

# POLICY BULLETIN 29

## TRANSITION AT AGE 18

### 1. Purpose

1.1 To assist UK Border Agency caseworkers in processing applications for support from unaccompanied asylum seeking children (UASC) currently being supported by a local authority social services department, and who are approaching their 18<sup>th</sup> birthday. This document also provides information on the Children (Leaving Care) Act 2000 (the Children Leaving Care Act) and guidance on the handling of applications for support from former UASC who have been "looked after" by the local authority under section 20 of the Children Act 1989 (the Children Act) and qualify for the provisions of the Children Leaving Care Act. This document also gives useful information on the support options available when a UASC reaches 18.

### 2. Application of this instruction in respect of children and those with children

2.1 Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

### 3. Unaccompanied Asylum Seeking Children

3.1 Unaccompanied asylum seeking children (UASC) are young people aged under 18 who are not accompanied by a parent or guardian, and who claim asylum. These children are also advised by the Refugee Council's Panel of Advisers. In terms of support, they either receive assistance from the local social services department as children in need (under section 17 of the Children Act ) or are accommodated under section 20 of that Act. When young people reach the age of 18, section 17 duties cease to apply to them and councils' duties to accommodate and maintain those who have been looked after under section 20

also come to an end. However, under sections 23C-E and 24 of the Children Act, as amended by the Children Leaving Care Act, local authorities continue to have duties and powers in respect of UASC who have been accommodated under section 20 of the Children Act (see section below entitled: Children (Leaving Care) Act 2000).

#### **4. Discretionary Leave (DL)**

4.1 Although UASC may arrive at any age, the majority of arrivals tend to be aged 16 – 17. In the vast majority of cases UASC's will have had their asylum claim refused and at the same time they will have been granted Discretionary Leave (DL) either for one year or until their 18<sup>th</sup> birthday. Those who apply for asylum two months or less before their 18<sup>th</sup> birthday will not normally have any decision made on their asylum claim until they are 18 and will not be granted DL while they are a minor. When DL is granted for more than one year the applicant may be able to appeal against the decision to refuse asylum. The policy to grant DL has been in place since 1 April 2003 (prior to that exceptional leave was granted for a period of time).

#### **5. Support options at 18<sup>th</sup> birthday**

**5.1 It is essential that local authority social service departments (SSD's) plan ahead to ensure that support arrangements can be put in place for when the UASC reaches 18.**

5.2 It is important to note that some cases will not be eligible for asylum support. If the UASC applies for further leave before their current leave to remain expires, the UASC will be eligible for main stream benefits from the local Job Centre Plus until a decision has been taken to refuse or grant the application (if a right of appeal exists against the decision, the person will remain eligible for mainstream DWP benefits while they appeal). In addition, in the case of a person who was granted DL until their 18th birthday, if they have an outstanding appeal against the refusal of asylum when they reach 18 and they have made an in time application for further leave, they will be eligible DWP benefits. Those who are eligible for main stream benefits are not eligible for Asylum Support and an application to the UK Border Agency should not therefore be made.

5.3 When a UASC applies for further leave to remain, the UK Border Agency will make a decision on whether to treat the application as a fresh application for asylum. An application for further leave will only be treated as a fresh asylum application if the information provided is considered to meet the criteria set out in paragraph 353 of the Immigration Rules.

5.4 If the UK Border Agency does decide to treat the application as a fresh asylum application the person will remain eligible for mainstream benefits if the original application was made before the person's leave expired (i.e. it was made "in time"). In addition if the fresh claim is subsequently refused by the UK Border Agency, the person will remain eligible for mainstream benefits if they appeal against that decision.

5.5 Thus there will only be the following cases where there is the possibility of the UK Border Agency providing support:

a) The applicant has an outstanding asylum claim on reaching 18. The following are examples of when this may occur:

Example 1: Where the person made their claim for asylum two months or less before their 18<sup>th</sup> birthday - in such circumstances a decision on their asylum application will not usually be made until they are 18.

Example 2: Where the person had been granted exceptional leave (under the earlier policy) or DL and had their asylum claim refused but they have appealed against that decision and that appeal is still outstanding when they reach 18.

b) The applicant has made an application for further leave out of time (i.e. after their leave to remain expired) and a decision has been taken by the UK Border Agency to treat the application as a fresh application for asylum<sup>1</sup> and that claim has been recorded<sup>2</sup>.

5.6 In the above cases support can only be provided if the person has made their asylum claim as soon as reasonably practicable<sup>3</sup> and they are destitute or likely to become destitute.

5.7 In the case of example one at 5.5 a) above: in cases where the asylum claim was made in country on or after 8 January 2003 a section 55 interview will be carried out in connection with the timeliness of their claim, in the normal way as part of the screening process when they apply for asylum.

5.8 In the case of example two at 5.5 a) above: in cases where the asylum claim was made in country on or after 8 January 2003, the SSD will need to contact their case owner 4 to 6 weeks before the applicant's 18<sup>th</sup> birthday in order to arrange for him or her to be interviewed in connection with the timeliness of their asylum claim.

