

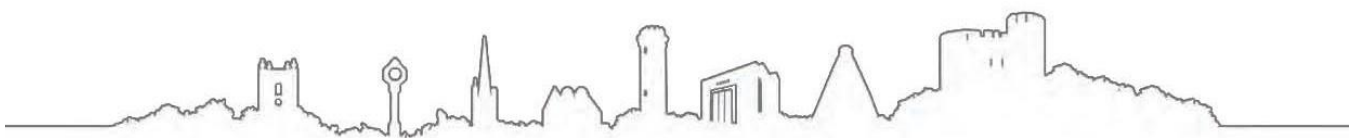
Families with No Recourse to Public Funds (NRPF) **Practice Guidance**

Contents	Page
1. Who has NRPF?	3
2. What are Public Funds?	3
3. Assessment of Needs	4
3.1 Pre-assessment Screening	4
3.2 Which Authority must Undertake an Assessment	5
3.3 Checking Immigration Status	5
3.4 Exclusions from Support	6
3.5 Families that are not Excluded	7
3.6 Assessing Need under Section 17	8
3.7 Limitations on the Ability to Self-Support	9
3.8 Considerations when Parents are in an Excluded Group	10
4. Human Rights Assessment	11
4.1 Determining Whether the Family Can Freely Return	11
4.2 Legal Barriers to Return	11
4.3 Practical Barriers to Return	11
4.4 Determining a Breach of Human Rights	12
4.5 Protection Cases	13
4.6 Medical Cases	13
4.7 Family Life	13
4.8 Private Life	14
4.9 Legal Proceedings	14
4.10 Country Information	15

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CHILDREN'S SERVICES

4.11 Determining a Breach of EU Treaty Rights	15
4.12 Determining Whether the Child would be in Need	15
4.13 Concluding the Human Right's Assessment	16
5. Refusing or Withdrawing Support	16



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1. Who has NRPF?

The term No Recourse to Public Funds (NRPF) refers to a person who is 'subject to immigration control' in the UK and has no entitlement to welfare benefits, homeless assistance or public housing.

The definition of 'subject to immigration control' is set out in section 115 of the Immigration and Asylum Act 1999 and applies to non-EEA nationals who:

- Require leave to enter or remain in the UK but don't have it (e.g. visa overstayer or an illegal entrant);
- Have leave to enter or remain in the UK, subject to a condition that they have no recourse to public funds (e.g. a Tier 4 student and their dependents, a spouse of a settled person or those with leave to remain under family or private life rules); or
- Have leave to enter or remain in the UK, subject to a maintenance undertaking (e.g. adult dependent relative of a British citizen or a person with settled status)

People with the following types of immigration status WILL have recourse to public funds:

- Indefinite leave to enter or remain, or no time limit (apart from adult dependent relative);
- Right of abode;
- Exempt from immigration control;
- Refugee status;
- Humanitarian protection;
- Discretionary leave to remain, for example:
 - Leave granted to a person who has received a conclusive grounds decision that they are a victim of trafficking or modern slavery;
 - Destitution domestic violence concession.
- Limited leave to remain granted under family and private life rules where the person is accepted by the Home Office as being destitute;
- UASC leave.

2. What are Public Funds?

Below are a list of the welfare benefits that a person subject to NRPF is excluded from claiming:

- Attendance allowance;
- Carer's allowance;
- Child benefit;
- Child tax credit;
- Council tax benefit;



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- Council tax reduction;
- Disability living allowance;
- Discretionary support/ welfare payment made by a local authority;
- Domestic rate relief (Northern Ireland);
- Housing benefit;
- Income-based jobseeker's allowance;
- Income-related employment & support allowance;
- Income support;
- Personal independence payment;
- Severe disablement allowance;
- Social fund payment: budgeting loan, sure start maternity grant, funeral payment, cold weather payment and winter fuel payment;
- State pension credit;
- Universal credit;
- Working tax credit

Section 118 of the Immigration and Asylum Act 1999 also excludes a person subject to immigration control from being entitled to access an allocation of social housing through the council register and homelessness assistance.

