Pathway for Safeguarding and Promoting the Welfare of Separated/ Unaccompanied Children arriving in Northern Ireland

Regional Operational Guidance

November 2013
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1. **INTRODUCTION**

The aim of this operational guidance is to provide advice and guidance for Statutory Agency staff on practice responses and interventions to meet the needs of all separated children arriving in Northern Ireland. It is not intended to replicate or replace other related guidance, policy or procedures. Rather it is designed to encompass these in setting out coherent operational arrangements to be followed when any separated child arrives in Northern Ireland from outside the United Kingdom.

Based on experience to date this will be best achieved by ensuring that all relevant statutory agencies which have a primary role to play are fully aware and informed of respective responsibilities. While some voluntary agencies also have a mandate in respect of trafficked children, it will generally be the statutory agencies which will be involved in making immediate and longer term arrangements for these children. This Guidance, therefore, sets out the respective roles and responsibilities of the key statutory agencies and thereby emphasises the necessity of good multi-agency working to ensure that the child’s pathway is central to all considerations.

A separated child can be any of the following:

- An unaccompanied asylum seeking child,
- An unaccompanied non-asylum seeking child
- A trafficked child
- A child suspected of having been trafficked

For the purpose of this document, the term, separated child, will be used throughout to address all of the above categories.

It is also acknowledged that some indigenous children may be subject of internal trafficking within Northern Ireland. Trafficking within the United Kingdom for sexual exploitation is defined in the Sexual Offences Act 2003 as follows;

A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—

a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or

b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.
Internally trafficked children are not specifically addressed in this operational guidance as they will be dealt with as all other children who are at risk and in need.

The document is intended to provide a comprehensive operational tool that identifies the additional processes and interfaces with other key statutory agencies that are required in order to provide appropriate interventions in relation to any separated child who falls within the definition provided above.

This operational guidance must be read in conjunction with:

- Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking”, DHSSPS, 2011. [This document is likely to be updated to take account of recent developments / changes and also to ensure appropriate cross departmental ownership]
- Children (Northern Ireland) Order, 1995
- Co-operating to Safeguard Children, DHSSPS, 2003 [pending update]
- Area Child Protection Committees’ Regional Policy & Procedures [pending update]
- Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland, 2013
- Safeguarding of Children Missing from Home and Foster Care, 2012.

The operational guidance is also underpinned by the following key objectives:

- To inform multi-agency professionals of particular action to take to safeguard and promote the well-being of separated children arriving in Northern Ireland;
- To provide guidance and support for multi-agency professionals who are working with separated children in Northern Ireland;
- To assist professionals to understand factors which can make separated children from abroad particularly vulnerable and may indicate their need for protection.

N.B. “Child refers to any child or young person up to the age of 18 years*
2. Summary Pathway and Flow Chart

Potential sources of first contact with a separated child

Border Force  HSC Trusts / Social Services  Education  PSNI  Home Office (Visas and Immigration and Immigration Enforcement)  Community / Voluntary organisation

Referral to relevant Trust / Out of Hours Emergency Social Work service for initial assessment
This will include consideration of Child’s needs including age, accommodation and risks.

Consider the following

Is child potentially or already confirmed to have been trafficked?

Is this an Asylum Seeking Child?

Is the child under 18 years or potentially an adult?

Is this an European Economic Area (EEA)/non-EEA child or it is not clear from initial assessment what the child’s status is?

Staff must be aware that a child may not know / wish to say if he/she is trafficked. See U.N Human Trafficking Indicators. See Appendix

If concerned that the child may be trafficked, a referral should be made by PSNI, Border Force, Home Office or the Social Worker [depending when trafficking is identified] as FIRST RESPONDER under the NATIONAL REFERRAL MECHANISM to the U.K. Human Trafficking Centre. [UKHTC]

As only non-European Economic Area (EEA) children need to apply for asylum, the Trust will arrange for them to become looked after, pending further investigations.

Thus this does not include EEA countries of Iceland, Liechtenstein, Norway, Switzerland + EU Countries Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, U.K.

If there is any doubt that the child is 18 years of age, an age assessment should be undertaken. Ensure involvement of VOYPIC Independent Advocacy Service. If still unclear, the child to be given benefit of doubt until this can be clarified. If it becomes evident that the ‘child’ is actually an adult and a victim of human trafficking the PSNI must be contacted. There are arrangements for Migrant Help / Women’s Aid to provide all necessary support. (accommodation etc)

Trusts should make arrangements for children to be looked after pending further investigations to clarify situation.

• Children must be provided with independent legal advisors at earliest opportunity

• Close contact must be maintained between Social Worker, PSNI & UKBA [now Home Office Visas & Immigrations]
Referral of Separated Children to any Agency

A separated child can enter Northern Ireland in many different circumstances. The Summary Pathway Flowchart, Figure 1, sets out potential sources of first contact for a separated child. Initial presentation may be to one of a number of agencies. It is vital that the agency which is in first contact with the child refers the child to the relevant Trust Gateway Service or Out of Hours Regional Social Work Service. This is to ensure that an appropriate assessment of the child’s needs is undertaken. On receipt of referral the Social Worker will undertake a number of steps including:

- Meeting the child directly with the referring Agent to establish what information is known about the child and the circumstances of his / her arrival into Northern Ireland.
- Considering the information in conjunction with other relevant Agencies, taking account of the fact that the child may not fully know / may not wish to explain the circumstances of his/her arrival in Northern Ireland. A decision needs to be made about whether there is a real possibility that the child is subject to trafficking, either suspected or confirmed.
- In the event of any perceived immediate risk of trafficking, absconding or abduction, the Social Worker needs to take appropriate steps to safeguard the child. This will involve close liaison with the PSNI and legal advisors to ascertain the appropriate legal intervention under the Children (NI) Order 1995 and other relevant legislation.

A number of considerations must be addressed to fully explore the circumstances and needs of the child at the point of presentation. The outcome of these considerations will impact on immediate operational steps to be taken pending longer term intervention. These are outlined in the Summary Pathway Flowchart in Figure 1 and considered in more detail below.
Most staff have limited experience of trafficking but it is very important that they are alert to potential indicators that a child may have been trafficked, as well as both its prevalence and the associated risks. Where a separated child presents in circumstances which cannot be easily explained or where their account of arrival with / without adults into Northern Ireland raises concerns about the validity or reliability of the information, all the relevant statutory sector staff involved should immediately have their suspicions raised.

The United Nations Human Trafficking Indicators [reference Appendix 1] provide a useful tool to assist staff in assessing the child’s potential to being trafficked and should be considered as part of the initial assessment.

All separated children and young people who are suspected of having been trafficked must be considered to be children in need of care and protection under the Children (Northern Ireland) Order 1995 (the Children Order). Whilst this will be discussed with the child / young person it is likely that all such children found within a Trust’s area will become Looked After by the Trust and consideration should be given to the need for legal intervention to secure the child’s wellbeing. The PSNI should be informed immediately.

Border Force is an operational arm of the Home Office dealing with arriving passengers in relation to Immigration and Customs related work at the Border. Home Office – Visas and Immigration and Immigration Enforcement (formerly UKBA) deals with all asylum cases referred to them by Border Force as well as all in-country applications. Border Force will act as a first responder to children with outstanding immigration issues and will refer the child through the National Referral Mechanism (NRM) process to the United Kingdom Human Trafficking Centre (UKHTC). UKHTC is the Competent Authority (decision maker for trafficking referrals) for all EEA and British Citizens NRM referrals. UKVI is the Competent Authority for all non EEA citizens. Where a separated child who is a victim of trafficking is a non EEA national claiming asylum UKVI will have responsibility for deciding both the trafficking and the asylum claim. (For guidance on definitions and explanation of the National Referral Mechanism and Competent Authority reference website: www.gov.uk/government/uploads/attachmentdata/file/23310/NRM%20child%20first%20responders%20guidance.pdf).
• Border Force will complete the NRM referral. At this point in asylum cases Border Force passes responsibility for any further action to Home Office – Visas and Immigration (UKVI). In the case of parallel trafficking and asylum claims, UKVI has sole responsibility for the asylum decision. There will be close liaison, however, between UKVI and UKHTC in relation to the trafficking claim where UKHTC has retained responsibility.

