



Practice Guidance for Local Authorities

Assessing and Supporting Children and Families from Abroad who have No Recourse to Public Funds (NRPF)

December 2008

Table of Contents

1. Introduction	2
1.1 Scope and aims of guidance	2
1.2 Relevant legislation	2
2. Key points	3
3. Good practice	3
4. Eligibility for Services	4
4.1 Additional guidance for cases involving families with children	6
5. Assessment of Need	6
5.1 Families with children – Children in Need assessments under s17 CA ..	6
5.2 Community Care Assessments of Parents	8
5.3 UKBA support for asylum seeking families (where a parent has an assessed need)	9
5.4 Human Rights Assessments in cases where Schedule 3 Section 54 NIA applies	9
5.5 Voluntary return	11
6. Common Scenarios	11
6.1 Visa Overstayers	11
6.2 Family fleeing domestic violence	12
6.3 EEA Nationals	13
6.4 All rights exhausted refused asylum seekers who have a child after the ARE date	14
6.5 Families with a child that has a disability	14
6.6 Nursing or expectant mothers	14
6.7 Leaving care provisions	15
6.8 Safeguarding children	15
6.9 Children Subject to Orders Under Section 8 of the Children Act 1989 ..	15
6.11 Children Subject to Care Proceedings	16
8. Glossary	18
9. Further information	18
10. Useful contacts	18
11. Acknowledgements	20

1. Introduction

This paper provides guidance to local authorities in assessing whether they have a duty to support families with children who have no recourse to public funds (NRPF). NRPF applies to a person who is subject to immigration control; does not have the right to work;¹ and has no entitlement to welfare benefits, public housing or UKBA asylum support.

This guidance is supplementary to the more general guidance provided in [Guidance for Local Authorities: assessing and supporting destitute people from abroad with NRPF](#).

It is intended only as background guidance to local authority duties and powers and how authorities might wish to respond to requests for service provision. It does not attempt to provide an exhaustive statement of the relevant law; nor is it a substitute for legal advice either generally or in relation to individual cases.

While every attempt will be made to keep this guidance up to date on the NRPF Network web pages,² local authorities should check the issue date on this document against any recent case law or changes in statute or Government guidance.

1.1 Scope and aims of guidance

This guidance is for use when working with adults who are responsible for children and post-18 former unaccompanied children leaving care. This guidance does not cover unaccompanied children and young people from abroad, to which different considerations apply.

The guidance outlines how to establish a family's eligibility for services and how to assess their need for support. Common scenarios are also considered in some detail.

1.2 Relevant legislation

The following legislation is relevant to this area of work:

- [Children Act 1989](#)
- National Assistance Act 1948
- [Children \(Leaving Care\) Act 2000](#)
- [Immigration and Asylum Act 1999](#)
- [Nationality, Immigration and Asylum Act 2002](#)
- [Asylum and Immigration \(Treatment of Claimants, etc\) Act 2004](#)
- [Immigration, Asylum and Nationality Act 2006](#)
- [Local Government Act 2000](#)
- [Human Rights Act 1998](#)
- [NHS and Community Care Act 1990](#)

¹ People granted leave as spouses or civil partners are permitted to take up employment.

² Please see:

http://www.islington.gov.uk/Health/ServicesForAdults/nrpf_network/policy_guidance.asp

- Mental Health Act 1983

2. Key points

- Local authorities have a duty to safeguard and promote the welfare of children in need within their jurisdiction. Wherever possible, family support services should be provided to help families care for children in need. The [Children Act 1989](#) is the framework within which local authorities provide family support services.
- It is unlikely that a local authority will be required to support an asylum seeking family or families that have been refused asylum. Local authorities cannot provide assistance in the form of support and accommodation under Section 17 Children Act 1989 (CA) to a child where support would otherwise be available to the child under Section 95 Immigration and Asylum Act 1999 (IAA). If a refused asylum seeker family has a child after the ARE date, they should seek support via Section 4 IAA in the first instance.
- In both the above cases, any child protection issues remain the responsibility of local authority Children's Services whilst accommodation and subsistence remains that of the UKBA. If the family is moved by the UKBA, Children's Services must transfer responsibility to the new local authority.
- A local authority may be requested to support a parent under Section 21 National Assistance Act 1948 (NAA). Authorities may also be requested to assess a destitute family under Section 17 CA if no other support is available.
- A child in need assessment may be required irrespective of a lack of presenting needs. Being destitute with NRPF is reason enough to intervene.
- Support provided by local authorities to people with NRPF should be temporary, that is, kept under review and provided until the immigration status of the individual or family is resolved. It may also be necessary to provide interim support while assessments are completed.
- A child dependent is defined as: a member of an applicant's family or their spouse's family who is under the age of 18; or a person under 18 who has been living in the applicant's household since birth or for at least six of the previous 12 months.³

3. Good practice

All families who present to an authority requesting support with accommodation and subsistence should receive a humane and customer-

³ This definition is taken from regulation 2(4)(i) of the Asylum Support Regulations 2000. For more information, see: <http://www.opsi.gov.uk/si/si2000/20000704.htm>

focused response. Authorities should ensure a consistent response to people who request a service, irrespective of the local authority service to which they present. It is good practice for there to be an identified lead person dealing with individual cases. An interpreter should be provided if the family's preferred language is not English.

