

## **Processing an asylum application from a child**

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# 1. Introduction

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## 1.1 Purpose of instruction and intended audience

This instruction sets out the policy and procedures to follow when dealing with an asylum application from a child. An asylum application can be made by, or on behalf of, a child whether accompanied or unaccompanied and must only be processed by a specially trained case owner who has received the requisite children's training.

This instruction is intended to provide guidance for case owners, Case Resolution Directorate (CRD) case workers, Chief Immigration Officers, Senior Case Workers and Presenting Officers as well as staff in the Asylum Screening Unit (ASU), ports, Local Immigration Teams (LIT) and Local Enforcement Offices (LEO).

Within these instructions the terms "child" or "children" refer to persons under 18 years of age.

**Where the age of the applicant (and their status as a child) is in doubt, reference should be made to the detailed guidance provided in the Asylum Instruction on Assessing Age.** Please note that where the person's age is in doubt he/she should be treated as a child unless and until a full age assessment shows him to be an adult.

These instructions should also be read in conjunction with the Asylum Instructions (AI) on Dependants.

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## 1.2 United Nations Convention on the Rights of the Child (UNCRC)

The UK is a signatory to the UN Convention on the Rights of the Child (UNCRC) and its text includes key commitments that UKBA has to meet when handling asylum applications from children. Case owners should familiarise themselves with the UNCRC with particular regard to the following articles:

### Article 2 – Non-discrimination

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's, or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### Article 3 – Best interests of the child

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision

#### **Article 12 – Child’s views**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 22 – Refugee children**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### **Article 37 - Deprivation of liberty**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults, unless it is considered in the child's best interest not to do so, and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

#### **Article 39 - Rehabilitation of victims**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The obligation to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration can be demonstrated by adherence to section 55 of the Borders, Citizen and Immigration Act 2009.

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#### **1.3 Best interests**

Article 3 of the UNCRC obligates the UKBA to ensure that the best interests of the child are a primary consideration in all actions concerning the child. This guidance must be read with this principle clearly in mind and the understanding that Best Interests is a continuous assessment that starts from the moment the child is encountered and continues until such time as a durable solution has been reached.

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#### 1.4 The new statutory duty to safeguard and promote the welfare of children in the UK

Case owners also need to be aware that, effective from 2 November 2009, **Section 55 of the Borders, Citizen and Immigration Act 2009** (hereafter “the section 55 duty”) introduced a statutory duty on the Home Secretary to make arrangements to ensure that UKBA functions (and services carried out by third parties on UKBA’s behalf) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. This statutory duty extends to all UKBA staff and those acting on behalf of UKBA when carrying out immigration functions in relation to children within the UK (as a matter of policy, UKBA staff working overseas are also expected to act in accordance with the duty, albeit that the basis is not statutory). Therefore those dealing with asylum applications from children (or from those whose claimed age is doubtful but are being treated as children) must have regard to the detailed guidance provided in this instruction and elsewhere as part of these arrangements.

Case owners dealing with children should therefore check they are familiar with the general approach (summarised below) described in the separate guidance - Arrangements to Safeguard and Promote the Welfare of Children for those Exercising UK Border Agency Functions. The new general guidance replaces the Code of Practice for Keeping Children Safe from Harm and describes the relationship between carrying out UKBA’s chief functions - including immigration control and achieving the departure of those with no legal basis of stay - and the new statutory duty.

The Statutory Guidance to the UKBA on making arrangements to safeguard and promote the welfare of children, issued under section 55, sets out the key arrangements for safeguarding and promoting the welfare of children as they apply both generally to public bodies who deal with children (Part 1) and specifically to the UKBA (Part 2). Any person exercising immigration, asylum, nationality and customs functions are required to have regard to this guidance. The guidance indicates that UKBA must act in accordance with the following principles:

- Every child matters, even if they are someone subject to immigration control.
- The best interests of the child will be a primary consideration when making decisions affecting children.
- Ethnic identity, language, religion, faith, gender and disability are taken into account when working with a child and their family.
- Children should be consulted and the wishes and feelings of children taken into account, wherever practicable, when decisions affecting them are made. Where parents and carers are present, they will have primary responsibility for the children’s concerns.

- Children should have their applications dealt with in a way that minimises the uncertainty that they may experience.

The detailed guidance that follows in this instruction has been revised to reflect the section 55 duty and consideration of the best interests of the child. Being familiar with and applying the detailed guidance that follows in this instruction will enable immigration officers, case owners and other UKBA staff to demonstrate that the child's welfare has been taken account of in the processing of their case.

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### **1.5 Other guidance**

Case owners may also wish to refer to the following documents which primarily reflect obligations of agencies and especially local authorities with respect to safeguarding and promoting the welfare of children: [Every Child Matters](#); in Scotland, [Getting it right for every child](#) ; and in Wales, [Child and Young People: Rights to Action](#). Case owners may also find it helpful to read UNHCR's Guidelines on International Protection: Child Claims under Article 1(A)2 and 1F of the 1951 and/or 19667 Protocol relating to the Status of Refugees.

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## 2. Immigration rules relating to children

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The Immigration Rules make specific provision for asylum-seeking children and the safeguarding and promotion of their welfare during key parts of the asylum process:

- Paragraph 349 of HC 395 (as amended) defines a child for the purpose of an asylum application, as a person, who is under the age of 18 or, in the absence of any documentary evidence, appears to be under that age
- Paragraph 350 provides for unaccompanied children wishing to apply for asylum and, in view of their potential vulnerability, requires that particular priority and care be given to the handling of their cases
- Paragraph 351 explains that a person of any age may qualify for refugee status under the 1951 UN Convention relating to the Status of Refugees. However, account should be taken of the applicant's maturity and in assessing the application of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of their situation. An asylum application made on behalf of a child should not be refused solely because the child is too young to understand his situation or to have formed a well founded fear of persecution. Close attention should be given to the welfare of the child at all times
- Paragraph 352 requires that an accompanied or unaccompanied child (over the age of 12) who has applied for asylum in their own right be interviewed about the substance of their application unless the child is unfit or unable to be interviewed. This paragraph also requires that when a child is subject to a substantive asylum interview:
  - the interview should be conducted in the presence of a Responsible Adult (for example, a parent, guardian, representative or another adult who has responsibility for the child but is independent of the Secretary of State)
  - the interviewer should have specialist training in the interviewing of children and have particular regard to the possibility that the child feels inhibited or alarmed
  - the child shall be allowed to express himself in his own way and at his own speed. If he appears tired or distressed, the interview will be suspended. The interviewer should then consider whether it would be appropriate for the interview to be resumed the same day or on another day.
- Para 352ZA stipulates that as soon as possible after an asylum claim is made, measures are taken by the Secretary Of State (for example, case owners) to ensure that:
  - a representative represents or assists the unaccompanied child with respect to the examination of the application
  - the representative is given the opportunity to inform the unaccompanied child about the meaning and possible

consequences of the interview and, where appropriate, how to prepare himself for the interview.

- The representative also has the right to be present at the interview and ask questions and make comments in the interview, within the framework set by the interviewer.
- Para 352ZB requires that the decision on the asylum claim is also taken by a person trained to deal with asylum claims from children

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## 3. Policy relating to dependent children

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### 3.1 Family members of principal applicants

For example, their spouse and/or minor children, will normally be considered as their dependants. A dependent child who reaches the age of 18 prior to the decision on the principal applicant's application must continue to be treated as a dependant for the purposes of the application. At this point they can also make an application for asylum in their own right if they wish to do so.

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### 3.2 Where a dependent child lodges a separate claim

A dependent child can also lodge a claim for asylum in their own right but where the child has previously been served with a one-stop notice as a dependant, and failed to raise asylum in a statement of additional grounds, consideration should be given to issuing a certificate under section 96 of the 2002 Act, after exploring all possible legitimate reasons for not doing so. (For further guidance, see [Immigration Directorate Instructions, Chapter 12, Section 3, The One-Stop Procedure: Warnings & Certificates.](#)

Parents of a child applying for asylum cannot be considered as dependent on their child's claim.

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### 3.3 A child as the dependant of another child

For the purposes of claiming asylum, a child cannot normally be regarded as the dependant in a sibling's claim. They would need to make their own claim and their files should be blue-taped together to ensure that the files travel together until the action or decision required has been completed and the cases concluded. Siblings may provide useful evidence relating to each others claims in some cases and it may be appropriate, in keeping with the Immigration Rules and section 55 duty to ensure case owners proactively seek to consider this issue in their decision making.

The only circumstances in which a child may be treated as a dependant on another child's application is where they are married to each other, in a civil partnership or in a same sex or unmarried relationship which has subsisted for two years or more, or where the principal applicant is the parent of the younger (dependent) child. Evidence of the relationship, for example, a valid and genuine marriage certificate or birth certificate, is required. Other documentary evidence can be submitted and should be considered on a case-by-case basis, taking into account all the circumstances of the case including conditions in the child's country of origin the child's country of origin.

For further information please refer to the AI on Dependants.

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## 4. Definitions

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### 4.1 Accompanied asylum seeking child (AASC)

An accompanied asylum seeking child is a child who:

- is applying for asylum in their own right; and
- forms part of a family group; or
- is separated from both parents and is being cared for by an adult who by law has responsibility to do so or is in a private fostering arrangement.

The accompanying adult will be asked to provide evidence of the above relationship, for example, a genuine birth certificate or guardianship papers.

A private fostering arrangement is defined when an adult (aside from the child's parent) is looking after a child for duration of more than 28 days. A referral to the Local Authority must be carried out to assess the appropriateness of the placement.

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### 4.2 Unaccompanied asylum seeking child (UASC)

An unaccompanied asylum seeking child is a child who is:

- applying for asylum in their own right; and
- is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

A child may move between the unaccompanied and accompanied categories whilst their applications are under consideration, for example, where a child arrives alone but is later united with other family members in the UK, or a child arrives with their parents or close relatives but is later abandoned, or a trafficked child, or one brought in on false papers with an adult claiming to be a relative.

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### 4.3 Responsible adult

Suitable people to perform this role:

- Social worker, Local Authority key worker, relative, or foster carer would be suitable people. However, other people/persons who are independent of the Secretary of State and have responsibility for the child could also assume this role, such as a doctor, priest, vicar, teacher, charity worker or Refugee Council representative.

In some cases and only with the consent of the child the legal representative may act additionally in the capacity of responsible adult. The child must be asked prior to the interview to confirm whether he/she is happy with the person acting as their Responsible Adult and the Responsible Adult must be content to act within the scope of their duties as described by the case owner in the asylum interview preamble.

The main roles of a Responsible Adult include the following:

- to be present at the substantive asylum interview and to ensure that the child is not unduly inhibited or alarmed by the interview process
- to ensure that the child understands the interview process
- to give moral support and reassurance as necessary to the child
- to facilitate communication between the child and the interviewing officer where necessary
- to ensure that all welfare needs relating to the child are sufficiently provided for, for example, adequate breaks, refreshments, etc.
- to offer any additional information to the interviewing officer which may have a bearing on the child's emotional wellbeing and fitness for interview (for example, bringing to the case owner's attention that the child is fasting or mentioning that they have had a long journey and an early morning start to attend the interview.)

In some cases the Responsible Adult may also accompany the child during the screening interview. A Responsible Adult does need to be present when fingerprints are taken from a child of less than 16 years of age.

