

Family and Friends Care Statutory Guidance revision

July 2018

<https://consult.education.gov.uk/children-in-care/revised-family-and-friends-care-statutory-guidance/>

Overview

We are seeking views on revisions made to include asylum seeking children being brought to the UK under the Dublin III Regulation to join family or relatives.

Why We Are Consulting

Asylum seeking children coming to live in the UK can be some of the most vulnerable in the country. The revisions are intended to provide clarity and support to local authorities in fulfilling their role where children are being brought to the UK under the Dublin III Regulation to live with family or relatives. This consultation seeks views on whether the revised guidance provides sufficient advice to local authorities in England engaging in these cases. We would like to know:

Is there anything in the revised guidance that should be amended?

Is there anything further that should be added to the revised guidance?

Do you have any suggestions for further links or resources that could be included?

Introduction

The aim of the guidance is to clarify the support available to family & friends carers and to ensure that local authorities understand that Dublin III carers are included as family and friends carers. It should be recalled throughout the guidance that the purpose of the support is separate to the decision taken under Dublin III on whether a child should be reunited with relatives in the UK. It is critical that the assessment in Dublin III does not limit the support available to carers and children once here, but that it is treated as a separate legal process.

Dublin III

The EU Regulation 'Dublin III' ('the Regulation') provides for circumstances in which an unaccompanied asylum seeking child in the EU can be reunited with family or relatives in another EU country. At Article 8, the Regulation sets out a hierarchy of relatives a child is eligible to join. Parents, step-parents or adults who have cared for a child, or siblings can be reunited where it is in the child's best interests. Relatives (aunts and uncles by blood or marriage and grandparents) can be considered as carers where it is in the child's best interests and where they are able to care for the child.

It should be recalled that the purpose of the Regulation is to promote family unity, and that it can prevent child trafficking or smuggling, and can prevent children undertaking dangerous journeys alone to reunite with their families because there is a legal route for them to access. Article 8 operates in conjunction with Article 6, which provides guarantees for unaccompanied minors,

requiring member states to take into account not only family reunification, but also well-being and social development, safety and security and their wishes and feelings. This is stated in the preamble to the Regulation, which whilst not legally binding, is an interpretative guide to the Regulation. This requires states to consider the child's best interests as set out in the UN Convention on the Rights of the Child (UNCRC) and the EU Charter of Fundamental Rights.

This guidance should aim to reflect the purpose and principals behind the Dublin III Regulation, and local authorities should be encouraged to recall the best interests of the child in migration, whilst also being clear that the local authority is not making the decision on the child's eligibility for entry into the UK.

The guidance is very long, and at times is over-prescriptive. The guidance in Wales and Scotland is shorter.

The guidance does not refer back to the Statutory Guidance on the Care of Unaccompanied Migrant Children and child victims of modern slavery (2017). However, this guidance contains useful information regarding the particular issues faced by asylum-seeking children.

Specific comments on the guidance

Paragraph 24: this goes against the spirit of the Dublin III regulation that a child's best interests are a primary consideration in deciding whether they should be transferred. It is recognised that it is appropriate that the relative the child will join is assessed. However, the sentence '...children are not being transferred to live with family members or relatives where they are unable to take on their care' is misleading and is clearly confusing the hierarchy that is in the text of the regulation. This should be accompanied by clarification that a child can be transferred to join a family member (not relative) who is not able to look after them but where the transfer is still in their best interests. For example, transferring siblings to be together even where a child is likely to be a looked after child.

It would be useful if the guidance could be clearer about the role of the assessment and its interaction with the Dublin III decision-making process.

Paragraph 53: special guardianship orders – it is important to note that in the design and implementation of Special Guardianship Orders, unaccompanied asylum seeking children were specifically identified as a group that could benefit from an SGO in ensuring that parental responsibility could be exercised by the special guardian to the exclusion of all others without terminating the legal relationship with the birth parents.