5.9 Applicants that fall into the 5.5 b) category above will need to attend the Asylum Screening Unit with their letter confirming that their representations are to be treated as a fresh asylum claim. Their claim will then be recorded and arrangements will then be made for the person to be interviewed in connection with the timeliness of their fresh claim.

5.10 Where a person is identified as eligible to apply for asylum support, irrespective of whether the he/she qualifies for leaving care services, the SSD will arrange for asylum seeking children in their care to **complete the asylum support application form, and submit it to the UK Border Agency, 4-6 weeks before their 18<sup>th</sup> birthday. Where the asylum claim has been made in country, a decision on whether the person qualifies for section 95 support will be delayed until a decision has been made on whether they applied as soon as reasonably practicable.**

5.11 In cases where the applicant applied for asylum in country on or after 8 January 2003 it will be necessary for the person to be interviewed in connection with the timeliness of their asylum claim (see section 5.8 and 5.9 above). In some cases it may be necessary for the case owner to consider whether to grant access to emergency accommodation pending a section 55 decision in accordance with current policy.

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<sup>1</sup> An application for asylum in this context can be an application under the 1951 UN Convention or an application that their removal from the UK would be a breach of Article 3 ECHR

<sup>2</sup> If a decision has been made to treat the person's further representations as a fresh asylum claim, the person will normally need to attend an Asylum Screening Unit in order to have their claim recorded.

<sup>3</sup> Section 55 of the Nationality, Immigration and Asylum Act prevents the UK Border Agency from providing support to those who have not applied for asylum as soon as reasonably practicable unless they have a minor dependant.

5.12 Following recent guidance from the Department of Health (Local Authority Circular LAC 2003/13) many more former UASC are expected to qualify for leaving care services from the SSD responsible than before. SSDs have a duty to plan for such young people until they are 21 at least and will want to ensure that there is no break in the support arrangements.

5.13 To enable UK Border Agency caseworkers to decide whether the applicant is destitute, SSDs must provide a letter stating that their duties and powers to provide services to the UASC under section 17 of the Children Act, or to maintain and accommodate him or her under sections 20 and 23B of the Children Act, will cease from a specific date (usually the person's eighteenth birthday), and whether the SSD is aware of any other resources/support in kind available to the young person, that might disqualify them from asylum support or which the UK Border Agency should take into account. While section 17 cases are likely to become much less frequent it is a matter for the SSD to decide whether the UASC falls under section 17, 20 or 23B.

## **6. The Children (Leaving Care) Act 2000**

6.1 The Children (Leaving Care) Act 2000 came into force on 1 October 2001. The principal aim of this Act is to improve the life chances of young people living in and leaving local authority care. It imposes new duties on local authorities, in place of their present powers, to support children leaving care (including asylum seekers) until they are at least 18 and to assist them until they are at least 21.

6.2 These duties include providing Personal Advisers and Pathway Plans for all eligible young people. The Personal Adviser will provide the link between the young person and their local authority, providing support and guidance and helping to co-ordinate services. The Pathway Plan will map out a route to independence for these young people, and will be reviewed at least once every six months until the young person reaches at least 21. The responsible authority will also assist the young person with their educational, training and employment needs, and will provide general assistance where required.

6.3 The Government's policy of dispersing asylum seekers would have made the local authority's duty under the Children (Leaving Care) Act very difficult to implement. Ministers have therefore agreed that with effect from 1 October 2001, except in exceptional circumstances, the UK Border Agency will not seek to disperse those young people who reach the age of 18 on or after 1 October 2001 without a final decision being reached on their asylum claim. This concession will only apply to those young people who have been accommodated by the local authority under Section 20 of the Children Act 1989 and qualify as '*former relevant children*' (see section 6 below) under s23C of the Children (Leaving Care) Act. *The SSD must therefore advise the UK Border Agency, in cases where an application for support is made for asylum support, whether an applicant is a former relevant child or not.*

6.4 Responsibility for locating and managing suitable accommodation for this group of young people will fall to the local authority concerned rather than to the UK Border Agency. The local authority will, however, be able to seek reimbursement from the UK Border Agency of £140 per person, per week (if the person qualifies for asylum support). This amount will be a contribution towards the cost of the young person's accommodation, utilities and support. It has been agreed that any shortfall between this amount and the actual costs involved will be met by the local authority concerned.

## **7. Definition of Former Relevant Children, Eligible Children, and Relevant Children**

7.1 'Former relevant children' are defined in the relevant legislation as being aged 18-21 and having been either 'eligible' or 'relevant children'.

7.2 'Eligible children' are aged 16 or 17 and are looked after by a local authority having been looked after for a qualifying period of at least 13 weeks from their 14<sup>th</sup> birthday.

7.3 'Relevant children' are aged 16 or 17 and have left care, having been 'eligible children' but have moved from care to more independent living arrangements.

