I should be explicit that the statutory instrument does not include a statutory review, but the Ministry of Justice as the justifying authority will continue to monitor and review the use of X-rays in this context as the shadow Minister would expect.

I suspect that the spokesman for the Scottish National party, the hon. Member for Glasgow South West, may reprise a number of the arguments and questions that he has just put to me to a Home Office Minister as the applying authority in another Committee in about an hour. There are a number of points to consider. On informed consent, that would again be a question for the Home Office as the authority wishing to carry out this policy. Similarly, on the question of a scientific

method of age assessment, it is recognised in the documents that the Government have put forward that assessing an individual's age is an incredibly complex task and there is no single methodology, scientific or otherwise, can determine a person's age with absolute precision. However, as I set out earlier, this will be one consideration in weighing up the evidence based on either the individual's declared age or a social worker's assessment of it.

**Chris Stephens:** I assume that the Minister thought I was speaking to the statutory instrument—shock horror. A number of human rights groups have raised concerns. Has he, as the justifying authority, had a look at those? Obviously, there are clear concerns about human rights.

**Edward Argar:** I am grateful to the SNP spokesman for that. In considering this as the justifying authority, the Secretary of State has had due regard to those named consultees that, under the 2004 Regulations, he is obliged to consult on the justification decisions. It would be for the Home Office to set out what discussions it had had—I think it was either the hon. Member for Brentford and Isleworth or the hon. Member for Hemsworth who talked about local authorities, campaign groups and others—in how they designed that policy and what they proposed when they bring that forward. That would be a matter for Home Office Ministers. I am perhaps being less forthcoming than I normally would be—the hon. Member for Glasgow South West has opposed me in Committee before—because I am deliberately drawing that distinction between the justifying authority, which is functionally separate in looking at what it actually has to look at as the MOJ, from the Home Office as the Department that has to introduce the specific regulations on how this policy would work. On that basis, I commend this decision and this statutory instrument to the Committee.

*Question put,*

*The Committee divided: Ayes 9, Noes 1.*

**Division No. 1]**

**AYES**

Argar, rh Edward	Pawsey, Mark
Bailey, Shaun	Skidmore, rh Chris
Coffey, rh Dr Thérèse	Stevenson, John
Dines, Miss Sarah	Tuckwell, Steve
Mann, Scott	

**NOES**

Stephens, Chris

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Justification Decision (Scientific Age Imaging) Regulations 2023.

4.56 pm

*Committee rose.*