Paragraph 71: staff should have training on the asylum process and the particular needs of unaccompanied asylum seeking children as an issue faced by family and friends carers. This requirement is outlined in the Department for Education's [guidance on 'Care of unaccompanied migrant children and child victims of modern slavery'](#) which makes clear that social workers should have an understanding of asylum and immigration applications.

Paragraph 78: financial support – it would be helpful to highlight that in some circumstances carers may not have access to mainstream benefits (where they have leave to remain with No Recourse to Public Funds - NRPF) and that this is not a reason to exclude them from family and friends care, but that support may need to be provided under section 17 of the Children Act and information

provided about applying to the Home Office for a change in conditions. This section should also link to the Child Benefit 2 child policy.

Paragraph 88: the family tracing policy does not link to the statutory guidance on the care of unaccompanied migrant children; this refers (paragraph 55) to family tracing taking place where appropriate, and the Home Office seeking the views of the local authority.

Paragraph 93: this is the first time that it is made clear that a child does not have to live with a close family member under Dublin III; this should be stated beforehand, rather than included in the section on contact with family members for the first time. In our experience there is confusion in local authorities about who a child transferred under Dublin III may, or should, live with. This paragraph is also unclear because it suggests that a transfer under the NTS may be appropriate, but there is no reference to the need for transfer to be in the child's best interests (which it may not be if it involves moving away from their family member). This should cross-reference to the National Transfer Protocol which states that:

'Where a child is transferred to the UK and is reunited with a family member under the Dublin Regulation, and is not a looked after child, the child will not be eligible to be included in the transfer scheme. The child may become eligible for the transfer scheme if the family relationship subsequently breaks down and the child becomes looked after by a local authority that is over their 0.07% threshold, and it is assessed to be in the child's best interest to transfer away from the family member.'

Paragraph 98 – Support groups: would be helpful to include information specific to Dublin III children, for example providing information on refugee welcome groups, or ESOL classes as well as other specific or non-specific support groups.

Annex A: Page 51 sets out that if an arrangement is 'deemed unsuitable' by the local authority then a child may not enter the UK. This is confusing the two separate tests for family members and relatives. The former reunification is not limited by the ability of the family member to care for a child. Even where the child is to be reunited with a relative, 'deemed unsuitable' does not reflect the language of Dublin III which states that a relative "can take care of him or her". This is not the same as unsuitable and puts an additional gloss on the factors that the Home Office need to consider.

There is no basis in Dublin III to require relatives to support a child without access to public funds. The test for transfer is whether the relatives 'can take care of' the child. Where a child is placed with relatives who have leave to remain, there is no prohibition on them making an application for the public funds to which they are entitled. Alternatively, where a child joins family members who have NRPF, then they may be eligible for section 17 assessment and support if a child is in need.

Annex B:

Paragraph 1 sets out that a relative must also establish that they can take care of the child. This is not the wording of the Dublin Regulation, which does not place the burden on the child or relative, but on the state. In addition, the amending Implementing Regulation 118/2014 include pro forma forms for the transfer of children, which refer to the test for 'able to' care for the child. This states "basic evidence of material capacity" and "evidence of capacity" – which relates to an expressed desire to care for the child.

It is very concerning that relatives are not informed about access to benefits and services that mean they may be able to care for the child. It is also unclear why in the flow-chart a relative would be asked to confirm that they can care for a child without recourse to public funds, when there is no requirement to do so. It is not in the spirit of the regulation that the social worker can make an assumption about whether a family can support the child.

The second section of the diagram contains three questions in each instance the implication is that the transfer will not therefore be granted; this is a considerably higher test to the regulation 'able to look after', and there is no justification in law for it. The accommodation requirement is particularly problematic, and financial support is not synonymous with 'able to' – although it is clear that a material capacity test is envisaged, there is no guidance on how this should be interpreted. A refusal of transfer because of the suitability of accommodation where the child has expressed a desire for reunification with their relative goes against the spirit of the Regulation in the pre-amble and in Article 6.

The guidance should not be encouraging flexibility of the Dublin III deadlines. There is also no lawful basis for assuming that there is flexibility. Article 22 sets out a two-month deadline for a receiving state to respond.