• If Border Force do not identify a potential victim of trafficking at the initial stage but this becomes evident at a later stage UKVI will do the referral. Alternatively HSC Trusts Social Services may make this referral if such evidence presents prior to UKVI meeting with the child.

• If Border Force identifies a potential victim of trafficking where there is no immigration issue (e.g. European Citizen with free movement rights) it would refer to the PSNI and Social Services. Border Force will do the initial referral to UKHTC in these cases.

• The expectation is that Trusts would then only do such NRM referrals as first responders when the child has been accommodated by the Trust and concerns about possible trafficking arise at that later point and where this has not already been undertaken by Border Force or UKVI.

• When the PSNI receive a report of a suspected Human Trafficking victim, this is initially dealt with by Uniformed Response Officers who will attend the scene and make an initial assessment. If trafficking is suspected the ‘On Call’ Detective Inspector from Organised Crime Branch will be contacted. The Detective Inspector will then assess whether or not the investigation should remain within the Organised Crime Branch, be passed on to the Public Protection Unit or returned to the Uniformed Response Officers. The child should be interviewed under the provisions of the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland, 2013.

• Depending on the outcome of the above, the PSNI representative and the Social Worker will agree on whether immediate action is needed to safeguard the child, and if so, whether this should be through use of an Emergency Protection Order [E.P.O.] or a Police Protection Order [P.P.O.]

• Potential child victims do not need to consent to their referral. A referral into the NRM and the subsequent decisions do not replace or supersede established child protection processes which should continue in tandem.
- Referrals made in relation to children should be made on the child NRM Referral Form. The referral form and guidance notes, including a list of potential indicators of children who may be trafficked, can be found at: [www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms](http://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms)

- Given the vulnerability of such children and where English is not their first language, arranging immediate access to an Interpreter is a priority. Additionally arrangements for access to the VOYPIC Advocacy Service and independent legal representation for the child must be immediately undertaken.

- The Social Worker will arrange immediate and suitable accommodation for the child which will be in a Residential Unit or Foster care and never in Bed and Breakfast accommodation or unregulated arrangement (as per HSCB Notification Reporting on Unregulated Placement arrangements for children and young people aged under 18 years). The choice of placement should include advice giving about the need for close monitoring and security, given the known risks from any potential traffickers.

- The NRM referral and report must be made, where possible within 48 hours, in order that the Competent Authority may determine whether there are grounds to further investigate if the child is a potential victim of human trafficking.

- All referrals by Trusts in respect of potential child victims of human trafficking should be made through the NRM to the UKHTC. Decisions in relation to children who are UK and European Union nationals will be made by the UKHTC. The UKHTC will forward any referrals for non EU nationals to UKVI who will act as the competent authority in such cases. UKVI will make reasonable grounds and conclusive decisions in these cases as well as any outstanding immigration decisions. Trusts should be kept informed about which agency is the case holder and should be contacted prior to any reasonable ground or conclusive ground trafficking decision being made so that any additional evidence the Trusts may be aware of is taken into consideration.

- A recovery and reflection period of 45 days will routinely be granted where there are reasonable grounds to suspect that a person is a victim of trafficking. Victims may, during this period, also wish to lodge a claim for asylum if they have not already done so. No immigration decision will be made or served on the child during the 45 day reflection period, however, after 30 days the potential victim of trafficking may be invited to an interview by the asylum case worker to enable the collation of information to inform the asylum decision.
The Competent Authority will not interview a child in respect of a Potential Victim of Trafficking claim. Under current arrangements and in keeping with Achieving Best Evidence (ABE) PSNI and Social Work staff will undertake interviews with the child. The Competent Authority will use (verbatim – not summary) transcripts of these interviews to inform the trafficking decision. The transcript must be in full or it will not stand up to judiciary scrutiny as reliable evidence.


N.B. This was published prior to the name change for UKBA but all other processes remain relevant.
With reference to Map below there are two grounds that attract Discretionary Leave under UKVI Trafficking Policy. That is: involvement / cooperation in an on-going police investigation / prosecution; or Article 8 personal circumstances. The latter requires medical evidence supporting a diagnosis and prognosis of a condition that arises directly from the alleged trafficking experience. Under the 30 days where consideration is being given to residence permit action, it should be noted that where there are suspected conditions / trauma, specific referrals are made to the required experts during this period to enable evidence to be available at the decision making stage (after 45 days).
Trust remains responsible for meeting identified protection needs regardless of Competent Authority judgement. Any further information collected and assessed, including via the trafficking matrix or UNOCINI, and relevant information passed to Competent Authority. Competent Authority will consider relevant information even after a negative initial decision.

Decision letter to victim
Reflection and recovery period granted, Trust Social Worker notified

Temporary Admission/Temporary Release

Yes

Two-way information flow between Trust Social Worker and CA

Gather information for conclusive grounds decision.

Yes

30 Days

Extend reflection period

No

Conclusive Decision

Consult with any other relevant partner agencies – eg police, voluntary organisation

Decision letter sent
Trust Social Worker notified

No

Continue to consider any immigration issue

Are victims willing to cooperate in criminal investigation. Application for residence permit? Consider extension to reflection period

Extended time

45 Days

Day 5  45 Day reflection period (extended where appropriate, length according to need)

Trust care continues according to statutory obligations and article 12 of the Convention.

Residence permit issued in accordance with the best interests of the child, including personal circumstances and co-operation with the police (application made by police following normal procedures)

45 Days

Decision letter sent out – Conclusive decision and no residence permit
Relevant authorities notified

Review of residence permit

No residence permit

Decision letter sent out
Relevant authorities notified

Relevant immigration procedures continues

No

Assisted Voluntary return if in best interests

Where appropriate outstanding immigration issues eg asylum concluded in parallel
**Is this an Asylum Seeking Child?**

- In the event that trafficking has been considered and ruled out and the child is a non-EEA child, he/she should be treated as an asylum seeking child applying for asylum in his/her own right; being separated from both parents and not being cared for by an adult who by law has responsibility to do so.
- In these situations, where the Border Force has identified such a child they will refer to Home Office – UKVI for asylum consideration and to Social Services for immediate welfare issues.
- If any other Agency is the first point of contact they should ensure that immediate referral is made to Social Services who in turn will ensure that a referral is made to UKVI.
- Any child in such circumstances will be treated immediately as a child in need and provided with the same services as any other child in Northern Ireland who has been identified as such.
- Trusts will need to make suitable arrangements for the child to become looked after, pending further investigations, bearing in mind that a child in such circumstances under 16 years of age cannot voluntarily agree to become looked after under the provisions of Article 21. Appropriate legal intervention must therefore be considered.
- As above and given the vulnerability of such children and where English is not a first language immediate access to an interpreter must be provided. Referral to the VOYPIC Advocacy Service and legal representation must be organised as a matter of priority.

**Is the child under 18 years or potentially an adult?**

- Based on an analysis of separated children arriving in Northern Ireland between January 2012 and August 2013 the majority claim to be 16 / 17 years. This may indeed be the case but it is also necessary to bear in mind that the ‘Child’ may possibly be over 18 years and thus actually an adult trying to gain entry to / access the services provided to children in need.
- If there is doubt about the child’s age and therefore whether he / she is actually a child and if no appropriate or credible documentation is available to confirm age, an Age Assessment should be undertaken.
This is often referred to as a Merton Age Assessment. The term derives from the case of R (on the application of B) v Merton London Borough Council [2003] EWHC 1689 (Admin) (14 July 2003) which gives guidance as to the requirements of a lawful assessment by a local authority when assessing the age of a young asylum seeker claiming to be under the age of 18 years. Subsequent legal rulings have added to/clarified “Merton” in that ultimately it will be for a Court to ‘determine’ the age of the individual but that the authority must always conduct a Merton Age Assessment.

Case law requires that a Trust age assessment is as full and comprehensive as possible and conducted in a clear, transparent and fair manner. Given that, every effort should be made to use staff who are trained in the use of the ‘Merton’ age assessment’ process.

Given that the outcome may be challenged in Court, it is preferable that another member of staff is also present when this assessment is being undertaken.

The presence of an independent person in this process is also recommended and VOYPIC’s Advocacy Service can fulfil this role.

Details of this process are provided in later chapters.

The outcome of the assessment should be shared, in writing, with the Competent Authority or Asylum case worker as this information is necessary to ensuring that due process is followed in reaching the correct decision.

