

SECTION 10: SAFEGUARDING CHILDREN IN SPECIFIC CIRCUMSTANCES

SECTION 10.3: SAFEGUARDING CHILDREN FROM ABROAD

10.3.1 Introduction

This guidance is adapted from the work carried out by the East Midlands Child Protection Network, and Stockport Safeguarding Children Board is grateful for their generosity in sharing it with us.

- a) Large numbers of children arrive into this country from overseas every day. Many of these children do so legally in the care of their parents and do not raise any concerns for statutory agencies. However, recent evidence indicates that children are arriving into the UK ;

in the care of adults who, whilst they may be their carers, have no parental responsibility for them

in the care of adults who have no documents to demonstrate a relationship with the child

- alone
 - in the care of agents
- b) Evidence shows that unaccompanied children or those accompanied by someone who is not their parent are particularly vulnerable. The children and many of their carers will need assistance to ensure that the child receives adequate care and accesses health and education services.
- c) A small number of these children may be exposed to the additional risk of commercial, sexual or domestic exploitation.
- d) Immigration Legislation impacts significantly on work under the Children Act 1989 to safeguard and promote the welfare of children and young people from abroad. This guidance refers to the current legal framework but it is important to note that regulations and legislation in this area of work are complex and subject to constant change through legal challenge etc. The guidance intends only to reflect broadly the additional issues faced by families operating also within the context of immigration law. All practitioners need to be aware of this context to their contact with such families. Legal advice on individual cases will usually be required by Children's Social Care.

10.3.2 Purpose

- a) The purpose of this guidance is to assist staff in all agencies to:

Understand the issues which can make children from abroad particularly vulnerable
Identify children from abroad who may be in need, including those who may be in need of being safeguarded
Know what action to take in accordance with their responsibilities.

- b) As with any guidance, it is not intended to provide the answer to all situations. No practitioner or agency holds all of the knowledge; the groups of children and families change and our knowledge of specific issues is developing.

10.3.3 Principles

- a) There are some key principles underpinning practice within all agencies in relation to unaccompanied children from abroad or those accompanied by someone who does not hold parental responsibility. These are:

No agency should lose sight of the fact that children from abroad are children first – this can often be forgotten in the face of legal and cultural complexities.

Children arriving from abroad who are unaccompanied or accompanied by someone who is not their parent should be assumed to be children in need unless assessment indicates that this is not the case. The assessment of need should include a separate discussion with the child in a setting where, as far as possible, they feel able to talk freely.

Assessing the needs of these children is only possible if their legal status, background experiences and culture are understood, including the culture shock of arrival in this country

Be prepared to actively seek out information from other sources. Beware of “interrogating” the child.

10.3.4 THE STATUS OF CHILDREN WHO ARRIVE FROM ABROAD AND LEGAL DUTIES TOWARDS THEM

- a) Children who arrive in the UK alone or who are left at a port of entry by an agent invariably have no right of entry and are unlawfully present. They are likely to be in a position to claim asylum and this should be arranged as soon as possible if appropriate.. They are the responsibility of the Children’s Social Care Department to support until they are 18 years of age, under section 17 or section 20 of the Children Act 1989. If their asylum claim is not resolved before they reach 18 years old, support after the age of 18 years is dependent on immigration status. The Asylum Team in Children’s Social Care can assist in obtaining knowledge about asylum status.
- b) **Children who arrive in the UK with or to be with carers without parental responsibility** may have leave to enter the country or visas or may be in the UK unlawfully. Children’s Social Care may have responsibilities towards them under the Private Fostering Regulations.
- c) If the child is assessed to be in need, support can be provided by Children’s Social Care for the child, and for the family, if this is not excluded by section 54 of the National Immigration Act 2002. If the child is cared for by relatives, Private Fostering Regulations may not apply.