Local authorities should explain to presenting families the assessment process and the potential outcomes of their case at the outset, including the possibility that they may be advised to return to their country of origin.

It is good practice for the authority to seek a solution to the destitution faced by the family presenting whilst keeping strictly to its legal duties. In cases where there is no duty on the authority to provide support, local authorities should provide advice and assistance to families in pursuing other options such as voluntary return or Section 4 support⁴ provided by the UKBA. However, authorities should not propose other options when it is clear these will not work or when there is a duty to support the presenting person.

It is good practice that a Child in Need assessment is child-focused, that is based on the needs of the child and any potential risk there is to the child.

Parents should be given the opportunity to comment on the findings of assessments and have their views considered and noted.

It is good practice for local authorities to establish protocols in regards to budgeting for families that are found to be eligible for local authority assistance. It is also good practice for expenditure on families with NRPF to be monitored. Local authorities receive no reimbursement for these costs (with the exception of those outlined in Part 5.3).

4. Eligibility for Services

In order to establish a family's eligibility for services, the local authority should:

- (i) establish whether it is "territorially responsible" (that is, whether the child becomes a child in need within that local authority's area). Exceptions to this rule are outlined in Part 4.1);
- (ii) establish that the family is destitute;
- (iii) carry out an immigration check to establish eligibility under immigration legislation; and

⁴ Regulations made under section 4 of the Immigration and Asylum Act 1999, as amended by the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, provide the Home Office with powers to support destitute failed asylum seekers who satisfy one or more of five conditions. These are that the individual is taking all reasonable steps to leave the UK, is unable to leave the UK due to physical impediment or because there is no safe route of return, that the courts have granted leave to appeal in an application for judicial review in relation to his or her asylum claim or that support is necessary to avoid a breach of his or her human rights.

(iv) check whether the authority is excluded from supporting the family under Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (NIAA).

As referred to in point (iv) above, certain persons are ineligible to receive assistance under s17 Children Act 1989 and s21 National Assistance Act 1948 (residential accommodation for persons in need of 'care and attention'). The groups of persons so excluded under Schedule 3 NIAA are:

- EEA nationals and any dependents
- Persons granted refugee status by another EEA state and any dependents
- Refused asylum seekers who have failed to comply with removal directions, and any dependents
- Persons unlawfully present in the UK (this includes people who have overstayed their visas or failed asylum seekers who made their initial asylum claim in-country).

These exclusions do not apply to children, and it is important to remember that duties to children under the Children Act 1989 remain.

Where the parent(s) falls within one of the excluded groups in point (iv), above the local authority must:

- carry out a human rights assessment (including a child in need assessment where support is being requested under s17 Children Act 1989) to establish whether there is an obligation on the authority to provide support in order to prevent a breach of a parent's and/or child's human rights; and
- in the case of EEA nationals, an assessment to determine whether support is necessary to prevent a breach of their rights under the Community Treaties (EU law).

See Part 5.4 for more information.

A template human rights assessment has been produced by the NRPF Network and can be accessed using the following link:

http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Rtf/human_rights_assessment.rtf

If a person is lawfully in the UK, they may have the right to work and the local authority should ask whether they can self-support.⁵ In some cases, the local authority may be required to intervene if the person does not speak English or if they cannot exercise their right to work because they are not entitled to child minding allowance.

If a family is in the UK unlawfully, the local authority has a duty to inform the UKBA under Schedule 3 NIAA.

⁵ If they are on a visa and cannot self-support, they may be in breach of their conditions of entry.

A more detailed procedure for establishing eligibility for services is outlined in [Guidance for Local Authorities: assessing and supporting destitute people from abroad with NRPF](#) (pages 3-5).

4.1 Additional guidance for cases involving families with children

A child may be a UK citizen on account of a parent's nationality, however the ongoing relationship of the child with that parent must be considered as part of the assessment. If the child has regular contact with a British parent or a parent with Indefinite Leave to Remain (ILR), the latter may be able to support the child through his/her earnings or mainstream benefits. If there is no regular contact with the British/ILR parent, it may *not* be a breach of the child's human rights for that child to return to the country of origin of the other parent.