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**Is this an EEA child or it is not clear from initial assessment what the child’s status is?**

- An EEA child will have different immigration status from a non EEA child and this technically/legally allows the child admission into the U.K. However the circumstances of entry into the country as a child, unaccompanied by a parent, relative or guardian poses concerns about the child’s welfare and who is exercising parental responsibility.

- A child in such circumstances should become Looked After in the first instance taking account of their age and need for legal intervention. Consideration must be given to their longer terms needs and the possibility of repatriation to family.

- This will be done by ascertaining the child’s previous addresses so contact can be made with their local Social Services.


- Staff, however, must remain vigilant to their potential age and the possibility of trafficking. If the latter is suspected, contact should not be made with family while PSNI is undertaking investigations.

3. **Further Practice Information**

3.1 **Multi agency initial actions checklist for Professional working with Separated Children and Young People**

**All professionals:**

- Child first, migrant second. All agencies are responsible for safeguarding and the welfare of the child is paramount.
- Professionals who come into contact with separated individuals who claim to be under 18 years, **must** make an immediate referral to Social Services for further support and safeguarding due to potential vulnerabilities and where necessary for consideration of an age assessment.
- In doubtful or borderline cases as to a child or young person’s age, the child should be given the benefit of the doubt in the first instance, and a referral must still be made to Social Services.
- Where UKVI has evidence or suspects a young person is under 18 and makes a referral to Social Services, Social Services should consider undertaking an age assessment. UKVI should make a referral to Social Services unless physical appearance / demeanour **very strongly** suggests that the “child” is **significantly** over 18.
- Staff may also make use of national services such as the National Society for the Prevention of Cruelty to Children (NSPCC) Child Trafficking and Information Line (CTAIL), to source additional advice and support. The HSC Board has a Memorandum of Understanding with the NSPCC in respect of the use of this service. UKHTC also acts in an advisory capacity and therefore can be contacted for advice and information.

3.2 **Children’s Social Work Services:**

3.2.1 **Safeguarding:**

- The Regional Child Protection Committee (RCPC) Policy and Procedures, and in particular ‘The Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse - Northern Ireland 2013’ outline actions to be taken when Police Officers and Social Workers suspect a child or young person to be at risk of significant harm of neglect, emotional, physical or sexual abuse and these procedures should be followed irrespective of the child/young person’s immigration
status. Professionals should be mindful of the risks that separated children and young people may be subject to. All risks to the child/young person should be considered under the RCPC Policy and Procedures in conjunction with UNOCINI. The Safeguarding Board for Northern Ireland [SBNI] will now also be involved with this.

- Social Work staff will apply the same procedures as they would to any child from Northern Ireland. This will apply not only to initial safeguarding but also to any subsequent arrangements for the child to become Looked After.
- In this regard, consultation should take place with other professionals - PSNI / Health / Education and other agencies where appropriate and Looked After Placement Arrangements and Care Planning apply as with any other Looked After child.
- Support from a Trust should continue post 18 as most separated children and young people will be entitled to leaving care services. Separated children and young people ‘Looked After’ for 13 weeks or more are entitled to leaving care support from the Trust that Looked After them, under the Children (Leaving Care) Act (Northern Ireland) (2002) [also see Articles 25, 34 and 35 of the Children (Northern Ireland) Order 1995]
- In many cases young people will qualify for leaving care services. Young people who have been accommodated by the Trust will be eligible to continue to receive advice, support, and assistance from the care leaver’s service as a former relevant person until the age of 21 years (24 years if completing a programme of education or training agreed with the HSC Trust).

Professionals should be particularly aware of:

**Children at risk of going missing:**

- There is a high risk of separated children where trafficking is suspected or confirmed going missing from care within a very short period of first coming to the attention of the various agencies. The protection of separated children where trafficking is suspected or confirmed is paramount. In the event of such a child / young person going missing the Trust should adhere to the Safeguarding of Children Missing from Home and Foster Care 2012. This includes notification to PSNI and a determination between Children’s Services and PSNI about further actions to be taken. Where there are concerns that the child / young person is being moved to the Republic of Ireland, the PSNI will alert An Garda Síochána. The Inter-Jurisdictional Protocol for Transfer of Children’s Social Care Cases between Northern Ireland and the Republic of Ireland 2011 should be implemented in conjunction with Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking, DHSSPS, 2011.
HSC Trusts must complete an Untoward Event Notification.

Home Office Guidance on Missing Children and Vulnerable Adults Section 8.1: Children in the Care of the Local Authority advises that the local authority / HSC Trust must advise Home Office Evidence and Enquiry Team where a Looked After separated child goes missing and / or when he / she returns. Further information on actions and the role of Home Office in these circumstances is available at:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/emsectiond/chapter19c?view=Binary

Sexual Exploitation:

- Child Sexual exploitation (CSE) for the purpose of the protocol includes:
  - Abuse through exchange of sexual activity for some form of payment
  - Abuse through the production of indecent images and / or any other indecent material involving children / young people whether photographs, film or other technologies
  - Abuse through grooming whether via direct contact or the use of technologies such as mobile phones and the internet
  - Abuse through trafficking for sexual purposes.

Depending on where and to whom a separated child makes the first point of contact, there can be variations in the initial process of responding. However the process outlined below provides detail on the primary process to be followed.

- Within the context of safeguarding and whilst the initial referral most usually will be made by telephone this should be followed up in writing by the referral source through completion of the UNOCINI preliminary referral form which should be forwarded to the Gateway Duty Manager. Safeguarding concerns to be considered under the RCPC Policy and Procedures.

- Gateway will contact the Evidence and Enquiry Team regarding the referral by email to EvidenceandEnquiry@homeoffice.gsi.gov.uk to:
  - Clarify if young person is already known to them
  - If known, confirm if they have biometric capture
  - If not known, agree arrangements for them to undertake biometric capture.

- It is recommended that biometrics are captured from the child within the first 24 hours, preferably with their consent, alongside an explanation of why this is necessary. This will help the PSNI with their investigations should the child subsequently go missing. (If consent is refused by a child or young person, legal advice should be
sought). If a child does not comply with the required processes for progressing his / her claim, the case can be withdrawn on the grounds of non-compliance.

- If trafficking is suspected or confirmed at the point of referral social services will initiate contact with PSNI and implement Joint Protocol procedures.
- Placement arrangements should give due consideration to potential for the young person going missing.

**3.2.2 Internal Actions:**

- If the referral is made ‘out of hours’, the social worker who dealt with the case must ensure that the Gateway Team is contacted at the earliest opportunity on the next working day to ensure that all urgent tasks are completed.
- Children’s Services should contact EvidenceandEnquiry@homeoffice.gsi.gov.uk at the earliest opportunity to establish whether the child is known to UKVI and to agree arrangements, for example, application for asylum required, record details and biometric data.
- The appointment of independent legal representation should be addressed.
- Following referral by Social Services, UKVI and Children’s Services should liaise at the earliest opportunity to record personal details and biometric data of newly arrived children and young people.
- A referral should be made to Advocacy Services in keeping with the Protocol between HSC Trusts and VOYPIC on the Provision of Advocacy Support to Separated Children, 2013
  - Where there is any dispute in relation to age an appropriate ‘Merton compliant’ age assessment is crucial and will inform both the outcome of the asylum application, and the appropriate provision of services to meet the individual’s needs. In addition to Social Workers, an independent advocate should if at all possible, be present whilst the age assessment is undertaken.
- Trusts must always remember to notify HSC Board of the arrival of any separated / unaccompanied child into Northern Ireland, using the prescribed notification pro forma.

**3.2.3 Communication:**

- Consideration needs to be given to the country of origin and language of the child. The Refugee Council’s website has multi-lingual pages to assist with the identification
of country of origin and language.
http://www.refugeecouncil.org.uk/practice/multilingual

- Arrange an Interpreter (the child/young person has the right to change interpreters if
  he/she has reason to do so). See Code of Practice and Guidelines on Booking
  Interpreters for HSC Staff and Practitioners Northern Ireland Health and Social Care
  Interpreting Service (NIHSCIS). Tel: (028) 9056 3794  Email:
  interpreting@belfasttrust.hscni.net

- UKVI will arrange a Home Office approved interpreter for any interactions and
  discussions on immigration issues.