What falls outside the Responsible Adult's remit:

- The Responsible Adult is not present to answer questions on behalf of the child but may intervene if it is clear to him/her that the child is becoming distressed or tired and a break is required.

At the conclusion of the substantive asylum interview the interviewing officer will confirm that the child has understood all the questions and will give the child an opportunity to add any information that they would like to be considered. The Responsible Adult and legal representative will also have an opportunity to add any comments relating to the conduct of the interview process.

If it is clear to the interviewing officer that the responsible adult is not fulfilling his/her role they should consider suspending the interview.

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## 5. Support for children applying for asylum

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This section provides guidance on authorities that provide support for children applying for asylum.

### 5.1 Children's Services/ Social Services

Local Authorities in England and Wales have a duty under Sections 17 and 20 of the Children Act 1989 (s22 & s93 of the Children (Scotland) Act 1995 in Scotland) to provide support for unaccompanied asylum seeking children, Section 17 places a general duty on every Local Authority to safeguard and promote the welfare of children in need within their area by providing services appropriate to those children's needs. Section 20 requires every Local Authority to provide accommodation for children in need within their area who require accommodation if:

- there is no person who has parental responsibility for them;
- the children have been lost or abandoned; or
- the person who has been caring for them has not been able to provide them with suitable accommodation.

The local authority's assessment of the individual's needs will be the basis on which the authority will provide them with suitable accommodation and related support. In England, this assessment and support will be the responsibility of the Children's Services departments within a Local Authority and in Wales and Scotland, within the Local Authorities' Social Services departments.

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### 5.2 Role of UKBA in asylum support for children

The only circumstance in which UKBA provides support for asylum seeking children is when they form part of a UKBA-supported asylum-seeking family. For guidance on support arrangements for those who turn 18, see the AI on [Change of Age](#).

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### 5.3 Refugee Council's Panel of Advisers

The role of the Panel of Advisers is to advise and assist an unaccompanied child in their dealings with UKBA and other central and local government agencies (for example, Local Authorities) while their application is outstanding. The adviser will not offer legal advice.

All children must be referred to the Refugee Panel within 24 hours of the application being made. Referrals which include details of the child are usually carried out by case owners via fax. Contact details for the Panel of Advisors are as follows: -

240 – 250 Ferndale Road,  
London

SW9 8BB

Tel: 02073461134

Fax: 02073461140

#### **5.4 Legal representation**

All children are eligible to receive legal aid to help them with their asylum application and the Legal Services Commission (LSC) will fund a legal representative's attendance at a screening event and a substantive interview. However, funding is not available for the 'First Reporting Event' or other 'Reporting Event'.

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## 6. Screening

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This section provides an overview of the screening process that should be followed by staff in the Asylum Screening Unit (ASU), ports and Local Immigration Teams (LITs).

### 6.1 Welfare pro-forma for children encountered at ASU, ports and LITs

Children who attend ASU, or who are encountered at ports or by LIT enforcement officers may sometimes have travelled extensively before arriving at their final destination in the UK. Officers should take this into account and offer children refreshments, access to toilet facilities and if required, an adequate amount of rest prior to the commencement of any immigration interview.

The Welfare Pro-Forma (ASL.4261 - available on DOCGEN) should be completed to ensure the child is fit to be interviewed. Its purpose should be clearly stated to the child, all the questions asked and all answers recorded. The answers should then be attached to the applicant's file. Once completed, please refer to the guidance on the full screening process below.

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### 6.2 General principles

The purpose of the screening process is to register an application for asylum. An application which can be understood as a request for international protection will be presumed to be an application for asylum. **Screening is not the place to explore the claim for asylum.**

The screening process for child applicants is designed to obtain details about: the child's identity, country of origin and family, the history of how they arrived in the UK and their documentation; any previous claims for asylum; their health and any special needs; security-related information; and, the identity of anyone accompanying the child or acting as their Responsible Adult. Additionally, the applicant's photograph and fingerprints are taken.

Screening officers must deal with children as a priority in view of their vulnerability.

It is a requirement of the immigration rules (paragraph 352) that a Responsible Adult be present where an unaccompanied child is interviewed about the substance of their claim, for example, when they are subject to a substantive asylum interview. There is no requirement for a Responsible Adult to be present when the child is being interviewed initially (for example at first contact) or at their screening interview and it is in the interest of the child that these interviews are not delayed unnecessarily, for example, while arrangements are made for the Responsible Adult to be present. However, the child may prefer to be screened in the presence of a legal representative. When this is the case, every opportunity should be taken to accommodate the

child's wishes though these need to be balanced against operational needs and the likely delay in re-booking the screening interview.

Where there is no Responsible Adult or legal representative present, particular care is required to ensure that the approach in the screening or other non-substantive interview does not go beyond inviting a response that verifies that asylum is being claimed. So, in the process of registering their asylum application, an interviewer may ask a child "Are you saying that you are afraid to return to your home country? An initial interview or screening interview without a Responsible Adult or legal representative present should not however involve a child being asked to explain or elaborate on why they are afraid to return to their home country. However, it should be explained to the child that they will have an opportunity to explain these details at a later date.

It may be that details or information relating to the substance of their asylum claim are nevertheless volunteered by an unaccompanied child in the course of verifying that they are applying for asylum in the UK. Asylum decision makers should not rely on details or information obtained from an interview where no Responsible Adult or legal representative was present unless these details or information have been explored and raised with the applicant during the substantive asylum interview - in the presence of a Responsible Adult or legal representative - and the applicant has been given an opportunity to explain any related issues or inconsistencies. But case owners must always bear in mind that the purpose of the screening interview is not to go into details of the asylum claim itself regardless of whether a Responsible Adult is present or not.

Screening staff should be alert to the possibility and to any signs that the child is at risk of harm or abuse or may have been trafficked. See section 7. below and further guidance (including making referrals to the local authority) contained in the Victims of Trafficking instruction.

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### **6.3 Fingerprints**

The presence of a parent, guardian or a Responsible Adult (for example, "a person who for the time being takes responsibility for the child" (s.141(3), IAA Act 1999) when the fingerprints of a person under 16 years of age are being taken is a legal requirement. This person must be entirely independent of UKBA. It may therefore be appropriate to conduct the screening interview with minimum delay and then make arrangements for the child's fingerprints to be taken as soon as possible after that – possibly the next day – when a Responsible Adult can be present.

The fingerprints of all minors aged 14 and above will be entered and cross referenced against the Eurodac database. Further information on this can be found at 6.5.

For children encountered by a Local Immigration Team or Local Enforcement Office staff should refer to local instructions when determining when to conduct the screening interview. However, if the child is transferred to social services before their screening interview has been conducted then the screening interview should be conducted by the end of day 2.

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#### 6.4 Screening process

All children should usually be screened; however this can vary depending on a child's maturity and individual circumstances.

The child's details must be entered onto CID. **For a child a special condition flag must be activated.** If the child's status changes, the special flag condition must be closed. For example, the child is later joined by his/her parents, or the "child" is later assessed as an adult.

Where two or more unaccompanied children are seeking asylum and are related, they must each be treated as an individual applicant. The case files, once created, must be blue-taped together and considered at the same time.

Should the child not be in the care of a Local Authority it is the responsibility of the ASU or other screening officer to notify the relevant Local Authority, who will arrange for the child to be collected. The referral must be made by both phone and fax and must be recorded in the Home Office file and on CID. The screening officer must follow this up to make sure the information has been acted on by the Local Authority. The Notes field on CID must be updated with the contact details of whoever from the Local Authority has taken responsibility for the child. Unaccompanied children should not be permitted to leave the ASU alone.

If the child provides any information that raises concern (for example, about trafficking or exploitation issues), a more detailed screening interview should be arranged. If the information relates to criminal activity, the officer must contact the police as a matter of urgency. For further information see Section 7 within this AI. In such cases the child should be assured that the information will be treated confidentially.

Before children leave the ASU or other screening location the following should be issued to them:-

- An IS.96 form which grants temporary admission to the UK
- Children aged 12 or over must be issued with a letter to report to a case owner in 10 working days, for the First Reporting Event (FRE letter ICD.3391)
- A Self-Evidence Form (Self-Completion) (ASL.1957) should be issued which should be completed and returned to case owners within 20 working days
- An Application Registration Card (ARC), however, should the screening location not be ARC-enabled a time limited Standard Acknowledgement Letter (SAL) should be issued

- Applicants under the age of five should be issued with an ARC which bears the reference 'CUF' (child under five).

If the child claiming asylum is part of a family whose appeal rights are exhausted (ARE) and they are currently detained and awaiting removal, any subsequent asylum application made by the child in their own right should be dealt with expeditiously. All aspects of the claim should be taken into account and the claim considered on its own individual merits. The following factors should be considered:

- does it amount to a claim? A mere assertion which cannot be particularised is not a claim
- further details should be requested- a response for a deadline should be reasonable in light of particular facts of claim
- if further information is not forthcoming a letter should be issued to the child detailing the reasons why their application is not being considered as a claim
- however, if, the claim is particularised (which gives details on who the risk is from or why they are at risk) the claim must be considered
- **no certification under section 94 or 96 can be carried out unless and until the claim has been considered and rejected.** For further information see AI [Further Submissions](#)
- if the child's particulars are very vague or similar to the parent's claim and there is no element of different fear being claimed it may not be appropriate to issue the child with a SEF; however this will vary on a case-by –case basis
- cases can be certified by case workers or OSCU as long as the family has been through the one-stop process
- if the one stop notice was served the claim can, if appropriate be refused and certified under section 96
- if no one-stop notice was given the claim can, if appropriate, be refused and certified under section 94
- a one stop notice should be issued. For further guidance, see the [One Stop Warning](#).

On receipt of the case the case owner **must** check the file for a referral notice to ensure that a referral to the relevant Children's Services or Social Work Department has been made. Case owners must also check that the reasons for referral have been addressed, if it appears there has been no action after referral. This information must be recorded on CID within the notes field.

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### 6.5 Children attending screening with an adult

There may be occasions where a child attends the screening unit accompanied by an adult. It will be necessary to verify the identity of the adult. Once the identity of the adult has been established (for example, Passport, Photographic Drivers Licence) the following checks should be carried out. Prior to the screening interview.

If relevant information is obtained from the checks the case should be referred to Local Authority Social Services (see section 9) and other appropriate units including the Paladin team and UKBA Office of the Children's Champion. The screening interview should not be proceed unless the case owner is advised otherwise by their manager.

In all cases where the child is under 16 and the accompanying adult is not a parent or relative but is providing accommodation and care to the child for more than 28 days then this "private fostering arrangement" must be referred to the local authority for approval in line with the guidance accompanying section 55.

Consent should be sought from the accompanying adult for a set of fingerprints and their photograph. Their response should be noted by the screening officer. If the accompanying adult refuses to give their consent UKBA has no legal power to enforce the taking of their biometrics.

Details of all referrals made must be attached to the HO file and minuted accordingly on CID.

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### **6.6 Fingerprints and referrals to the Third Country Unit**

All children aged five or over should have their fingerprints taken. Children under the age of five should not be fingerprinted; however their photographs should always be taken. For further information, see the AI on [Fingerprinting](#).

As stated above, the fingerprints of a child under 16 can only be taken if they are accompanied by parent, guardian or a Responsible Adult (for example, "a person who for the time being takes responsibility for the child" (s.141(3), IAA Act 1999).

