

Leaving care support for migrant children and young people

This fact sheet provides information about leaving care support for young migrants in care. This fact sheet covers what leaving care support is, who is entitled to it, how immigration status affects it and the proposed changes under the Immigration Act 2016 which are not yet in force.

What is leaving care support?

The accommodation and support of separated and unaccompanied asylum-seeking children is provided by the local authority under Section 20 of the Children Act 1989. The majority of separated young people will be entitled to leaving care services under the Children (Leaving Care) Act 2000.

This Act sought to improve support to care leavers in a number of ways, including ensuring that young people do not leave care until they are ready and that they receive more effective support once they have left.

The general aim of the leaving care duties is to provide a child or young person with the sort of parental guidance and support which most young people growing up in their own families can take for granted but which those who are separated or estranged from their families cannot. [1]

The Immigration Act 2016 proposes to make significant changes to leaving care support for migrant young people with uncertain immigration status, though no changes have yet been made – this is discussed in further detail below.

In general, there are four different categories of young people who are or have been 'looked after' and are entitled to some form of leaving care support. Which category a young person falls into determines the type of leaving care support to which they are entitled:

- **Eligible children** are 16 or 17 years old, have been 'looked after' under section 20 of the Children Act 1989 for at least 13 weeks since the age of 14 and are still looked after. [2]

- **Relevant children** are 16 or 17 years old, have been 'looked after' under section 20 of the Children Act 1989 for at least 13 weeks since the age of 14 and have ceased to be looked after. [3]
- **Former relevant children** are 18 to 21 years old and have either been an eligible or relevant child or both. If, at 21, the young person still being helped by responsible authorities with education or training, they remain a former relevant child to the end of the agreed programme of education or training, even if that takes them past the age of 21, up until the age of 25. [4]
- **Qualifying children** are young people aged under 21 (under 25 if in education/training) who have ceased to be looked after or accommodated, or privately fostered, after the age of 16 but while still a child. This includes young people who were accommodated within 13 weeks of their 18th birthday who will not qualify for full leaving care services.

Qualifying children young people who arrive in the UK and first become 'looked after' within 13 weeks of their 18th birthday will not qualify for full leaving care services even if they have been provided with support under section 20 of the Children Act 1989 for the weeks leading up to their 18th birthday, as they will not have been 'looked after' for 13 weeks or more.

Upon turning 16, both **eligible** and **relevant children** should receive (if they have not done so already) an assessment of their needs – including information about education, health and development – carried out not more than three months after the child turns 16 or becomes an 'eligible child'; a pathway plan; and a personal adviser.

Former relevant children are entitled to:

- personal adviser,
- pathway plan,

- financial assistance with employment, education and training (including a higher education bursary if the young person is at university),
- assistance in general (this may include accommodation if the young person's welfare requires it),
- vacation accommodation for higher education if needed,
- the responsible authority is under a duty to keep in touch with them.

Qualifying children, although not entitled to the main leaving care entitlements, are entitled to advice, assistance and befriending.

How long does leaving care support last?

Support from the leaving care service continues until at least the young person's 21st birthday.

If at age 21 a young person is still in education or training then leaving care support should continue until the programme of education or training which has been agreed in his or her pathway plan comes to an end, up to the age of 25.

The definition of 'education or training' must be interpreted broadly and could include a range of opportunities e.g.:

- Basic skills courses (e.g. numeracy and literacy skills)
- Vocational training and apprenticeships
- Courses in further education
- University courses
- Post graduate Qualifications

If at age 21 they not in education or training then support from leaving care will usually stop. There should be a final pathway planning meeting and the young person should be told that they can re-contact the service in the future at any time up to their 25th birthday if they wish to seek support with education or training.

The Children and Social Work Act 2017 [5] proposes to extend services to former relevant children up to the age of 25 even if they are not in education or training. It is proposed that where the local authority is informed that advice and support is needed, the former relevant child must be provided a personal adviser until the age of 25. They will also have to conduct an assessment to determine whether the young person needs advice and support to help them obtain services offered by the local authority. Please note these provisions are not yet in force and are currently being consulted on.

Pathway planning

As noted above, a local authority has a continuing obligation to support any child over the age of 16 who is, or has been, a 'looked after' child, until they are 21 (or 25 if pursuing a programme of education or training). A young person should be provided with support akin to that which a parent would normally provide. The young person's social worker must carry out an assessment of their needs in order to determine what advice, assistance and support they require, both whilst they are being looked after and also once they cease to be looked after. A detailed plan, called a 'pathway plan', should be prepared as soon as possible after the assessment.

Areas covered in the pathway plan include:

- Accommodation,
- practical life skills,
- education and training,
- employment,
- financial support,
- specific support needs, and
- contingency plans for support if independent living breaks down.

The pathway plan must be recorded in writing and should be reviewed at least every six months. It should also be reviewed whenever the care leaver or their personal adviser asks for it to be. The young person should be actively involved in his or her assessment and planning, as should significant adults in the young person's life.

