



Department  
for Education

# **Consultation on the revised statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children**

**Government response**

**November 2017**

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## Introduction

The statutory guidance on the care of unaccompanied asylum seeking and trafficked children was first published in 2014. Recent legislative changes such as the Modern Slavery Act 2015, policy developments such as the National Transfer Scheme for unaccompanied asylum seeking children and events around the recent migration crisis have meant that it was necessary to update the guidance to be of maximum use to local authorities.

The guidance was previously titled “Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children”. Following the Modern Slavery Act 2015 the definition of “modern slavery” has been described as including human trafficking, slavery, servitude and forced and compulsory labour. The title and content of this statutory guidance has therefore been revised to use the same terminology and is now called ‘*Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities*’. The original title did not take into account the number of non-asylum seeking non-citizen children in local authority care and so it has been revised to use the term “migrant children” to encompass asylum seeking and non-asylum seeking unaccompanied children from abroad.

Starting in summer 2016 we worked to revise the guidance with an Expert Reference Group comprising of local authorities with high numbers of unaccompanied children, the Association of Directors of Children’s Services, the Local Government Association, non-government organisations working with unaccompanied and trafficked children and other government departments. Over 90 individuals from over 30 organisations, plus numerous local authorities contributed during the pre-consultation stage. The guidance was then revised according to feedback from the Expert Reference Group, and that revised version was made publically available for consultation during March 2017.

During the public consultation period we asked whether any further additions or amendments were required and whether respondents had any suggestions for additional resources or links that could be included. 23 full responses were received including five from representative bodies. This document summarises the results of that consultation and sets out the government’s response.

## Summary of responses received and the government's response

The public consultation on the revised statutory guidance regarding the care of unaccompanied and trafficked children closed on 17 March 2017. The consultation received a range of responses from a variety of stakeholders, either representing their own views or those of their members. It attracted responses from a range of interested stakeholders including local government representative bodies (representing over 35 single organisations), non-government organisations, local authority children's services, social care services and individual social workers and support workers.

The consultation asked the following three questions:

1. Is there anything in the revised guidance which should be amended?
2. Is there anything further which should be added to the revised guidance?
3. Do you have any suggestions for further links or resources that could be included at Annex A of the guidance?

## Numbers of responses received

<b>Total responses received:</b>	<b>23</b>
Local Authority	4
Representative body	5
Voluntary sector organisation	8
Individual	6

## The government response

As this piece of statutory guidance cuts across many government policies, in line with government policy, we have not replicated advice or guidance that is published elsewhere to restrict the length of the guidance and ensure that future updates are effective. A number of suggested amendments/additions have therefore not been included for this reason but we have added links to the relevant guidance wherever appropriate. Nonetheless, the guidance has been expanded significantly in response to a number of requests (both before and after the public consultation period) to provide additional guidance on a range of issues.

The key themes referred to by respondents are described below, along with an explanation of how the guidance was revised prior to the public consultation, and then again after receiving the public responses.

## **Scope of guidance**

The purpose of the guidance when first published was to set out the steps local authorities should take to provide support for looked after children who are unaccompanied asylum seeking children and child victims of trafficking. In view of the Modern Slavery Act 2015, it was necessary to broaden the scope of this document to include all child victims of modern slavery, not only those who have been trafficked. The vast majority of responses during the public consultation welcomed the change to widen the scope of the guidance to child victims of modern slavery. We have also included all groups of unaccompanied migrant children rather than simply those seeking asylum. A number of respondents requested, however, that to support this adjustment, the list of exploitation types in the opening paragraph should be expanded and made suggestions which have been included in the published guidance.

## **Introduction**

A number of respondents during the public consultation requested that there should be further recognition of the needs and vulnerabilities specific to unaccompanied children and the measures required to keep them safe, although one representative organisation suggested that there was too great a focus on trafficking. The introduction was revised in places to highlight where the circumstances of being unaccompanied, including having an uncertain immigration status, may lead to increased vulnerabilities. Other parts of the text have been changed to account for both unaccompanied children and child victims of modern slavery. We have not distinguished to a great extent between the different protection needs of unaccompanied children and child victims of modern slavery as children may, at some point whilst being looked after, fall into both of these groups and therefore require the same level of protection.

Respondents during the public consultation suggested that we make clear the different ways in which an unaccompanied child or child victim of modern slavery may present to a local authority. The possibility that a child may come into contact with a local authority after having been brought to the UK in a private fostering arrangement which subsequently breaks down has been included. A full list of the other possibilities has not been included because the statutory duties to safeguard all unaccompanied children and child victims of modern slavery remains the same irrespective of how they present. The guidance has been revised to indicate that there are a range of situations in which an unaccompanied child may come to the attention of local authorities and other agencies.

## **Definitions**

This section was significantly expanded, following advice from stakeholders, to include definitions for different groups of unaccompanied children, reflecting their individual circumstances, to help inform the support they may require. A definition of the best interests principle was also included prior to consultation which was welcomed by respondents. While it was not deemed necessary to reference best interests

considerations throughout the entire document as was requested by some respondents, links are provided to further guidance and the legislation, as well as links to relevant legislation, regulations and guidance where best interest principles are embedded.

### **Local authority responsibilities**

This section was revised prior to make clear that the provision of services under section 17 and section 22 of the Children Act 1989 apply equally to unaccompanied children and child victims of modern slavery. Further guidance relating to what is expected of social workers supporting children through the asylum process was then included following the public consultation, as well as signposting towards other relevant documents, which may assist them in doing so.

### **Training and awareness**

Prior to March 2017 the guidance was expanded to clearly identify the knowledge of the asylum process which social workers need to have. This was further expanded following the public consultation. A number of respondents felt that the guidance needed to be clearer as to what is expected of local authorities in terms of supporting unaccompanied children to seek legal advice to assist them with the asylum process, and the guidance has been revised accordingly, including providing links to other guidance.