All fingerprints of those aged 14 and above need to be checked as quickly as possible against the Eurodac database. If there is a Eurodac match, a referral must be made to Third Country Unit (TCU) who will inform the screening unit or routing team if they are assuming responsibility for the case and liaise over accommodation, care etc. Reference should be made to the asylum instruction [Third Country Cases – Referring and Handling](#).

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## 7. Trafficking

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### 7.1 General principles

This section provides guidance on the process that should be followed by case owners when they encounter an asylum seeking child who may be a victim of trafficking. Please note that section 9, provides detailed guidance on situations where case owners must make a referral to Local Authorities as part of their safeguarding duty.

**Broadly speaking, a child is a victim of trafficking if they have been moved into a situation where they are exploited.** Children may be trafficked for a variety of different reasons.

For further information please refer to the paper on “Safeguarding Child who may have been trafficked” available on [Every Child Matters](#) and [Human Trafficking](#).

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### 7.2 Signs of trafficking

In having a regard to the need to safeguard and promote the welfare of children, case owners and others encountering children in the course of their work should be sensitive to possible indicators that a child may have been trafficked, such as:

- at port of entry the child may have entered the country illegally; either with no travel documents or on false documents
- the child has a prepared story very similar to that which other children have given
- unable to confirm the name and address of the person meeting them on arrival
- the child’s journey or visa has been arranged by someone other than themselves or their family
- he/she is accompanied by an adult who insists on remaining with them at all times
- the child may appear withdrawn and refuses to talk or appears afraid to talk to a person in authority.
- the sponsor has previously made multiple visa applications for other children and/or has acted as the guarantor for other children’s visa applications. They may have/or known to have acted as the guarantor on the visa applications for other visitors who have not returned to their countries of origin on the expiry of those visas.
- a child currently residing in the UK goes missing from local authority care
- a poor relationship exists between the child and their adult carers
- the child may be one among a number of unrelated children found at the same address
- the child is not enrolled/or attending school.

Case owners should also be aware that children may also be internally trafficked within the UK. For further guidance please see “Working Together to

Safeguard Children” (2010), “What to do if you suspect a child is being abused” (2006) and Arrangements to Safeguard and Promote the Welfare of Children for those Exercising UK Border Agency Functions .

In cases where a child appears to have been trafficked, case owners should immediately speak to their senior caseworker, and make a referral to the local authority social worker or local police for the area in which the child is currently residing and complete a Children Intel Referral form. For further information contact the NSPCC National Child Trafficking Advice and Information Line tel. 0800 107 7057, or the United Kingdom Human Trafficking Centre (UKHTC [www.ukhtc.org](http://www.ukhtc.org)) on 0114 252 3891 or 08001800 (24/7).

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### **7.3 Handling and considering an asylum application from a child who may have been trafficked**

This section provides guidance on how to handle and consider an asylum application from a child who may have been trafficked. Each case should be considered on its individual merits and in the context of the country on which it is based. Some victims of trafficking may be able to establish a 1951 Convention reason (such as membership of a particular social group) and have valid claims to refugee status. Section 16.5-16.7 also refers to some child-specific forms of persecution.

Among the factors to consider is the risk of him or her being re-trafficked and therefore the risk of future harm through exploitation and abuse. When considering the child’s application it will be important to gather information about the child’s family, community and general conditions in the country of origin before considering the decision.

The UNHCR have produced guidance on the application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked. For further information please refer to [Human trafficking](#).

There may be some instances where the child may come to the attention of Local Enforcement Officers or police as victims of trafficking in the first instances rather than asylum applicants. However, case owners should ensure that in keeping with paragraph 327 of the Immigration Rules, any application for international protection is treated as an asylum claim.

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## 8. Handling applications

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### 8.1 Allocation and handling of case files

The case is referred by phone to the Asylum Routing Team who will allocate the file to an Asylum Team in the region that the applicant is to reside.

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### 8.2 Outstanding actions from screening

- check for any outstanding referrals
- telephone the Local Authority to check whether they are aware of the case.

Note - For port, or local enforcement office cases, there may be a delay between the taking of the fingerprints and the results being checked against Eurodac. The asylum interview must not be arranged until the results of the fingerprint match have been received on file. In the event of a match, guidance must be taken from TCU on how to proceed with the asylum claim.

If there are outstanding actions

- liaise with the screening officer and agree how the outstanding actions will be completed.
- ensure that this information has been recorded in the notes field on CID.

If it is unclear whether the actions have been completed

- all actions must be undertaken
- any changes in the child's circumstances, for example, age, address are accurately recorded on CID.

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### 8.3 Actions prior to the First Reporting Event (FRE)

A FRE must be completed for all unaccompanied children who register an asylum application. This should always be a face-to-face meeting unless the child is in the care of Social Services, in which case it can be agreed between the case owner and social worker for the FRE to be conducted by telephone.

- FRE to be set up by the Asylum Routing and Initial Accommodation Team if aged 12 and over
- inform the child when and where the FRE is to take place (FRE letter ICD.3391)  
Action to be arranged by case owner
- enquire whether a Responsible Adult is attending the FRE with the child
- if no Responsible Adult is available case owners can serve the relevant documents to the legal representative

- the Invitation to Interview letter must be posted and/or faxed to the legal representative, the social worker and/or legal guardian as soon as it is clear that a FRE cannot go ahead.

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## 9. Referrals to Local Authorities

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If a child has been referred to a Local Authority because of concerns about the accompanying adult/sponsor, the case owner must check with the Local Authority as to what action is being taken, and agree a timeframe for the Local Authority to complete their checks.

A letter/fax from the Local Authority stating that they are satisfied with the child's living arrangements must be submitted to the case owner in advance of or at the time of the [First Reporting Event](#). If this is not received, the case owner must speak to the Local Authority and ensure that action is being taken.

**Further types of situation in which case owners must make a referral to the Local Authority or to other agencies with child protection responsibilities, are as follows:**

- Where there are concerns about the current or future abuse of child for example:
  - Neglect
  - Physical abuse
  - Emotional abuse
  - Sexual abuse
- Where there are concerns about the lack or poor level of support a child may be receiving
- When the child is in a private fostering arrangement
- Where there are concerns that a family or care provider is not meeting a child's developmental needs
- Trafficking

If a child is identified as falling into one of the above categories, case owners must follow the procedure below:

- collect as much information as is necessary about the accompanying adult/sponsor. They must find out their full name, address, immigration status, relationship to the child and any other relevant information
- should there be a change of circumstances, for example, transfer of caring responsibilities, case owners should ensure the appropriate checks are conducted on the accompanying adult/sponsor/
- any concerns must immediately be flagged up to a senior caseworker who is appropriately qualified to deal with Local Authorities.
- details of the problem, what information has been gathered and any recommendations should be clearly minuted in the file notes.
- it will not normally be appropriate for case owners to inform the child or their parents or carers that they intend to make a referral to the Local Authority in such cases. Case owners must consult a senior caseworker if they are in doubt.
- where the child is believed to be at imminent risk, the referral to the Local Authority, police and UKBA Office of the Children's Champion (OCC) should be made immediately. The child will not be allowed to

leave UKBA premises until a placement in a safe situation has been arranged and agreed.

In addition:

- the case must be faxed to the relevant Local Authority. Case owners must call the Local Authority and verify if they have received the information sent
- the officer must fax a Children Services Referral Form containing all of the relevant information to the Local Authority, and update the electronic social services referral log. Case owners must telephone to confirm the fax has been received and is being acted on
- case owners must seek advice from a senior caseworker if they encounter any difficulties during the course of making such a referral
- referrals should usually be made within 1 working day. If the child is perceived to be ill at ease or shows fear of their guardian/sponsor or is perceived to be in immediate danger, an immediate referral must be made to the Duty Social Work Team or Duty Children's Team for the relevant Local Authority. It may also be appropriate for the police to be contacted
- the Border Control Central Intelligence Unit must be contacted by the screening officer or case owner if there is evidence that the child has been trafficked
- all actions must be clearly minuted on the file as well as recorded in the person notes section on CID.

If, following a referral in these circumstances the Local Authority is or remains satisfied that the child should still be looked after by the guardian/sponsor, case owners must seek advice from a senior case worker before following the advice of the Local Authority.

If the senior caseworker is not in agreement with the Local Authority, the case must be referred again to the UK Border Agency Children's Protection Officer. Case owners must keep a record of the action agreed.

For further guidance on referrals, refer to Guidance on referring a child to child welfare agencies or the police.

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## 10. Procedure to follow in the event of a missing child

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When a child goes missing, case owners **must** complete a missing children's pro forma. Also please refer to section 6.1 of the Failure to Report & Absconders AI which contains a flow chart detailing various actions for case owners to initiate in the event of a missing child.

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## 11. First Reporting Event (FRE)

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### 11.1 General principles

A FRE should be conducted by the child's allocated case owner or a UK Border Agency member of staff who has received the requisite children's training.

However, it may be more appropriate for unaccompanied children under the care of the social services to have their FRE conducted over the telephone with their social worker present and then have all the required documentation and information sent to them. This may be in cases where the case owner is unable to attend the FRE personally or when the time taken for the child to get to the reporting event is considered unreasonable. Depending on the age and maturity of the child, s/he may have views or how the FRE is arranged and where possible these views should be taken into account.

Where a face-to-face FRE is going ahead, a suitable location for the FRE should be decided by the case owner in consultation with the social worker and/or accompanying adult/sponsor or the legal representative. Case owners must also consider whether it is necessary for an interpreter to attend the FRE and if so arrange for one to attend. The case owner should also check and consider whether the child has any particular needs and how these might be addressed. Where the child is legally represented, any information should be sent to that legal representative.

The following documents must be produced in preparation for the FRE:

- invitation to Interview Letter
- covering letter to legal representative – Invitation to Interview Letter
- an amended IS96 or IS248

If the FRE goes ahead as planned, the case owner must take the following actions prior to the event:

- verify that the Local Authority has been contacted.
- verify that the applicant has been fingerprinted and issued with an ARC.

The purpose of the FRE is:

- to establish contact with the child, develop a rapport and, as far as possible, to put the child at ease with the person who will be undertaking the asylum interview and handling their application
- to explain - in child friendly language - the asylum process and that the substance of the asylum application will be discussed at the asylum interview
- to check on progress in completing the SEF
- to ensure the child has legal representation
- issue any relevant paperwork
- to advise children of the existence of the assisted voluntary return programme (AVR) and provide them with a leaflet. It is important to stress that AVR is an option at any time for the child to consider if

he/she would like to return home to his/her family and certainly not an indication that his/her claim will not be taken seriously. For further details on the AVR policy, programmes and provisions, see [Assisted voluntary returns](#).

- to stress the importance to the child, social worker and/or guardian with regards to complying with the asylum process, including any contact management requirements

The FRE should also be used to ascertain whether the child is still in contact with their family, if this is unclear from the information already provided. This is not limited to the parents, and should include other close family members such as siblings, aunts and uncles.

If the child is not in contact with their family then, if appropriate, the child should be informed that in order to protect the child's best interests, UKBA is committed to doing what it can to trace the members of his or her family as soon as possible. In cases where there may be a danger or a threat to the child or their close relatives, particularly if they have remained in the country of origin, the tracing process may not be appropriate. In every case tracing must be undertaken with due care to avoid jeopardising the safety of all concerned (see section 15).