- d) Some children who arrive in the UK with their parents belong to families of EEA nationals migrating into the UK. Such families cannot be supported by Children's Social Care except for the provision of return travel (and associated accommodation). If such families decide to stay and seek further help, Children's Social Care still has responsibilities towards any child who is in need, including the provision of accommodation for the child alone. Practice is to declare such families ordinarily resident after 3 months and to pay benefits. Housing Department practice is to consider housing after 6 months. Children's Social Care remains in the position that services may only be provided direct to the child alone.

10.3.5 Identification and initial action

- a) Whenever any professional comes across a child who they believe has recently moved into this country the following basic information should be sought:
- Confirmation of the child's identity and immigration status
 - Confirmation of the carer's relationship with the child and immigration status
 - Confirmation of the child's health and education arrangements in this county.

This should be done in a way which is as unthreatening to the child and carer as possible.

- b) If this information indicates that the child has come from overseas and is being cared for by an unrelated adult or one whose relationship is uncertain, Children's Social Care should be notified in order that an assessment can be undertaken.
- c) The immigration status of a child and his/her family has implications for the statutory responsibilities towards the family. It governs what help, if any, can be provided to the family and how help can be offered to the child. Appendix 1 of this procedure- "Legal Status" provides information about the most relevant aspects of this legislation.
- d) Where families are subject to Immigration legislation which precludes support to the family (see Appendix 1 of this procedure -Legal Status), many may disappear into the community and wait until benefits can be awarded to them. During this interim period the children may suffer particular hardship – e.g. live in overcrowded and unsuitable conditions and with no access to health or educational services. They are particularly vulnerable to exploitation because of their circumstances.

10.3.6 Establishing the child's identity and age

- a) Age is central to the assessment and affects the child's rights to services and the response by agencies. In addition it is important to establish age so that services are age appropriate (and developmentally appropriate).
- b) Citizens of EU countries will have a passport or ID card (usually both). Unaccompanied children very rarely have possession of any documents to confirm their identity or even to substantiate that they are a child. Their physical appearance may not necessarily reflect his/her age.

- c) The assessment of age is a complex task, which often relies on professional judgement and discretion. Issues of disability may compound such assessment. Moreover, many societies do not place a high level of importance upon age and it may also be calculated in different ways. Some young people may genuinely not know their age and this can be misread as lack of co-operation. Levels of competence in some areas or tasks may exceed or fall short of our expectations of a child of the same age in this country. The advice of a paediatrician with experience in considering age may be needed to assist in this where there is any discrepancy a joint age assessment can be done with the Asylum Team.

10.3.7 Parental responsibility

- a) The Children Act 1989 is built around the concept of “parental responsibility”. This legal framework provides the starting point for considering who has established rights, responsibility and duties towards a child.
- b) In some cultures child rearing is a shared responsibility between relatives and members of the community. Adults may bring children to this country that they have cared for most of their lives, but who may be unrelated or “distantly” related.
- c) An adult whose own immigration status is unresolved cannot apply for a residence order to secure a child for whom he/she is caring.
- d) Children whose parents’ whereabouts are not known have no access to their parents for consent when making important choices about their life. Whilst their parents still have parental responsibility they have no way of exercising it.
- e) Children who do not have someone with parental responsibility caring for them can still attend school, and schools should be pragmatic in allowing the carer to make most decisions normally made by the parent.
- f) Such children are entitled to health care and have a right to be registered with a GP. If there are difficulties in accessing a GP, the local Patient’s Services should be contacted to assist.
- g) Emergency life-saving treatment would be given if required. However, should the child need medical treatment such as surgery or invasive treatment in a non life-threatening situation, the need for consent would become an issue and legal advice would be required.
- h) Children’s Social Care has statutory duties where the child is deemed privately fostered. (See appendix 3 of this procedure).
- i) Carers/parents are not eligible to claim benefits for their child unless they have both been granted some form of “leave to remain” in this country by the Home Office.