7.4 This is a summary: refer to The Children (Leaving Care) Act (England) Regulations 2001 for full details.

## **8. Further information for UK Border Agency case-workers**

8.1 Where an application for asylum was made prior to the dates set out in Annex B, the application for asylum support should be refused on the grounds that they are entitled either to social security benefits (port applicants) or to support under the Interim Support Arrangements.

8.2 UK Border Agency caseworkers will need to consider carefully whether the applicant will be destitute (within the meaning of Part VI of the Immigration and Asylum Act 1999) after their 18<sup>th</sup> birthday. If an accompanying letter has not been received from the SSD, then one should be requested (see proforma at Annex C).

8.3 Where the SSD advises that further assistance may or will be provided in accordance with sections 23C-E or section 24 of the Children Act, caseworkers should consider whether it has any impact on their entitlement to asylum support. For example, if they are receiving assistance solely and specifically for travel expenses in connection with their education or training, it should not be treated as other income. However the caseworker should also check whether they are receiving an education allowance of any kind (e.g. the Education Maintenance Allowance) or where the SSD makes cash payments for essential living needs, these may be treated as income.

8.4 Where the applicant is considered to be eligible for asylum support, the UK Border Agency case-worker will consider when that support should commence. This must not be before the person's 18<sup>th</sup> birthday, and consideration must be given to the date from which SSD financial support will cease. While the UK Border Agency will acknowledge applications, local authorities may wish to contact the Disbenefited Team a week before the 18th birthday to ensure that applications have been received.

8.5 Where a person is eligible for asylum support, support and accommodation has been requested by him or her and he or she is a 'former relevant child' this will be arranged by the relevant local authority. The UK Border Agency Finance Section will arrange for the local authority to be reimbursed £140 per person, per week towards the cost of providing accommodation, utilities, and support to the young person.

8.6 On receipt of an application from a 'former relevant child' who is eligible for asylum support, the case-worker within the Disbenefited Team should record on ASYS details to this effect. When an invoice is received by the UK Border Agency Finance Section from the local authority it should be sent, in the first instance, to the Finance Officer in the Disbenefited Group. A caseworker within this team should check ASYS to confirm that the applicant is eligible for asylum support. The invoice should then be certified by signing as appropriate

and returned to UK Border Agency Finance Section. This process will continue every four weeks, until a final decision is taken on the applicant's asylum claim.



Paragraph 353 of the Immigration Rules sets out how to deal with further submissions. It states:

**“When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:**

- (i) has not already been considered; and**
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.**

**This paragraph does not apply to claims made overseas.”**

**The following are eligible to apply to UK Border Agency (see also section 2 above)**

- Asylum seekers who applied for asylum **on arrival** on or after **3 April 2000**
- **In-country** asylum seekers living in **Northern Ireland** or **Scotland** who applied for asylum on or after **3 April 2000**
- **In-country** asylum seekers living in **Kent** or **Medway** who are served with a refusal notice on or after **17 April 2000**
- **In-country** asylum seekers living in **London** who applied for asylum on or after **24 July 2000**
- **In-country** asylum seekers living in the **North East, Yorkshire, Humberside** or **Wales** on or after **31 July 2000**
- **In-country** asylum seekers living in the **North West, East Midlands, Eastern, South West** or **South Central** on or after **14 August 2000**
- **In-country** asylum seekers living in the **West Midlands** or **Sussex** on or after **29 August 2000**.

To: ..... Local Authority Social Services Department  
.....  
.....

From: UK Border Agency



Date:

**ASYLUM SEEKER - UNACCOMPANIED MINOR**

Name:

Address:

Date of Birth:

Nationality:

We have recently received an application for support from the above named young person who has advised that s/he is currently receiving maintenance and accommodation and/or assistance from ..... SSD under the Children Act 1989, but that the duties under which this maintenance and accommodation/assistance is being provided will cease to apply on .. / .. / .... when s/he reaches age 18.

Could you please confirm to the best of your knowledge, whether the above statement is correct, and whether s/he: (please delete as appropriate)

does not have any personal income;  
has personal income amounting to £ ..... per week / month / annum.

does not have any means of support (i.e. somewhere to stay/means to live);  
has friends/family willing to provide support as detailed below:

does not have any assets;  
has the following assets: - cash to the value of £.....  
savings to the value of £.....  
investments to the value of £.....  
owns land to the value of £.....  
owns car(s) / vehicles(s) to the value of £.....  
owns goods for business/trading purposes to the value of £.....

Please advise whether there will continue to be any entitlement under sections 23C-E or s24 of the Children Act 1989, and if so provide details of any assistance which is being/will be provided.

Please confirm whether the young person qualifies for assistance under s23C of the Children Act 1989 (as amended by the Children (Leaving Care) Act 2000) as a former relevant child and that accommodation will be arranged by the local authority.

Signed.....  
Position.....  
Date.....



## Change Record

Version	Authors	Date	Change Reference
4.0	BF	21/11/08	Update branding only
5.0	SM	05/10/09	Children's Duty paragraph added