A number of respondents during the public consultation suggested that the guidance include further details on training required by social workers, carers and others involved in the care of unaccompanied children, with a focus on mental health and the potential impact of trauma. Specific training is not a statutory requirement for all social workers and therefore it has not been required by the guidance. Local authorities are under a broad duty to ensure their staff are appropriately trained to meet the needs of the children they are looking after. There are other references in the guidance, however, noting that specialist mental health support may be required by child victims of modern slavery and these have been revised to include unaccompanied children, who may require support to deal with the impact of loss and trauma.

### **Modern slavery and trafficking**

The guidance is clear that it does not does provide detail on steps that should be taken to identify and protect victims of modern slavery including trafficking, but links are provided to the guidance which is intended to serve that purpose. The guidance was however revised prior to March 2017 to set out the changes to legislation through the Modern Slavery Act 2015 and key information regarding the National Referral Mechanism. Respondents suggested a number of clarification points in this section which were included.

Respondents in the public consultation requested that the bullet point list of possible protective measures to help keep trafficked children safe should be removed from the

guidance. It was suggested that this advice, without the relevant context, could be misconstrued by social workers and is not appropriate for statutory guidance. The list of measures has therefore been removed and replaced with a referral to the practice guidance on *Safeguarding children who may have been trafficked*, published by the Department for Education and Home Office in 2011.

### **National Transfer Scheme**

The guidance was revised prior to March 2017 to include reference to the National Transfer Scheme, launched in July 2016, and signposting towards the National Transfer Protocol, to provide further information and advice. Respondents suggested that the guidance should provide further detailed information on the National Transfer Scheme for unaccompanied asylum seeking children. This information is, however, included within the National Transfer Protocol, as cited in the document, and therefore it is not necessary to replicate that within this guidance.

### **Assessment**

The guidance was significantly expanded prior to March 2017, to set out how those undertaking the initial assessment should be mindful of the issues facing this group of children. They should be alert to the possibility that the child may have been a victim of modern slavery, the risk of the child going missing, and other needs and vulnerabilities. In particular, respondents suggested that the guidance should specify more detail on health and education assessments and the guidance has been revised accordingly, including providing links to other guidance.

Some respondents suggested we include more examples for why an unaccompanied child might go missing, other than the risk that they will be subject to ongoing exploitation, and so the guidance has been revised to include further examples, as well as providing links to other guidance.

### **Family reunification**

A new subheading was created prior to March 2017 on information and advice regarding the reunification of unaccompanied children with family members. The section was expanded further following suggestions from public respondents, though not to the extent that the content of family tracing guidance is replicated. Links to relevant guidance have been provided.

### **Planning, protection and placement**

Further clarity has been provided regarding care planning, following on from the issues identified in the “assessment” section for this group of children. Protection and placement planning was significantly expanded following requests for more guidance regarding considerations when identifying suitable placements for this group of children.

## **Review, advocacy and wider support**

This section was revised prior to March 2017 to include mention of the Independent Child Trafficking Advocates (ICTAs), a service which is currently being trialled in specific Early Adopter Sites. Respondents requested that the reference to the additional support available from Independent Child Trafficking Advocates in Greater Manchester, Hampshire, the Isle of Wight and across Wales was removed or footnoted as the information is time-specific and the guidance has been revised accordingly.

## **Planning transition to adulthood**

Respondents requested that references should be included to the Immigration Act 2016 and new support arrangements for those leaving care who have exhausted all rights of appeal against their asylum decision. As the regulations for these changes are yet to be laid, it is not appropriate to refer to them at this stage. Once laid, we will update the guidance to ensure local authorities are fully aware of the legislative changes.

The guidance has been expanded significantly both before March 2017 and after the public consultation period to include more detail on the ways in which social workers and personal advisers need to support children and care leavers through the immigration and asylum process. The way in which pathway plans need to take into account the range of possible outcomes has also been included in far more detail.

Many respondents considered that the section detailing the possible outcomes of an asylum application was not sufficient or completely accurate and failed to adequately inform social workers about the right to appeal an asylum refusal at the time of the decision and so the guidance has been expanded and revised accordingly.

## **Access to public funds and other services**

Prior to March 2017, the title of this section was revised to be more accurate, and new information included, which was welcomed by public respondents.

## **Next steps**

The Department for Education will review the guidance in 2020 but it will only be revised if it is considered no longer fit for purpose. In the interim, minor amendments will be made to the statutory guidance as and when new legislation affecting this cohort of children is introduced.



## Question analysis

### Question 1

**Is there anything in the revised guidance which should be amended?**

There were 24 responses to this question.

	Total	Percent
Yes	17	71%
No	7	29%

### Question 2

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

There were 23 responses to this question.

	Total	Percent
Yes	19	83%
No	4	17%

### Question 3

**Do you have any suggestions for further links or resources that could be included at Annex A of the guidance?**

There were 23 responses to this question.

	Total	Percent
Yes	12	52%
No	11	48%

# Annex A: List of organisations that responded to the consultation

## Local Authority

- Gateshead Council
- Hartlepool Borough Council
- London Borough of Croydon
- Wandsworth Borough Council

## Representative body

- Association of Directors of Children's Services
- British Association of Social Workers
- Local Government Association
- Refugee Children's Consortium
- Royal College of Paediatrics and Child Health

## Voluntary sector organisation

- British Red Cross
- Coram Children's Legal Centre
- ECPAT UK
- National Youth Advocacy Service (NYAS)
- No Recourse to Public Funds Network (NRPF Network)
- St Christopher's Fellowship
- Unseen UK

## Individual responses:

- two social workers, a clinical psychologist and an independent reviewing officer



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