The ordinary residence requirement is distinct in children and families cases from those of adults. The local authority area where the child was living when the need arose is responsible for assessing that family. Exceptions to this rule are when a child is:

- accommodated by another local authority;
- receiving services other than subsistence and accommodation from another local authority; or
- subject to a care order in another local authority.

Children subject to a Child Protection plan are the responsibility of the authority in which they are living and responsibility should be transferred accordingly.

5. Assessment of Need

The assessment of the family/parents will depend on the presenting needs. That is, whether the parent is presenting solely as having a child or whether the parent is presenting as having community care needs in their own right.

5.1 Families with children – Children in Need assessments under s17 CA

A child that is destitute may be considered a child in need and therefore may be eligible for local authority assistance under Section 17 CA. If the child has no additional needs, the local authority should seek alternative sources of support, such as Section 4 IAA for refused asylum seekers, or voluntary return for visa overstayers (in cases where the child would cease to be a child in need on returning to their country of origin and where no human rights breach would result. More details in Part 5.4). If the family is eligible for support under Section 95 IAA, this is their only option for support.

It is essential that a 'child in need' assessment is carried out under the Children Act 1989. The assessment should be child-focused, based on the needs of the child and on any potential risk there is to the child. The local authority should also establish the ordinary residence, destitution and immigration status of the child(ren), as these may differ from those of their carer(s).

For families caught by Schedule 3, Section 54 NIAA, the Child in Need assessment must form part of a human rights assessment. Further information in Part 5.4.

In accordance with the Assessment Framework published by the Department of Health,⁶ there needs to be a thorough understanding of the:

- developmental needs of children;
- capacities of parents/caregivers to respond to the needs of those children; and
- impact of wider family and environmental factors on both parenting capacity and children.⁷

This assessment framework for the assessment of children in needs and their families can be accessed using the following link:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008144

An example of what might constitute a 'child in need' for the purposes of s17 CA includes: a disabled child or young person; those with emotional and behavioural difficulties; or those with caring responsibilities. It is also important to check that the child has access to appropriate health and educational provision. A child who is destitute/in need of accommodation will be a 'child in need'.

If the child is found to be a child in need then the local authority has a duty to provide services, which may include a specific duty to accommodate the child. Under the Children Act 1989 this can be in the form of accommodation of the child alone under Section 20 CA or by the provision of services which can include accommodation for the child and their carer under Section 17 CA. In making this decision consideration needs to be given to the child's individual needs and its right to family life under Article 8 of the European Convention on Human Rights (ECHR).

Where the child or their carer is ineligible for support due to Schedule NIAA, a human rights assessment should be undertaken (refer to Part 5.4 below). A child in need assessment must also be done in conjunction with the human rights assessment. In such cases the local authority must consider the needs of the child in the UK *and* in the country of origin, should they be returned there. This will include a consideration of their access to education, benefits, housing, social services and health services. Country of origin information can be accessed from the Home Office website⁸ and national embassies. The assessment should be 'detailed and circumstantial', balancing the views of the parents with the information provided by the UKBA and national embassies.

⁶ *Assessing Children in Need and their Families*, DoH (2000)

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008144

⁷ Immigration status and no recourse to public funds is an environmental factor that impacts upon parenting and children.

⁸ http://www.homeoffice.gov.uk/rds/country_reports.html

5.2 Community Care Assessments of Parents

The duty to assess a person's community care needs arises under Section 47 of the National Health Service and Community Care Act (NHSCCA) 1990. This imposes a duty on the local authority to make an assessment of a person's needs, irrespective of whether s/he request/s the assessment. Whether there is an appearance of need for community care services or not the local authority must assess the person. If the person and their family have no immediate access to accommodation, the authority should house them pending the outcome of the assessment(s).

In almost all situations where a parent requests a community care assessment, such an assessment should be completed, because the threshold to trigger the assessment is very low. The assessment of community care needs should be done in conjunction with a child in need assessment where the family are presenting as destitute.

If the parent is presenting as in need of residential accommodation, the assessment must address whether a duty is owed to provide the parent with residential accommodation under section 21 National Assistance Act 1948 (NAA). The duty to provide residential accommodation applies to persons over the age of 18 who are in need of 'care and attention'. In assessing whether a parent is owed a duty under Section 21 NAA, the key question is not one of destitution, but of the need for care and attention (meaning a need for 'looking after') that is *not otherwise available*.

Local authorities should be mindful of the judgement in the House of Lords case of *M v Slough Borough Council* (2008). The House of Lords held in this case that the words "care and attention" in the context of s21 NAA mean a need for 'looking after'. This includes things such as needing help with dressing, toileting or shopping, or a need to be watched over to prevent harm to oneself or to others. A need for *medical treatment* alone does not constitute a 'need' for care and attention under section 21 NAA. Additionally, section 21 NAA only applies to current needs and not future needs, but can include need for preventative measures.⁹

If the adult is accepted for support and is able to meet the assessed needs of their child, other than financially it follows that their dependent children should also be supported under Section 17 CA in order that they can remain in their parent's care. A child in need assessment should also consider whether the child has needs over and above those that apply to the carer, for example special needs or services the parent is unable to provide by reason of illness or disability.