10.3.8 HOW TO SEEK INFORMATION FROM ABROAD

- a) Seeking information from abroad should be a routine part of assessing the situation of an unaccompanied child. Professionals from all key agencies – eg Health, Education, Children’s Social Care and the Police – should all be prepared to request information from their equivalent agencies in the country(ies) in which a child has lived, in order to gain as full as possible a picture of the child’s preceding circumstances. Agencies should refer to the procedure for obtaining information about a child from abroad section of these procedures
- b) It is worth noting that agencies abroad tend to respond quicker to e-mail requests/ faxed requests than by letter. Similarly, the Internet may provide a quick source of information to locate appropriate services abroad.
- c) Appendix 2 of this procedure contains contact numbers that are possible sources of information and local networks that may be of use.

10.3.9 Assessment

- a) Any unaccompanied child or child accompanied by someone who does not have parental responsibility should receive an initial assessment in order to determine whether they are a child in need of services, including the need for protection. (See also appendix 3 of this procedure regarding “private fostering” duties of Local Authorities).
- b) Such children should be assessed as a matter of urgency as they may be very geographically mobile and their vulnerabilities may be greater. All agencies should enable the child to be quickly linked into universal services, which can begin to address educational and health needs.
- c) The assessment of children from abroad can be challenging. It is helpful to use the DOH Assessment Framework, provided that it is recognised that the assessment has to address not only the barriers which arise from cultural, linguistic and religious differences, but also the particular sensitivities which come from the experiences of many such children and families.
- d) The needs of the child have to be considered based on an account given by the child or family about a situation that the professional has neither witnessed nor experienced. In addition it is often presented in a language, and about a culture and way of life with which the professional is totally unfamiliar or has only basic knowledge about.
- e) It is vital that the services of an interpreter are employed in the child’s first language and that care is taken to ensure that the interpreter knows the correct dialect. If that interpreter shares more than a common language, and are professionally trained, they can sometimes be a rich source of information about traditions, politics and history of the area from which the child has arrived. They may be able to advise on

issues like the interpretation of body language and emotional expression. (See the procedure for the use of interpreters in section 10.12 of these procedures).

- f) The first contact with the child and carers is crucial to the engagement with the family and the promotion of trust which underpins the future support, advice and services. Particular sensitivities which may be present include:

Concerns around immigration status

- Fear of repatriation
- Anxiety raised by yet another professional asking similar questions to ones previously asked.
- Lack of understanding of the separate role of Children's Social Care, that that it is not an extension of police.
- Lack of understanding of why an assessment needs to be carried out
- Previous experience of being asked questions under threat or torture, or seeing that happen to someone else.

Past Trauma

- Past Regime/ experiences can impact upon the child's mental and physical health. This experience can make concerns from the Authorities about minor injury or poor living conditions seem trivial and this mismatch may add to the fear and uncertainty
- The journey itself as well as the previous living situation may have been the source of trauma

The shock of Arrival

- The alien culture, system and language can cause shock and uncertainty, and can affect the mood, behaviour and presentation.
- g) In such circumstances reluctance to divulge information, fear, confusion or memory loss can easily be mistaken for lack of co-operation, deliberate withholding of information or untruthfulness.
- h) The first task of the initial contact is therefore engagement. Open questions are most helpful, with a clear emphasis on reassurance and simple explanations of the role and reasons for assessment. If the "engagement" with the family is good there are more likely to be opportunities to expand on the initial contact, as trust is established.
- i) Within the first contact with the child and carer (s) it is however also vital not to presume that the child's views are the same as their carer, or that the views and needs of each child are the same. Seeing each child alone is crucial, particularly to check out the stated relationships with the person accompanying them. (Someone allegedly from the same place of origin should have a similar knowledge of the

place, for example). Clearly the professional is going to be seen as in “power” and as such a child may believe that they must “get it right” when they may not wholly understand the system or even the question.

