

Services for unaccompanied asylum seeking children

Following the Dubs amendment to the Immigration Act 2016, and the increased use of the Dublin III procedures to bring asylum-seeking children to the UK, this factsheet has been written as a brief checklist for those working with these groups of asylum-seeking children. However, the information is not designed as a complete guide. Separated children, including unaccompanied asylum-seeking children, are supported by local authorities in accordance with their duties to children under the Children Act 1989. This factsheet outlines the services a child may receive where they are looked after and briefly considers where children are reunited with families in the UK. If you have a query about a specific migrant child in care, please contact our advice line on 0207 636 8505 or by email to mcp@coramclc.org.uk.

Children coming to the UK

Children under 18 have always travelled to the UK in order to seek asylum. Some of these children have family members in the UK, others are brought here by traffickers. There are a range of push and pull factors that will be different for each child. However, the numbers who reach the UK are still very low, with 3043 separated children claiming asylum in the UK in 2015. [1] Children who do not have family in the UK are considered to be unaccompanied. A child may not be able to live with family who they have joined in the UK and can therefore be considered to be unaccompanied.

Services provided to children in need

Section 17 of the Children Act 1989 imposes a general duty on local authorities in England or under the Social Services and Wellbeing (Wales) Act 2014 section 21 in Wales, to safeguard and promote the welfare of children within their area who are in need. Where a child is assessed as having certain needs, the local authority should meet those needs through the provision of services to secure the welfare of the child. Section 17 applies whether a child is separated or with family members.

Section 17 refers to providing 'a range and level of services appropriate to those children's needs'. [2] It does not refer to particular types of services because the needs of children vary widely. [3] Certain specified duties are specifically mentioned in Schedule 2 of the Children Act 1989, [4] but the range of services that the local authority can provide are not prescribed or limited to any list and essentially local authorities can provide anything which they consider necessary to safeguard and promote the welfare of children in their area. Unaccompanied children, like all children, are owed a duty after the first twenty-four hours in a local authority area, even where they are in temporary accommodation

Accommodation under section 20

Section 20 of the Children Act 1989 contains a specific, mandatory duty to provide accommodation to a child in England who meets certain criteria. The provision is mirrored in Wales under section 76 Social Services and Wellbeing (Wales) Act 2014 The criteria are that a child requires accommodation because there is no one with parental responsibility for them, because they are lost or have been abandoned, or because the person who has been caring for them is prevented from providing them with suitable accommodation or care. [5] Only one of these three criteria must be met for the duty to arise.

The section 20 duty to accommodate takes precedence over the general duty owed to children in need under section 17 of the Children Act 1989. [6] The law is very clear that local authorities cannot label accommodation 'section 17 accommodation' if accommodation is properly to be provided to a child under section 20. [7] Once the section 20 criteria are met, local authorities cannot avoid their statutory duty to accommodate the child. For unaccompanied asylum-seeking children in the UK, the presumption is that they fall within the scope of section 20, [8] unless the needs assessment results in another response being considered more appropriate (for example if a trafficked child is at risk and it is appropriate to initiate care proceedings under section

31 of the Children Act 1989). There is no specific category of accommodation that is prescribed by section 20. However, accommodation will need to be suitable and meet the needs of the child. Particular consideration should be given to the risk of trafficking or going missing from accommodation. For more information see the Department for Education note on suitable accommodation here: <http://bit.ly/2expt3h>

'Looked after' status

A child who is accommodated by the children's services department of a local authority under section

20 of the Children Act 1989 for a particular period of time falls within the definition of a 'looked after' child. [9] Where a child is 'looked after' by the local authority the local authority acts as the child's 'corporate parent'. There are a series of duties that local authorities owe to 'looked after' children. [10]

In addition, under the Children (Leaving Care) Act 2000 the local authority will also owe a 'looked after' child longer-term duties as they progress into adulthood. If a child is looked after for at least 13 weeks between the ages of 14 and 18, at least one day of which is after the child's 16th birthday, they become entitled to leaving care support, until at least the age of 21, and potentially up to the age of 25.

[11] For more information on leaving care support, see the factsheets at: <http://bit.ly/1CB8MYj>

National Transfer Scheme

Currently a voluntary transfer scheme enables local authorities with a high proportion of unaccompanied asylum seeking children to request that the Home Office relocate newly arrived children to other local authority areas. Local authorities with an unaccompanied child population of over 0.07% of the total child population are able to request a transfer but are not obliged to do so. It is important that a child's best interests are considered at all stages by the local authority with responsibility for them. A first local authority will retain responsibility until the transfer is complete. For more information see the National Transfer Protocol at <http://adcs.org.uk/safeguarding/article/national-uasc-transfer-protocol>

Accommodation with family members

Children who are joining family members in the UK may go and live with them. Prior to a child joining family members in the UK, safeguarding checks should be carried out by the Local Authority where the family is located. A child who joins family members may still be a child in need, and in some circumstances these checks may highlight risks to the child from adult family members. For more information see: <http://bit.ly/2exNXLs>

Trafficking and exploitation

Some unaccompanied asylum seeking children may have been brought to the UK by traffickers, and as vulnerable young people, many are at risk of trafficking and exploitation.