A detailed procedure for assessing need for services under Section 21 NAA is provided in [Guidance for Local Authorities: assessing and supporting destitute people from abroad with NRPF](#) (pages 5–6). Support would typically be

⁹ Legal advice should be sought in assessing under s21 NAA in light of the Slough ruling. Understanding of this ruling may yet be clarified through subsequent case law. Updates will be provided via the NRPF Network Briefings.

provided on account of a parent's poor mental health, disability or physical health.

It should be noted that assessments are not made on the basis of Fair Access to Care (FACs) Criteria.

5.3 UKBA support for asylum seeking families (where a parent has an assessed need)

If an asylum seeker parent is assessed as having a need for care and attention that requires provision of residential accommodation under Section 21 NAA, the local authority must arrange for accommodation for the family. Provided the child does not have care needs over and above those of the parents, the authority can seek reimbursement from the UKBA for the child's share of the accommodation and living expenses. The local authority would otherwise be operating outside its powers.

5.4 Human Rights Assessments in cases where Schedule 3 Section 54 NIAA applies

Schedule 3 Section 54 NIAA bars local authorities from providing assistance to four categories of person subject to immigration control, as referred to in Part 4, point (iv), above.¹⁰ In such cases, there is a legal duty placed on local authorities to consider resolving the family's destitution by offering assistance in returning the family to the parents' country of origin. This is because they are excluded from entitlement to support under Section 17 CA and if the child ceases to be a child in need on returning, no other support from social services is necessary in the UK. In such cases, a human rights assessment must be undertaken.

A human rights assessment should include:

- the support history of family in the UK;
- findings of the Child in Need assessment (see Part 5.1);
- what family, friends and other ties the person has in the UK and in the country of origin;
- whether the parent will be homeless, be able to work, access services in the country of origin;
- case law and legislation that needs to be considered; and
- what support will be offered to family by the local authority in order to avoid breach of their human rights.

In family cases Article 8 rights enshrined in the European Convention on Human Rights (ECHR), on the right to family life, must also be considered.

Article 8 of the ECHR is as follows:

¹⁰ EEA nationals and any dependents; persons granted refugee status by another EEA state and any dependents; refused asylum seekers who have failed to comply with removal directions, and any dependents; persons unlawfully present in the UK (this includes people who have overstayed their visas or failed asylum seekers who made their initial asylum claim in-country).

“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 8 is a qualified right, i.e. once it is established that the right exists (under Article 8(1)), it is necessary to consider whether any interference with the right is justified “for the protection of health or morals, or the protection of the rights and freedoms of others” (under Article 8(2)).

If one parent has British Citizenship/ILR and has meaningful contact with the child, they may make an application to the UKBA for leave to remain for their family under Article 8 HRA (right to family life). Applications under Article 8 HRA do not entitle families to UKBA support in the same way as Article 3 HRA applications. The local authority does not have to wait for the outcome of this claim before deciding whether there would be a breach of human rights if it were to refuse support.

It is important to note that where a person has made a fresh application for asylum or fresh representations to the Home Office based on human rights, this will be relevant to the human rights assessment. Case law holds that a local authority cannot effectively step into the shoes of the Immigration Authorities to determine the validity of a person’s human rights claim. Rather than making a detailed assessment of the human rights arguments, the local authority should only look at whether the person’s outstanding claim or representations are “*manifestly unfounded*”. The claim/representations will be manifestly unfounded where the claim/representations merely repeat the grounds previously cited which were not accepted by the immigration authorities, or where no human rights claim is made out on the facts at all. In only the clearest of these sorts of cases will the local authority be able to conclude that there would be no breach of human rights for the family to return home, before the Home Office has determined the claim.

The NRPF Network has developed a template [Human Rights Assessment](#) that local authorities can use in assessing families under the Human Rights Act.

If it is found that withholding support would be a breach of the family’s human rights, the local authority must provide accommodation and subsistence support to that family. If it is found that withholding support would not be a breach of the family’s human rights, the local authority should seek a resolution to the family’s case, which may involve offering tickets to the country of origin and a resettlement package (see Part 5.5).

5.5 Voluntary return

For families to whom the local authority owes no duty to support, they should be referred on to organisations that can help them return home or arrangements should be made by the local authority for travel home.

