



Llywodraeth Cymru
Welsh Government

GUIDANCE

Briefing: supporting unaccompanied asylum-seeking children in Wales

This briefing sets out the rights and entitlements of unaccompanied asylum seeking children.

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The Social Services and Well-being (Wales) Act 2014 ('the Act') came into force in Wales on 6 April 2016 and sets out the powers and duties held by local authorities towards children and adults in Wales.

This Briefing sets out the applicable legal provisions where local authorities are working with unaccompanied asylum-seeking children and young people in Wales.

General concepts

Preventative services

Local authorities are under a general duty to have preventative services available in their areas for specific purposes (1). The purposes are detailed in s15(2) of the Act and are:

- to prevent or delay the development of people's needs for care and support
- to reducing the needs for care and support of people who have such needs
- to promote the upbringing of children by their families, where that is consistent with the children's wellbeing
- to minimise the effect on disabled people of their disabilities
- to reducing the need for care proceedings, other proceedings which may lead to the children being placed in care, proceedings under the inherent jurisdiction of the High Court; and criminal proceedings against children
- to avoiding the need to place children in secure accommodation
- to discourage children from committing criminal offences
- to enabling people to live their lives as independently as possible

Practitioners should familiarise themselves with the services that are already available to unaccompanied asylum-seeking children in their area. There is a requirement in the Act that local authorities promote social enterprises, co-

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operatives, third sector and user-led services as a way of providing preventative services or in meeting care and support needs in their area.

There may be specialist resources available locally with experience of working with unaccompanied asylum-seeking children and young people.

Some local authorities may have more experience of supporting children in these difficult situations due to their geography and proximity to ports and other UK entry points. Local authorities are encouraged to share best practice and expertise around the types of services that have successfully supported unaccompanied asylum-seeking children and young people in their areas.

What is well-being?

Well-being is a central concept in the Act; its aim being to ensure that practitioners consider every individual person's needs in a holistic way (whether that person is an adult or a child). The various facets which go towards a person's well-being are described in s2(2) of the Act and include the following:

- physical and mental health and emotional well-being
- protection from abuse and neglect
- education, training and recreation
- domestic, family and personal relationships
- contribution made to society
- securing rights and entitlements
- social and economic well-being
- suitability of living accommodation

In the case of children, the following two facets should also be considered when looking at their overall well-being:

- physical, intellectual, emotional, social and behavioural development

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- welfare (2)

It is highly likely that the circumstances in which unaccompanied asylum-seeking children and young people find themselves in will impact on their well-being in several different ways; their physical, mental and emotional well-being will invariably be affected because they are in an unfamiliar country with different cultural and religious norms, may not have anywhere to live or find themselves living in unsuitable accommodation. These children are likely to be at heightened risk of exploitation or abuse and are less able to access education or opportunities to build social relationships with peers because of linguistic barriers.

Why is well-being important?

If a local authority is exercising functions under the Act in respect of an adult or a child, it is under a positive duty to promote that person's well-being if they have been assessed to be in need of care and support (3). There are certain things that the local authority has to do to discharge this particular duty (4).

In order to promote a child's well-being, the local authority must:

- ascertain and have regard to the child's views, wishes and feelings
- have regard to the importance of promoting and respecting the child's dignity
- have regard to the child's characteristics, culture and beliefs
- have regard to the importance of supporting the child to participate in decisions affecting him/her (to the extent appropriate to do so)
- have regard to the importance of promoting the child's upbringing in the birth family if this is consistent with promoting the child's well-being
- ascertain and have regard to the wishes and feelings of those with parental responsibility ('PR') for the child (if the child is under 16)

In the case of unaccompanied asylum-seeking children and young people, local

authority practitioners will have to look at creative ways of ensuring that they fully discharge the duty to promote the child's well-being. There will likely be linguistic barriers that need to be overcome to ensure that the child and those with PR are able to clearly and fully communicate their views and express what is important to them.

Translators and interpreters will likely be required and support provided to enable individuals to fully participate in discussions with the local authority. Reflecting upon and being sympathetic to the child/young person's cultural beliefs involved will also be vital, as will be preserving familial relationships and enabling families to stay together wherever possible. This would include assisting the child/young person with **family reunion arrangements (5)** and to trace their family using services such as the **British Red Cross international family tracing service. (6)**

Whilst it may not always be practically possible (or desirable) to meet all the expressed wishes of the children and young people, it is important that practitioners are able to evidence that they have fully taken these matters into account.

