

## Supporting asylum-seeking children joining their family under the Dublin Regulation

This fact sheet provides information for professionals working with children who have joined their family member(s) in England under the Dublin Regulation. For more information on the Dublin Regulation generally, including transfers to other European countries, and for information relating to the process of refugee family reunion, see our fact sheets on these issues at [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

This fact sheet does not cover Scotland, Wales or Northern Ireland – although the rules around Dublin transfers are the same, the child in need and child protection provisions are devolved issues.

### Children joining family in the UK under the Dublin Regulation

The Dublin III Regulation ('Dublin III') is an EU law which sets out which European country is responsible for someone's asylum claim. **[1]** An unaccompanied child who claims asylum can be transferred to a country where they have a family member (parent/carer or spouse), sibling, or relative (aunt/uncle or grandparent).

The child may also be transferred on a discretionary basis under Dublin – this is particularly relevant for children with family not covered under Dublin (for example cousins).

Family members and relatives need to be lawfully present in the UK (not undocumented). The family member may be seeking asylum themselves, have some form of limited or indefinite leave to remain or be British or European nationals living in the UK.

### Asylum and legal representation

A Dublin child who arrives to join relatives or family members **will not** have the same leave as the adult they are joining. For Dublin children who have joined family, they will need to go through the asylum process. Please see our fact sheet on going through the asylum process as a child, at

[www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources). However, a child who joins a parent may be given leave in line with their parent in some circumstances – for example a child joining refugee parents could rely on family reunion rules.

It is crucial that a child is legally represented throughout the asylum process. There is legal aid available for asylum claims, subject to a means and a merits test. Please note that the means of the family the child has joined will need to be taken into account in these circumstances unless it appears inequitable to do so – a legal representative should advise the child on these issues when meeting for the first time. See our fact sheets on legal aid and legal representation for further information, at [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

### Supporting children under Dublin III in England

In all instances where a child joins relatives or family under Dublin III, the 'Family and Friends Care' statutory guidance is applicable. **[2]**

#### Family Members

Children who join family may need additional support to access services or additional financial support. A family is entitled to an assessment by the local authority under section 17 of the Children Act 1989 where a child is in need. **[3]** This duty to assess applies even where the family has no recourse to public funds (NRPF).

A family may need support to register a child with the GP, school or college, to access mental health services or language support. Family members may need advice about their entitlement to benefits or other financial support that is available to them.

#### Relatives

Children who join relatives under Dublin may not know them very well, or at all. Relatives will not have

parental responsibility for the children who join them. Asylum-seeking children joining relatives should be assessed under section 17 of the Children Act 1989 if it appears that they are in need.

In some circumstances, it may not be necessary to provide any services to a child and the family they have joined, but a local authority is likely to need to conduct an assessment to establish this.

Where a child will be staying with relatives for a long period of time, then the relative should consider applying for parental responsibility through the family courts. This will be either:

- Through a child arrangements order setting out who a child should live with
- Through a Special Guardianship Order (SGO) which includes who a child should live with, as well as any support required from the local authority.

### Siblings

A child may come to the UK to join a sibling (the sibling may be an adult or a child). Any care plan for looked after children should consider whether they should be placed together, and at a minimum promote contact between siblings. [4]

A sibling group may need additional support and a child in need assessment should be carried out in those cases. An adult sibling may acquire parental responsibility for their young sibling through a child arrangements order (see below).

### **Family Breakdown**

A child who is reunited with a family member under Dublin may not be able to live with them. Dublin does not require a family member or sibling to take care of a child.

Like any family relationship, the relationship between the family (whether parents, relatives or siblings) and the child may break down. Those working with families in this situation need to be sensitive to the complications of family relationships, including lifestyle, financial and other circumstances. The local

authority will also need to consider how to support a family in this situation and whether the child needs to be looked after by the local authority.

Family breakdown can be difficult to identify and may be based on a number of factors. The local authority should carry out a family assessment under section 17 of the Children Act 1989 where a child is in need and determine what support needs to be provided to the family as a whole. There are often other children already living in the family unit, and their needs should also be assessed.

In many cases, families feel inadequately supported in looking after an additional family member in overcrowded accommodation, where the young person is not well known to them, and is an adolescent with high needs. Where a child or young person has to be accommodated by the local authority, it is highly likely that the arrangement is one where they are looked after under section 20 of the Children Act 1989, and fall under the UASC Home Office funding scheme [5]

Although the local authority should be aware that where a child has joined relatives, there may not be anyone with parental responsibility who can make a section 20 agreement, this should not be used to create a situation where the child is instead assessed as still residually supported by family & friends carers and only needing section 17 support for very specific (accommodation and/or subsistence) needs; this has the potential effect of depriving the child of leaving care support. For further information on leaving care, please see our fact sheet on this issue, available here: [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources)

Any young person who has been accommodated by the local authority as a child, who is then told they are not entitled to leaving care support, should seek legal advice. Young people who have achieved refugee status and have some family members in UK are particularly vulnerable to the assessment that they are only in need of s17 support – they may be wrongly perceived as able to sort their own affairs (claim benefits, etc.).

In some cases, the local authority may consider it necessary to make an application for a care order.

Arrangements for children in care should meet a child's needs. [6] This should include contact with family unless this is not in the child's best interests. A child should not normally be entered into the National Transfer Scheme if the relationship with their family has broken down, and they become unaccompanied. [7]

There may still be great value in contact with family even although the family are unable to accommodate and care for the young person, and the local authority has taken over the corporate parent role.