Refused asylum seeker families should be referred to Section 4 IAA support provided by the UKBA if there is no duty to support. In order to qualify for this support, refused asylum seekers must satisfy one or more of a number of conditions.¹¹

Visa overstayer families who are not eligible for support should be referred to the International Organisation for Migration (IOM)¹² who may assist families to return to their country of origin and in some circumstances may provide reintegration loans. The local authority may also purchase tickets home for visa overstayer families by exercising powers either under the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 or Section 2 of the Local Government Act 2000.

In regards to EEA migrant families (or families who gained refugee status in another EEA state), local authorities have the power to purchase travel tickets to enable an individual to return to their country of origin when it would be an effective response to avoid a breach of a person's human rights (under Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002). Embassies may also be able to purchase travel tickets for their nationals. Pending their return to the relevant EEA state, the local authority can provide interim accommodation, but has no duty to provide cash payments. A financial resettlement package can also be offered.

If a family refuses to return to their country of origin in situations where the local authority has no duty to support, any hardship that follows will not be caused by a failing on the part of the authority. This is because the family is making a choice not to return to the country of origin when it is open to them to do so. It is important to remember that duties to children under the Children Act 1989 will remain, irrespective of the decisions of the parents.

6. Common Scenarios

6.1 Visa Overstayers

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 prohibits local authorities from providing assistance to visa overstayer families under Section 17 CA. A Human Rights Assessment should be carried out, including a child in need assessment, to determine whether it would be a breach of the

¹¹ These are that the individual is taking all reasonable steps to leave the UK, is unable to leave the UK due to physical impediment or because there is no safe route of return, that the courts have granted leave to appeal in an application for judicial review in relation to his or her asylum claim or that support is necessary to avoid a breach of his or her human rights.

¹² A list of IOM offices is provided in the Useful Contacts section

family's human rights to withhold or withdraw support and offer tickets to the country of origin. As part of the child in need assessment, the local authority should determine whether the child would cease to be a child in need on returning to their country of origin (see Part 5.4).

It is good practice to seek to resolve the immigration situation of the family, which may involve applying for leave to remain (for example if there are family connections in the UK or 'compassionate' reasons for the family to stay in the UK). In such cases, families should seek legal advice. Options to return the family to the country of origin should be explored; the IOM may assist in arranging travel documents and tickets. National embassies may also be able to help.

6.2 Family fleeing domestic violence

If an adult has been in the UK on a spousal visa for less than two years and they and/or their dependent become victims of domestic violence, they can apply for indefinite leave to remain (ILR) under the Domestic Violence Rule (DVR). The local authority should advise the person to seek appropriate advice for an application under this rule and if the two year visa is nearing its end to stress the urgency of this. The application costs £750, however this fee can be waived if the applicant provides evidence of destitution. Local Authority staff may be asked to provide evidence in support of any aspect of the application and with the agreement of the person concerned may do so in relation to reports of domestic violence.

Those making applications under the DVR must seek legal advice in completing the application.

In order to qualify for local authority support pending the outcome of this application or in cases where the family has been in the country on a spousal visa for over two years, or in any other circumstance, support may be provided under Section 17 CA. A child in need assessment must be undertaken to assess eligibility for services under the CA (see Part 5.1 for more information).

People on spousal visas are entitled to work in the UK. Although exercising this entitlement may not always be possible, it is good practice to explore options for them to self-support.

In some cases where people fear returning home because of the stigma associated with domestic violence or the breakdown of a marriage for example, an application can be made under Article 3 of the Human Rights Act 1998. If an application under Article 3 HRA is submitted, the family would be entitled to UKBA support.

For more detailed guidance on domestic violence cases, please see our practice guidance on [*Assessing and Supporting Victims of Domestic Violence with No Recourse to Public Funds*](#).

6.3 EEA Nationals

Schedule 3 of the Nationality, Immigration and Asylum 2002 Act prohibits local authorities from providing accommodation to families with children from EEA countries under Section 17 CA.

A Human Rights Assessment should be completed on EEA migrants who cannot support themselves and become destitute to ensure that withholding or withdrawing services or offering tickets home would not be a breach of their human rights. The local authority may purchase travel tickets for EEA national families to their country of origin (under Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002) (providing this would not be a breach of their human rights).

EEA nationals do not require leave to enter or to remain in the UK, however their right to reside is subject to some restrictions. EEA nationals exercising their 'treaty rights' are called 'qualified persons', who are in the UK as jobseekers, workers (including some former workers), self-employed, self-sufficient or students. EEA migrants may apply for permanent residence after five years of residing as a qualified person.

EEA migrants that are habitually resident in the UK may be eligible for non-contributory benefits and in such cases they should be referred to the relevant local authority department or the jobcentre. For more information on the Habitual Residency Test, please see the web pages of the Department of Work and Pensions: <http://www.dwp.gov.uk>

If an EEA migrant family that is not permanently resident ceases to have the right to reside in the UK, for example if they become an 'unreasonable economic burden' on the UK social system, the local authority may be able to offer tickets home for the family, subject to a human rights assessment.