3.2.4 Accommodation and Support:

- Arrangements should be made to provide suitable accommodation to all
  unaccompanied children pending a full assessment which will include the need to
  consider legal intervention. Safeguarding issues, including the need for legal
  intervention, should be considered regarding the choice of placement within the first 24
  hours. Where concerns exist about the possibility that the child could in fact be an
  adult consideration must be given to the appropriateness of a placement where other
  children reside. Use of Bed and Breakfast accommodation is not suitable in such
  circumstances.

- Support should be provided to children/young people regarding their asylum claim to
  include information about the asylum process (with the exception of legal advice, which
  should only be provided by an accredited immigration advisor) and preparation for
  every possible outcome of their asylum claim. It is vitally important that the child/young
  person understands the asylum process. Check what information they have been
  given about this and ensure that information is correct, contacting UKVI if necessary.

- Consideration should be given to religious beliefs, cultural norms and social
  opportunities of the child/young person to ensure that needs are met as appropriate.

3.2.5 Legal Representation:

- In relation to any separated child, a legal representative should be appointed. If the
  child has not yet claimed asylum and wishes to do so (e.g. the child has demonstrated
  a fear of return) professionals should ensure an experienced asylum solicitor (OISC
  registered) supports the child/young person.

- If an asylum claim has already been made, liaise with UKVI to identify the child/young
  person’s Caseworker or to register an asylum claim.
Practitioners should alert the Caseworker at UKVI regional office, PSNI and any other agencies involved to any changes pertaining to the child/young person’s age and outcome of any age assessment.

Practitioners have responsibility for accompanying the child/young person to asylum interviews to act in the child/young person’s best interest during the interview.

3.2.6 Health:

Physical Health

- Separated children who arrive in Northern Ireland may have complex health needs therefore it important to liaise with the named health lead for Looked After children in the Trust to ensure a comprehensive health assessment is undertaken.

- In relation to separated children, the completion of a medical assessment as part of becoming a Looked After child and care placement requirements will be in keeping with Trust policy and procedures on meeting the immediate and longer term health needs of Looked After children.

- The Belfast Trust TB screening service has also developed the Northern Ireland New Entrant Service (NINES). This nurse led service aims to provide access to health care for new entrants to Northern Ireland to include new immigrants, asylum seekers, refugees and clients who are unable to register for GP services. The service will continue to offer Mantoux testing and BCG vaccination for children and infants identified through the “at risk” screening programme. A range of clinics can be accessed to address the health and social well being needs of the client group to include drop-in clinics for advice and support, health assessment clinics, immunisation clinics and health promotion sessions.

- If the PSNI are involved and there is a need for a forensic medical to be undertaken, special arrangements will be made for this. This is likely to involve the Sexual Assault Referral Centre [SARC Service at Rowan House, Antrim Area Hospital.]

- In most circumstances where children are seen as competent to give their consent to a medical, there should be no problem once this has been explained to them, using an interpreter where necessary. However, if the medical practitioner has concerns about conducting a forensic medical, legal approval to do so can be considered either through use of an Emergency Protection Order or an Interim Care Order both of which give the Trust ‘Parental Responsibility’ to sign the consent. Alternatively a ‘Specific Issue Order’ which authorises the medical assessment can be considered but the only
difficulty being that courts will not grant this for a child once they reach 17 years old. The only other option post 17 years of age is to apply to High Court for a Statutory Declaration which is extremely complex and needs to be based on medical evidence. A Consultant would have to file affidavit evidence as to why in their view the child is not competent. However this should not arise as almost every 17 year old will be competent to give their own consent.

- Registration with a G.P. should also be arranged at the earliest opportunity.

**Emotional / Mental Health**

- Each separated child should be considered for referral to LAC Therapeutic Services to ensure appropriate assessment of emotional health and well-being needs. This will inform intervention and / or referral to other appropriate service.
- Another referral pathway in cases of sexual exploitation is to the Sexual Assault Referral Centre [SARC Service at Rowan House, Antrim Area Hospital]. This service may be useful if a child or young person has experienced rape, sexual or other abuse, or has been trafficked.
- Professionals must take the time to discuss cultural differences with young people, such as how girls and women may dress differently in the UK, as young boys may exhibit inappropriate sexual behaviour due to an inability to understand western social customs and dress codes. If there are any concerns of this nature, professionals should respond appropriately and ensure that young people have appropriate information and guidance on appropriate sexual behaviour, age of consent and other relevant information.

**3.2.7 Education:**

- Refer to Trust’s Looked After Children Education service (where available) or the Education Welfare Officer with responsibility for Looked After Children in order to determine and access appropriate educational provision.
- The duties owed to safeguard welfare include the duty to promote educational attainment.
- Prepare a Personal Education Plan [PEP] when appropriate.
3.3 **Child Trafficking**

- The two most common terms for the illegal movement of people, *‘trafficking’* and *‘smuggling’*, are very different. In human smuggling, immigrants and asylum seekers pay people to help them enter the country illegally, after which there is no longer a relationship. **Trafficked** victims are coerced or deceived by the person arranging their relocation. However, there is a difference between adult and child trafficking, where the victim is a child neither coercion nor deception need to be present for the child to be considered trafficked. On arrival in the country of destination the trafficked child or person is denied their human rights and is forced into exploitation by the trafficker or person into whose control they are delivered or sold.


(Article 3)

“**Trafficking of persons**” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation set forth in sub-paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in sub-paragraph (a) of this article “Child” shall mean any person under eighteen years of age.

*The Palermo Protocol* (United Nations, 2000) establishes children as a special case. Any child transported for exploitative reasons is considered to be a trafficking victim, whether or not they have been deceived. This is partly because it is considered not possible for children to give informed consent. Even when a child understands what
has happened, they may still appear to submit willingly to what they believe to be the will of their parents or, accompanying adults. It is important that these children are still protected.

- The Council of Europe Convention on Action against the Trafficking in Human Beings, Article 10 (3) presumes that a child is a child until otherwise verified even if age disputed. In addition, Article 4 also states that presumptions should not be made as to a child’s complicity in acts of exploitation, fraud, deception.

- Separated children can be trafficked for a number of reasons which include; domestic servitude, sexual exploitation, organ harvesting, transportation of drugs, begging, criminal activity and forced labour. A child/young person cannot give informed consent to moving countries. Given the clandestine nature of trafficking activity, the incidence of child trafficking is very difficult to quantify and research in Wales suggests professionals may not always recognize and /or act on suspected cases of child trafficking.

- UK research suggests that many trafficked children/young people will present as being separated / unaccompanied and seeking asylum, and will subsequently go missing from care, usually within 48 hours.

- Similarly, it is possible that separated / trafficked children/young people may appear to be in a private fostering arrangement with extended family members. The Children (Private Arrangements for Fostering) Northern Ireland Regulations 1996 apply to children from abroad who are living with extended family. Consideration may be given to the investigation of a private fostering arrangement and agencies may want to undertake an assessment in the child protection context in accordance with UNOCINI. In such investigations attention need to be given to Article 17 of the Children (Northern Ireland) Order 1995 which states that, in relation to a child-in-need, “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

### 3.4 Age Assessment Process

- The age assessment process is about gathering a variety of information and conducting interviews with the child/young person in order to assess if the information gathered amounts to an accurate reflection of the child/young person’s stated age (if they have one). Judgements subsequent to the Merton Judgement have firmly restated and re-established the position of the Courts as being the ultimate arbitrator in the context of determining the age of an age-disputed person. An age
assessment which incorrectly judges a child/young person to be over 18 can have severe consequences by denying young people under 18 access to statutory services and potentially placing them at risk. For example, a child/young person may be housed with other adults seeking asylum if assessed as over 18. Conversely, an incorrect age assessment which judges a young person to be under 18 when they are in fact older may mean that they are inappropriately accommodated as a child. The assessment process does not impose a burden of proof on the child to ‘prove’ age.

- It is recognised that age assessment is not an exact science, but one that is best suited to a **holistic multi-agency assessment process** by social workers, with input from individuals in the child/young person’s life, such as; representatives from health services, education, advocacy services, youth workers and foster carers. Failure to communicate with other agencies in order to have a complete picture of the child/young person may place a child/young person at risk. This is a difficult area of practice because there is currently no statutory guidance on how to conduct an age assessment. The process has developed through local authority practice and case law. **An interpreter and an appropriate adult/independent advocate should be present at the age assessment.**

- Children should not be routinely exposed to a full age assessment for various reasons unless there is a need, such as a dispute, however, all children will require a needs assessment and age should be included in this. An age assessment should be carried out if:
  - There is a dispute about a young person’s age
  
  or

  - If their appearance or demeanour suggests that they are younger or older than they claim to be
  
  and

  - There is no documentary evidence of their age.