3. Assessment of Needs

There are two stages that a local authority will usually follow to establish whether it has a duty to provide support to a family with NRPF:

- **Pre-assessment Screening** – establishing the facts of the case prior to assessment; and
- **Assessing Need** – determining eligibility for the provision of services.

3.1 Pre-assessment Screening

When a family is referred for or requests accommodation and/or financial support, the local authority will need to consider the following:

- Whether there is a duty to undertake a child in need assessment;
- What the parents' nationality and immigration status is in order to:
 - Ascertain eligibility for employment, welfare benefits or asylum support, and
 - Determine whether the family can only receive support if this is necessary to prevent a breach of their human rights or EU treaty rights.
- Whether emergency support needs to be provided whilst assessments are being carried out.

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At this first point of contact the parent can be asked for information relating to their financial circumstances, which may be used to inform the child in need assessment to determine whether the family are eligible for support.

Families should not be refused support without proper enquiries being made to identify needs of the child. A child in need assessment is likely to be required for any family presenting on the basis that they do not have adequate accommodation and/or sufficient income to meet their living needs because of their inability to access benefits or employment, or where the child's circumstances suggest this may be the case.

3.2 Which Authority must Undertake an Assessment

Within the judgment of [*R \(Stewart\) v LB Wandsworth & Ors*](#) (2001), the Court found that the duty to assess under Section 17(1)(a) of the Children Act 1989 is triggered by the physical presence of a child in need in the local authority's area. In circumstances where, for example, a child lives in one local authority area but attends school in a different local authority area, co-operation would be required to complete the assessment.

3.3 Checking Immigration Status

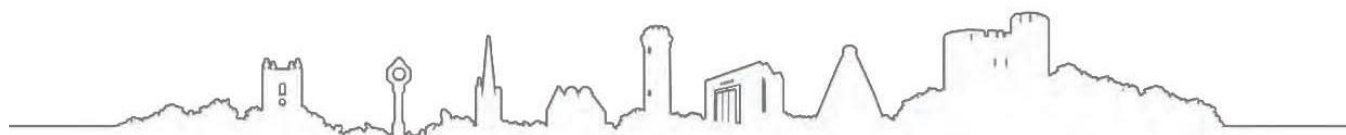
When a family requests accommodation and/or financial support, the local authority will establish nationality and immigration status of the parents for several purposes:

1. To ascertain any possible entitlement to welfare benefits, housing assistance, employment or Home Office asylum support.
2. To identify whether the parent is in an excluded group and so can only be provided with support where this is necessary to prevent a breach of their human rights or EU treaty rights.
3. Where a parent is in an excluded group, find out where there are any immigration claims pending with the Home Office or appeal courts, or other legal barriers preventing them from leaving the UK or returning to their country of origin.

Evidence of nationality and immigration status for non-EEA nationals may be established through the documents issued by the Home Office in the UK or overseas visa application centres/entry clearance posts. Documents issued may be different depending on the type of immigration permission given and date it was granted.

A person may have one or a combination of the following documents:

- Biometric residence permit (BRP) – this is now issued to most people who have been granted leave to enter or remain for longer than six months;
- Immigration status document;
- Visa or residence permit in passport;



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- Stamp in passport;
- Asylum registration card (ARC);
- Home Office issued convention travel document – for a refugee;
- Certificate of travel – for a person with humanitarian protection who cannot get a national passport;
- EEA family permit/ residence card/ permanent residence card/ derivative residence card issued to the family member of an EU national;
- Home Office letter.

European Economic Area (EEA) nationals and most of their family members are not required to obtain documentation from the Home Office to confirm their right to live in the UK because the right to reside under European law is acquired on the basis of a person's circumstances. This means that the local authority will need to ask questions about the person, and their family member's length of residence and activities whilst in the UK.

A free status checking service is available from the Home Office and can be accessed via the email address below:

ICSSVECWorkflow@homeoffice.gov.uk

3.5 Exclusions from Support

The primary reason for establishing the parent's nationality and immigration status is because local authorities need to find out whether the family is in an excluded group and can only receive 'support or assistance' under Section 17 of the Children Act 1989 if such support is necessary to prevent a breach of their human rights or EU treaty rights.