EEA nationals from the accession states (A8 nationals)¹³, whose countries joined the EU in 2004, face some additional restrictions to residing and working in the UK. A8 nationals are required to register their first 12 months of employment under the [workers registration scheme](#). After 12 months employment in the UK, A8 nationals have the same rights as other EEA migrants. While working A8 nationals are eligible for some work related benefits such as working families tax credit.

During the first 12 months, A8 nationals have NRPF and the local authority can use their power under (under Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002) to purchase tickets home, subject to a human rights assessment.

Bulgarians and Romanians (A2 nationals) have further restrictions to residing and working in the UK. A2 nationals must apply for [accession worker cards](#).

¹³ The A8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

Self-employed or self-sufficient A2 nationals are not required to apply for the accession worker card.

As well as conducting the human rights assessment, for EU nationals, there must be consideration of whether support and assistance under s17 CA (or s21 NAA for parents who may be in need of care and attention) is necessary to prevent a breach of their 'treaty rights'. The first step is to establish whether the person is exercising treaty rights so that they can be classified as a 'qualified person', and then whether assistance is needed to prevent those rights being breached.

6.4 All rights exhausted refused asylum seekers who have a child after the ARE date

A refused asylum seeker whose first child is born 21 days after her claim is rejected and has exhausted all appeal rights will be treated as a refused asylum seeker. They are not entitled to ongoing Section 95 IAA support but may be eligible for Section 4 IAA support. Such parents may be caught by Schedule 3 NIAA, depending on their particular circumstances, and any claim for support under s17 CA or s21 NAA must be subject to a human rights assessment.

6.5 Families with a child that has a disability

Where a child has a disability, an assessment must be conducted on the needs of the child and of the carer and their ability to care for the child.

Asylum seeker families where a child is disabled should be supported by the UKBA, who should ensure that the accommodation meets the child's needs.

6.6 Nursing or expectant mothers

Expectant and nursing mothers may qualify support under Section 21 (1)(aa) of the NAA. Test case *R (Gnezele) v Leeds City Council*; *R (Dayina) v Leeds City Council* however ruled that refused asylum seeker expectant or nursing mothers were excluded from support under s21(1)(aa) NAA because:

- Pregnancy and nursing a child do not come within 'care and attention'. They are dealt exclusively under the power in s21 (1)(aa). This meant that any need for *care and attention* arose solely from their destitution, which is expressly excluded from support in the NAA for persons subject to immigration control; and
- they were lawfully entitled to Section 4 IAA support.

For other expectant and nursing mothers, local authorities have a *power* not a *duty* to provide support in these circumstances. It is good practice to establish a protocol in regards to supporting expectant and nursing mothers, though this may vary between local authorities.

An example would be to provide support while the woman is pregnant and for six to eight weeks following the birth of the child. On terminating support, the family should be referred on to alternative forms of support or signposted to services helping them to return home, as stipulated in Part 5.5 above.

6.7 Leaving care provisions

Post-18 former unaccompanied asylum seeking children whose appeal rights are exhausted have NRPF. In general young people who have been looked after as children (including children supported under Section 20 CA) should receive assistance from the local authority under Section 24 of the Children Act 1989 and the Leaving Care Act 2000, though the duties vary according to the period over which the young person was in the care of the Local Authority. The Hillingdon judgement¹⁴ determined that unaccompanied asylum seeking children (UASCs) would almost always be provided with accommodation under s20 CA and not under Section 17. This means that most UASC will be 'looked after children' and entitled to care leaving services.

However, the leaving care provisions of the CA fall within Schedule 3 NIAA. Former UASC will sometimes fall within one of the excluded groups, most likely to be "persons unlawfully present in the UK" by reason of particular circumstances of exhausted appeal rights and no further leave to remain. If that is the case, the duties of the Local Authority to provide leaving care services will be limited, and subject to a human rights assessment.

Former unaccompanied children supported who had been supported under Section 17 CA will not be entitled to leaving care provisions on turning 18, but it is important to note that after the Hillingdon judgment, only in rare cases will a UASC be accommodated under s17 rather than s20 CA

6.8 Safeguarding children

Local authorities have a general duty under the CA to enable children to live with their families. The refusal of support under Section 17 CA may raise safeguarding concerns for the child. This is particularly acute in regards to families caught by Schedule 3 NIAA who are barred from local authority support under the CA. Human rights issues under Article 8, right to family and private life, may also be raised.

It is good practice to find solutions to the destitution faced by the family. This may involve exploring options for families to return to their countries of origin, subject to a human rights assessment and a child in need assessment. It may also involve exploring opportunities to apply for leave to remain.