Child applicants should also be informed of the family tracing services available through the British Red Cross and International Social Services. Their postal address is:

Children & Families Across Borders (CFAB)  
Canterbury Court, Unit 1.03  
1 - 3 Brixton Road  
London  
SW9 6DE

Advice Line: 020 7735 8941  
Reception: 020 3176 0253  
Fax: 020 7582 0696  
e-mail: [info@cfab.uk.net](mailto:info@cfab.uk.net)

Both organisations can provide family tracing services and should be signposted to the child for him/her to make an informed choice. Instances where this signposting may not be appropriate include cases where the child has expressed a fear of certain close family members, or where the child becomes distressed at the idea of contact with the family.

For further information see the Asylum Instruction on First Reporting Event (FRE) doc.

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## 12. Contact management

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Case owners must ensure that they establish an appropriate contact management strategy, which will be agreed with the children's social worker and/or their accompanying adult/sponsor at the various milestones and in accordance with the child's age and level of understanding, which are as follows:

- FRE
- interview
- the decision service event
- if an appeal is lodged, at the determination service event
- continue beyond any grant of UASC leave
- this may involve telephone contact and/or visits or meetings at regular intervals.

For further guidance see the AI on Reporting.

When deciding on the contact management regime, the personal circumstances of the child which may influence the nature and frequency of the contact, for example, their age, level of understanding, area of residence, the amount of leave (DL/UASC leave) the child has been granted and any other relevant factors should be taken into account. It is essential that any actions taken or decisions made and the reasons for them are recorded by case owners on the case notes field on CID.

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## 13. Collecting evidence from an asylum seeking child

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### 13.1 General principles

At all stages of the process, but with particular emphasis when obtaining, and then assessing evidence from a child, case owners must have regard to the best interests of the child which is encapsulated in the section 55 duty to safeguard and promote the welfare of the applicant. The following general principles must also be applied:

- be aware that children do not often provide as much detail as adults in recalling abusive experiences and may often manifest their fears differently from adults
- assess evidence provided by a child in the light of their age and degree of mental development and maturity currently and at all material times in the past, together with any available knowledge of their personal, family, cultural and educational background
- be proactive in identifying, pursuing and considering objective factors and information that may be relevant to the child's asylum claim
- consider evidence from a range of other sources such as information from other family members, accompanying adults or social workers. For further guidance on assessing applications case owners should see the AI on [Considering the Asylum Claim](#).
- consider evidence from other agencies involved with the child which they are able to share and that may be relevant to the application
- consult a senior caseworker who has received specialist training in assessing children's claims with regards to the appropriateness of information from other agencies, and the relevant policy unit as to whether the information and/or the source can be relied upon. All issues discussed should be recorded and minuted in the case file. The note field should also be updated on A-CID
- consider objective country information available in the Country of Origin Information (COI) Reports which can be used in conjunction with the Operational Guidance Notes (OGN) accessible via the Asylum website Country Information - UKBA Horizon Intranet and publicly at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/>.
- take account of factors which may affect consideration of the child's credibility (Rules para. 351 and para.16.4 below, refer)

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### 13.2 Interviewing accompanied or unaccompanied children

Children aged twelve and over must be interviewed about the substance of their asylum application unless they are unfit or unable to be interviewed. Discretion should be used on whether to interview in cases where the child is younger especially if the child is mature and, if given the option, is willing to be interviewed. It may be appropriate in these cases to seek the advice of the social worker/accompanying adult or legal representative before proceeding.

Physical and mental health considerations also need to be taken into account when considering whether going ahead with an interview is in the child's best interests.

Case owners may decide in consultation with the social worker, accompanying adult or other responsible adult, and the legal representative, a suitable non-UKBA location for the substantive interview. For example, Local Authority facility with which the child is familiar and comfortable.

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### 13.3 Prior to the interview

- case owners should use the Statement of Evidence Form (SEF) to thoroughly prepare for the interview, consulting any subjective or objective evidence considered appropriate. Case owners should consider the level of detail and the language used in the witness statement. This will help the case owner understand the education, maturity and general background of the child, thus indicating what is reasonable to ask at interview.
- If the child's claim is gender specific or there are other reasons to believe the child would prefer a female or male interviewing officer, this should be accommodated when possible.
- where it appears the child has not been able to secure legal representation the interview should usually be suspended to allow time for this to be arranged (unless the child has expressly stated that they do not want legal representation).

At the beginning of the substantive asylum interview case owners must confirm:

- the identity of the child, checking against the IFB photographic records attached to the file, and the ARC card
- check that a Responsible Adult is available. A Responsible Adult must be present for the interview to go ahead
- check at the beginning that the child feels comfortable, and that any specific health and emotional needs are acknowledged and addressed
- in cases where an interpreter is present, that the interpreter and the child understand one another and that the interpreter's manner is appropriate.

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### 13.4 The interview

Particular care is required at the substantive interview of a child applicant. Case owners should ensure that they:

- interview in a sensitive manner using appropriate tone, body language and eye contact with the child during the interview and using a vocabulary that is appropriate to the child's age, level of understanding and to their personal situation and ensuring the child is addressed rather than the interpreter.
- take time to establish a rapport with the child (for example, by means of a short informal conversation with the child on a topic unrelated to their claim) before starting the substantive interview. This will help the child to relax and is likely to increase the chances that the child will be open and disclose relevant information to the interviewing officer.
- introduce each individual in the room (including themselves) to ensure the child is clear on who is present and their role(s) at the interview
- explain the asylum process including that it is permissible for the child to:
  - speak to their legal representative and/or Responsible Adult at any time in the interview
  - say where they don't understand a question
  - say if they need a break
- set the framework in which child's legal representative and/or Responsible Adult may ask questions and make comments in the interview
- are aware of the cultural sensitivity issues and acknowledge the fact that the child is giving information in an alien environment and may fear/distrust someone in authority
- check that the child is not hungry, thirsty or in any other physical discomfort or distress during the interview and that regular breaks are factored within the interview
- check at intervals throughout the interview that the child feels comfortable and where necessary consult with the Responsible Adult.
- during the course of the interview, if the child is perceived to be upset, which could affect their ability to provide information in a coherent manner case owners must stop the interview and assess the situation. If the child is unable to continue the interview, arrangements must be made to reschedule the interview for another date. In these circumstances consultation with the Responsible Adult will be appropriate.
- sensitively, put all inconsistencies in the child's subjective evidence or between the subjective and objective evidence to the child at the interview, to allow them an opportunity to explain further

For further guidance on dealing with traumatised victims refer to [Conducting the asylum interview](#).

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### 13.5 Additional information

Consideration should also be given to interviewing relatives of children and also any other persons who have had sustained contact with the child (social workers, carers) if there is an indication they could elaborate on elements of the child's claim which the child themselves appears to have had difficulty in getting across.

It may also be possible for the relatives to corroborate parts of the child's claim when they are interviewed. The child should be made aware of any additional interviews and the legal representative should be permitted to comment.

Where it has not been possible to interview a child and the Statement of Evidence Form (Self-completion) (ASL.1957) does not contain sufficient information, case owners should:

- write to the child via their representative and ask them to provide further information within an appropriate timescale
- consider visiting the child in the legal representative's presence, to gather the necessary details to make a decision or contact individuals who have had sustained contact with the child and may be able to elaborate on elements of the child's claim – for example, carers, social services.

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### 13.6 Requesting case files of family members or other cases related to the child

In all cases it is good practice to call for the files of any accompanying siblings, accompanying adults or family members who may have made an asylum application in their own right and in the circumstances below:

- if a child is accompanied and the accompanying parent or other accompanying adult has an outstanding asylum application in their own right, case owners must call for their files to serve the decisions together
- a sub-file must be set up for accompanied children using the same file reference as the parent's or accompanying adult's.
- the relationship and dependency would need to be clearly established and the case files must be white-taped together
- if the child's asylum application is refused on asylum and human rights grounds, and the parent's or accompanying adult's application is also refused, UKBA will seek to remove the child together with the parent or accompanying adult once all appeal rights have been exhausted
- if the child has a brother or sister whose application for asylum has not yet been considered, their file must be requested and blue-taped together so the cases can be looked at together. Caseowners should investigate whether there is corroborative information contained within the separate files in order to make positive credibility findings. Conversely it may be the case that the files reveal significant

differences that should be reflected appropriately in the decision letter. All actions relating to the blue taped files should happen at the same time until the cases are concluded. (See AI on Dependents).

If the case files of the child's family members cannot be obtained, case owners must contact the relevant department and request that the relevant details be faxed over.

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## 14. Visa Application Form (VAF) checks

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In all asylum seeking children's cases, case owners must check visa application forms (VAF) on the Central Reference System (CRS).

The CRS is a web-based application and read-only system used to store information about visa applications. Such information includes:

- Personal details of the child
- Type of visa applied for
- Sponsor's details
- Photograph of the child
- Details page from the child's passport
- Q&A interview notes or refusal notices associated with the application.

Photograph matches help to tackle the abuse of children being brought into the UK on false pretences. It may also assist in tracing the child's family in the country of origin; help to determine whether or not the child came to the UK with a parent or accompanying adult; or assist case owners to determine whether the child's parents or relatives are in the UK. It is also important to note that in some cases, children may not know that a visa has been applied for on their behalf. It is therefore important that any visa related evidence is presented to children in a sensitive manner. For further information refer to [Visas handling asylum claims from UK visa applicants](#).

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## 15. Family tracing & reunification

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### 15.1 Family tracing and contact

Regulation 6 of the [Asylum Seekers \(Reception Conditions\) Regulations 2005](#) states that:

(1) So as to protect an unaccompanied minor's best interests, the Secretary of State shall endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum.

(2) In cases where there may be a threat to the life or integrity of the minor or the minor's close family, the Secretary of State shall take care to ensure that the collection, processing and circulation of information concerning the minor or his close family is undertaken on a confidential basis so as not to jeopardise his or their safety.

There is therefore a general principle that family tracing should take place as soon as possible, and not necessarily be suspended until the asylum claim is finally determined. However this must be qualified by the need to protect the child's safety and the safety of his/her family that have remained in the country of origin. It will not therefore be appropriate to commence tracing until the case owner understands the nature of the asylum claim and is able to gauge the risk to the child or his/her family.

The practical arrangement through which contact can be made with the family will be relevant to the assessment of when to begin tracing efforts. Each case should be considered on its merits depending on the particular circumstances. In some cases a direct telephone call to parents may be appropriate when it is clear that this would not place either the parent or child at risk. An example of this could be when the child is in regular telephone contact with his family. In other cases when the child has expressed a fear of the authorities, tracing efforts that will draw attention to the child's family will not be appropriate.

Any tracing that is undertaken must consider the UKBA's section 55 duty to have regard to the need to safeguard and promote the welfare of children in the UK and whether it is in the children's best interests to return them to their family or extended family, if reunification is possible.

The main purpose of such contact with the family is:

- to obtain information as to the family's current location and circumstances, and
- to obtain information relevant to an assessment of whether there is a prospect of reuniting the child safely with their family in the event of return.

The child may have been separated from their family through no fault of their own, and may want to return to their family. However, this may not always be the case, and any tracing undertaken by the UK Border Agency needs to be balanced against the duty of confidentiality towards the child, especially before the case has been concluded. Any tracing must be reasonable and

proportionate, with careful consideration of whether there is reason to believe that such enquiries might compromise the safety of the child or their family. In particular, case owners must take into account any child protection issues that need to be considered, that may make contacting the family inappropriate. Though normally regarded as being in the best interests of the child, family reunification could, in certain circumstances, not be in his or her best interests. This would be the case when it exposes or is likely to expose the child to harm.

