

Rights and entitlements of families reunited in the UK under the provisions of Dublin III

This booklet is intended to provide information to non-lawyers regarding the rights and entitlements of families reunited in the UK under the provisions of Dublin III. This booklet does not address the law and procedures relating to Dublin III. If you require further information on Dublin III, please see the leaflets available on MLP's website relating to Dublin III.

Family reunification under Dublin III and immigration status

Dublin III can enable non-EU national family members seeking international protection to be transferred from one European country to another for the purpose of family reunification.

For a family to reunite in the UK under the provisions of Dublin III, the person based in the UK must be legally present. This means that the person based in the UK must be an asylum seeker; a Refugee; an individual otherwise with lawful permission to be in the UK (Leave to Remain); or, in certain circumstances, a British national.

It is not always necessary for the person in the UK to be able to take care of the family member entering the UK for family reunification.

Family members or relatives that are transferred to the UK for the purpose of family reunification under the provisions of Dublin III will be given permission to enter the UK as an asylum seeker and will have their asylum claims considered by the UK authorities.

Rights and entitlements

Person in the UK

A British national will be entitled to work and / or claim benefits, dependent on eligibility (which includes consideration of their financial resources and, in some circumstances, national insurance contributions).

A person with Refugee status or Humanitarian Protection will be permitted to work and / or claim benefits, dependent on eligibility (which includes consideration of their financial resources and, in some circumstances, national insurance contributions).

A person with other types of lawful permission to live in the UK (Leave to Remain) may be able to work and / or claim benefits, dependent on eligibility (which includes consideration of their financial resources and, in some circumstances, national insurance contributions). Whether a person is able to work and / or claim benefits will depend on the type of leave they have and whether there are any restrictions related to working or claiming benefits (such as a No Recourse to Public Funds restriction).

It is important to note that if the person being joined in the UK is entitled to work and claim benefits, they may be entitled to additional benefits or tax credits following the entry of their family member or relative to the UK. (This is outlined further below.)

Person entering the UK

The person entering the UK for the purpose of family reunification under the provisions of Dublin III may be entitled to financial support and / or accommodation in their own right, but which is outside of the mainstream benefits system

These rights and entitlements vary between different groups, and adults and children have different entitlements. These rights and entitlements are explained in detail below.

Adults entering the UK

An adult asylum seeker who is destitute is entitled to financial support and accommodation (usually outside of London) from the Home Office – this is usually known as “asylum support” or “NASS support”. The current rate of NASS support is £37.75 per week (February 2018).

If an adult is joining their husband / wife or unmarried partner in receipt of NASS, they should be added as a dependent with NASS and the couple should be provided appropriate accommodation and financial support taking into account the addition of the dependent adult (and any dependent children) to the household.

If an adult is joining their husband / wife or unmarried partner and their husband / wife or unmarried partner is in receipt of benefits, for example, income based Job Seeker's Allowance (JSA), they will not be entitled to additional benefits due to the presence of the wife / husband / partner in the UK so that the JSA will not be increased taking account of the presence of the additional family member. However, the person will still be treated as a member of their household for benefits purposes, and any income or capital of the partner will be taken into account for means tested benefits, such as income based JSA. Also, any benefit income payable because the person is a single adult will be lost, e.g. severe disability premium on means tested benefits. The additional adult would be entitled to apply for the support element only of NASS support subject to eligibility.

If an adult is joining their husband / wife / partner, they should be able to live with their husband / wife / partner, subject to the agreement of any landlord. The landlord will have to check the right to rent of everyone living at the property.

Note: an asylum seeking adult does not automatically have the right to rent and any landlord has to contact the Home Office to confirm the asylum seeker has the right to rent. In the case of asylum seekers, the Home Office should simply confirm the right to rent has been given. If

there is any issue with the landlord contacting the Home Office or the right to rent, legal advice should be sought.

Where an adult enters the UK with children to be reunited with their partner / the parent of the children, the family can live with the person who has Leave to Remain (subject to the right to rent being confirmed by the Home Office).

It can be difficult for families to live together as a unit if the person in the UK has lawful permission to be in the UK, but does not have (or cannot afford) accommodation that is adequate for the whole family. This is because family members without lawful permission to be in the UK (Leave to Remain) will not be taken into account when assessing whether the overall household is overcrowded. If, however, the main applicant in the household is deemed eligible, homeless and in priority need, for reasons other than the arrival of any family member(s) without immigration status, accommodation should be offered for the whole household so long as they would reasonably be expected to live with the main applicant (this would include partner and / or minor children).