A child who has been a victim of trafficking should be referred into the National Referral Mechanism (NRM) for formal identification. In most areas of the UK, this referral will be completed by a designated first responder. All local authorities are first responders. In some areas (South West and West Yorkshire), the referral can be made by contacting the local Slavery Safeguarding Lead. For information about trafficking see our factsheets: <http://bit.ly/2eKzh7E>

All public bodies are under an obligation to report trafficking to the Home Office within 48 hours. For more information see the frontline staff guidance at: <http://bit.ly/2ezradq>

'Dublin' Transfers

The Dublin III process allows for an asylum claim to be processed in a different EU country to the place in which they claim is made. It also places a duty on a member state to trace the family members of an unaccompanied child. [12] A transfer of the asylum claim and the individual can take place where an application is made by the member state where the child is present and will be to a state where their family members are legally present, provided that is in a child's best interests. A family member may mean a parent or adult who has been responsible for the child, or a sibling, an uncle, aunt or grandparent. The best interests determination will consider the

child's current situation. A Dublin III transfer does not require a child to live with parents or siblings in the state where they are transferred. See <http://bit.ly/2eKzh7E> for further information.

Children can be brought to the UK under Article 17 Dublin III, which is a discretionary article allowing those who have claimed asylum in another state to be transferred to the UK, this can be on the basis of other family relationships, humanitarian grounds, or particular family or cultural considerations

The 'Dubs' Amendment

Section 67 Immigration Act 2016 allows 'refugee children' in Europe to be brought to the UK. [13] The section is broader and was announced as intended to bring unaccompanied asylum seeking children to the UK. [14] Arrangements for the transfer of children within Europe can be made under Dublin III, Article 17. Once in the UK, children will be entered into the transfer scheme to be placed with local authorities in England.

Seeking asylum

A child has the right to seek asylum in the UK independently, however they are not required to do so.

It is important that a child or young person receives advice about seeking asylum and about their immigration status as soon as possible. The Refugee Council panel provides assistance in finding asylum lawyers for unaccompanied children and in guiding them through the process [15] and the Home Office should make a referral to them when they are aware of an asylum seeking child [16]. However, anyone can make a referral. Legal aid is generally available for those who seek asylum whether alone or as part of family group and a child in need whether alone or with a family may need assistance to find a legal aid solicitor. For more information see: http://www.childrenslegalcentre.com/index.php?page=mcp_factsheets:finding_a_lawyer

A child who comes to the UK under Dublin III will still be asylum-seeking and their asylum application

will need to be considered either at the same time as their family members, or in the case of children joining family who are not asylum-seeking, then separately. They may also need to receive asylum and immigration advice separately to their family members.

Age Assessments

A significant number of children and young people arrive in the UK without documentation to demonstrate their age. A child does not need to be age assessed unless there is significant doubt about whether they are a child. [17] An age assessment should not be routine practice. There is no single reliable method for making precise estimates about a child's age. Medical and dental checks can be inaccurate and are not approved by the Government for use in an age assessment process. [18]

Any age assessment will need to be carried out in accordance with the standards found in case-law. The ADCS has produced age assessment best practice guidance: http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf

Advocacy

Local authorities have a duty to provide information about advocacy services and offer to help find an advocate for a child receiving a service from them. [19]

Legal Representation

Securing a child's immigration status is very important and should be addressed in a child's care plan. Where there is a need for legal representation, the local authority, in accordance with its corporate parenting duty, should provide practical assistance in securing appropriate representation, for example from an immigration solicitor. If no legal aid is available, and no other source of appropriate legal representation exists, the local authority may have to pay for private legal services. For more information, see

http://www.childrenslegalcentre.com/index.php?page=legal_advice_and_representation.

NOTES

- [1] Section 17(1), Children Act 1989
[2] *R (G) v Barnet* [2003] UKHL 57, paragraph 29
[3] Part I, Schedule 2, Children Act 1989
[4] Section 20(1), Children Act 1989
[5] *R (G) v Southwark* [2009] UKHL 26 and *R (M) v Hammersmith and Fulham* [2008] UKHL 14. See also the joint guidance by the Department for Children, Schools and Families (now the Department for Education) and the Department for Communities and Local Government, 'Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation' (2010) issued under section 7, Local Authority Social Services Act 1970 and section 182, Housing Act 1996
[6] *R (G) v Southwark* [2009] UKHL 26, paragraph 28
[7] See *Behre and others v Hillingdon* [2003] EWHC 2075 (Admin)
[8] Section 22(1), Children Act 1989
[9] Section 22 –section 23ZB, Children Act 1989. A number of these duties were introduced by the Children and Young Persons Act 2008, with changes coming into force on 1 April 2011
[10] Sections 23A-23C and Schedule 2, Children Act 1989; Children (Leaving Care) Act 2000; and Children (Leaving Care) (England) Regulations 2001
[11] Section 20(6), Children Act 1989
[12] Dublin III Regulation, Article 6 'Guarantees for Minors'
[13] Immigration Act 2016, section 67, <http://www.legislation.gov.uk/ukpga/2016/19/section/67/enacted>
[14] Announcement from Prime Minister's Office, 4 May 2016 <https://www.gov.uk/government/news/unaccompanied-asylum-seeking-children-to-be-resettled-from-europe>

- [15] See Refugee Council, http://www.refugeecouncil.org.uk/what_we_do/childrens_services/the_childrens_panel_-_advice_service
[16] See 'Processing an Asylum Claim from a Child', Home Office, July 2016, p17 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf
[17] Statutory guidance on Care of unaccompanied and trafficked children, Department for Education, 2014, p7
[18] See statement from Lord Young on Child Refugees: Age checks, 21 October 2016 <https://hansard.parliament.uk/lords/2016-10-21/debates/7A6AC310-48BA-434F-AD40-C9D99C66BA6C/ChildRefugeesAgeChecks>
[19] Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.