

## **Unaccompanied Asylum Seeking Children – National Transfer Scheme**

### **Strategic Development**

To advise Leaders of the forthcoming extension by secondary legislation of the National Transfer Scheme of unaccompanied asylum seeking children to include Scottish local authorities. This is expected to be completed by 24 January 2018.

### **Summary and Recommendations**

This paper provides an update on the significant amount work around unaccompanied asylum seeking children led by COSLA over the last 12 months and sets out the implications of the extension of legislation regarding the National Transfer Scheme to Scotland.

Leaders are asked to:

- i. Note the anticipated completion on 24 January 2018 of the legislative process to enable local authorities outside of England to participate in the National Transfer Scheme of unaccompanied asylum seeking children;
- ii. Consider, assuming the legislation is passed, whether their local authority is willing to participate in the scheme and on what scale;
- iii. Note the implications of participating, or failing to participate, in the scheme;
- iv. Agree that COSLA continues to lobby for improved funding, up to full cost recovery, to support unaccompanied asylum seeking children; and
- v. Prioritise officer attendance at the next meeting of the Unaccompanied Asylum Seeking Children Dispersal Working Group on 9 February 2018 where the final draft of the Protocol will be agreed.

### **References**

Previous reports:

- Unaccompanied Asylum Seeking Children Update – Leaders, February 2017
- Calais Crisis Update and Unaccompanied Asylum Seeking Children – Leaders, November 2016
- Unaccompanied Asylum Seeking and Refugee Children – Leaders, August 2016
- Unaccompanied Asylum Seeking and Refugee Children – Leaders, May 2016

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## **Unaccompanied Asylum Seeking Children – National Transfer Scheme**

### **Current COSLA Position**

1. COSLA has been working with the Home Office and local authorities on issues around the National Transfer Scheme for unaccompanied asylum seeking children present in the UK which was introduced by the Immigration Act 2016 and its extension to Scotland. COSLA established a working group on these issues in May 2016. This has met regularly since and has members from 27 local authorities.
2. Leaders will recall that we had identified a number of barriers to taking this work forward in Scotland, and a number of risks to local authorities including the likelihood of a funding shortfall. Despite this, from our discussions with local authorities it has been clear that there is an appetite to respond positively to the proposals; to work through the issues identified; and to find a way to provide support to some of these very vulnerable young people, although perhaps not on the scale that the Home Office might wish to see.
3. COSLA has maintained that this must be a voluntary scheme which local authorities can choose to participate in on a scale that suits local circumstances. However, it should be noted that the Secretary of State has the power to compel local authorities to take on more young people if they do not volunteer to participate under the Immigration Act 2016, and this power can be extended to include Scotland.
4. COSLA continues to lobby the Home Office regarding the funding rates for supporting unaccompanied asylum seeking children as these are not sufficient. There is currently a review of the rates to which we are contributing. This is expected to report back by the end of the financial year.

### **Strategic Development**

5. The Immigration Act 2016 introduced the National Transfer Scheme for unaccompanied asylum seeking children in England. This is intended to support a more even distribution of unaccompanied asylum seeking children throughout the UK, and prevent an unmanageable burden for local authorities that are responsible for very high numbers of unaccompanied asylum seeking children simply by being ports of entry to the UK. For absolute clarity, the term unaccompanied asylum seeking children refers to all those seeking asylum who are under 18 years of age.
6. Secondary legislation is required to extend this scheme to the rest of the UK to allow for the transfer of the legal responsibility for these young people between English, Scottish, Welsh or Northern Irish authorities. The Parliamentary process for this was started on 7 December 2017. This is affirmative legislation which requires debating time in both UK Houses of Parliament, and this has been scheduled for 22 and 23 January. Neither House has the ability to put forward amendments; they can only vote for or against the extension. At the time of writing, it is anticipated that, while there will be debates about the legislation, it will ultimately be supported in both Houses.
7. Scottish local authorities will be able to participate in the National Transfer Scheme the day after it has been agreed by both Houses on 24 January 2018. As such, Scottish

local authorities must now consider whether they wish to participate in the National Transfer Scheme and receive unaccompanied asylum seeking children from other local authorities, and on what scale. This scheme has been in operation in England since July 2016 and all English regions are participating to some extent.