Section 54 and Schedule 3 of the [Nationality Immigration Asylum Act 2002](#) sets out the specific groups who are not eligible for adult social care support under the Care Act 2014 or accommodation under homeless legislation. Those specified are also not eligible to receive support from local authorities under Section 17 of the Children Act 1989 or Sections 23C, 23CA, 23CZB, 24A or 24B relating to care leavers. Under these circumstances, a person can only receive support under Section 17 of the Children Act 1989 if there would be a breach of their human rights or EU treaty rights without such assistance.

The limitations apply to:

1. People who are not currently seeking asylum and are unlawfully present in the UK, e.g. visa overstayer, illegal entrant, refused asylum seeker;
2. European Economic Area (EEA) nationals (not UK nationals);
3. People who have been granted refugee status by another EEA state.
4. Refused asylum seekers who fail to comply with removal directions, and their dependants – i.e. they have been issued with removal directions that provide a set time and means of leaving the UK but have failed to take this up; and

5. Refused asylum seekers with dependant children who have been certified by the Secretary of State as having failed to take steps to leave the UK voluntarily.

The exclusion also applies to a dependant of a person who falls under one of the above groups, for example, the dependant family member of a refused asylum seeker.

Schedule 3 does not mean that assistance can automatically be refused to a family when the parent is in an excluded group, because support must be provided where this is necessary to avoid a breach of the family's human rights or rights under EU treaties.

The purpose of Schedule 3 is to restrict access to support for a family where the parent is in an excluded group because they either have no permission to remain in the UK, or can no longer self-support, and when returning to country of origin (where they may be able to access employment and receive services), would avoid a breach of human rights which may occur if they remain destitute in the UK. This means that, along with establishing whether there is a child in need, local authorities must identify whether there are any legal or practice barriers preventing the family's return to the parent's country of origin, as return cannot be considered unless these are cleared. This is done by undertaking a human rights assessment.

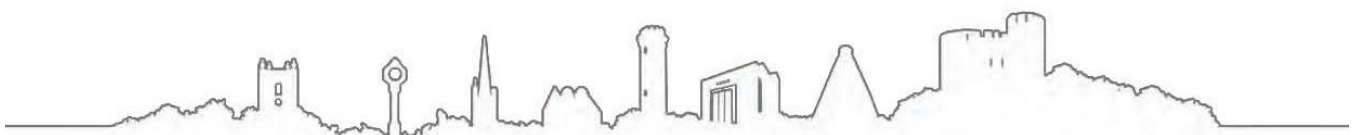
3.6 Families that are not Excluded

The Schedule 3 exclusions do not apply to all families with NRPF. A family will not be excluded from receiving assistance under section 17 where the parent has one of the following immigration status types:

- Limited leave to enter or remain in the UK with the NRPF condition;
- Derivative right to reside under European law, for example:
 - Primary carer of a British (or other EEA national) child (Zambrano carer);
 - Primary carer of a child (in education) of an EEA worker;
 - Primary carer of a self-sufficient EEA national child.
- Asylum seeker;
- Refused asylum seeker who claimed asylum at port of entry (providing the other categories specific to refused asylum seekers do not apply).

Such families are not excluded from section 17 support and would need to be provided with assistance if they are found to be eligible for this following a child in need assessment.

Local authorities are often required to provide support to families where the parent is lawfully present, for example, has limited leave to remain with NRPF, or a derivative right to reside under European law as a Zambrano carer. These types of immigration status are commonly held by single parents who are caring for a British child, or child who has lived in the UK for seven years.



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When a parent can work but is unable to claim benefits to top up a low income, such as housing benefit and tax credits, and cannot access more affordable social housing, they will face difficulties funding childcare and sustaining employment that enables them to afford accommodation and provide for their family's living needs. When the child is 'in need' as a result of this, local authorities will be required to provide accommodation and/or financial support in the absence of such benefits. The courts have found that this is a positive duty and also that national policies restricting access to mainstream welfare support are lawful because section 17 of the Children Act 1989 provides a safety net to protect destitute children.

3.7 Assessing Need under Section 17

The threshold for assessing a child in an NRPF household is low - a child in need assessment is likely to be required for any family presenting on the basis that they do not have adequate accommodation and/or sufficient income to meet their living needs because of their inability to access benefits or employment, or where the child's circumstances suggest this may be the case. Examples of this include:

- The child regularly does not have adequate food, warmth, shelter or essential clothing;
- When a parent's limited financial resources or having no recourse to public funds increases the vulnerability of the children to criminal activity e.g. illegal working;
- When a parent is unable to provide for material needs, which negatively impacts on the child.

