

Children's asylum claims

This fact sheet provides information on the asylum process for a child in the UK, including making a claim for asylum, appeal rights and what different outcomes mean. It also outlines how other processes, such as the National Transfer Scheme, interact with the asylum process. It applies to all of the UK.

Claiming asylum

The asylum process is very complicated, particularly for children. They can find the process daunting, confusing and overwhelming. It is important that a child is supported throughout the process and has legal representation to help them navigate the system.

Children, like anyone else claiming asylum in the UK, can claim in two ways – either at port of entry (such as an airport) or 'in-country' (essentially any time after entry into the UK). Children normally claim asylum at the national intake unit in Croydon or in other immigration centres throughout the UK. This will depend on where the child is in the UK.

The Home Office has guidance on children's asylum claims – 'Processing children's asylum claims'. [1] This was last updated in October 2017.

The Dublin Regulation sets out which EU country is responsible for an asylum claim. Currently, if a child has claimed asylum in the UK, then their asylum claim should be considered in the UK, unless it is not in their best interests. See our fact sheet at www.coramchildrenslegalcentre.com/resources.

Some children's cases will be complicated if their age is being disputed by the Home Office, local authority or both. For further information, see our fact sheets on age disputes at www.coramchildrenslegalcentre.com/resources.

National Transfer Scheme

In July 2016 the national transfer scheme was introduced for unaccompanied asylum-seeking children arriving in the UK. The aim of the scheme was to share

responsibility of caring for those children between local authorities. Therefore, children are no longer necessarily cared for in the local authority in which they first present. Instead, they may be transferred to an authority with greater capacity on a voluntary basis. The Home Office have published detailed guidance to govern this scheme. [2]

In line with the new transfer scheme and after the welfare interview (see below), a referral will now also be made to the national asylum allocation unit for a child's case to be allocated to a case working team.

'Dubs' amendment

Section 67 of the Immigration Act states that the UK government make arrangements to relocate a specified number of unaccompanied children from Europe to the UK. This was in addition to the Middle East and North Africa and Syrian Vulnerable Persons' resettlement schemes.

This section is referred to as the 'Dubs' amendment as its main sponsor was Lord Dubs, a Labour peer who had escaped to the UK as a child fleeing the Nazis in 1939. His proposal was for 3,000 refugee children to be relocated from Europe.

The Home Office have capped the numbers at 480 under the scheme, and the actual number of children transferred has been low. There have also been issues with children given adequate reasoning for not being transferred under the scheme. [3]

Those children transferred under the 'Dubs' amendment are also considered for leave to remain if their asylum claim is refused. See below for further information.

Legal representation

A child or young person will need a legal representative to assist them to make their case for asylum to the Home Office. Under the UK Immigration Rules the Home Office is required to ensure that a child has legal representation

and it is recommended that this be done before applying for asylum or as soon as possible.

A legal representative should, along with having a thorough knowledge of asylum law and policy, have a special understanding of policies and procedures applying to separated children, and skills in communicating with children and young people.

The legal representative must be regulated to provide immigration advice by either the Office of the Immigration Services Commissioner (OISC) or their registered body (e.g. the Solicitors' Regulation Authority). Legal aid is available for advice and representation on asylum issues and a legal aid adviser should be sought in order to provide the child with representation. The legal aid adviser must be regulated by the Law Society's Immigration and Asylum Accreditation Scheme (IAAS) to level 2 (senior caseworker) in order to work with children.

For more on legal representatives, see our fact sheet at www.coramchildrenslegalcentre.com/resources.

A legal representative will be also be funded to attend the welfare and substantive interviews with a child (a legal representative will not be funded to attend an interview with an adult). [3]

Welfare interview & statement

When applying for asylum, a child will undergo a welfare interview and a series of checks. This was formerly called a screening interview. The process includes being fingerprinted unless they are under five (if the child is under 16, there must be a responsible adult present when they are being fingerprinted).

The child is also photographed and asked questions about how they travelled to the UK, details of their family history and (very briefly) about why they have come to the UK.

A responsible adult should be present during this interview. A solicitor can also attend the welfare interview. The welfare interview should not be used to explore the claim for asylum in detail.

During the fingerprinting process the child's prints will be checked on an EU database called Eurodac. This enables

a comparison of their fingerprints against those in the central database to determine if an asylum claim has been lodged in another EU country. If that is found to have occurred, a referral may be made to the third country unit. A referral will also be made if the child states that they have family or relatives present in other EU member states under provisions in the Dublin III Regulation.

All children will receive a blank statement of evidence form (SEF), which is the asylum application form that should be filled in with the support of a legal representative and submitted to the Home Office within the timeframe set out on the SEF, which can be up to 60 days. If there is any uncertainty as to the date the SEF needs to be returned, this should be checked with the Home Office.

The Refugee Council's Panel of Advisers must be informed of an unaccompanied child's application within 24 hours of the application being made.

UASC case review

The Home Office have recently introduced UASC case review events whereby, ten working days after a case is allocated, the social worker should be contacted to arrange a case review meeting. [4] The legal representative and a representative from the Children's Panel should also be invited to the meeting.

The purpose of the meeting is to check the progress of the claim – including checking whether the child has legal representation, explaining the family tracing process and checking on the progress of the case. Please note that a case review does not happen in every child's asylum claim.

Substantive asylum interview

All children aged 12 or over will normally be interviewed about the substance of their asylum application. A child under 12 can be interviewed if they are willing and deemed to be mature enough.

The purpose of the asylum interview is to establish whether or not the child is at risk of persecution (under the Refugee Convention) and/or serious harm or ill treatment.