### Unaccompanied Asylum Seeking Children – Scottish and UK context

8. There are roughly 4,500 unaccompanied asylum seeking children in the UK, with about 150 of those in Scotland. 75% of the unaccompanied asylum seeking children in Scotland are located in just two local authorities. Of the unaccompanied asylum seeking children in the UK, 69% are 16-17 years old and 88% are male, in Scotland 85% are 16-17 years old and 71% are male (the higher proportion of females in Scotland is likely skewed by the profile of young people Scotland accepted from Calais after the camp closures).
9. When an unaccompanied asylum seeking child presents in a local authority area, after the local authority has accommodated the child for 24 hours they become looked after by that local authority which then has ongoing responsibilities to that young person under the relevant legislation, notably; the Children (Scotland) Act 1995, Children and Young People (Scotland) 2014 and The Looked After Children (Scotland) Regulations 2009.
10. While these young people have undoubtedly gone through some traumatic experiences when leaving their country of origin and travelling to the UK, they have very different needs to the 'citizen' looked after population. Unaccompanied asylum seeking children can be very resilient, often having travelled independently across several countries to make it to the UK. COSLA have been working positively with the Care Inspectorate to discuss and support the development of innovative models of support which meet the needs of these young people within the regulations.

### Unaccompanied Asylum Seeking Children – Funding

11. The Home Office provides funding to local authorities for unaccompanied asylum seeking children who have either arrived spontaneously in local authorities, or have been transferred through the scheme. This is on the following basis for young people who have arrived in the UK since 1 July 2016:

| Age                      | Daily Rate | Weekly Rate | Annual         |
|--------------------------|------------|-------------|----------------|
| Under 16                 | £114       |             | <b>£41,610</b> |
| 16-17                    | £91        |             | <b>£33,215</b> |
| 18 and over              |            | £200        | <b>£10,400</b> |
| Appeals Rights Exhausted |            | £0          | <b>£0</b>      |

12. Evidence gathered by COSLA shows that the funding for all age groups is insufficient but is particularly acute for those that are under 16, 18 and over, and notably those who have become appeals rights exhausted and have no recourse to public funds. While there are potential models of support which can be delivered within the funding envelope for 16/17 year olds, it is the continuing costs once they turn 18 which are not adequately funded and place the biggest burden on local authorities. These costs arise as these young people are asylum seekers and have no recourse to public funds. However, local authorities have long-term responsibilities to them as they are generally considered to be care leavers and there is a consensus that these young people must be treated as looked after and accommodated.

13. Additionally, if and when any of these young people become appeals rights exhausted with regards to their asylum claim they are still former care leavers and it is the experience of local authorities with appeals rights exhausted young people that they do not leave and nor does the Home Office remove them. Local authorities must continue to support them as former care leavers unless they choose to do a human rights assessment to justify the removal of support. While this occurs in some English areas, this is not something that Scottish local authorities have chosen to do to date.
14. While COSLA is involved in the review of funding rates that is ongoing, there is no definite commitment that the funding envelope will be increased. It is therefore recommended that local authorities consider participation based on current funding rates rather than any expectation that they will rise.
15. Although the Scottish Government has conceded that there is an ongoing financial shortfall over potentially many years, to date they have offered no financial assistance to assist local authorities. This lack of funding – both in terms of the shortfall from UK Government and the absence of any financial assistance from Scottish Government – makes this an incredibly challenging issue for local authorities.