- One of the risks of the age assessment process is incorrectly assessing a child/young person’s age as over 18; this means that it is likely that the child/young person may be accommodated with adults in Home Office Immigration asylum support accommodation. There are no safeguards in existence to monitor the safety or protection of age disputed children/young people in this context. Social Workers should have regard to this and other risks around welfare and safeguarding when making any decisions on age assessment or support. Where an age assessment has
been completed the Trust will, with the young person’s consent, forward a summary assessment to UKVI.

**Why are some children ‘age disputed’?**

- Separated children who arrive in the UK without a parent or guardian are the responsibility of Trusts under the Children (Northern Ireland) Order 1995. However, many of these children who arrive may appear to look younger or older than their stated age, possess false documents, or arrive without documents evidencing their identity and/or date of birth and may not know their age as some countries do not recognise birthdays. As a consequence they may find their age disputed by UKVI who may then decide to treat the applicant as an adult (on basis that their physical appearance/demeanour very strongly suggest that they are significantly over 18 years of age). If that is the case, the Trust will not have the opportunity to decide whether the person is a child/young person.

- However if this has not occurred, it will still be the responsibility of the Trust to decide whether they are satisfied that the person is a child/young person. If they have real doubts they will undertake an age assessment. In circumstances where age assessment is carried out as part of assessment, professionals must tell the child the purpose of the assessment so that it is not done under guise of ‘needs assessment’ but is really about age.

- Home Office Immigration policy to be applied by their staff when the person is first encountered:
  1. **The applicant should be treated as an adult if their physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age.**
     Careful consideration must be given to assessing whether an applicant falls into this category as they would be considered under adult processes, and could be liable for detention.
  2. **All other applicants should be afforded the benefit of the doubt and treated as children, in accordance with the Processing an asylum application from a child AI, until a careful assessment of their age has been completed.**
     This policy is designed to safeguard the welfare of children. It does not indicate final acceptance of the applicant’s claimed age, which will be considered in the round when all relevant evidence has been considered, including the view of the Trust authority to whom unaccompanied children, or applicants who we are giving
the benefit of the doubt and temporarily treating as unaccompanied children, should be referred.


- If the Trust age assessment continues to dispute the child / young person’s reported age, the child / young person must be informed, via an interpreter, that he / she has the right to legally challenge the decision and advocacy services and / or legal services will continue to be made available to the child / young person within any appeals process.

- Following the outcome of the age assessment, Children’s Services should inform the child that a summary/assessment of the decision on age will be given to UKVI. If the person is assessed as a child or young person Children’s Services must then take any actions based on the outcome of their Child in Need Assessment. If the person is assessed as an adult they should be referred to Home Office Immigration. Their guidance to Case Owners states:

  “Case owners should give considerable weight to the findings of age made by local authorities, recognising the particular expertise they have working with children. In cases where the local authority’s assessment is the only source of information about the applicant’s age – their assessment will normally be accepted as decisive evidence. Nevertheless, case owners should carefully consider the findings of the local authority and discuss the matter with them in appropriate circumstances, such as where the findings are unclear; or do not seem to be supported by evidence; or it appears that the case is finely balanced and the applicant has not been given the benefit of the doubt; or that it appears the general principles set out in the Merton Judgement were not adhered to.”

Where there is any suspicion that an age disputed child may have or is being trafficked, immediate safeguarding actions must be taken and he / she “should be presumed to be a child and shall be accorded special protection measures pending verification of his / her age.” (Article 10, Council of Europe Convention against Trafficking)

“Where there is any uncertainty as to a child’s age, that age should be given the benefit of the doubt as standard practice” (Age Assessment: Joint working protocol between the Immigration and Nationality Directorate (UKBA) and the Association of Directors of Social Services, 2005 – currently under review and should be agreed and updated for use by 2014).
Conducting age assessments and key legal judgements

Case law requires that a Trust age assessment is as full and comprehensive as possible and conducted in a clear, transparent and fair manner. Case law continues to evolve in respect of age assessments. Until the point at which national guidance is available case law should be used to inform the practice of Children’s Social services and other agencies involved.

Key Judgements in Case Law

The Children’s Legal Centre has summarised the following key judgements in relation to age assessments:

R (B) v London Borough of Merton 2003 - This is a key judgement about age assessment and thus policy and practice guidance and other references to the process will often state that age assessments must be ‘Merton-Compliant Age Assessments’. The judgement established a vital baseline for age assessment, but this judgement should not be utilised in isolation from the growing body of emerging case law.

R (B) v London Borough of Merton 2003

An assessment cannot be made solely on the basis of appearance or demeanour, and should be a holistic one taking account of the young person’s appearance, demeanour, background and credibility.

- Any assessment should take into account relevant factors which form the child’s medical, family and social history and the decision maker should seek to elicit the general background of the application, including family circumstances and history, educational background and activities during the previous few years. Cultural and country of origin information is also important. General credibility of the child as to their journey or past is not necessarily determinative of general credibility on age.
- There was a duty on the decision makers to give reasons for a decision that an applicant claiming to be a child is not a child.
- The young person should be given an opportunity during the assessment to answer any adverse points the decision maker concluded.
- Age assessments must be conducted by two experienced Social Workers (at least one should be a Merton Trained Social Worker) and that all the safeguards to ensure fairness are in place.
- If the decision maker is left in doubt about the age of the claimant, the claimant should receive the benefit of that doubt.
R (on the application of A) v London Borough of Croydon: R (on the application of M) v London Borough of Lambeth 2009

This judgement held that, although age assessment remained the responsibility of local authorities, in the event of a challenge by judicial review, it would be for the High Court itself to determine, as a matter of judicial fact, whether the person is a child and how old he/she is.

R (FZ) v London Borough of Croydon

This judgment included;

- a young person has a right to have an Appropriate Adult present at the age assessment interview. Social Workers should ensure that arrangements are made with independent advocacy providers so that age disputed children have an advocate who can be present throughout the age assessment process,
- there is no burden of proof on the child to prove his age,
- affirms the Merton principles as to credibility,
- fairness requires that the assessors put to the child adverse inferences and matters which require clarification at the end of the initial interview so as to provide the child an opportunity to rebut / clarify matters before a final decision is reached on age.

Providing summary of evidence for Home Office - UKVI

- The Age Assessment should be a careful and balanced consideration of various factors: including; cultural background, relevant country of origin information, social factors, demeanour, understanding and vulnerability as well as physical appearance. In addition age assessment should be a reflective practice and agencies and individual initial assumptions may need to be questioned and critically-evaluated based on a holistic assessment of all contributing factors, as any assessment may be challenged in court and social workers will be expected to evidence how they arrived at their conclusions.
- There is also a responsibility on the Health and Social Care Trusts to provide at least a summary of the age assessment to the relevant case owner at the Home Office – UKVI, in order that they can ascertain that a ‘Merton compliant’ assessment has been conducted.

Professionals should be aware that Home Office – UKVI Directorate’s position on this is as follows;

“Case owners should request a full copy of the local authority’s age assessment and confirmation from the local authority that it has been carried out in compliance with the guidelines in the Merton case. In some instances local authorities may still feel
unable to share their full age assessment with the Agency citing data protection and/or confidentiality concerns. Whilst accepting that the information contains sensitive personal data, it should be pointed out to the local authority that there is provision for sharing such information with the Agency within the Data Protection Act 2008”.

However, there is no requirement in statute or settled law that a HSC Trust should provide UKVI with a full Merton compliant age assessment of the information gathered during the age assessment process and the Association of Directors of Social Services (ADSS) joint working protocol acknowledges that UKBA does not need or require such extensive information. There is a responsibility on local authorities to provide a summary of the age assessment. The summary of evidence to UKVI should include:

- An outline of the age assessment process (where it was conducted, who was present, e.g. interpreter in person, person assessed, informed of reason for assessment)
- Whether or not other sources of information have been considered, such as; documents, medical, education, health professionals, and foster carers
- A summary of the Social Workers’ analysis and weight given to conflicting information
- How the decision was communicated to the child/young person

A fair, holistic, reliable, timely age assessment that limits uncertainty and stress is in the best interest of the child/young person.