When assessing children in NRPF families, consideration must be given to the parent's lack of access to employment, welfare benefits and social housing due to their immigration status and how this impacts upon the child. Section 17 is an ongoing duty, so when family's circumstances change, the local authority must decide whether this means the child's needs must be reassessed. A tool has been created to support migrant families to understand if they are able to claim benefits and social housing, receive support from social services or if they should seek immigration advice. This can be accessed by following the link below:

<https://migrantfamilies.nrpfnetwork.org.uk/>

Under section 17, a local authority has the power to provide emergency housing and/or financial support to a family when a child's welfare is at risk whilst assessments or enquiries are being carried out. Refusing to provide support to a family who would otherwise be homeless and destitute would be a breach of Article 3 of the European Convention on Human Rights and potentially unlawful.

As part of the assessment, the local authority would need to establish what other support options are available to the family in the UK, or whether return to country of origin may resolve the family's inability to self-support in the UK when the parent is in an excluded group. There will be many cases where such support options will be limited:

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- Where the parent has no current immigration permission, is in an excluded group and has a pending human rights application or appeal that has not been determined by the Home Office or courts which constitutes a legal barrier preventing the family from leaving the UK;
- Where the parent is the primary carer of a British (or other EEA national) child and has a right to reside under European law, is not in an excluded group, has permission to work but cannot claim benefits and social housing;
- Where the parent has leave to remain with the NRPF condition, is not in an excluded group, has permission to work but is excluded from benefits and social housing.

In such cases the courts have been clear that the purpose of section 17 is to provide a safety net of support for families who either cannot leave the UK or who are lawfully present in the UK but are prevented by their immigration status from being able to claim benefits usually provided to families with a low income.

Any information and evidence already gathered by the local authority as part of its initial enquiries must be considered within the child in need assessment, in balance with other factors relating to the welfare of the child:

- How the family's financial and housing circumstances are affecting the child's health and development, what assistance the child needs and how the child would be affected if they do not receive such help;
- How urgently the family needs assistance;
- Details of any medical conditions affecting the child or their family members;
- Details of the child's current and previous schools;
- If the child's other parent is not in the family household, their details including nationality and immigration status, what contact the parent and child has with them and whether they are providing any support.

Depending on the family's particular circumstances, information and documents relating to the family's finances and housing will need to be requested. Local authorities need to undertake thorough investigations and properly document findings, ensuring that any judgements on the parent's credibility are based on fact and not feel, and adverse inferences must not be made without first putting such concerns to the parent and providing them with an opportunity to respond.

3.8 Limitations on the Ability to Self-Support

When considering the parent's ability to self-support it is important to be aware of the restrictions imposed by the Immigration Act 2014 and Immigration Act 2016 that apply to people who do not have any current immigration permission:



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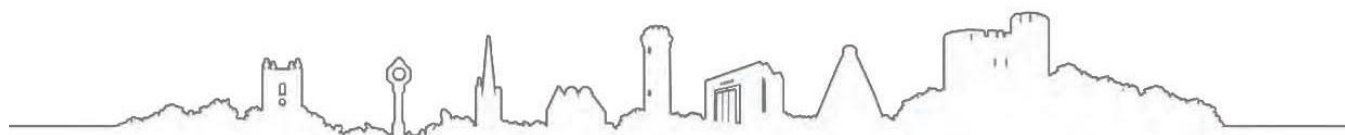
- Since 12 December 2014, banks and building societies have been prohibited from allowing a person with no current immigration permission to open a new current account;
- A person with no immigration permission may have their bank accounts closed or frozen, as since 1 January 2018, banks and building societies have been required to check details of current account holders against a database of Home Office information on a quarterly basis;
- Since 1 February 2016, private landlords in England have not been able to legally rent or sub-let a property to a person who does not have any current immigration permission and who has not been granted permission to rent on an exceptional basis by the Home Office. This also applies to renting a room to paying lodgers;
- Since 1 December 2016, landlords have been required to take action to end a tenancy or evict a tenant when they find out or have reasonable cause to believe that the occupier does not have any immigration permission; when the Home Office informs a landlord that this applies to their tenant, the landlord may undertake possession proceedings without having to obtain a court order;
- On 12 July 2016, undertaking work or self-employment became a criminal offence, punishable by imprisonment, for people who do not have any current immigration permission, or have a condition attached to their leave to remain restricting employment.