In all cases case owners must act carefully and communicate their intentions to the child. In some cases, British Embassies/High Commissions may be able to help with family tracing in the relevant country. The post must be given as much information as possible to help them with their enquiries such as details of any visas that the child may have been issued in the past, or information about any school the child attended, etc. The case owner may request a copy of the VAF from the overseas post. Contact details for British Embassies abroad can be obtained from the [Foreign & Commonwealth Office's website](#).

Family tracing can be a lengthy process, and contact with the family is only one aspect of the overall consideration.

Any information obtained from the child at interview about the relationship ties with their family and their contact details and as well as information gathered from the family should be considered in the round with the other evidence available. Case owners should not defer making an initial decision pending the outcome of a tracing request, particularly if the decision is to afford international protection to the child. All tracing efforts should be minuted on CID and on the HO file and updated as necessary. Results of the tracing process can be forwarded as additional information within the appeal bundle in the event of a refusal and can be used at appeal even though it was not included in the decision letter.

There may be an option for family reunification in a third country, where close or extended family of the child reside. In such circumstances caseowners should explore the possibility of reuniting the child there. This could be considered if the child's claim is either successful or unsuccessful.

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## 16. Assessing an asylum application from a child

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### 16.1 General principles

In addition to the requirements set out in the UN Convention Rights of the Child (UNCRC) and the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children in the UK, the following are general principles which need to be observed when assessing a child's claim:

- consider applications within the framework set out at paragraphs 349 to 352 of the Immigration Rules and any other public commitments made on children
- every applicant, regardless of age, has to show to the same standard (a reasonable degree of likelihood) that they have a well-founded fear of persecution for a Convention reason – while taking into account child-specific considerations and other factors that may impact upon the interpretation of these concepts.
- consider the factors that would affect a child's demeanour such as age, education, maturity, gender, the standing of the child's family in the community, their general life experience, trauma experienced and the cultural expectations and attributes of children in their country of origin.
- assess the credibility taking into account additional child specific factors
- allow for a different degree of understanding compared to what one would expect from an adult claimant
- when assessing claims from children, case owners may need to be proactive in their pursuit and consideration of objective factors and information relating to the child's claim
- child-specific Country of Origin Information should be obtained and referred to, wherever available
- where there are clear discrepancies in an account given by a child, case owners will need to consider the ability of a child to be able to clarify these discrepancies and how far these should be pursued during the interview. This can only be decided on a case-by-case basis and it may help to discuss complex case issues with an appropriately qualified senior caseworker.
- full consideration of the child's asylum claim should take place before case owners consider their eligibility for any other forms of leave (for example, Humanitarian Protection, Discretionary Leave or UASC leave)

- a specific best interests consideration which satisfies the requirements of Article 3 of the UN Convention on the Rights of the Child and the section 55 duty must also be abided in every case.

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In assessing applications from a child, case owners must consider the following:

### **16.2 Age and maturity**

More weight may need to be given to objective indications of risk than to the child's state of mind. Other factors to consider might include: documentary evidence, objective country evidence, evidence from people with knowledge of the child – including post arrival in the UK.

Any child psychological and physical health and development reports or information from welfare and health support professionals to whom the child may have disclosed relevant evidence, (such as rape) which he/she may not have felt able to disclose to other should also be considered as part of the decision making process.

In young or less mature children a different degree in their knowledge and information is to be expected and the benefit of the doubt must be applied more liberally.

An asylum application made by a child must not be refused solely because the child is too young to understand their situation or to have formed a well-founded fear of persecution.

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### **16.3 Family circumstances**

The circumstances of family members may be central to a child's asylum application. Whilst the child may have personally feared persecution, they may also fear, or are affected by, the experiences of other family members even though no harm may have come to the child and their fear is based upon what treatment family members have received.

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### **16.4 Assessing credibility**

A case owner must not draw an adverse credibility inference from omissions in the child's knowledge or account if it is likely that their age or maturity is factor or if there are logical or other reasons for those omissions.

The benefit of the doubt will need to be applied more generously when dealing with a child, particularly where a child is unable to provide detail on a particular element of their claim.

There needs to be an awareness of the increased burden on case owners to ascertain and evaluate the facts of a child's asylum claim, including the need to be proactive in obtaining relevant objective information and evidence relevant to the child's claim (including COI and statements from relevant parties).

Case owners must take account of what is "reasonable" to expect a child to know in his/her given set of circumstances and in doing so taking account of his/her age, maturity, education and other relevant factors.

Case owners should demonstrate explicit consideration of any mitigating circumstances (as per the Credibility AI) that should be taken into account when assessing credibility in a child's claim. This will also apply to behaviours that fall within Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, including:

- the child's age and maturity
- mental or emotional trauma experienced by the child
- educational level
- fear or mistrust of authorities
- feelings of shame
- painful memories, particularly those of a sexual nature

A case-by-case approach will be required and if there is doubt, case owners must discuss the case with a senior caseworker. For further information on assessing credibility, see AI on [Considering the Asylum Claim](#) and [UNHCR Handbook -Part One](#) paragraphs 41 & 219.

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### **16.5 Child specific persecution**

In determining any asylum application, case owners must consider whether the applicant meets the definition of a refugee as set out within the Refugee Convention. For further information on well founded fear of being persecuted see [UNHCR Handbook -Part One, Paragraph 42](#). Special care is required when assessing a child's claim for asylum and account taken of the possibility that a child may not be able to make explicit reference to potentially applicable 1951 Convention reasons in the same way that an adult applicant, that an adult applicant could, when explaining their case. When considering whether the child's claim qualifies them under the definition of a refugee, case owners must consider the following:

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### 16.5.1 Fear

A child may have little or no concept of fear as, it may be common for parents not to share experiences or fears with their children. They may have been sent to safety by a parent or other family member before having experienced any ill-treatment or without their understanding why they were being sent away. Children may also be too young to comprehend what constitutes a risk, and what does not. For issues related to this awareness of 'fear' and the reasons for it, a child's individual level of maturity and understanding will be relevant.

The child may have difficulties articulating their fear in an interview therefore, case owners should look at other sources of information in order to investigate the child's claim such as teachers or social workers who may be able to provide pertinent information specific to the child and also refer to objective country information.

### 16.5.2 Well-foundedness

A child may be less able to produce objective evidence to corroborate their claim, and may in fact have very limited life experience. Case owners must also be aware that a child may find it difficult to describe details extraneous to their direct experience, such as names of places, persons, or organisations. When considering the objective evidence in support of a child's case, it is important for case owners to refer to up-to-date relevant country of origin information.

### 16.5.3 Persecution

Forms of, or reasons for, persecution may be directly influenced by age factors. The range of potential claims with an age dimension is varied, such as forcible or underage recruitment into military service, family or domestic violence, infanticide, forced or underage marriages, discrimination against street children, female genital mutilation, forced labour, forced prostitution, child pornography, trafficking, and children born outside of strict family planning laws and policies.

While a child may suffer similar forms of persecution to adults, they may also experience different forms or ways of persecution from adults. It is important to recognise that, due to the variations in the psychological make-up of individuals, fear of persecution includes a subjective factor. Actions that might be considered mere harassment in the case of an adult could cause serious physical or psychological harm amounting to persecution in the case of a child.

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## 16.6 Harmful traditional practices

In some countries harmful traditional practices exist such as female genital mutilation ('FGM') or forced/underage marriages, and these may be carried out at the request of, or even arranged by family members. The fact that such

harm may result from widespread social customs or conventions does not mean that it cannot amount to persecution. In such cases a State's efforts and its ability to protect a child against these harmful practices, as well as the actions taken towards its eradication, need to be carefully evaluated. Even though a particular State may have prohibited such a persecutory practice, the State may nevertheless continue to condone, tolerate or ignore the practice and may be unable to stop it effectively. In such cases the practice might still amount to persecution (ie because there is insufficiency of protection) and there might still be a link to one of the five Refugee Convention grounds.

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### **16.7 Child soldiers**

The forced conscription of a child into armed forces under the age of 18 is inconsistent with international law (ILO Convention on the Worst Forms of Child or Labour 1999 (Article 3); CRC Optional Protocol on the Involvement of Children in Armed Conflict (Article 2). A child recruited by non-state armed groups may also fall within this category. The serious long-term physical and psychological effects on the child's development and welfare mean that the use of children in hostilities constitutes a serious form of persecution. For further information see Section 3.2.1 of [UNICEF](#) and [Children and armed conflict](#).

Conscription of a child under 15 years is considered a war crime and this is irrespective of whether the child was forcibly conscripted or they volunteered. Where the 'voluntary' recruitment of children aged 15-18 years is encountered, consideration needs to be given to the extent to which other factors may also have been involved, such as where there was vulnerability to recruitment due to poverty or separation from family.

Case owners should consider the likely treatment of former child soldiers on return to their country of origin as a relevant factor in their asylum claim. They may be in danger of re-recruitment or military punishment, or may be subject to stigmatization, harassment, or ill-treatment by their community because of their past activities. Reference to the relevant Country Report or OGN for further country specific information should be carried out or a referral made to the War Crimes Unit. The state of mind of former child soldiers needs careful considering. Characteristics of this vulnerable group of children may include distrust of adults, guilt and fear of reprisal.

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### **16.8 Religion**

In some States, a person's religion assigns particular roles or behavioural codes to all, including a child. If a child does not fulfil their assigned role or refuses to abide by the codes, such as a female refusing to wear the veil or

refusing to obey prescriptive gender roles, there may have a well-founded fear of being persecuted for reasons of religion.

There is frequently an overlap between the grounds of religion and political opinion in age-related applications, especially regarding imputed political opinion. Religious tenets may require certain kinds of behaviour and contrary behaviour which may be perceived as evidence of an unacceptable political opinion that threatens the basic structure of power. This is particularly true in societies where there is little separation between religious and State institutions and laws and doctrines.

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### **16.9 Political opinion**

Imputed or perceived political opinion may be relevant for a child, as they may be targeted as a member of a politically-active tribe, community or family. Or the persecutor wants to extract information or co-operation from politically active family-members, or to punish them. In such cases the child might not even know what the adults' political activities or opinion are.

A child can be politically active and/or hold particular political opinions independently of adults for which he or she may fear being persecuted. For example, children may be involved in the distribution of pamphlets, participation in demonstrations, acting as couriers, or engagement in subversive activities. These activities may be considered politically active in other countries but not in the UK.

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### **16.10 Membership of a particular social group**

Age groupings such as 'children' or 'young men', or 'young girls' may constitute a particular social group; depending on the specific country context and the treatment of this group and how they are perceived within that society and the laws of the relevant country. Case owners should bear in mind that at any given point, a child's age may be considered an immutable characteristic (for example, notwithstanding the fact that the child will ultimately grow out of his/her present age grouping).

Although it should be possible to identify the group independently of the persecution, discrimination or persecution may be a relevant factor in determining the visibility of the group within a particular context. Case owners should also be aware that other particular social groups may be identifiable, such as street children, HIV / AIDS-affected children, children in armed forces or lesbian, gay, bi-sexual and transgender children.