- j) If the engagement is good then there will be opportunities to expand on the initial contact. The ethnicity, culture customs and identity of this child must be a focus whilst keeping this child central to the assessment. The pace of the interviewing of a child should aim to be at the pace appropriate to the child, although the need to ensure that the child is safe may become paramount in some circumstances. Some core questions to be addressed are included in appendix 4 of these procedures.

k) **Child’s developmental needs**

Things to bear in mind include

- Health, behaviour and social presentation can be affected by trauma and loss. Famine and poverty can have an impact upon development.
- Wider health needs may need to be considered, including HIV, Hepatitis B and C and TB. (this applies to the parent/carer also)
- Education. What has school meant to this child?
- Self care skills. Not to judge competence by comparing with a child of the same age in this country. This child may have had to be very competent in looking after themselves on the journey, but unable to do other basic tasks. In some countries some children will have been working or have been involved in armed conflict. Loss of a parent can enhance or deprive a child of certain skills. Having had to overcome extreme adversity can result in a child who is either deeply troubled or both resourceful and resilient.
- Identity. Who is this child? What is their sense of themselves, their family, community, tribe, race, history?
- Physical appearance. Life experience and trauma can affect this. Lack of nourishment may make the child present as younger or older.
- Perceptions of what constitutes disability are relative and attitudes towards disabled children may be very different.
- The impact of racism on the child’s self image and the particular issues currently faced by asylum seeking children and their families.

Parenting Capacity

Things to bear in mind include:

- War, famine and persecution can make a family mobile. The family may have moved frequently in order to keep safe. The stability of the family unit might be more important to the child than stability of place. Judgements that mobility may

equate with inability to provide secure parenting may be entirely wrong. In some countries regular migration to deal with exhaustion of the land is part of the culture.

- The fact that a child seems to have been given up by a parent may not imply rejection, as the motive may have been to keep the child safe or seek better life chances for him/her.
- Talking about parents/ family can be stressful and painful – as can not being given the chance to do so regularly.
- Importance of the extended family/community rather than an Eurocentric view of family.
- Not to presume that you cannot contact a parent who is living abroad unless you have established that this is the case by actively seeking to do so.
- Lack of toys for a child may indicate poverty or different cultural norms rather than poor parenting capacity to provide stimulation
- The corrosive impact on parenting capacity of racism against asylum seekers
- The additional issues of parenting a child conceived through rape – either dealing with the negative response of the partner or with the stress of keeping it secret from him

Family and environmental factors

The importance of economic and social hardship is apparent. In addition there may be issues such as:

- Family history and functioning may include the loss of previous high status as well as periods of destitution
- Different concepts of who are/have been important family members and what responsibility is normally assumed by the whole community, e.g. who a child should reasonably be left with

k) Appendix 4 contains some questions that it may be helpful to cover within initial assessment of the situation of a child in these circumstances.

10.3.10 Children in need of protection

a) Where assessment indicates that a child may be in need of protection and Safeguarding Children procedures apply, additional factors need to be taken into account. These issues include such things as:

- Perceptions of Authority, the role of the Police in particular, and the level of fear which may be generated
- The additional implications for a family where deportation is a real threat of deciding to prosecute
- Balancing the impact of separation on a child with the likely history of separation/disruption
- Judgements about child care practices in the context of such different cultural backgrounds and experiences.

APPENDIX 1 LEGAL STATUS

The legal status of a child/family may be apparent from the documentation which the family carries.

An unaccompanied child (under 18) with an asylum claim has no access to public funds. However, the provisions of the Children Act 1989 will still apply. At least three weeks prior to reaching 18 the young person should be referred and assisted to the National Asylum Support Service (NASS) for ongoing support if the asylum claim is still outstanding.

The level of support given by the National Asylum Support Service (NASS) to a young person who has turned 18 may vary if they continue to live with relatives, e.g. no contribution will be made towards rent.

This is often complicated by duties that exist towards their parent/carers. The Local Authority has no powers under the Children Act 1989 to support parents or carer. Support, including financial, can only directly benefit the child.