Outcome of Age Assessment:

There can be a range of outcomes from the age assessment which will then determine the next steps:

- Individual deemed to be a child – in such cases follow normal LAC processes
- Individual deemed to be potentially 18+ but not definitively so. In such cases the child will be given the benefit of doubt and treated as a Looked After child pending further discussion/investigation.
- Individual deemed to be definitely 18 years+, refer to Bryson Charitable Group, Women’s Aid or Migrant Helpline for adult support service. If there is any suspicion of potential trafficking, there should be a referral to PSNI who will consider referral to UKHTC and who will assist the individual’s accommodation needs by referring to Migrant Help [men] or Women’s Aid [women]
Where the outcome of the Age assessment results in a change of decision by UKVI the Case Owner or Competent Authority may wish to discuss the referral in more detail. This will be on a case by case basis and subject to Data Protection legislation.

In relation to children, and only where trafficking has either been ruled out or confirmed by the PSNI as not involving the child’s family, can contact then be made with the child’s local Social Services / International Social Services to request a home visit based on information provided by young person to determine if child can / should be considered for repatriation.

3.5 **Legal Context**

**Key relevant legislation**

- **The Children (Northern Ireland) Order 1995** places a responsibility upon Health and Social Care Trusts to safeguard and promote the welfare of children and young people living in their area. When children in need are identified, an assessment of their needs should be undertaken.

- **The Children (Leaving Care) Act (Northern Ireland) 2002** introduced new requirements for Trusts to strengthen planning and support for ‘looked after children’ during their transition to adulthood. It created the new definitions; ‘Eligible’, ‘Relevant’, and ‘Former relevant children’ and placed various duties on Trusts depending on a young person’s circumstances. These duties include; providing the young person with a young person’s adviser, devising a pathway plan, providing support and in certain cases financial assistance in relation to education and training. Further guidance including the full definition of eligible, relevant and former relevant children can be found in the DHSSPS Guidance and Regulations, Leaving and After Care, Volume 8, 2005.

- **The United Nations Convention on the Rights of the Child** (UNCRC) acknowledges the rights of this group of children and young people by the provision of special protection measures within the UNCRC. This is an international set of minimum standards for all children/young people up to the age of 18 across the world. The UNCRC has now been found to be directly applicable to the exercise of statutory duties by public authorities which includes Home Office – UKVI and Social Services.

- **Human Rights Act 1998** enables people in the UK to take human rights cases to court in the U.K. There are 16 basic rights in the Human Rights Act, all taken from the European Convention on Human Rights.
• Section 55 of the Borders, Citizenship and Immigration Act 2009. A reservation on Article 22 of the UNCRC was lifted in 2008, leading to the development of Section 55 which came into force on 2 November 2009. It required, with immediate effect, the UK Border Agency to make arrangements to safeguard and promote the welfare of children in discharging its immigration, nationality and general customs functions. The Office of the Children’s Champion leads in this regard with children’s leads in all teams nationally.

3.6 Asylum Process

• Professionals should identify the immigration status of a separated child or young person on arrival. If there is a need, establish if already known to UKVI through the Evidence and Enquiry Team as he / she may have already claimed asylum and have undertaken the initial ‘screening’ process. In all other circumstances a referral will need to be made to UKVI (local/regional office).

Social Workers responsibilities include:

• contacting the Evidence and Enquiry Team using the following mailbox EvidenceandEnquiry@homeoffice.gsi.gov.uk to request that a Status check is conducted on the individual. This will only be necessary in those cases in which the child / young person is NOT referred to Children’s Services by either Home Office – UKVI, UKIE or Border Force. Where the social worker has not received a response within 24 hours, he / she should then contact Home Office – UKVI,

• appointing legal representatives,

• appointing an ‘Appropriate Adult’ for the ‘Substantive Asylum Interview’ at Home Office – UKVI office,

• arranging Interpreters within Children’s Services,

• referring children/young people to advocacy services.

• It is also Social Workers’ responsibility to monitor how the child/young person is getting along with these services. Children and young people have a right to change any services that they are entitled to if they have good reason to do so.

Throughout the asylum process the importance of children and young people having experienced legal representatives, who are able to support them throughout their asylum application cannot be over emphasised. This is also the case in respect of using good, reliable interpreters and advocates.
Separated children and young people often feel stressed, anxious and worried about their asylum claim, the process of visiting Home Office - UKVI Offices, talking to the interpreter and their staff, the asylum interview itself and of course, waiting for the eventual outcome of their asylum application. It is important that professionals working with separated children and young people have some knowledge of the asylum process in order to support the child/young person effectively. This includes, for example, indication of timescales of the asylum process and what to expect at the ‘substantive interview’. This information should be given via an Interpreter wherever possible and/or professionals could use the multi-lingual leaflets available from the Refugee Council website http://www.refugeecouncil.org.uk/. It is also important that the child / young person cooperates with UKVI and the process to ensure a prompt decision and therefore minimise anxiety levels.

It is recommended that any professional working with separated children and young people should attend appropriate training courses. All asylum claims from unaccompanied asylum seeking children will be dealt with by caseworkers who have received specific training to deal with claims from asylum seeking children.

Asylum process for Children
- When a separated child or young person on arrival into the country claims asylum, only necessary basic information checks are undertaken immediately. A full screening is arranged for a later date in keeping with a ministerial commitment in 2009 that no separated / unaccompanied child arriving in the UK would be interviewed within 4 days of arrival in the country.
- The child/young person will be given a Statement of Evidence form and this form must be returned within 20 working days. The legal representative should assist the child/young person with this.

Substantive Asylum Interview
- Social Workers/Advocates should attend the substantive interview as a Responsible Adult with the aim of supporting the separated child or young person. The legal representative should also attend the asylum interview and the Legal Services Commission should provide funding for this. The presence of both a legal representative and a responsible adult is necessary as their roles are different. The child/young person can request a female or male interpreter. UKVI will only interview children/young people over the age of 12 and with a Responsible Adult present. An initial non-probing short screening interview should take place on arrival. The full interview then takes place at a later stage. Asylum interviews can be lengthy.
Asylum Decisions

Possible outcomes of the asylum process for unaccompanied children and young people are:

- **Refugee Status**
  - The Home Office has accepted that a child/young person may have a well-founded fear of persecution under one or more of the reasons set out in the 1951 Convention relating to Refugees. Refugee Status or Leave to Remain is given for 5 years or until the applicant reaches the age of 17½, whichever is reached sooner. At this point the case will be reviewed. The applicant can apply for Indefinite Leave to Remain. Few unaccompanied children/young people are granted Refugee Status and should therefore be prepared for this eventuality in their **Pathway Plans**.

- **Humanitarian Protection (HP)**
  - If a child does not meet the criteria for Refugee Status they may still be considered for Humanitarian Protection. It is a form of leave granted to a child who would, if removed, face in the country of a return a serious risk to life arising from the death penalty; unlawful killing; or torture or inhuman or degrading treatment or punishment. Humanitarian Protection is normally granted for 5 years or until the applicant reaches 17½, whichever is reached sooner. At this point the case will be reviewed, after which the person can apply for Indefinite Leave to Remain.

- **Refused Asylum, refused Humanitarian Protection and granted Leave to Remain (LTR)**
  - The Home Office has refused the child/young person’s claim for Refugee Status and Humanitarian Protection and has granted temporary leave in the form of Unaccompanied Asylum Seeking Child (UASC) Leave to Remain within the rules (LTR) due to the lack of adequate reception arrangements in the applicant’s country of origin. The majority of asylum seeking children/young people will receive LTR. This decision can be appealed again if a minimum of 12 months leave was granted. UASC LTR will be given for
a period of three years or until the child/young person is 17½, whichever is the shorter period of time.

- The Home Office could also refuse a child / young person’s claim outright and grant no form of leave, but this is more unusual. UKBA have recently updated the Asylum Process Instruction for children/young people and now includes details of outright refusals and the conduction of “Best Interests Assessments” before a child/young person is removed to the country of origin.