Local authorities must be fully aware of these measures in order to ensure that they do not inadvertently encourage or condone criminal activity when determining what alternative support options are available to a family.

These sanctions mean that the local authority may have to bear the cost of funding support, for example, where a parent would otherwise be committing a criminal offence by working illegally, or is unable to rent in the private sector despite having the means to do so. The courts have been clear that, when a local authority finds that a child is not in need because the parent can secure accommodation or has other housing arrangements available to them, the local authority must consider whether the family can realistically access this alternative support and whether the suggested accommodation arrangement is suitable for the child.

3.8 Considerations when Parents are in an Excluded Group

When a parent is in one of the groups of people that are excluded from receiving accommodation and financial support under section 17, a human rights assessment will also need to be undertaken in conjunction with the child in need assessment in order to determine whether support must be provided to prevent a breach of the family's human rights or rights under EU treaties.



If return to country of origin is being considered, the child in need assessment should also address the child's needs within the country of origin and how they may or may not be met, as this information would be relevant to the human rights assessment.

4. Human Rights Assessment

A practical way of approaching the human rights assessment is to consider key questions in a staged process:

1. Can the family freely return to the parent's country of origin?
2. If so, would return result in a breach of the family's human rights under the European Convention on Human Rights (ECHR)?
3. Would return result in a breach of the family's rights under European treaties? (EEA nationals and dependent family members of EEA nationals)

4.1 Determining Whether the Family Can Freely Return

The first stage of the assessment is to identify whether return is reasonably practicable, which means establishing if there are any **legal or practical barriers** preventing the family from leaving the UK. If there is a barrier preventing return, then further consideration at this time will not be needed, and the human rights assessment in such cases may therefore be brief, simply documenting and evidencing the barrier, and noting at what point it may need reviewing.

4.2 Legal Barriers to Return

An outstanding application or appeal made to the Home Office raising human rights grounds (for example, Article 3 and/or Article 8) would constitute a legal barrier to return

4.3 Practical Barriers to Return

There may be a clear practical issue that prevents the family from being able to return, for example, where a family member is unable to:

- obtain identity or travel documentation,
- travel due to ill health or a medical condition, or
- travel due to being at late stages of pregnancy or caring for a new born baby.

When such barriers apply they may only be temporary, and it might be appropriate to provide support to the family on a short term basis and assist them to overcome this barrier, for example, by helping to obtain travel documentation.

4.4 Determining a Breach of Human Rights

When the local authority is clear that return is reasonably practical because there are no legal or practical barriers preventing a family from leaving the UK, then it will need to determine whether the family can return to the parent's country of origin to prevent a human rights breach from occurring, or whether return would give rise to a human rights breach and therefore social services' support must be provided.

If a parent has dual nationality, or has the nationality of one country and a right of residency in another country, then return to both countries must be considered. If other members of the household have different nationalities then their ability to comply with immigration requirements of the country of return would need to be considered.

For local authorities, when determining whether the exclusions to social care support apply, it is likely that only certain articles of the ECHR will need to be considered:

Article 3

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

Article 3 is an absolute right, which means it is never defensible to breach this right.

Article 8

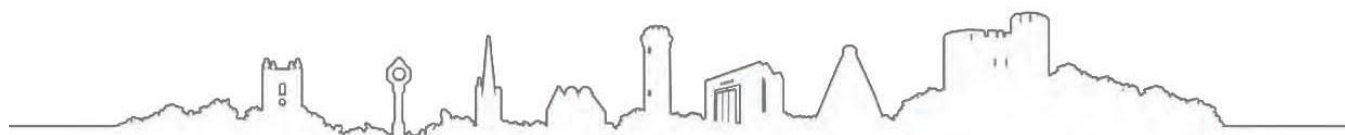
'(1) Everyone has the right to respect for his private and family life, his home and his correspondence.'