6.9 Children Subject to Orders Under Section 8 of the Children Act 1989

When undertaking child in need assessments, workers should make enquiries about any court orders which apply to the child. Orders under s8 of the Children Act 1989 (Residence, Contact, Prohibited Steps and Specific Issue) may affect the provision which can be offered to a family. For example under a residence order there is a specific prohibition on the child being taken out of the country for more than 28 days, and a contact order may require a child to remain in the UK to be effective. However where such orders are in place it is open to a parent or other party (but not normally the Local Authority) to seek a variation of the order in the courts.

¹⁴ R (Behre) v Hillingdon Council (2003)

Therefore if, for example, a residence order is in place to one parent but the child is not having any direct contact with the other parent it may be appropriate for the person holding the residence order to seek the permission of the court to remove the child from the UK.

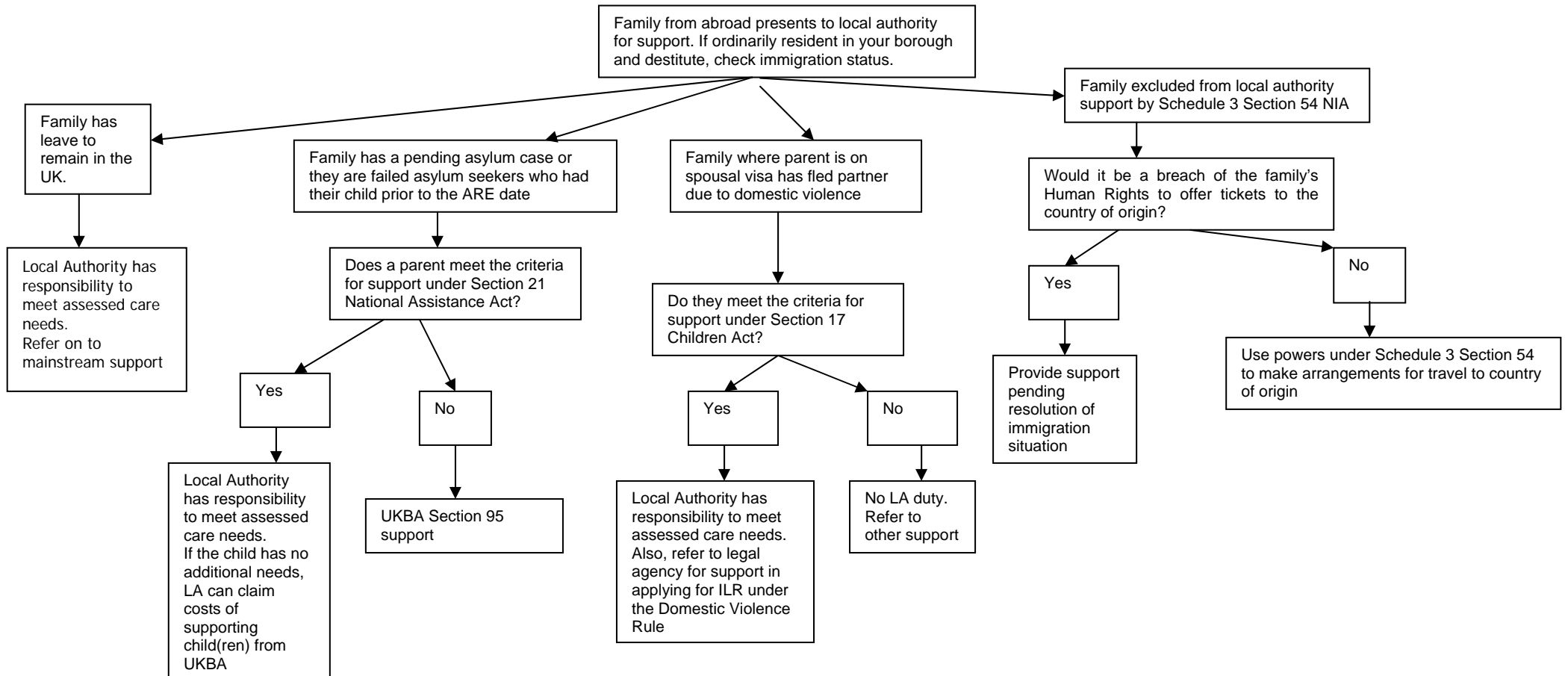
6.11 Children Subject to Care Proceedings

Normally the UKBA will allow a parent limited leave to remain in the UK for the duration of Care Proceedings even if the decision in relation to their application cannot be reached in that timescale. It would generally not be appropriate to expect a parent to leave the UK during the course of proceedings as this could hamper assessments and fetter the court in making decisions in relation to a child. Such instances raise human rights issues.¹⁵

The Local Authority may need to consider the provision of support to a family while assessments are underway. If the child is subject of a Care Order any provision is under Section 22 CA, not Section 17.