If the main applicant is not otherwise deemed to be homeless and in priority need, the adult with Leave to Remain in the UK can either seek to live with their partner and children in NASS accommodation or the family can consider waiting until the whole family has Leave to Remain in the UK. The family can then make a homelessness application to be accommodated together in accommodation that is suitable for all of them. In these circumstances, legal advice should be sought.

When an application is made for asylum support and accommodation the circumstances of the family should be made clear. If it is not possible or practical for the family to be housed together, a request should be made that accommodation be provided close to the accommodation of the family member to enable the maintenance of family life. If the asylum seeking family are placed in accommodation far away from each other, they may qualify for extra support if they can show that their circumstances are exceptional.

Children entering the UK

Parental responsibility

Parental responsibility is a legal term that means having all the legal rights, duties, powers and responsibilities for a child (a child is a person under the age of 18). Unless they are the child's parent(s), UK-based family members will not have parental responsibility for any child who joins them. If the child is to live with the family member for an extended period, it may be worth considering applying for parental responsibility.

If consideration is being given to applying for parental responsibility, legal advice should be sought from expert family lawyers.

Siblings

If a child enters the UK to join a sibling, additional support may be needed, in particular if the sibling is also a child or a young adult. If either or both of the children are looked after by the Local Authority, they should inform social services of the arrival or their sibling as soon as possible. Their needs assessment and care plan should consider whether the siblings should be placed together and promote contact between the siblings if they are not accommodated together. Extra support (including but not limited to financial support) under section 20 or 17 Children Act 1989 may be provided to enable the siblings to be in contact.

Asylum Support and Accommodation

A child asylum seeker is not entitled to asylum support and accommodation in their own right.

A child who arrives on their own should be accommodated and looked after by social services under s. 20 Children Act 1989.

If a child is joining a UK-based family member who is an asylum seeker and in receipt of asylum support, the child (if also destitute) can be added as a dependent to the family members' household for asylum support purposes and the family should be provided appropriate accommodation and financial support taking into account the addition of the child to the household.

It should be noted that, if the family member is a single adult, the adult may be in accommodation for single adults that is not appropriate for a child. If this is the case, the new arrival will usually be placed with foster parents.

A request can be made for alternative asylum support accommodation for the child and family member to be placed together.

If adequate asylum support and accommodation is not provided for the family, legal advice should be sought from an expert community care lawyer or housing lawyer.

What other support might be available?

Benefits and other financial support may be available in relation to any child that enters the UK for the purposes of family reunification under Dublin III.

The immigration status of the UK-based family member / relative and their financial circumstances will be relevant to any financial support available in relation to the child, particularly if the child is living with them.

The immigration status of the child does not matter, however, provided the responsible adult is entitled to receive benefits. The responsible adult must be eligible for any relevant benefits given their immigration status and any related restrictions, given their financial circumstances and, in some circumstances, national insurance contributions.

Where the child joins a UK based family member who is on a low income, the family member may be entitled, (or become entitled for the first time) to an increase in some means-tested benefits such as Housing Benefit, housing costs in Universal Credit or Council Tax support. They may also be entitled to additional benefits for the child as follows:

Child Benefit – the family member / relative may be able to apply for Child Benefit for a child they are responsible for.

An individual will usually be responsible for a child if the child lives with them or the adult is paying at least the same amount as Child Benefit (or the equivalent in kind) towards looking after them.

The Local Authority may need to confirm that the adult is responsible for the child in order for them to claim Child Benefit.

Where a child is over 16 but under 20 years old, the adult caring for them will only be able to claim child benefit if the child is in full-time education or training – this is more than an average of 12 hours a week supervised study or course-related work experience.

Child Tax Credit – it may be possible to apply for Tax Credits for a child the UK-based family member is responsible for if the child is:

aged 16 or under - the adult caring for them can claim until 31 August after their 16th birthday;

under 20 and in eligible education or training.

The amount received depends on how many children there are involved and whether the claim is a new claim for Child Tax Credit or the family member is already claiming Child Tax Credit.

Note: in some circumstances, the appropriate benefit may be Universal Credit, i.e., if the person lives in a Universal Credit area or has previously received Universal Credit.

Free school meals – a child may be able to get free school meals if their family member receives any of the following:

Income Support; income-based Jobseeker's Allowance; income-related Employment and Support Allowance; support under Part VI of the Immigration and Asylum Act 1999; the guaranteed element of Pension Credit; Child Tax Credit (provided they are not also entitled to Working Tax Credit and have an annual gross income of no more than £16,190); Working Tax Credit run-on - paid for 4 weeks after someone stops qualifying for Working Tax Credit; Universal Credit.