'(2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Article 8 is not an absolute right, but is a qualified right, so a certain level of infringement of this right can be permitted so long as there is a lawful basis and legitimate public end, for example, to maintain immigration control.

Article 6

'..everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'



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Article 3(1) of the United Nations Convention on the Rights of the Child 1989 states:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

4.5 Protection Cases

When a family states that they cannot return to their country of origin because they will be at risk of persecution, torture, or inhuman or degrading treatment, then return could engage Article 3 of the ECHR. The family must be referred for legal advice to establish whether they can make an application to the Home Office to assert this claim. This is usually done by claiming asylum, or making a fresh claim for asylum, when a person has previously been refused asylum.

4.6 Medical Cases

When a member of the household is receiving treatment in the UK for a medical condition, they may claim that they cannot return to the parent's country of origin because they will be deprived of the type or level of medical treatment that they are receiving in the UK. This issue has been considered by the Courts in the context of whether the removal of such a person from the UK engages Article 3 and/or Article 8.

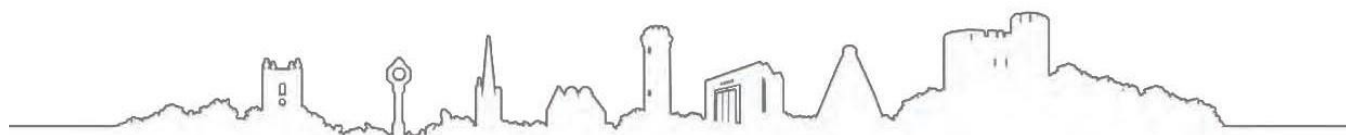
The family must be referred for legal advice to find out if they can assert this claim to the Home Office as a basis of remaining in the UK. Usually they would need to complete an application form and submit this to the Home Office with supporting evidence.

4.7 Family Life

Family life for the purpose of Article 8 can include relationships between an unmarried couple, an adopted child and the adoptive parent, a foster parent and fostered child, and other family members depending on an individual's circumstances.

The best interests of the child need to be a primary consideration when determining whether it would be proportionate to refuse support when this would result in a breach of family life. There will be a number of factors to consider within the human rights assessment:

- Previous Home Office and court decisions that consider Article 8
- Family life that exists in the UK
- Whether each family member will preserve their family life with the family group that is returning
- Where there is identified family life with family members that will remain in the UK, and how this would be maintained on return



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- Where there is identified family life with family members residing in the country of origin, how this is currently maintained
- When members of the household have different nationalities, whether there are any restrictions that may prevent them from permanently residing in the country of return

4.8 Private Life

Private life is the right of a person to live their own life with such personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. Examples would be respect for an individual's sexuality or the right to control information that is disseminated about a person's private life. Any interference with a person's body or the way that the person lives their life is likely to affect their right to respect for their private life under Article 8.

There will be a number of factors to consider for each family member within the human rights assessment:

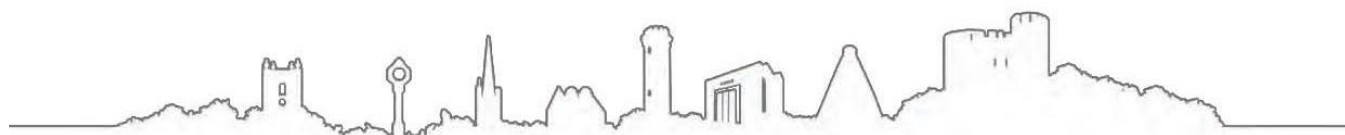
- Previous Home Office and court decisions that consider Article 8
- Age of the child, whether they are in education and what social/cultural ties they may have
- Length of residence in the UK: an application for leave to remain can be made by a child that has lived in the UK for seven years; an adult age 18-25 who has lived in the UK for over half their life and an adult who has lived in the UK for 20 years. A child born in the UK who has lived here for 10 years or longer will be entitled to register as a British Citizen
- Whether each family member can reasonably be expected to establish a meaningful level of existence in their country of origin, i.e. whether they can work or study; what services exist and their ability to access these; any support that is available from family members to do these things etc.