### **National Transfer Scheme – Operation**

16. Notwithstanding these financial challenges, COSLA has been working with the Home Office to draft an operational Protocol which works for Scotland. The final draft will be going to the Unaccompanied Asylum Seeking Children Dispersal Working Group on 9 February for final approval. The Protocol clearly sets out that local authorities are the only agents that can determine capacity and whether they are able to support an unaccompanied asylum seeking child in their best interests.
17. In basic terms the Home Office pass referrals for transfer to a regional lead in the UK who will then refer to a local authority for consideration in the way that has been agreed with their local authorities on a regional basis. This operates differently in different regions – some have a rota system, some have agreed to take a certain number of unaccompanied asylum seeking children every month, and some operate on an ad hoc basis depending on availability. For the purpose of the National Transfer Scheme, Scotland is treated by the Home Office as a single region.
18. Local authorities can only refer young people for transfer if they are over a limit relative to their child population, or there are specific reasons why a local authority cannot meet the needs of a young person in their area, or if it is in the best interest of a young person to be transferred to a different local authority. When a region is below the limit relative to their child population it is expected that the young person will be transferred within that region.
19. Based on the direction of the working group, the Protocol builds in the presumption that Scottish local authorities will only take unaccompanied asylum seeking children who are 16 or 17 years of age, except in exceptional circumstances. This is due to the funding available and the likelihood of local authorities being able to develop additional capacity to support these young people rather than those who are under 16.
20. The regional lead is funded by the Home Office and will be based in COSLA's Migration, Population and Diversity team as part of the Strategic Migration Partnership. The regional lead will continue to represent Scottish local authority interests to both the Home Office and Scottish Government and support local authorities participating in the scheme as well as those with spontaneous arrivals.

21. Local authorities will be able to opt out of participation at any time while the scheme remains voluntary. However, given the public interest in this area, if no Scottish local authorities choose to participate, it is likely that we would face public pressure, as well as political pressure from both the UK and Scottish Governments, to do so.

### **s.67 of the Immigration Act (the ‘Dubs Amendment’)**

22. The Home Office has recently resumed referring young people for transfer to Scotland who are eligible under s.67 of the Immigration Act 2016, more commonly known as the ‘Dubs Amendment’. Scotland has been able to participate in these transfers from the outset as the amendment covered the whole of the UK and not just England. Scotland has so far accepted 36 young people under this amendment. The number of young people who may be transferred has been capped at 480 by the UK Government.
23. Once the National Transfer Scheme is extended, any referrals for eligible young people under the Dubs Amendment will be covered by the new Protocol.

### **Next Steps**

24. Scottish local authorities must now consider whether they are able and willing to participate in the National Transfer Scheme of unaccompanied asylum seeking children from other parts of the UK to Scotland. The scheme is currently voluntary and participation and the scale of involvement is therefore within the gift of each local authority and can be planned. The Home Office will however require a response, which can be made through COSLA, from Scottish local authorities about their decision whether to participate in the scheme. It would be helpful if local authorities are able to indicate the timescales they anticipate may apply to their decision making process.
25. Discussions with the Home Office regarding their experience so far with the operation of the scheme indicate the most successful transfers occur where the local authorities are doing forward planning regarding their intake. Local authorities would be able to tell the regional lead exactly how they wish to participate in the scheme, including planning for arrivals in the future. Any decision to participate in the scheme now, or in the future, does not commit the local authority to participating indefinitely. Equally, any decision not to participate in the scheme does not exclude a local authority from choosing to participate in the future.
26. Assuming the legislation is passed, it is anticipated that there will be pressure from the UK Government and the Scottish Government to see involvement of Scottish local authorities despite the funding and capacity challenges.
27. COSLA will continue to lobby for full cost recovery, support local authorities participating in the scheme and those with spontaneous arrivals.
28. It is recommended that local authorities prioritise officer attendance at the next meeting of the Unaccompanied Asylum Seeking Children Dispersal Working Group on 9 February 2018 at the COSLA Conference Centre, 10:00-13:00.

### **Summary and Recommendations**

29. This paper provides an update on the significant amount work around unaccompanied asylum seeking children in the UK led by COSLA over the last 12 months and sets out the implications of the extension of legislation to Scotland.
30. Leaders are asked to:

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