When does a local authority have to complete an assessment of an unaccompanied asylum-seeking child

Children who need care and support

The term 'child in need' which is found in s17 Children Act 1989 in England has in effect been replaced in Wales with the concept of a "child who needs care and support". There is no specific definition in the Act of what is meant by 'care and support' as the intention is that this is given a very broad interpretation.

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It might be that a child only needs support or he/she may might require both care and support (7). The duties and powers of local authorities towards children in need of care and support include:

1. A duty to assess (section 21 of the Act)
2. A duty to meet care and support needs (section 37 of the Act)
3. A power to meet care and support needs (section 38 of the Act)

Local authorities should approach all cases of unaccompanied asylum-seeking children in light of the particular circumstances of the children concerned.

Duty to assess needs

The local authority's duty to assess a child's need for care and support is found in section 21 of the Act.

The trigger point for completing an assessment is set at a low level. If it appears that the child may need care and support in addition to or instead of what is provided by his or her family (and this is very likely to be the case where unaccompanied asylum-seeking children and young people are concerned) the local authority must complete an assessment. The assessment is known as a 'needs assessment' and its purpose is to decide whether the child does need care and support and if so, what those needs are.

A disabled child (8) is presumed to need care and support in addition to, or instead of, the care and support provided by his/her family.

A child who appears to have care and support needs has a right to an assessment on the basis of that need and the assessment should be proportionate to the request for assessment and/or the presenting need. This might mean that in an urgent case involving a child with nowhere to stay overnight, his/her immediate needs for shelter and accommodation would have

to be met whilst the overall assessment of needs is ongoing. The local authority has the power to meet a child's needs whether they are ordinarily resident in their area or not and before the needs assessment itself has been completed **(9)**.

The child must be seen for the purposes of completing the assessment; this may mean the assessor observing the child or, subject to their age and understanding, communicating directly with them.

The duty to assess under section 21 **(10)** does not apply to children who are looked after by a local authority in Wales, England or Scotland or by a Health and Social Care Trust in Northern Ireland.

Which local authority completes the needs assessment?

The duty owed is to those children ordinarily resident as well as those physically present in the local authority's area. The reason for this is to enable local authorities to be proactive in providing services and to encourage local authorities to act without fear of long-term responsibility for children from outside their area **(11)**. Local authorities should bear in mind at all times that the individual child's well-being must be at the heart of all decisions made and any action taken.

If a family is already known to a local authority or already receiving services from them, it might be helpful initially to approach that local authority as that particular local authority may already hold some information about the family's circumstances and be able to respond sooner to any request for assessment (providing of course that they are ordinarily resident in that local authority area or the child is physically present in their area).

The duty to assess applies regardless of the local authority's view about the level of the child's need for care and support or the level of financial resource of

the child or any person with PR.

What must the needs assessment cover?

The assessment must look at the developmental needs of the child and identify the desired outcomes for the child, from talking to the child (subject to age and understanding) and those people with PR for the child, (assuming this is consistent with the need to promote the child's well-being). Examples of some of the likely outcomes might include outcomes relating to physical, social or behavioural development and, for older children, outcomes in respect of self-care skills, access to education or training and accommodation.

The assessment must outline the services and the category of service that could be offered to achieve the identified outcomes or any other needs identified by the assessment. The various appropriate categories of service might be to provide care and support, offer preventative services or to provide information, advice or assistance. A combination of these services might also be appropriate (for example, a young person might be capable of having some socialisation needs met through access to a youth club whilst requiring a managed care and support plan to meet separate identified education and health needs).

Assessments should look at any other factors or other circumstances which may affect the child's well-being (12) and assess whether (and if so, to what extent) other matters could contribute to the achievement of the outcomes or other needs identified. Such matters will likely include assistance with the child/young person's asylum claim and the provision of appropriate accommodation.

In conducting the assessment, it is important that the child/young person is supported to share as openly and honestly as possible all available information about his or her with the local authority. This would include securing copies of any official identity documentation or other Home Office paperwork.

It is expected that a comprehensive assessment of a child's need should be completed within 42 working days of referral.

Power of individual to refuse a needs assessment

There is no presumption in law that children under 16 years of age have the capacity to decide to refuse a needs assessment under section 21 of the Act. However a local authority will be discharged from its duty to assess where it is satisfied that a child under the age of 16 has sufficient understanding to make an informed decision to refuse the assessment. Practitioners would have to be satisfied that the young person fully understands the consequences of refusing an assessment - which could be far-reaching in terms of the impact upon their well-being – and recording the reasons for this in detail.