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### **16.11 Agents of persecution and access to protection**

The need for international protection only arises where a state is either unable or unwilling to provide protection for a child. This may result from the fact that there is no effective means of legal recourse to prevent, investigate, or punish the form of persecution feared. Some persecutory practices are condoned or tolerated by the state, as can be the case with Female Genital Mutilation and other forms of child abuse. In these cases, it is important to remember that a child's relationship with the state is normally mediated through parents or other adults, who may condone the harm, providing active encouragement, participate directly in it or threaten the child with the negative repercussions of non-cooperation.

If the State authorities do not condone the mistreatment, case owners must consider whether a child is likely to be able to understand or know how to initiate contact with appropriate state agencies. Cultural beliefs about the appropriate behaviour of children may prevent them from seeking the protection of the state, or may lead to them not being taken seriously when they do so. Simply put, a child may have the knowledge of how to contact state agencies whilst lacking the means or power to seek their assistance.

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### **16.12 Internal relocation**

Case owners are reminded that when considering asylum claims from children, the issue of internal relocation must be based on the country situation alongside the child's age and maturity at the time of the decision. Cases will be determined on a case-by-case basis. For further information regarding Internal relocation please refer to the UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees – paras 55-57 (<http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>) as well as the AI on [Internal Relocation](#).

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### **16.13 Child abuse**

A child's application may include allegations of abuse. Such applications must be handled sensitively at all times.

Where the alleged abuse is central to the application for asylum or Humanitarian Protection, case owners need to consider the following:

- are the alleged abusers family members or those who could be state or non state agents
- is the child at future risk of abuse for a Convention reason for example, political opinion
- are there adequate child protection safeguards in place for example, sufficiency of protection

- if the child or is returned would there be a future risk or can they be returned to a safe environment

**Any allegations of abuse disclosed by a child must be referred to the local authority and/or police in all circumstances (see section 9).** Case owners should also be vigilant and aware of the possibility that where there has been abuse by family members, this may be on-going in the UK. Case owners must discuss any doubts with a senior case worker.

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## 17. Possible outcomes of applications

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In making any decision about a child/young person there must be a proper consideration of their “best interests” in accordance with our responsibility under Article 3 of the UN Convention of the Rights of the Child and section 55 of the Borders, Citizenship and Immigration Act 2009. Best Interests must be taken into account as a primary (but not the sole) consideration in every decision affecting the child. It is important that case owners demonstrate and record how they have considered best interests and the section 55 duty as well as the outcome.

### 17.1 Non-compliance

If a child fails to submit information when requested without reasonable explanation or submits the information late, case owners must make every effort to investigate the reasons for the non-compliance. Case owners must contact the Local Authority and, if necessary, the police if all attempts to locate the child prove futile. For further information see AI on [Non-Compliance](#) and Section 10 on missing children.

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### 17.2 Withdrawals

If a child fails to attend their personal interview their application may be treated as implicitly withdrawn as provided in paragraph 333C of the immigration rules. Case owners should, however, exercise extreme caution in handling occurrences of non-attendance of personal interviews in the case of children, taking in account their level of maturity and best interests. Every effort should be made to establish why the child failed to attend the interview as well as providing his/her legal representative to address this question and any reasons why the claim should not be treated as withdrawn. For further information see [AI on Withdrawals](#)

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### 17.3 Article 1F Exclusion

Children are not exempt from the Exclusion Clauses. However, it is important that case owners carefully consider the specific context of each case, for example the child’s age and maturity, when considering how far the individual should be deemed liable for their actions. It is always important to treat each case on its merit. Personal circumstances, such as age or psychological functioning, may be relevant when investigating the level of knowledge a person had of what they were participating in as well as the child’s ability or power to take alternative action. For further information see the AI on [Article 1F and 33\(2\) of the 1951 Refugee Convention](#)

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### **17.4 Refugee status and the grant of asylum**

A child who fulfils the criteria set out in the 1951 Convention or 1967 Protocol is a refugee and the requirements of paragraph 334 of the Immigration Rules. In granting asylum the United Kingdom is recognising the refugee's status and extending the protection required under its international obligations. In cases where the child is found to be a refugee it will usually be clear that their best interests are served by remaining in the United Kingdom. Case owners should ensure that Local Authorities are aware of the outcome, so that social workers can ensure that the child's pathway plan reflects the likelihood of long term residency. There may be some cases where because the child has siblings or other family who are settled in a third country and would like to be reunited with these relatives it is in the child's best interests to join them. Case owners should discuss with social worker the possibility for the child to be resettled. For further information see AI [Considering and Deciding the Claim](#)

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### **17.5 Humanitarian Protection**

When a child's claim does not qualify for refugee status, case owners must consider whether they qualify for a grant of Humanitarian Protection (HP).

Under paragraphs 339C and D of the Immigration Rules, Humanitarian Protection may be granted to a person who is in the United Kingdom and is not a refugee. In considering cases that do not come within the 1951 Refugee Convention, but where there might nonetheless be substantial grounds for believing that the child faces a real risk of harm in the country of return, case owners should consider credibility factors in the way described at paragraph 16.4 above. As with a grant of asylum, it will generally be the case that the child's best interests are to remain in the United Kingdom. Case owners should liaise with the child's local authority social worker in the same way as described in paragraph 17.4.

For further information refer to AI on [Humanitarian Protection](#).

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### **17.6 Discretionary Leave - general policy**

Children who do not fulfil the criteria for asylum or HP should be granted Discretionary Leave (DL) if they meet any of the criteria set out in the AI on [Discretionary Leave](#). In addition, if they meet the criteria for a grant of HP, but fall into one of the exclusion categories, they may still qualify for a grant of DL. In cases where Article 8 of the European Convention on Human Rights is engaged (for example because the child has established a family or private life in the United Kingdom) case owners should take into account the best interests of the child as part the balancing exercise that needs to be conducted under Article 8(2) of the Convention. Further guidance on the consideration of best interests is provided below.

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### 17.7 UASC Leave

The UK Border Agency has a policy commitment that **no unaccompanied child will be removed from the United Kingdom unless the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be removed.**

From 6 April 2013, the policy on granting DL to UASC has been incorporated into the Immigration Rules. For guidance on the requirements for limited leave to remain as a UASC (UASC Leave), refer to the AI on [Discretionary Leave](#) and the Interim guidance for asylum caseworkers on the introduction of unaccompanied asylum seeking children leave into the immigration rules.

Supplementary guidance on UASC leave is provided below:

The case owner must minute the case file and clearly state on what grounds the child has been granted leave. This will assist in the process of any future application for further leave to remain.

In considering the grant of UASC Leave the starting point should be whether the child can be returned to his/her family. Family reunification should generally be regarded as being in the best interests of the child. Guidance on procedures for tracing family is provided at chapter 15.

There may, however, be instances where family reunification is not in the child's best interest. This may be when the material facts of the claim for protection involve persecution or ill treatment at the hands of family.

Where returns to family or extended family cannot take place (for example because the family cannot be traced) the case owner should consider if the child can be returned to alternative safe reception arrangements as a last resort.

Information regarding the availability of safe and adequate reception arrangements can be found within the Country of Origin Information (COI) reports for each country under the section on children. In addition to this resource, further general guidance on current policy for dealing with claims from children can be found in each country's Operational Guidance Note (OGN).

It is not possible to draw an exhaustive list as each case must be considered on its individual merits. However the following examples could be considered adequate reception arrangements:

- Family home where the child was cared for and lived previously
- Home of a relative where the child was cared for and lived previously

- Family or relative in a third country to whom the child would like to be reunited and whom are willing and able to receive and care for the child

In other cases where the reception arrangements do not involve return to family, case owners should consult the country specific guidance. Where UKBA has made arrangements with NGOs or other organisations overseas to provide specific assistance on return, it can of course be assumed that these arrangements are adequate. However, case owners should nevertheless go on to consider whether return is appropriate to the individual child according to the guidance set out later in this section, taking particular account of his/her best interests.

Careful consideration should be given to how the reception arrangements that need to be in place to enable return will be accessed on arrival, taking into account the child's age, vulnerability and overall best interests. In most cases (and in all cases where the child is under 16) the child will need to be met at the airport by a suitable person in order to be safely transported to the longer term reception arrangements – for example the family home or alternative accommodation arrangement. In order to come to a view on the sort of reception arrangements that need to be in place the case owner may need to draw on information from other sources, for example, the local authority. See section 17.8 below.

There may be occasions when older children do not need to be met on arrival, for example because they are quite capable of independent travel and can safely return to the family home by themselves by taxi or other public transport without difficulty. In such cases, a careful assessment needs to be made of the child's level of vulnerability and maturity, the safety of unaccompanied travel by public transport in that particular country and area as well as consultation with the child's local authority social worker.

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### **17.8 Best interests and duty under section 55 of the Borders, Citizenship and Immigration Act 2009.**

The availability of safe and adequate reception arrangements is only one factor to consider in deciding on whether the person should be granted UASC Leave. Full account also needs to be given to the following:

- the best interests of the child must be taken into account as a primary consideration in the decision; and
- the duty to have regard to the need to safeguard and promote the welfare of the child in accordance with section 55 of the Borders, Citizenship and Immigration Act 2009 and the statutory guidance that accompanies it (“Every Child Matters” – Change For Children).

The 1989 Convention on the Rights of the Child (UNCRC) is the main legal instrument on the protection of children. While the UNCRC neither offers a

precise definition, nor explicitly outlines common factors of the best interests of the child, it stipulates that:

- the best interests must be the determining factor for specific actions, notably adoption (Article 21) and separation of a child from parents against their will (Article 9);
- the best interests must be taken into account as a primary consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).

Section 55 of the Borders, Citizenship and Immigration Act 2009 places an important statutory safeguarding duty on the UK Border Agency:

“To ensure that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK”

Safeguarding and promoting the welfare of children is defined in Part 1, Paragraph 1.4 of the statutory guidance to section 55 as:

- protecting children from mistreatment;
- preventing impairment of children’s health or development (where health means “physical or mental health” and development means “physical, intellectual, emotional, social or behavioural development”);
- ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

The best interests of the child, whilst a primary consideration, is not the sole consideration when considering whether a child should be granted leave to remain or return to the country of origin. Other factors, including the need to control immigration, are also relevant.

In some cases, it may be reasonably clear that the child’s best interests may be served by returning to the country of origin – for example where the family has been traced and it is clear that the return arrangements can be made direct to parents.

In other cases, the decision on whether to return will be a matter of making a careful assessment of the child’s best interests and balancing those interests against the wider public interest of controlling immigration. It is not possible to give an exhaustive list of all of the factors that might be relevant to the balancing exercise in a particular case, but the following are examples:

- physical and mental health & medical needs
- level of education
- emotional and behavioural development

- family and social relationships
- self-care skills
- the child's views
- the child's age and maturity;
- experience of mental or emotional trauma;
- compassionate factors
- the duration of absence from the home country and level of integration in the UK;
- whether the child is settled in education in the United Kingdom and the disruption caused to those arrangements by a decision to refuse outright.
- the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background;
- the child's right to preserve their identity, including nationality, name and family relations
- the availability of care arrangements, the safety and security of the living arrangements, and the socio-economic conditions;
- the availability of education, work or training opportunities in the country of return.