Interviewing children is difficult and most children will not clearly understand the purpose of the interview. They will not be able to relate events in the same way as an adult. Children invited to attend an asylum interview must be interviewed by a specially trained member of staff. They also must be accompanied by a responsible adult. If needed, an interpreter must be present.

A responsible adult should be someone who the child trusts - not a police officer, immigration officer, or an officer of the Secretary of State. It will usually be a social worker, or another member of staff of a local authority or voluntary sector organisation, a legal guardian or a foster carer. Their role is primarily to ensure that the welfare of the child is paramount in the process.

It is crucial that a legal representative is present to advocate on behalf of and represent the child in addition to the responsible adult. The presence of both a legal representative AND a separate responsible adult is necessary as their roles are different. A legal representative should not take the role of responsible adult in a substantive interview.

The Home Office interviewer is required to have regard to the best interests of the child when making any decision on the child's asylum claim, including the interview. [5] The Home Office guidance also states that where the child turns 18 before their substantive interview, they should still follow best practice for children's cases.

Asylum decision

The Home Office's current stated aim is to resolve initial asylum claims made by children within six months of an asylum claim being made. This is not a duty and there have been issues for children waiting far in excess of the 6 month target.

It is important to note that the standard of proof needed to show that the child (or adult) is a refugee is 'a reasonable degree of likelihood'. This is a lower standard of proof than in civil cases (balance of probabilities) or criminal cases (beyond reasonable doubt).

When a claim has been decided, the decision maker must notify the social worker and legal representative of the decision to the child.

Outcomes

The outcome will likely be one of the following:

- Refugee status
- Humanitarian protection (refusal of refugee status)
- 'UASC' leave (refusal of refugee status and humanitarian protection)
- 'Section 67' leave (refusal of refugee status and humanitarian protection)
- 'Calais' leave (refusal of refugee status and humanitarian protection)
- Limited leave [whether discretionary/family or private life/trafficking] (refusal of refugee status and humanitarian protection)
- refusal of any leave.

For further information about UASC leave, please see our fact sheet on this type of leave and the problems with being granted it:

www.childrenslegalcentre.com/resources.

'Section 67' leave (or 'Dubs leave') is only granted to those children transferred as a result of the 'Dubs' amendment. See the section on the Dubs amendment above for further information. The child also needs to meet certain requirements in order to be granted leave. This is still a refusal of refugee status and humanitarian protection. [6]

'Calais' leave is only granted to children transferred to the UK from the Calais camp for the purposes of being reunited with family. The transfer has to have occurred between the dates of 17 October 2016 and 13 July 2017 – the Home Office have calculated this number as 549 children. Like 'section 67' leave, this is a refusal of refugee status and humanitarian protection. [7]

It is important to note that the decision should consider the risk of return of the child **at the time of the decision**. This means that if someone is refused asylum on the basis they will be returned as an adult (i.e. after their UASC leave would end), this is incorrect. The same principle applies for an asylum appeal (see below). [8]

Appeals

A child will normally receive an appeal right if he is refused asylum or humanitarian protection. This includes the right to appeal against a decision where 'section 67', 'Calais' or 'UASC' leave has been granted. This is sometimes referred to as an upgrade appeal.

It is crucial that a child get urgent advice about appealing a refusal of asylum or humanitarian protection, including when they are granted another form of leave.

Young people whose asylum applications are refused outright also have the right to appeal. An appeal must be made within 14 days of the decision being sent.

The recent case of *AM (Afghanistan) v Secretary of State for the Home Department* has highlighted problems for children in appeals and the need for early consideration of issues in an individual's case – including any psychological, educational or psychiatric issues that may make it difficult for the child to give evidence. [9]

Reporting & Immigration Bail

Some people going through the asylum process are asked to report to an immigration office or police station on a regular basis.

From January 2018, anyone who requires leave to remain but does not have it will receive immigration bail. This has replaced temporary admission for asylum seekers.

This will most commonly be an issue once a young person turns 18 and has not yet had their initial decision or has become appeal rights exhausted. Unaccompanied asylum seeking children should not receive immigration bail as they are not liable to detention.

There have been incidents where advocates have been successful in changing the reporting requirements of young people, for example, because of the distance to travel or medical reasons

For those children with UASC leave, the Home Office has issued guidance to its staff outlining that they must ensure that they establish an appropriate contact management strategy for each child. In the majority of cases it will be sufficient to maintain contact by

telephone with the social worker until at least the young person reaches 17 and a half.

For further information on immigration bail and young people, please see our information page:

www.childrenslegalcentre.com/resources.

NOTES

[1] Home Office, Processing children's asylum claims. October 2017 <https://www.gov.uk/government/publications/processing-an-asylum-application-from-a-child-instruction>

[2] See gov.uk website <https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme>

[3] Regulation 2, The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012

[4] Pages 28-30, Home Office, *Processing children's asylum claims*, July 2016

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf

[5] Section 55, Borders, Citizenship & Immigration Act 2009 <https://www.legislation.gov.uk/ukpga/2009/11/section/55> [6]

Paragraphs 352ZG & 352ZH, Immigration Rules <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>

[7] Paragraphs 352I to 352V, Immigration Rules <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum> & Home Office, Calais leave guidance <https://www.gov.uk/government/publications/calais-leave>

[8] See the cases of: *CL (Vietnam) v Secretary of State for the Home Department* [2008] EWCA Civ 1551 and *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123

[9] *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123. For further information, please see our case note, available here:

www.coramchildrenslegalcentre.com/resources

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.