Some children may arrive in the UK to be rejoined with their parents. If their parents have an outstanding asylum claim, the children can be recognised as 'dependants' and granted the same status as the principle applicant. Dependants are those who:

- are related (as claimed on the Asylum application)

or

- were dependent on the principal applicant prior to arrival in the UK (even though unrelated)

or

- had formed part of the pre-existing family unit abroad (again even though they may be unrelated).

If **indefinite** or **exceptional** leave to remain (ILR/ELR) or **Humanitarian Protection** has already been granted to the parent, the child's application is considered as one for 'family reunion' and not as a 'dependent'. In these circumstances the child must have formed part of the pre-existing family unit abroad.

Children who are dependent on asylum seeking parents may also claim asylum in their own right and their applications are then considered individually, irrespective of the outcome of their parents' claim. The claims must be registered with the Immigration and Nationality Directorate (IND).

RELEVANT PIECES OF LEGISLATION

Nationality Immigration and Asylum Act 2002 (NIA)

Section 54 is intended to discourage the concept of 'benefit shopping' within Europe. It is retrospective and applies to anyone who comes within the categories set out below. This is not dependent on the length of time they have been in the UK.

The Act has the effect of preventing local authorities from providing support under certain provisions, including section 21 of the National Assistance Act and section 17 of the Children Act, to:

Nationals of the European Economic Area (EEA) States (other than UK)

Those with refugee status in another EEA state

Persons unlawfully present in the UK who are not asylum seekers, including those who have overstayed visa entry limit and those without confirmation of ELR/ILR leave to remain

Failed asylum seekers who refuse to cooperate with removal directions

Section 55 applies to those who have made or are intending to make an asylum claim in the UK. It prevents NASS from providing asylum support unless the Secretary of State is satisfied that the person applied for asylum as soon as reasonably practicable after arrival in the UK. Families with dependent children will, however, receive asylum support even if they did not apply as soon as reasonably practicable.

Section 55 does not apply to unaccompanied minors.

Those who have not yet officially lodged an asylum claim can be offered assistance with accommodation (usually overnight) and travel to Immigration and Nationality Directorate Public Caller Unit (IND) by Children's Social Care in order to register the claim with the Home Office. Family can then access NASS support via Refugee Action once IND has accepted the claim and provided written confirmation of this.

APPENDIX 2 SOURCES OF INFORMATION

Documentation held by the child/family

The child/family may have documentation from their previous country such as benefit letter, ID cards, GP or hospital letters, letters from other Children's Social Care departments.

The Foreign and Commonwealth Office on 020-7008 1500

The appropriate Embassy or Consulate

The London Diplomatic List, ISBN 0 11 591772 1 can be obtained from the Stationery Office on 0870 – 600 –5522 or from FCO website www.fco.gov.uk. It contains information about all the Embassies based in London.

International directory enquires dial 155. Ask for main Town Hall number as they will have details of local offices. This can be useful where an address in a town abroad is known.

International Social Service of the UK

Cranmer House, (3rd Floor), 39 Brixton Road, London SW9 6DD
Tel No 020-7735 8941/4. Fax 020-7582 0696

Stockport Asylum Team

Victoria House, Ground Floor, Wellington Street, Stockport, SK1 3AD

Tel No: 0161-474-3651.

Fax: 0161 429 8136

APPENDIX 3 PRIVATE FOSTERING

Private Fostering arrangements can be a positive response from within the community to difficulties experienced by families. However, privately fostered children remain a diverse and potentially vulnerable group.

A privately fostered child is defined in the Children Act 1989 as a child under the age of 16 (or under 18 if the child has disabilities) who is cared for and provided with accommodation for 28 days or more by someone who is not the child's parent or a close relative, or someone with parental responsibility. It is a private arrangement between parent and carer.

The private fostering policy document is available on the Social Care and Health section of the Children and Young person's intranet site.

http://172.16.1.4/smbcintr/new/content/directorates/cyp/documents/PrivateFosteringProceduresVersionFinal-Nov2005_000.pdf