If a child is still going through the asylum process or has immigration issues, they will need to be legally represented. They should be legally represented through the entire process in any event but a child in care will be able to obtain legal aid for asylum representation.

If a child becomes looked after and accommodated, they will be an unaccompanied asylum seeking child. Please see our fact sheet on the asylum process as a child for further information, available here: [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

### **Family court orders**

A family court may make orders that are necessary to safeguard and promote the wellbeing of a child. When an application is made to the family court, an order will only be made if it is in the child's best interests. In order to determine the child's best interests, the court will apply the welfare checklist. [5] This includes:

- The child's wishes and feelings
- Their physical, emotional and educational needs
- The likely effect of change in circumstances
- Their age, sex, background and personal characteristics
- Any harm the child has suffered or is at risk of suffering
- How capable the child's parents, or any other adult is of meeting their needs
- The powers available to the court

A child arrangements order sets out who a child is to live with, or spend time with. An order that a child live with a relative will normally give that person parental responsibility.

### **Special Guardianship Orders**

A special guardianship order (SGO) gives the adult parental responsibility for the child, for more information on SGOs see the Child Law Advice Service at: <http://childlawadvice.org.uk/information-pages/special-guardianship/>.

The aim of an SGO is to secure a child's long-term future, but it can also include support for the adult caring for the child. When considering making an SGO, a court will need to see a report from the local authority assessing the arrangement.

In some circumstances, a special guardian is able to receive financial support from a local authority, but for unaccompanied children who have not been looked after, this is not automatic. A special guardian may receive other forms of support however, including therapy, support or access to counselling. [6]

It is important to seek legal advice before making an application before the family courts. Applications for an order in the family courts attract a fee, although there is a waiver if the applicant is unable to meet the cost. There is generally no legal aid available for making an application.

### **Welfare & Benefits**

Where a family, relative or sibling is joined by another child, they may be able to apply for additional welfare benefits. If the adults the child is joining have leave with a NRP condition, they will not be able to apply for benefits. However, the immigration status of the child does not matter provided the responsible adult is entitled to receive benefits.

#### Child Benefit

Where a family is joined by a child who is under 16 then they may make a claim for child benefit if they are responsible for the child. This is not the same as having parental responsibility. Someone is responsible for a child if:

- The child is living with them, and
- They are paying the equivalent of child benefit to support the child through food, clothes, pocket-money, etc.

The local authority may need to confirm that the adult is responsible for the child in order for them to claim child benefit. The benefit cap does not apply where the child would otherwise become looked after.

Where a child is over 16, then the adult caring for them will only be able to claim child benefit if the child is in full-time education or training.

### Child Tax Credits

A claim for child tax credit (CTC) can also be made if an adult is caring for a child. As with child benefit, the entitlement is automatic if the child is under 16, and will depend whether a child is in full-time education after 16. Full-time education means at least 12 hours per week. The test for eligibility is:

- Whether the child 'normally lives with' them
- If in a household with a number of adults, where the adult or couple applying has the main responsibility for the child.

### **Education**

Under section 43A Education Act 1996, a local authority where a child resides has a duty to identify children under 16 who are not in education, and to ensure they have a suitable placement. [8] The local authority should already be aware of the child in their area, as a result of the transfer and should ensure that the child is allocated a school place.

Where the child is over the age of compulsory schooling, (the last Friday in June of the school year they turn 16) then the local authority has a duty to make sure there is adequate training and education provision in the area. [9]

Where a young person aged 16 or 17 is resident in the area, they are entitled to an offer of a suitable

placement to continue education for the next academic year. [10]

For further information on school education for migrant children and further/higher education, please see our fact sheets on these issues, available here: [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

### **NOTES**

[1] The Dublin III Regulation is available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>.

[2] Family & Friends Care: Statutory Guidance for Local Authorities, 2010 at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/288483/family-and-friends-care.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288483/family-and-friends-care.pdf)

[3] Section 17, Children Act 1989, see <http://childlawadvice.org.uk/information-pages/child-in-need-services/>

[4] The Children Act 1989 Guidance and Regulations volume 2: care, planning and placement review, June 2015 <https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review>

[5] Page 4, ADCS FAQ Document [http://adcs.org.uk/assets/documentation/UASC\\_FAQ\\_webJan2017.pdf](http://adcs.org.uk/assets/documentation/UASC_FAQ_webJan2017.pdf)

[6] Section 1(1) Children Act 1989

[6] Child Law Advice Service, <http://childlawadvice.org.uk/information-pages/special-guardianship/>

[7] Page 7, Home Office, Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-17

[http://adcs.org.uk/assets/documentation/Draft\\_National\\_UASC\\_transfer\\_protocol\\_v0\\_8.pdf](http://adcs.org.uk/assets/documentation/Draft_National_UASC_transfer_protocol_v0_8.pdf)

[8] Department for Education, Children Missing Education: Statutory Guidance for local authorities, September 2016, at <https://www.gov.uk/government/publications/children-missing-education>

[9] Department for Education, Participation of young people in education, employment, or training. September 2016

[10] Department for Education, Participation of young people in education, employment, or training. September 2016, page 9

**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 please contact us by email at [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk) or call our advice line on 020 7636 8505 (Tuesday to Thursday 10am-2pm).**