A person with parental responsibility can also refuse a needs assessment on behalf of a child under the age of 16, but the local authority would have to be satisfied they had capacity to make that decision on behalf of the child and that they understood the decision to not complete an assessment would be inconsistent with the child's well-being.

What must a local authority do in relation to meeting needs

Local authorities have powers to meet all needs but are only under a duty to meet assessed needs in certain circumstances.

Duty to meet needs

The duty to meet the needs of children is wide. If the child is present in the local

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authority area and the child will not be protected from abuse or neglect (or a risk of abuse or neglect) or other harm (or risk of such harm), then the local authority is under a positive legal duty to meet the child's identified needs. In the case of unaccompanied asylum-seeking children, it is entirely possible that they might be at risk of abuse, neglect or other harm. In those situations, the local authority must act and meet those needs by providing appropriate services.

The local authority will also be under a duty to meet a child's particular identified needs if the child is in the local authority's area and his or her needs meet the eligibility criteria **(13)**.

An identified need will fall within the eligibility criteria if it falls within any of the following circumstances:

1. The need arises from the child's physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances, or the need is one that if unmet is likely to have an adverse effect on the child's development.
2. The need relates to one or more of the following:
 - ability to carry out self-care or domestic routines
 - ability to communicate
 - protection from abuse or neglect
 - involvement in work, education, learning or in leisure activities
 - maintenance or development of family or other significant personal relationships
 - development and maintenance of social relationships and involvement in the community
 - achieving developmental goals
3. The need is one that neither the child, the child's parents nor other persons in a parental role are able to meet, either:

- alone or together
- with the care and support of others who are willing to provide that care and support, or
- with the assistance of services in the community to which the child, the parents or other persons in a parental role have access

and the child is unlikely to achieve one or more of the child's personal outcomes unless the local authority provides or arranges care and support to meet the need or the local authority enables the need to be met by making direct payments.

Ways in which a local authority can meet needs

Section 34 of the Act sets out the possible ways in which a local authority can meet a child's care and support needs but does not prescribe exactly how this should be done. The powers are wide and flexible so that the local authority is able to respond to the child/young persons particular needs and overall circumstances.

The local authority is able to provide the services itself or arrange for the services to be provided through another person or organisation. Failure to look at the child/young person's needs in a holistic manner and give full consideration to the whole range of factors which go towards making up his or her well-being, could mean failing to direct the correct support in the right ways at the right times.

The key is that whatever support is provided should meet the specific care and support needs identified.

Duty to provide advocacy – a child’s entitlement to an advocate

“Advocacy services” are defined in the Act (14) as services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support.

There are several provisions within the Act under which a local authority may decide to provide advocacy services. For example, a local authority might decide to provide advocacy services as a means of meeting a child’s identified needs for care and support (15).

The Act requires local authorities to provide an advocate to an unaccompanied asylum seeking child who is ‘looked after’ and who makes or intends to make representations (including complaints) about the way in which the local authority has discharged its duties is (16).

The ‘Active Offer’ of independent advocacy is available throughout Wales and is delivered through providers including NYAS Cymru. Children are entitled to an active offer of advocacy from a statutory independent professional advocate when they become looked after – this entitlement extends to unaccompanied asylum seeking children who become looked after (17). Statutory advocacy is available to looked after asylum seeking children and care leavers up to the age of 25 (provided they are in education, employment or training).

‘Active Offer’ advocacy can still be provided to asylum seeking children that are not ‘looked after’ but who may have needs for care and support and intend to make representations (including complaints) about the way in which the local authority has discharged its duties (18). This is in line with the Code of Practice requirement for advocacy to be arranged for ‘A looked after child, or a child who is not being looked after but may have needs for care and support.’ (19)

Where a young person has been assessed by the local authority (or the Home Office) to be over the age of 18, 'age dispute' advocacy is provided by [Tros Gynnal Plant \(TGP Cymru\) \(20\)](#)

Duty to support care leavers

Unaccompanied asylum seeking young people are entitled to support from their local authority leading up to leaving care and when they leave care [\(21\)](#). That support includes the preparation of an assessment of needs, the formulation of a pathway plan (that should be reviewed on a regular basis) together with the appointment of a personal adviser to provide ongoing support. Pathway planning should include continuing to provide support with any ongoing asylum claims and proactively working towards its conclusion. Plans should be based around short term, achievable goals for the young person while their immigration status is unclear, together with a longer term plan for if the young person is awarded permission to stay in the country, including information about community based support. If permission to stay is not granted including following an appeal and appeal rights are exhausted, a plan should be made for the young person to be returned to their country of origin.