- Application for Further Leave (Active Review)
  - Children and young people with UASC LTR have a right to apply for an extension of leave. The child/young person should contact a Solicitor or be referred to a Solicitor by their Social Worker approximately 6 weeks before UASC LTR expires. It is very important that an application for further leave has been applied for at least 4 weeks before UASC LTR expires. (This is called an ‘in time’ application). Failure to apply for further leave before the current leave expires means that the child/young person becomes an ‘overstayer’ and will have no right to appeal the decision in the UK if it is refused. Therefore, if the “in time” application is refused the child/young person will have a right of appeal. An applicant can appeal against an “in time” negative decision, including the decision to refuse asylum and grant LTR and must always be given the opportunity to do so. Where a decision to grant leave to an UASC is taken on or after 6 April 2013 it must be granted in accordance with the Immigration Rules Paragraph 352ZC to 352ZF. Limited Leave will continue to be granted either until the applicant is aged 17½ or for 30 months, whichever is shorter. This does not represent any change to Home Office policy on the requirements to be met to qualify for leave as an UASC, rather the UASC policy being incorporated into Immigration rules.
  - Education and Employment services may request evidence of LTR, but the child/young person may have returned documentation to the Home Office – UKVI. In this instance, services can be advised to contact UKVI (using Home Office reference number) to confirm the status through the Evidence and Enquiry mailbox. The Home Office – UKVI operates an Employer Checking Service that can be used to check the status of an individual to work in the UK.
• **Appeal Rights Exhausted (ARE)**
  - Trusts who are supporting unaccompanied children and young people who become ‘Appeal Rights Exhausted’ will be issued with a letter from the Home Office – UKVI. This could happen when a young person reaches age 17½ and applies for an extension to his/her Leave to Remain with rules. If that extension is refused, the applicant has a right of appeal. If the appeal is dismissed the case will become Appeal Rights Exhausted.

• **Detention and removal**
  - Young people, who have turned 18, and have been refused Refugee Status or further leave to remain and have exhausted all appeal rights are liable for removal and may be detained prior to being removed from the UK. Immigration detainees can apply for bail if they have been detained and unlikely to be removed from the UK within 7 days.

• **Voluntary Return**
  - A child on reaching the age of 18 also has the option to return voluntarily to their country of origin.

  *Professionals must familiarize themselves with the asylum process for children/young people.*

• The vulnerability of children and young people subject to immigration control is an additional vulnerability to that experienced by all children/young people. Research into the emotional well-being and mental health of unaccompanied children/young people has shown that uncertainty concerning their immigration status causes extreme anxiety and distress to them, **particularly those who are in their late teens and nearing the end of their LTR in the UK.** It is important that professionals are mindful and take account of these issues, and that appropriate planning is considered throughout the whole care process. Children and young people may want to trace family and return to their country of origin. If this is the case there are organisations such as the Red Cross or CFAB who can assist.

• **LAC Plans and Pathway Plans**, coordinated by Children’s Services, need to realistically consider the possibility of all outcomes and ensure that they are discussed openly and sensitively with the child/young person. Plans should consider what skills, education and training would be most useful, not only if the young person remains in the UK, but also if they have to return to their country of origin. Professionals should consider how best to protect children and young
people when all their appeals are exhausted, giving the broadest interpretation
to the type of support they can be given to avoid a breach of their rights.

- Social Workers should plan for the possible outcomes for those separated
  children and young people. This should be part of their regular statutory
  planning through the Care Plan, Pathway Plan and Review Process. Triple
  planning will enable both Children's Services and the young person to plan for
every eventuality. Social Workers should be particularly mindful that upon
 turning 18, young people subject to immigration control may face difficulties
 and they should plan, as far as practicable for the various eventualities in good
time, liaising with other services providing support to separated children and
young people in Northern Ireland.

Potential scenarios in respect of the young person’s asylum claim include;
- The asylum application is successful and the applicant is granted limited
  leave to remain in the UK for 5 years. (After 5 years this will be reviewed). Any
  unaccompanied child/young person who has received refugee status should be
  integrated and be supported into accessing mainstream housing, benefits,
  training, employment etc. After turning 18, he/she is entitled to work and/or
  apply for mainstream welfare benefits.
- Young person is granted Humanitarian Protection (limited leave in the UK for 5
  years).
- For those granted Leave to Remain and have applied for Further
  Leave, the application for Further Leave may be refused, and the young person
  should be supported throughout appeal.
- If a young person becomes ‘Appeal Rights Exhausted’ they can apply for
  Assisted Voluntary Return (AVR) to their country of origin and they must be
  informed that they may be subject to administrative removal by UKBA at any
  point due to being someone who is ‘unlawfully in the UK’. In addition, a
  young person over 18 could be detained by UKBA before they are removed.

Voluntary Return
- Assisted Voluntary Return is available throughout the process and can be
  applied for at any stage. Children and young people will be informed of this on
  serving of their illegal entry papers at the start of the process.
- The organisation Refugee Action facilitates a Choices Assisted Voluntary
  Return Service which provides independent and confidential advice and
  assistance for children and adults who may be considering voluntary return.
Refugee Action has partner agencies, to deliver this service. They also offer advice to immigration detainees in detention centres, who would like to consider voluntary return.

**Support for young people post 18**

- Separated young people who are eligible for leaving care support under the provisions of the Children (Leaving Care) Act (Northern Ireland) 2002 and who have leave to remain, or applications pending, continue to have this entitlement. Equally where a young person is still waiting for a decision on their asylum claim, they will continue to be eligible for leaving care support until the claim has been dealt with.

- Young people who are “Appeals Rights Exhausted” are young people who have been refused asylum or any form of temporary protection or whose leave to remain has expired (and an application to extend it refused) and all appeals have been exhausted. There is some confusion over whether local authorities are required to provide support in such circumstances.

- Such young people frequently have not been removed and consequently remain. Issues of uncooperative governments and difficulties in obtaining travel warrants particularly from countries that do not recognise their nationals make removal in practice challenging.

- The law on withdrawal or withholding of local authority support is contained in Schedule 3 of the Nationality, Immigration and Asylum Act 2002 which prevents certain categories of migrants from accessing leaving care and other types of support. Paragraph 6 of Schedule 2 states that young people who are considered to be failed asylum seekers are entitled to continue to receive leaving care support from a local authority up to the point where they fail to comply with removal directions set by the Home Office. In other words, being a failed asylum seeker is not sufficient cause on its own to withdraw or withhold social services support – the young person, must in addition, have failed to comply with removal directions issued in respect of them.

- The Coram Children’s Legal Central specifies in its Migrant Children’s Factsheet April 2013 that many “end of line” young people, rather than being defined as “failed asylum seekers” will fit into another category detailed in Schedule 3: “persons unlawfully in the UK”. Who is and who is not “unlawfully in the UK” and therefore ineligible for leaving care support can be complex to determine. The majority of young people aged 18 or over who have no further lawful basis to
stay in the UK will become “unlawfully in the UK”. See

- If a young person is found to be a person “unlawfully in the UK” then they can
have their leaving care support withdrawn, providing that to do so would not
breach their rights under the European Convention on Human Rights (ECHR) or
under the European Community Treaty.

- Case law has made clear that the alternative to local authority support, UKVI
accommodation/asylum support, commonly referred to as NASS, is only
available as a last resort when all other statutory entitlements are excluded.
However a local authority cannot simply withdraw support and refer a young
person to the Home Office. A young person who is not lawfully in the UK is only
lawfully excluded from local authority leaving care support where the local
authority has shown that to cease such support would not be a breach of their
human rights

- In addition, the case of R (Birara) v Hounslow LBC [2010] EWHC Civ 2113
specifically states, in respect of education and support, that the support for
former relevant children must be as set out clearly in the pathway plan. If the
pathway plan is not done properly, the local authority cannot rely on that to
state that support can be terminated at 21.

- In 2010, a legal judgement1 relating to the accommodation duties towards
‘Former Relevant Children’ found that; if a young person over 18 is entitled to
leaving care support, including accommodation if their welfare or education
and training needs requires it, this should be provided by the local authority
rather than the UKVI through asylum support.

3.7 Complaints

- All Trusts and statutory bodies are required by law to have complaints procedures
and make them available to members of the public. A number of other agencies are
also likely to have complaints procedures.

- A legal representative, Social Worker or Advocate should explain the complaints
process and rationale.