Note: It is important that an individual in receipt of benefits notify the Benefits Agency of any change of circumstances, including the addition of any child to their household, although it is likely that a formal application for additional benefits will be required for any additional benefit to be received.

Local authority / Social Services

If the family has leave to remain in the UK but does not have enough resources or adequate accommodation taking into account the arrival of a child asylum seeker, they can ask the Local Authority to carry out a needs assessment. If the outcome of the assessment is that the child is in need, the Local Authority will have to assist the family to meet that need. This may include weekly subsistence payments in respect of the child, assistance to find new accommodation and/or with a deposit payment.

Anyone can request a child in need assessment, regardless of their immigration status. However, financial support from social services is a last resort. If a family without leave to remain requests a child in need assessment, the social workers will consider the status of any pending application for leave to remain that the family may have. They will also consider all other forms of support the family may be able to access, including charitable support.

If a family without leave to remain decides to approach Social Services for support, they should be aware that the Home Office are very likely to be contacted as part of the assessment process. If they have any concerns as to the status of their application, they should contact their immigration solicitor or otherwise seek legal advice before approaching social services.

Additional care needs

It may be possible for financial and other support to be obtained if an individual has additional care needs. These needs may be met by the National Asylum Support Service, the Local Authority or the Benefits Agency, depending on the circumstances of the family.

Legal advice should be sought in any case involving additional care needs.

Looked after child

There may be circumstances where a child may need to be looked after by the Local Authority. This may be because the family or family member they are entering the UK to be reunited with is unable to care for them. Alternatively, the child may enter the UK to be reunited with family and then, due to family breakdown or another change in circumstances, need to be accommodated and supported separately from the family.

A child can approach the Local Authority directly and ask to be looked after. This may be appropriate if, for example, there has been a family breakdown or if the child has been subjected to violence by a family member. The way to obtain support as a looked after child is to ask for a needs assessment. The views of the child should be taken into account.

Children in care are usually placed with foster carers or in supported accommodation. They should have care arrangements that meet their assessed needs and this should include contact with their family unless this is not in the child's best interests.

Healthcare

Primary health care includes:

- Access to a GP
- Dental treatment
- Eyesight tests
- Family planning services
- Prescriptions
- Some mental health services

Secondary (or 'acute') care is the health care that people receive in hospital. It may be unplanned emergency care or surgery, or planned specialist medical care or surgery. If someone goes to hospital for planned medical care or surgery, this will usually be because their GP, or another primary care health professional, has referred them to a specialist.

Asylum seekers are exempt from healthcare charges: those who do not have settled status may in some situations be charged for services unless they fall under one of the exemptions.

Education

The Local Authority where a child resides has a duty to identify children **under 16** who are not in education, and to ensure they have a suitable placement. Where the child is over the age of compulsory schooling, (the last Friday in June of the school year they turn 16) then the local authority has a duty to make sure there is adequate training and education provision in the area.

Where a young person **aged 16 or 17** is resident in the area, they are entitled to an offer of a suitable placement to continue education for the next academic year. However, a local authority may define 'residence' and may distinguish this from someone who is staying temporarily for an extended period of time. Asylum-seeking children are considered ordinarily resident for the purpose of funding for education provision through the Education and Skills Funding Agency to attend college, or after-16 provision.

If legal advice is required in relation to an education matter, it can be sought via the Civil Legal Advice gateway: 0345 345 4345.

Age assessments

In some cases, the age of an individual brought to the UK as a child has been reassessed following their arrival in the UK. Legal advice should be sought where an individual has been brought to the UK as a child and subsequently, in the UK, been assessed to be an adult.

Accessing rights and entitlements

If an individual has difficulties accessing any of the above services or otherwise exercising their rights and entitlements, as set out in this booklet, it may be possible to obtain advice and assistance.

The Resources page of the MLP website includes details of organisations that may be able to assist.

If the person who entered the UK is granted status

If the person who entered the UK for the purpose of family reunification is granted lawful immigration status in their own right, they will then have the rights and entitlements that flow from their status.

If the person is an adult, they will be entitled to claim benefits subject to their eligibility given any restrictions on their immigration status and their financial circumstances.

If a family has been living separately due to the differing immigration status of the family members, once the husband / wife / partner has been granted Leave to Remain it is possible to make a homelessness application as a family. The homelessness application can be made to the Local Authority in which either of the households has been based.

Note: *The rights and entitlements of those transferred to the UK for the purpose of family reunification under Dublin III are outlined in this booklet for the purpose of raising awareness of potential rights and entitlements. It is advisable to seek legal advice and, as necessary, representation in relation to any community care, housing or benefits issues, in particular if an individual has been transferred on the basis that any UK-based family member can take care of them.*