¹⁵ PB v Haringey (2006) where the court considered that there had not been consideration that Article 8 would be breached if mother returned to country of origin, as it would prohibit participation in assessments to inform the family proceedings court of who should care for the child.

7. Children and Families with NRPf flowchart



8. Glossary

ARE – All rights exhausted
BIA – Borders and Immigration Agency
CA – Children’s Act 1989
DVR – Domestic Violence Rule
ECHR – European Convention on Human Rights
EEA – European Economic Area
HRA – Human Rights Act
IAA – Immigration and Asylum Act 1999
ILR – Indefinite Leave to Remain
LGA – Local Government Act 2000
NAA – National Assistance Act 1948
NIA – Nationality, Immigration and Asylum Act 2002
NRPF – No Recourse to Public Funds
UASC – Unaccompanied Asylum Seeking Child
UKBA – United Kingdom Borders Agency

9. Further information

Child Poverty Action Group (2007) *Migration and Social Security Handbook: A Rights Guide for People Entering and Leaving the UK* (4th edition), London: Child Poverty Action Group

Family Rights Group (2008), *Family Support Services for Asylum Seekers*
<http://www.frg.org.uk/pdfs/11A%20MASTER.pdf>

Home Office *Country of Origin Information*
http://www.homeoffice.gov.uk/rds/country_reports.html

NRPF Network (2007) *Guidance on assessing and supporting people with no recourse to public funds*
http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Pdf/nrpf_assessment_guidance.pdf

NRPF Network (2007) *Human Rights Assessment*
http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Rtf/human_rights_assessment.rtf

NRPF Network (2007) *Guidance on assessing and supporting victims of domestic violence with NRPF*
http://www.islington.gov.uk/DownloadableDocuments/HealthandSocialCare/Pdf/nrpf_domestic_violence_guidance.pdf

10. Useful contacts

UK Borders Agency (UKBA)
<http://www.bia.homeoffice.gov.uk/>

Local Authority Communications (LA Comms) – You must be registered to use this information service
Tel: 0208 760 4527

Croydon Office: Lunar House, 40 Wellesley Road, Croydon, Surrey, CR9 2BY

Liverpool office: Reliance House, 20 Water Street, Liverpool, L2 8XU

International Organization for Migration (IOM)

www.iom.int or www.iomlondon.org

London Office: 21 Westminster Palace Gardens, Artillery Row, London, SW1P 1RR

Tel: 020 7233 0001; Fax: 020 7233 3001

Free Phone number: 0800 783 2332

Birmingham Sub-Office: Ground Floor, Norfolk House, Smallbrook Queensway, Birmingham, B5 4LJ

Tel: 0121 6335074; Mob: 07810 824997; Fax: 0121 633 5015

Bristol Sub-Office: Park House Business Centre, 10 Park Street, Bristol, BS1 5HX

Tel: 0117 907 4777

Glasgow Sub-Office: Centrum Offices, 38 Queen Street, Glasgow, G1 3DX

Tel: 0141 548 8116

Liverpool Sub-Office: 5th Floor, DBH Reception The Corn Exchange Fenwick Street, Liverpool, L2 7QL

Tel: 0151 225 0142

Manchester – every Wednesday morning, 9 am – 12 noon, Friends Meeting House, 6 Mount Street, Manchester M2 5NS
Bolton – 1st Wednesday of each month, 1 – 3.30 pm, BRASS office, Bolton Methodist Mission, Victoria Hall, Knowsley St, Bolton BL1 2AS
Blackburn – 1st Friday of each month, 10 am – 12 noon, Town Hall, King William St, Blackburn BB1 7DY
Contact the Liverpool office for more details or to book an appointment.

Refugee Council

<http://www.refugeecouncil.org.uk/>

Details of Refugee Council regional offices can be found at:

<http://www.refugeecouncil.org.uk/contactus/offices.htm>

Details of Refugee Council advice lines can be found at:

http://www.refugeecouncil.org.uk/contactus/advice_lines.htm

Family Rights Group

<http://www.frg.org.uk/>

Children's Society

<http://www.childrensociety.org.uk/>

Rights of Women

<http://www.rightsofwomen.org.uk/>

Southall Black Sisters

<http://www.southallblacksisters.org.uk/>

Asylum Support Appeals Project

<http://www.asaproject.org/web/index.php>

British Red Cross Refugee Services

<http://www.redcross.org.uk/TLC.asp?id=81617>

11. Acknowledgements

This guidance was written by Jonathan Price, with input from Olivia Fellas, Henry St Clair Miller and Curtilis Bristol (Islington Council). The NRPF Network would like to thank the members of the NRPF Network that provided responses to a consultation on this guidance. We would also like to thank Janice Grant and Carey Baff for editing the guidance and to Stacey Rowse for checking its legal content.