- A child or young person or anyone who is acting on his behalf or anyone who has
concerns about the care and support being provided by those agencies with lead

1 R (on the application of SO) v London Borough of Barking and Dagenham [2010] EQCA Civ 1101
responsibilities for separated children can make a complaint and should familiarise themselves with the agency’s arrangements for making a compliant. Each Trust operates an escalation policy which also affords a means of raising concerns.

- Everyone who makes a complaint has a right to be listened to properly and have his/her concerns resolved quickly and effectively – each agency’s complaints policy sets out how the process works.
- Separated children should be made aware at the earliest possible opportunity that they are entitled, like any other child or young person, to make a complaint and be provided with information about the complaints process. The Legal representative, Social Worker and Advocate should ensure that the young person has fully understood the process of making a complaint. They should also be made aware that they can seek independent advice regarding their concerns from the Northern Ireland Commissioner for Children and Young People (NICCY).

4. **Useful Links / Contacts**

**Guidance on Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking, DHSSPS, 2011.**


**Inter-Jurisdictional Protocol for Transfer of Children’s Social Care Cases between Northern Ireland and the Republic of Ireland**


**NRM Child First Responders Guidance 2013**


**Health and Social Care Trusts Gateway Service - Contact Details for Referrals of Child Victims of Trafficking /Separated Children.**

Belfast HSC Trust; Telephone 028 90507000. Website http://www.belfasttrust.hscni.net

South Eastern HSC Trust; Telephone 03001000300.Website http://www.setrust.hscni.net

Northern HSC Trust; Telephone 03001234333. Website http://www.northerntrust.hscni.net

Southern HSC Trust; Telephone 08007837745. Website http://www.southerntrust.hscni.net.
Western HSC Trust; Telephone 02871314090. Website [http://www.westerntrust.hscni.net](http://www.westerntrust.hscni.net)
Regional Out of Hours Social Work Service; Telephone (028) 9504 9999. Website [http://www.belfasttrust.hscni.net/NewRegionalEmergencySocialWorkServiceNumber.htm](http://www.belfasttrust.hscni.net/NewRegionalEmergencySocialWorkServiceNumber.htm)

Northern Ireland New Entrant Service can be contacted: Monday to Friday at Telephone Number (028) 9056 5909.
UNITED NATIONS - HUMAN TRAFFICKING INDICATORS

SEXUAL EXPLOITATION
People who have been trafficked for the purpose of sexual exploitation may:
- Be of any age, although the age may vary according to the location and the market
- Move from one brothel to the next or work in various locations
- Be escorted whenever they go to and return from work and other outside activities
- Have tattoos or other marks indicating "ownership" by their exploiters
- Work long hours or have few if any days off
- Sleep where they work
- Live or travel in a group, sometimes with other women who do not speak the same language
- Have very few items of clothing
- Have clothes that are mostly the kind typically worn for doing sex work
- Only know how to say sex-related words in the local language or in the language of the client group
- Have no cash of their own
- Be unable to show an identity document

The following might also indicate that children have been trafficked:
- There is evidence that suspected victims have had unprotected and/or violent sex.
- There is evidence that suspected victims cannot refuse unprotected and/or violent sex.
- There is evidence that a person has been bought and sold.
- There is evidence that groups of women are under the control of others.
- Advertisements are placed for brothels or similar places offering the services of women of a particular ethnicity or nationality.
- It is reported that sex workers provide services to a clientele of a particular ethnicity or nationality.
- It is reported by clients that sex workers do not smile.

LABOUR EXPLOITATION
People who have been trafficked for the purpose of labour exploitation are typically made to work in sectors such as the following: agriculture, construction, entertainment, service industry and manufacturing (in sweatshops).

People who have been trafficked for labour exploitation may:
- Live in groups in the same place where they work and leave those premises infrequently, if at all
- Live in degraded, unsuitable places, such as in agricultural or industrial buildings
- Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing
- Be given only leftovers to eat
- Have no access to their earnings
- Have no labour contract
- Work excessively long hours
- Depend on their employer for a number of services, including work, transportation and accommodation
- Have no choice of accommodation
- Never leave the work premises without their employers
- Be unable to move freely
- Be subject to security measures designed to keep them on the work premises
- Be disciplined through fines
- Be subjected to insults, abuse, threats or violence
- Lack basic training and professional licences

The following might also indicate that people have been trafficked for labour exploitation:
- Notices have been posted in languages other than the local language.
- There are no health and safety notices.
- The employer or manager is unable to show the documents required for employing workers from other countries.
- The employer or manager is unable to show records of wages paid to workers.
- The health and safety equipment is of poor quality or is missing.
- Equipment is designed or has been modified so that it can be operated by children.
- There is evidence that labour laws are being breached.
- There is evidence that workers must pay for tools, food or accommodation or that those costs are being deducted from their wages.

BEGGING AND PETTY CRIME
People who have been trafficked for the purpose of begging or committing petty crimes may:
- Be children, elderly persons or disabled migrants who tend to beg in public places and on public transport
- Be children carrying and/or selling illicit drugs
- Have physical impairments that appear to be the result of mutilation
- Be children of the same nationality or ethnicity who move in large groups with only a few adults
- Be unaccompanied minors who have been "found" by an adult of the same nationality or ethnicity
- Move in groups while travelling on public transport: for example, they may walk up and down the length of trains
- Participate in the activities of organised criminal gangs
- Be part of large groups of children who have the same adult guardian
- Be punished if they do not collect or steal enough
- Live with members of their gang
- Travel with members of their gang to the country of destination
- Live, as gang members, with adults who are not their parents
- Move daily in large groups and over considerable distances

The following might also indicate that people have been trafficked for begging or for committing petty crimes:
- New forms of gang-related crime appear.
- There is evidence that the group of suspected victims has moved, over a period of time, through a number of countries.
- There is evidence that suspected victims have been involved in begging or in committing petty crimes in another country.
GENERAL INDICATORS

People who have been trafficked may:

- Believe that they must work against their will
- Be unable to leave their work environment
- Show signs that their movements are being controlled
- Feel that they cannot leave
- Show fear or anxiety
- Be subjected to violence or threats of violence against themselves or against their family members and loved ones
- Suffer injuries that appear to be the result of an assault
- Suffer injuries or impairments typical of certain jobs or control measures
- Suffer injuries that appear to be the result of the application of control measures
- Be distrusted by the authorities
- Be threatened with being handed over to the authorities
- Be afraid of revealing their immigration status
- Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else
- Have a false identity or travel documents
- Be found in or connected to a type of location likely to be used for exploiting people
- Be unfamiliar with the local language
- Not knowing their home or work address
- Allow others to speak for them when addressed directly
- Act as if they were instructed by someone else
- Be forced to work under certain conditions
- Be disciplined through punishment
- Be unable to negotiate working conditions
- Receive little or no payment
- Have no access to their earnings
- Work excessively long hours over long periods
- Not have any days off
- Live in poor or substandard accommodations
- Have no access to medical care
- Have limited or no social interaction
- Have limited contact with their families or with people outside of their immediate environment
- Be unable to communicate freely with others
- Be under the perception that they are bonded by debt
- Be in a situation of dependence
- Come from a place known to be a source of human trafficking
- Have had the loss for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination country
- Have acted on the basis of false promises

CHILDREN

Children who have been trafficked may:

- Have no access to their parents or guardians
- Look intimidated and behave in a way that does not correspond with behaviour typical of children their age
- Have no friends of their own age outside of work
- Have no access to education
- Have no time for playing
- Live apart from other children and in substandard accommodations
- Eat apart from other members of the “family”
- Be given only leftovers to eat
- Be engaged in work that is not suitable for children
- Travel unaccompanied by adults
- Travel in groups with persons who are not relatives

The following might also indicate that children have been trafficked:

- The presence of childish clothing typically worn for doing manual or sex work
- The presence of toys, beds and children’s clothing in inappropriate places such as brothels and factories
- The claim made by an adult that he or she has “found” an unaccompanied child
- The finding of unaccompanied children carrying telephone numbers for calling taxis
- The discovery of cases involving illegal adoption

DOMESTIC SERVITUDE

People who have been trafficked for the purpose of domestic servitude may:

- Live with a family
- Not eat with the rest of the family
- Have no private space
- Sleep in a shared or inappropriate space
- Be reported missing by their employer even though they are still living in their employer’s house
- Never or rarely leave the house for social reasons
- Never leave the house without their employer
- Be given only leftovers to eat
- Be subjected to insults, abuse, threats or violence