#### 17.8.1 Working with Local Authorities

Information and expertise relevant to the consideration of the factors listed above may be held by other agencies. For example, a local authority social worker will usually be in a better position to provide an assessment of the child's degree of maturity and self care skills.

When considering the issue of return, case owners should always seek information from the child's social worker or the social worker's assessment of the factors listed above – in order to assist in the overall assessment of the child's best interests. The degree of contact and interaction will depend upon the particular circumstances and complexity of the case, but as a minimum case owners should discuss the case with social worker and ask him/her to complete the attached pro forma within an agreed timeframe. It should be noted that in some cases, especially where the child is a recent arrival in the UK, the social worker may need further time in order to assess the relevant factors. Caseowners should also discuss with the social worker whether a meeting with all the relevant agencies/parties would be helpful to understand fully the best interests of an individual child. Such meetings will be necessary in complex cases, or cases where the best interests are likely to be finely balanced.

Case owners should encourage the child's social worker to complete the Best Interests Consideration Pro forma (ASL.4262 available on DOC GEN) as soon as possible in order to make a timely decision.

The child must be informed about the exchange of information and depending on age and maturity openly consulted by the social worker on his/her views. The completed pro forma should be copied to the child's legal representative.

### 17.8.2 Overall assessment of best interests

The overall assessment of the child's best interests will generally be a matter of considering the child's individual circumstances and experiences in the United Kingdom alongside information about the conditions the child would face in the country of return.

When sufficient information is available to make an overall assessment of the child's best interests, the assessment should be balanced against the need to provide effective immigration control.

There is a positive duty in section 55 to safeguard and promote the welfare of children, so any balancing act must account for this heightened test

Only if it is decided that the child's best interests are outweighed by the need to uphold immigration control, should the child be refused outright. In all other cases, the child should be granted UASC leave in line with the time periods set out in paragraph 17.7 above.

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### 17.9 Outright refusal

#### (a) UASC

**A decision to refuse outright should only be made if the child does not qualify for leave under the categories set out above.**

A decision to refuse outright must follow a detailed consideration of the above factors, including how best interests and the section 55 duty has been assessed. The assessment of these factors must be reflected in the decision letter and the decision approved by a senior caseworker.

Children who are refused outright because they are over 17 and a half, but under 18 years of age should have their removal deferred until their eighteenth birthday, unless the safe and adequate reception arrangements test has been met. This undertaking should be made clear in the reasons for refusal letter.

#### (b) Accompanied child

Where an accompanied child does not meet the criteria for a grant of asylum, HP, DL or UASC leave and the case owner is satisfied that the child can be returned together with a parent, other adult relative or accompanying adult, the child must be refused leave outright following approval from a senior caseworker.

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### 17.10 Drafting reasons for refusal letters

Where a child is to be refused asylum, the Reasons For Refusal Letter (ASL.0015) must contain the relevant child-related paragraphs which is stored

on DOC GEN in the UASC folder, as well as how best interests has been determined. For further guidance, see the AI on [Considering Asylum Claims](#).

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## 18. Decision service event

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When an application has been decided case owners should, serve the decision on the child in person with the child's legal representative or Responsible Adult present. However, regional variations may apply and some regions may serve the decision by post or fax. Case owners must ensure they:

- notify the child
- notify the Local Authority
- notify the legal representative of the decision

Where the decision is a refusal, case owners must:

- consider reminding the child that the option of AVR is still an ongoing choice to bear in mind alongside any decision to challenge the refusal in the tribunal. For further guidance see the [Assisted Voluntary Returns](#)
- discuss and agree the ongoing contact management strategy with the child and their social worker and/or accompanying adult.

In cases of non-compliance, the Refugee Council Panel of Advisors must also be notified. See the AI on [Non Compliance](#).

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## 19. Appeals

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Once a decision to refuse asylum and HP (and in some cases DL or UASC leave) has been served on the child, case owners must:

- Update CID.
- Check whether an appeal is been lodged.
- Carry out data quality checks of PF1.

If an appeal is lodged

- prepare the full bundle – refer to the Minute Sheet
- send the bundle to the Asylum and Immigration Tribunal (AIT) (with a covering letter) and to the child's representative.

Further instructions can be found in the AI on [Appeals Bundling](#).

[Appeals \(IDI Chapter 12\)](#) gives guidance on rights of appeal arising from decisions made on asylum cases.

Once the final outcome of the appeals process is reached for any child or former relevant child supported by a local authority, the appropriate letter should be prepared using ASL.1950 on DocGen and sent out immediately to the local authority.

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## 20. Implementing the decision to return – the section 55 duty

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### 20.1 Implementing the decision to return – Best interests

If the AIT decide to dismiss any appeal and the minor exhausts any remaining appeal rights it will be important to liaise with the local authority (in cases where the child is in care) in order to make sure that the child's social worker is aware of the decision and the consequences. All agencies working with children have contributions to make towards safeguarding and promoting the welfare of children and that includes a collaborative approach to making sure the child's return to the country of origin is handled in a dignified and humane manner.

The case owner should also at this stage review the case to see if any new factors have arisen since the date of the original decision, or whether important new information or findings of fact have emerged through the appeal proceedings.

An example may be that the decision was based on a finding that the return arrangements would not be to the family home. New information revealed at appeal may, however, show return could be made direct to parents. Since that will generally be the preferable option the case will need to be assessed to see if return direct to family is in the child's best interests and can be achieved.

Depending on the particular circumstances, the handling of the case after the appeal may take different forms. But it will usually be necessary for the case owner to arrange a meeting with the child, his/her social worker and in complex cases, a representative from the UKBA Office of the Children's Champion (OCC).

It will always be necessary to discuss the case with the social worker – with the overall purpose of preparing the child for departure and managing the process as humanely as possible.

Issues that will need to be addressed, in partnership with the social worker, could include but should not be limited to:

- An exploration of voluntary return options;
- An explanation of the reception arrangements that will be in place in the country of return (especially if return is not to parents);
- An explanation of the reintegration assistance available in the country of origin.

The child should be openly consulted and his/her wishes and feelings taken into account wherever practicable on a range of matters that will affect the timing of the departure and how the return arrangements will be managed. These could include, but should not be limited to:

- The need to complete medical treatment;

- The fact that academic/vocational courses underway may be ending soon,
- The need to gather together certificates of achievement, local authority care plans or other documents that may be of assistance in the country of return and to enable continuity;
- The wish to say good bye to friends;
- The need to close bank accounts or settle other personal matters;

The social worker's views and advice on these matters should be given significant weight. Equally, the social worker should be actively consulted on pre-departure planning generally up to and including liaison about the timing of the setting of removal directions and appropriate contact management strategy including the possibility of reporting – with a view to minimising the risk that the child will go missing from his/her care placement and ensuring that the child's welfare is safeguarded and promoted.

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## 21. Integration

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When a decision is made to grant the child some form of leave, case owners must liaise closely with the child's social worker where they have one, to ensure that this is reflected in their pathway plan.

The pathway plan should be prepared in accordance with the Children (Leaving Care) Act 2000, which came into force on 1 October 2001. The Act places a responsibility on Local Authorities to support care leavers until they reach the age of 21 or beyond if they remain in an approved programme of education or training. The agreed pathway plan will include the assessed or identified needs, identified timescales, action plan to meet these needs and the responsible person which assist the child to make the transition from care to the responsibilities of adulthood. It should be flexible and regularly updated.

Case owners should close the case if refugee or HP status is granted, until the case is brought forward in five years to see whether an application for Indefinite Leave to Remain or further leave to remain has been made.

However, in cases that have been granted UASC leave, case owners must seek to agree an on-going contact management strategy (discussed in the contact management section) with the child and their social worker.

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## 22. Curtailing a child's leave to enter or remain

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### 22.1 Definition of curtailment

“Curtailment” refers to the variation of a person’s limited leave to enter or remain such that they no longer have leave. Varying a person’s leave in this way is an immigration decision (under section 82(2) of the 2002 Act) and thus attracts a right of appeal. The power to curtail limited leave is contained in section 3(3) (a) of the Immigration Act 1971. For further information, including the important procedural steps for the necessary liaison with UNHCR see the guidance on [Curtailment](#).

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### 22.2 Cessation, cancellation or revocation of refugee status

Although rare, a child granted refugee status may have their leave cancelled or revoked where there is evidence to suggest that the refugee status was obtained by deception, or where it becomes known that the child committed crime or acts which fall within the scope of Article 1F.

Cancellation, Cessation or Revocation is a serious matter and must not be undertaken lightly. All cases must be considered by a senior case worker, and all decisions must be agreed at G7 level. For further information, see the guidance on

[Article 1F and 33\(2\) of the 1951 Refugee Convention](#)

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### 22.3 Curtailment of leave granted under HP or general DL policy

A child granted HP under the Immigration Rules or DL under general policy (for example, not under the former UASC DL policy) may have their leave curtailed where there is evidence that the leave was obtained by deception. Case owners must refer any such case to a senior case worker.

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### 22.4 Curtailment of UASC leave

Below is a list of some situations where curtailment of UASC leave should be considered:

1. if the leave was obtained by deception; or
2. adequate reception arrangements are in place in the child’s country of origin or
3. if there is a change in the child’s circumstances, such as:
  - the child previously granted UASC leave has been joined in the UK by a parent, an adult sibling or other close family member, and can be returned to the home country with that person or

- a child previously granted DL on the basis that removal would breach Article 8 of the ECHR (right to respect for private and family life) on the basis of established family life in the UK, however, the existing relationship ends or the person for whom the child had a family life subsequently leaves the UK
- attempts at family tracing have been successful, and the child can be returned to his/her parents or other suitable family members.

In all cases that are considered for curtailment, the case owner must have specific regard to section 55 and the associated guidance before making a decision, because such a decision is part of UKBA's exercise of immigration functions.

Case owners should use their discretion when considering in what circumstances it may be appropriate to curtail leave, and refer any such cases to a senior caseworker. When curtailing leave case owners should issue an **ASL.3566** available on DOC GEN.

Case owners must consider any representation received to contest the intention to curtail leave and make a decision on whether it is appropriate to continue curtailment action in the light of the information submitted. If no appeal is lodged or if the appeal is dismissed, case owners must initiate removal action.

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## 22.5 Deception

In cases where a child is found to have obtained UASC leave by deception, and it is decided to take illegal entry action against that child (under Schedule 2 of the Immigration Act 1971), their leave is no longer valid. Where children have obtained UASC leave by deception, they are liable to removal under section 10 of the Immigration and Asylum Act 1999. A decision to remove under this section will invalidate the leave that has been given previously.

Separate action to vary leave will be required only where a decision to remove cannot be made and removal directions set.

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### 22.5.1 For EEA nationals only

EEA regulations in 2006 state that a national from an EEA country does not require leave to enter or remain in the UK. However, should the child be economically inactive or in full time education, the case owners can decide to curtail the DL on the grounds no further basis of stay in the UK.

Case owners are reminded that applications made by children who are nationals of the European Union, or of one of the European Economic Area states, must be considered by NSA accredited case owners.

EU nationals' children who are refused asylum and HP must not be granted UASC leave.

For further guidance, see the AI on [Discretionary Leave](#) and Applications from Nationals of the EEA and EU Accession Countries.