Can the young person be helped to return to their country of origin?

Local authorities will need to consider whether any human rights breach could be avoided or incurred by returning the young person to their country of origin. If the local authority can discharge its duty in this way, long-term support will not be provided. To assess whether a human rights breach can be avoided, local authorities will need to consider the [Country Guidance information published by the Home Office \(22\)](#) and also [RefWorld \(23\)](#). A human rights assessment that analyses whether any of the exceptions to the restrictions exist, would need

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to be carried out.

Sometimes, the only barrier to the young person's return might be a practical obstacle such as being unable to afford the travel costs. If so, the local authority can refer to the Home Office Voluntary Assisted Returns team which can provide travel costs and a cash sum to the individual on their arrival in their country of origin. The local authority could also offer to meet the return travel costs itself or support the young person temporarily whilst they work with other agencies to facilitate their return home.

Legal or practical reasons preventing a young person from returning to their country of origin might include:

- the young person is waiting on a Home Office decision on their application for leave to remain and the application is based on human rights grounds without being hopeless or abusive (24)
- the young person is appealing against an immigration decision (which is not hopeless or abusive) or commenced a judicial review claim; or
- there are valid reasons why they cannot return to their country of origin (for example, late stages of pregnancy or other medical reasons meaning they cannot travel).
- If the human rights assessment does not identify any issues with return, the local authority can help the young person return. The local authority should provide accommodation or financial support whilst any arrangements are finalised.

Footnotes

(1) Section 15(1) of the Act

(2)'Welfare' has the same meaning as in section 1(3) Children Act 1989 – (a) the ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding); (b) the child's physical, emotional and educational needs; (c) the likely effect on him of any change in circumstances; (d) his age, sex, background and any characteristics of his considered relevant; (e) any harm he has suffered or is at risk of suffering; (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; (g) the range of powers available to the court under the Act in the proceedings in question.

(3) Section 5 of the Act

(4) Section 6 of the Act

(5) <https://commonslibrary.parliament.uk/research-briefings/cbp-7511/>

(6) <https://www.redcross.org.uk/get-help/find-missing-family>

(7) Section 4 of the Act

(8) Section 3(5) of the Act which defines “disabled” as being a person who has a disability for the purposes of the Equality Act 2010

(9) Section 38 of the Act

(10) Section 21(8) provides that the duty to assess under section 21 does not apply in relation to a child who is looked after because the duties owed towards looked after children are separately set out in Part VI of the Act. Practitioners need to be alert to the different legal duties that apply depending on the legal

status of the child.

(11) Section 21(2) of the Act.

(12) Section 21(4)(e) of the Act

(13) Section 37 and The Care and Support (Eligibility) (Wales) Regulations 2015

(14) See section 181(2) of the Act

(15) Section 34(2)(e) specifically includes advocacy as an example of the ways in which a local authority might meet a child's needs for care and support

(16)]See section 178 of the Act chapter 20 <https://gov.wales/sites/default/files/publications/2019-05/part-10-code-of-practice-advocacy.pdf>

(17) Chapter 20 <https://gov.wales/sites/default/files/publications/2019-05/part-10-code-of-practice-advocacy.pdf>

(18) The representations could relate to the way in which the local authority might have assessed the child's needs, how the local authority intends to meet any identified needs or the way in which the local authority might have discharged its duties towards looked after/accommodated children or carried out their safeguarding duties.

(19) paragraph 103 <https://gov.wales/sites/default/files/publications/2019-05/part-10-code-of-practice-advocacy.pdf>

(20) <https://www.tgpcymru.org.uk/what-we-do/young-asylum-seekers-and-refugees-programme/>

(21) section 73 <https://gov.wales/sites/default/files/publications/2019-05/part-6-code-of-practice-looked-after-and-accommodated-children.pdf>

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(22) <https://www.gov.uk/government/collections/country-policy-and-information-notes>

(23) <https://www.refworld.org>

(24) Court of Appeal case - Birmingham City Council v Clue [2010] EWCA Civ 460. The case looked at the extent of a local authority's duty to provide financial support and assistance to a family where an application for indefinite leave to remain in the UK was pending and the application raised human rights issues. The Court decided that the local authority should have considered whether the family was destitute and if so, whether the application for leave was abusive or hopeless. If the application was not hopeless or abusive, the local authority should not have refused assistance.

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