Triple planning

There may be uncertainty around a young person's immigration status, particularly if they have claimed asylum, have UASC leave or are awaiting a decision on an immigration application. It is impossible for anyone to predict in which way claims or applications will be resolved. As a result, social workers need to plan for three possible outcomes for those turning 18. This is known as triple planning and should be part of their regular statutory planning through the care plan, pathway plan and review process. Planning for three possible outcomes after reaching 18 involves:

- equipping the young person to have a future in the UK if they receive some form of leave to remain in the UK past their 18th birthday,
- preparing a young person to be returned to their country of origin either if they are refused an extension to remain in the UK and are being returned, or if they decide to return of their own accord, and
- supporting young people who have been refused leave to remain in the UK and who have exhausted all appeals but are not removed.

Human Rights Assessments

Please note that there will be significant changes to certain categories of care leavers and human rights assessments brought about by provisions in the Immigration Act 2016 which are not in force at the time of writing.

Currently, if an individual with no leave to remain or outstanding application is receiving leaving care support, the local authority must carry out a human rights assessment in order to determine whether removing someone's leaving care support would breach their human rights.

There is very little guidance on how a local authority should conduct a Human Rights Assessment. The aim of such an assessment is to consider whether withdrawing support from a young person would result in a breach of:

- **Article 3** of the ECHR: i.e. if support were refused or withdrawn would the individual/family be subject to treatment amounting to torture or to inhuman or degrading treatment or punishment? It has been found that destitution can amount to inhuman or degrading treatment when an applicant 'faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life.' [6]
- **Article 8** of the ECHR: i.e. if the individual returned to country of origin, would the right to respect for private and family life be compromised.

Case law has made clear that the young person should not be moved by the local authority onto support under section 4 (soon to be section 95A) of the Immigration and Asylum Act 1999.

It is important that the local authority take into account any obstacles to the young person's departure from the UK. For example, the Home Office may not be removing anyone to their country of origin at that time, or there may be barriers to their obtaining the necessary travel documents.

Also, the young person may have a fresh claim for asylum or other immigration route to regularisation – if they do, they should continue to receive leaving care support until such time as that claim has been dealt with. It is not for the local authority to draw its own conclusions as to the merits of the claim. [7] The assessment must be individual in each case.

If a young person receives a decision removing their leaving care support they can challenge the decision. There is no right of appeal but they can follow the local authority complaints process, which should be publicised, followed by judicial review if necessary. A judicial review will need to be made within 3 months of the decision which is sought to be reviewed. Legal aid is available. See our fact sheets on legal aid and legal representatives – www.childrenslegalcentre.com/resources.

Changes under the Immigration Act 2016

The Immigration Act 2016 has set out significant changes for care leavers who have not regularised their status.

The provisions in the Act have yet to come into force and the regulations that will largely govern how the changes will work have yet to be debated and finalised. It is thought that this will now happen late in 2017, although there has been no definitive timescale set out. **The provisions below are not yet the law, and should not yet be adhered to.**

Former looked after children, who require leave to enter or remain when they turn 18 but do not have it, will be excluded from receiving accommodation, financial support, maintaining contact, a personal adviser, a pathway plan, funding for education or training, 'staying put' with foster carers and any other assistance under the leaving care provisions of the Children Act 1989 - sections 17 (services for children in need), 23C (assistance to former relevant children), 23CZA ('staying put'), 23D (personal advisors) and 24A & 24B (advice and assistance, expenses relating to employment, education or training).

Care leavers with no immigration status (for example, those young people who were granted UASC leave but no longer have it, and those who came to the UK at a very young age but never regularised their status) will, in most cases, only be able to access accommodation and/or financial assistance (in kind, or cash or vouchers to pay for subsistence). Those who have a pending first immigration application or appeal will be eligible for leaving care support provided by the local authority where they have resided. However, it is unclear how a first immigration application will be defined (this will be set out in the regulations).

In other circumstances, the following will apply:

- If the young person has a pending immigration application or appeal, other than the first application, they will be eligible for support provided by local authorities under paragraph 10B(2) and (3) of Schedule 3 Nationality Immigration and Asylum Act 2002. This is only accommodation and financial support, although additional support may be provided where a care-leaver has additional welfare needs.
- If the young person has been refused asylum, is destitute and is appeal rights exhausted ('ARE') then they may be eligible for the support provided by the

Home Office to refused asylum seekers when there is a 'genuine obstacle to leaving the UK.' This will be under the new section 95A Immigration and Asylum Act 1999.

- If the young person is destitute, appeal rights exhausted and has no pending application, but the local authority is 'satisfied that that support needs to be provided', assistance can be provided by the local authority. Regulations will be made to specify who can make this decision. This provision is set out at paragraph 10B(4) of Schedule 3 Nationality Immigration and Asylum Act 2002.
- EEA care-leavers will be unaffected by these changes, pending the outcome of the exit from the EU. Currently, an EEA care-leaver is generally excluded from leaving care provisions, but any decision to terminate support requires the local authority to conduct a human rights assessment.

NOTES

- [1] *R (G) v Southwark LBC* [2009] UKHL 26, 20 May 2009; [2009] 1 WLR 1299
- [2] Schedule 2, Part 2 of the Children Act 1989
- [3] Section 23 of the Children Act
- [4] Section 23 of the Children Act
- [5] http://www.legislation.gov.uk/ukpga/2017/16/pdfs/ukpga_2017_0016_en.pdf
- [6] *Limbuella (R v SSHD ex p Adam, Limbuella and Tessam)* [2005] UKH: 66, para 8
- [7] *Birmingham City Council v Clue* [2010] EWCA Civ 390

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. Email mcpadvice@coramclc.org.uk or call 0207 636 8505