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### **22.6 Where it is discovered that a child was 18 or over at the time of the application**

If it can be firmly established that a child was aged 18 or over at the time of the asylum application, and had therefore used deception to obtain leave, the case owners should arrange for the child to be interviewed by an Immigration Officer under caution with a view to determining if there has been deception. For further guidance, refer to [Enforcement Instructions and Guidance](#)

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## 23. Handling applications for leave to be granted in line

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A child may apply to be granted leave in line with other family members when they form part of a pre- existing family unit who have leave to enter/remain, rather than applying for asylum.

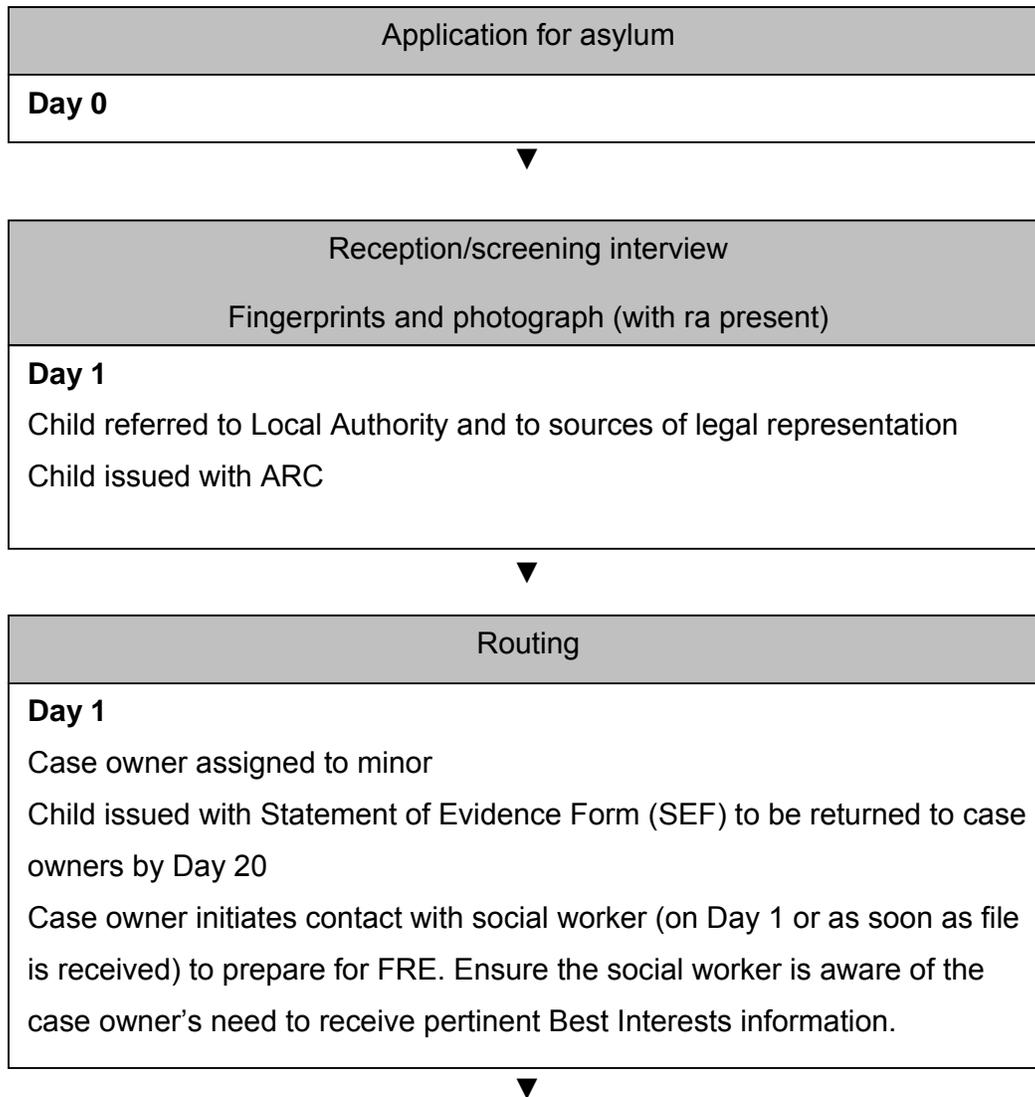
Case owners must ensure that family links are established by conducting an interview with relatives to check whether they know the circumstances of the child before any leave is granted. For further information see the AIs on Dependants and [Family Reunion](#)

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## Process map

The timescales in the process map below should be taken as indicative of best practice, for example, the way in which UKBA aims to deal with asylum applications from children. Fluctuations in intake and the operational resources available make it inevitable that, in practice, the timescales applicable to a particular case differ from those proposed.

### Asylum process for child



### First reporting event (FRE)

#### Day 10

Case owner meets child in person or contacts by telephone – explains their role, the asylum process and possible outcomes

Case owner checks child is receiving legal representation and/or assistance prior to substantive interview

Case owner issues letters of invitation for interview



### Return of SEF

#### Day 20



### Interview

#### Day 25

Case owner must give 5 working days after this for the submission of further representations. Describe the next stage of the process with the child and the social worker.



### Decision

#### Day 25

Prior to a decision to refuse leave for asylum, HP and under ECHR Art 8 all or some of the following requires completion depending on the circumstances of the case:

- Contact the parents in country of origin

- Arrange to trace the family in country of origin

- Enquire if there are alternative safe and adequate reception arrangements in country of origin

- Request from the social worker a completed Best Interests (BI) pro-forma (their care review cycles may impact on the date of issue).

- Consider whether the BI consideration outweighs the immigration decision to remove.

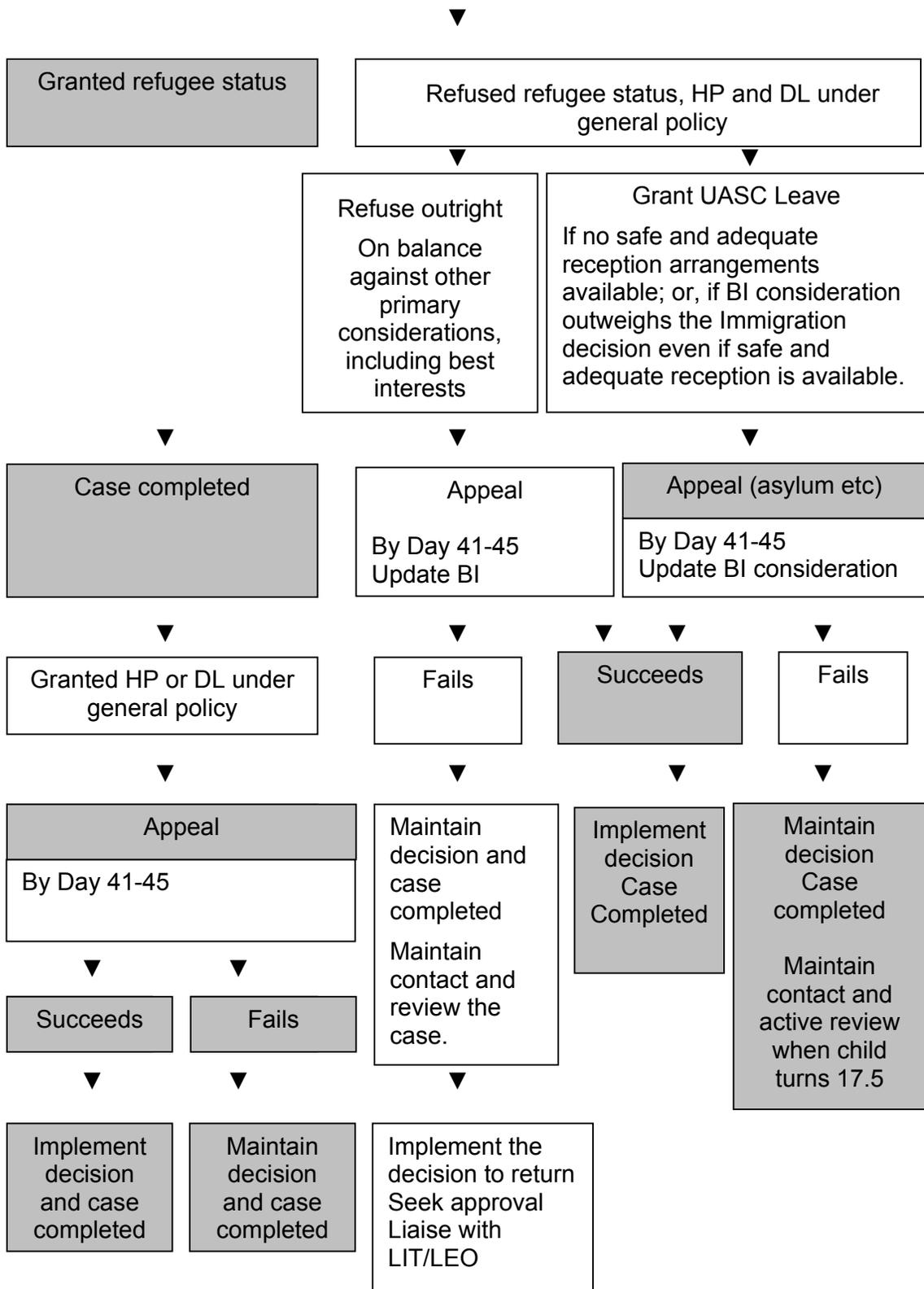
- Seek approval for outright refusal from an appropriately trained SCW and refer case to OCC.



### Decision service event

**Day 31-35 (or later if above actions delay outcome)**

Arrange a meeting with the child and his carer.  
Consider appropriate action for decision service.



## Glossary

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| <b>Term</b> | <b>Meaning</b>   |
|-------------|--|
| AASC        | Accompanied Asylum Seeking Child   |
| ACDIU       | ACD Intel Unit   |
| AI          | Asylum Instruction   |
| ARC         | Application Registration Card  |
| ASU         | Asylum Screening Unit  |
| CID         | Case Information Database  |
| CPO         | Child Protection Officer   |
| CRS         | Central Reference System   |
| CSD         | Children's Services Department   |
| ECO         | Entry Clearance Officer  |
| FRE         | First Reporting Event  |
| IS.96       | Notification of temporary admission/release (TA/R) to a person who is liable to be detained. It outlines restrictions to TA/R.           |
| IS.248      | Notification of reporting restrictions to persons who have made an asylum application at a time when they have leave to enter or remain. |
| LA          | Local Authority  |
| LEO         | Local Enforcement Office   |
| LIT         | Local Immigration Team   |
| NGO         | Non-Governmental Organisation  |
| PNC         | Police National Computer   |
| SEF         | Self-Evidence Form   |
| OISC        | Office of Immigration Services' Commissioner   |
| OGN         | Operational Guidance Note  |
| UASC        | Unaccompanied Asylum Seeking Child   |
| UASC Leave  | Limited leave to remain as an unaccompanied asylum seeking child under Paragraphs 352ZC – 352ZF of the Immigration Rules                 |
| WICU        | Warnings Index Control Unit  |

## Document Control

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### Change Record

| Version | Authors | Date     | Change Reference            |
|---------|---------|----------|-----------------------------|
| 1.0     | EGM     | 7/03/07  |                             |
| 2.0     | BN      | 11/11/08 | Update branding only        |
| 3.0     | S.K     | 22/05/09 | Update UASC policy          |
| 4.0     | P.R     | 02/11/09 | Update UASC policy          |
| 5.0     | A.P.    | 11/08/10 | Update UASC policy          |
| 6.0     | SM      | 16/04/13 | Update to UASC leave policy |