4.9 Legal Proceedings

When a family member is a defendant in criminal proceedings or a party in civil proceedings then Article 6 may be engaged and it is likely that the person will be required to remain in the UK whilst the trial or proceedings are pending.

There will be a number of factors to consider within the human rights assessment:

- If a child is subject to care or contact proceedings
- If a family member is a defendant in criminal proceedings or a party in civil proceedings what requirements are made of them by the court



4.10 Country Information

Should the local authority need to refer to information about the family's country of origin, for example, what welfare provision may be available, resources can be found via the Home Office - [Country information and guidance reports](#).

4.11 Determining a Breach of EU Treaty Rights

Where it has been established that there are no legal or practical barriers preventing the family from returning and there is an EEA national or dependent family member of an EEA national in the household, the local authority must consider whether support or assistance is necessary to prevent a breach of the family's rights under European Union (EU) treaties.

The local authority must identify:

1. Whether a member of the household has a right to reside in the UK under European law, through their own activities or as the family member of an EEA national. This could be established through their:
 - o Length of residence and activities in the UK, e.g. have they studied, worked etc. or
 - o Relationship with an EEA national family member living in the UK currently or in the past, and the length of residence and activities undertaken by that family member.
2. When a member of the household has a right to reside, would they be able to exercise their right to reside if accommodation and financial support is not provided to the family by the local authority?

In almost all cases when a member of the household has a right to reside, either due to their own activities or as a family member of an EEA national, a refusal to provide assistance is likely to prevent that person from exercising their right to reside in the UK, resulting in a breach of their EU treaty rights.

Where a local authority determines that the provision of support is not necessary to prevent a breach of EU treaty rights, the local authority must consider whether the family's return would breach their human rights, in line with the considerations set out in the previous section.

4.12 Determining Whether the Child would be in Need

When a return to country of origin is being considered, the child's needs (for example, access to education and healthcare) will be considerations that are relevant for determining whether there would be a breach of Article 8 (right to family and private life). It is therefore appropriate for the child's needs in the country of origin to be addressed within the child in

need assessment when the parents are in an excluded group, and this information referenced within the human rights assessment. This will also ensure that any risks on return or safeguarding factors are identified.

4.13 Concluding the Human Right's Assessment

The human rights assessment must balance the views expressed by the parents and child(ren) and the information that is known to the local authority about the country of origin, in order to draw clear conclusions.

The courts have been clear that it is the role of the Home Office, rather than the local authority in determining whether a person should be granted leave to remain in the UK on human rights grounds.

5. Refusing or Withdrawing Support

A decision to refuse or withdraw support under section 17 of the Children Act 1989 may be made following a child in need and/or human rights assessment. It is good practice for conversations with the family to have already taken place to prepare them for such an outcome and what their options will be, confirming the decision in writing. Any other organisations assisting the family should also be informed of the decision.

When the provision of accommodation and financial support is being refused following a human rights assessment, which has determined that the family can return to the parent's country of origin, then assistance with return must be offered to the family. This could be provided by the Home Office or local authority.

Should a parent refuse the offer of assistance with return to their country of origin and remain in the UK with no immigration permission, it is likely that significant concerns will arise regarding the welfare and safety of a child left in this situation. As soon as the local authority is aware that support is likely to be refused, it will be important to liaise with the Home Office for the case to be allocated to the family returns team.

The Home Office can fund and arrange travel for families who wish to return to their country of origin, and some people can obtain additional assistance.

Any person who is living in the UK without immigration permission or has been refused permission to enter or stay in the UK can apply to undertake a [voluntary return](#). This includes EEA nationals who are not exercising a right to reside. The Home Office will organise and fund the flight, but will expect the person to arrange their own documentation if they do not already have this.

When section 17 support is being terminated because there has been a change of circumstances that means that a family can now claim welfare benefits and homelessness



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assistance, they will need to be given a notice period and support with making these claims. Local authorities are under a legal duty to refer a family to the housing authority of their choice for homelessness assistance. In England the housing authority is required to establish whether homelessness can be prevented when a person is eligible and threatened with homelessness within 56 days.

For further information about how immigration status impacts on a person's entitlement to services and support options for people with no recourse to public funds, please visit:

<https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements>

