

## Unaccompanied Children and the Dublin II regulation

November 2006

### Dublin II regulation<sup>1</sup>

The Dublin II regulation replaced an earlier agreement (the Dublin Convention) and is designed to ensure that asylum seekers can only claim asylum in one EU state. It is part of the EU's effort to harmonise asylum policy and processes across Europe.

The Dublin II regulation establishes the '*criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.*'

This regulation forms part of domestic (UK) law and applies to applications for asylum made after 1<sup>st</sup> September 2003. Asylum applicants are fingerprinted and their fingerprints checked against a European wide database that informs the UK whether a person has previously passed through another member state or made a claim for asylum in another member state. A decision will then be made by the UK whether or not to remove the person to that country to have their asylum claim considered. Similarly, the regulation allows other EU states to make the same arrangements to return people to the UK if they have travelled through the UK and subsequently claimed asylum in another member state.

The regulation distinguishes between adults and unaccompanied children. Adults may be returned to a country to have their asylum claim considered on the basis that they passed through that state. This is referred to as 'taking charge'. Adults and unaccompanied children can be returned on the basis that they previously made an asylum claim in that country. This is referred to as 'taking back'.

There are time limits attached to the regulation. The UK must formally request another member state to 'take back' <sup>2</sup>an applicant within 3 months of the claim for asylum in the UK. A decision must be made on this request within two months and the UK has a further six months to enforce the transfer. <sup>3</sup>

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<sup>1</sup> European Council regulation EC 343/2003.

<sup>2</sup> Or take charge, in the case of adults to whom both policies apply.

<sup>3</sup> Exceptions to this may be applied e.g. an urgent reply may be requested if the applicant is in detention. The UK asks for a response within two weeks in this situation. It should also be noted that a judicial review will suspend the timescales. Other appeals would not usually suspend removal.

## Unaccompanied Children

An unaccompanied child seeking asylum is a person under the age of 18 who is separated from both parents and not being cared for by an adult who by law or custom has the responsibility to do so.<sup>4</sup> In 2003 UNHCR reported 10,676 asylum applications from unaccompanied children in 21 European countries.<sup>5</sup> In the UK in 2005, 2965 new applications were made from unaccompanied children; the top countries of origin being Afghanistan, Iran and Somalia.

### What does the regulation say about unaccompanied children?

Article 6 of the regulation states that if an unaccompanied child has a close family member (defined in the regulation as a parent) in another member state, the child's application should be considered in that country, providing it is in the child's best interests.

If there is no close family member the asylum claim will be determined in the country (or first country, if there has been more than one application) in which the child claimed asylum. Unaccompanied children are not subject to return to a country under this regulation if they did not claim asylum there.

The Regulation enables member states to exercise discretion under an 'opt out' clause, and choose to consider the child's application, rather than remove them to the first country in which they claimed asylum.<sup>6</sup>

### What are the problems with Dublin II for unaccompanied children in the UK?

1. EU States vary greatly in their assessments of whether or not a particular child is in need of international protection. Member states do not have a common list of 'safe countries' for example, so it is possible for a child to be refused asylum by one member state and returned to their country of origin when the UK may have recognised the same person as a refugee and granted them status.
2. Many unaccompanied children returned to a member state under the Dublin II regulation are denied access to that country's asylum system on return, meaning that they never have a full examination of their asylum claim.
3. The strict definition of 'close family member/s' means the UK is only required to reunite unaccompanied children with their parents. Some children have a family member able and willing to care for them, living in another member state. If that family member is not the legal guardian, the regulation does not require member states to reunite them.

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<sup>4</sup> Refugee Children: Guidelines on protection and care. UNHCR, Geneva 1994

<sup>5</sup> This is an imprecise figure, as there is no consistent method of defining or counting applications from unaccompanied children across European countries.

<sup>6</sup> Article 3(2). Each member state may examine an application for asylum lodged by a third country national even if such examination is not its responsibility under the order laid out in this regulation.

4. The timescales attached to the regulation mean that removal cannot usually be enforced after the child has been in the UK for eleven months. However, this still results in children being removed from a settled situation, with carers they know and trust, and returned to a country where they may have spent only a few hours.
5. Unaccompanied children in the UK have no independent legal guardian and no agency is charged with representing the child's best interests with regard to their need for international protection. This means that children are returned when it is not in their best interests.
6. There is no standard level of care for unaccompanied children across member states. Some countries will detain unaccompanied children and not all of them will continue to provide support once a young person has turned 18. The arrangements for assisting young people through the process, for example the appointment of a guardian, vary amongst countries. This means that a child could have been looked after by a foster family in the UK and be removed to a detention centre in another country where there is no-one to provide appropriate care.
7. There is no obligation for the UK to discuss assessments of need with, or to transfer care plans or histories to, the agencies or individuals who will be caring for the child on return. This would not happen to other children who move from the public care of one member state to another. Children who are in a course of therapy or education will suffer enough through the disruption when they are forcibly returned to a third country; it is unacceptable that there is no requirement for the child care and education specialists to transfer knowledge and plans that would almost certainly help the child to settle into another strange country.
8. There is no common obligation to actively seek family members; in practice this means that children will only be reunited if they are already aware of their parents' whereabouts.

NGOs have been concerned at the treatment of asylum applicants in Greece, particularly in relation to their policy on 'interrupted claims'.<sup>7</sup> This means that anyone who is forcibly returned to Greece under the Dublin II regulation will be treated as having abandoned their asylum claim and it will not be looked at. Michael, an unaccompanied child from the Middle East, had sought asylum in Greece and held in detention for three months, where he was beaten and exploited. He was released from detention after signing a document saying he would leave Greece immediately, despite no decision having been made on his claim for asylum. Still unable to return to his home country because of a fear of persecution there, Michael fled to the UK. The Home Office asked Greece to 'take back' Michael despite being aware of his experiences. Michael was removed to Greece earlier this year. We do not know what happened to him on return and we fear that Greece never fully examined his asylum claim.

### **What safeguards are in place to ensure that young people whose age is in doubt<sup>8</sup> are not mistakenly transferred to another member state?**

The regulation itself does not address the issue of young people who claim asylum as a child but who are believed by the state to be over 18. There is no common procedure for ensuring that an age dispute is resolved before a decision is made to apply the Dublin II regulation. It is not uncommon for applicants claiming to be children to be removed to another member state as an

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<sup>7</sup> More detail on this can be found in ECRE/ELENA, *Summary Report on the Application of the Dublin II Regulation in Europe*, March 06.

<sup>8</sup> Applicants whose claim to be a child are not believed by an immigration officer are known as 'age disputed applicants'.

adult, even when information later reveals that the applicant was indeed a child. This means that where an applicant has not previously made a claim for asylum in another member state but has merely travelled through it, the removal should not have taken place.

In the UK, if an immigration officer does not believe an applicant's claim to be a child s/he can decide to treat the applicant as an adult until credible documentary or other persuasive evidence, such as an assessment by social services, demonstrates that the applicant is a child. Whilst there are no statistics on how often the initial decision is overturned, in some areas it has been found to take place in at least 50% of cases.<sup>9</sup>

The UK Government has acknowledged that immigration officials do not always get the decision about a person's age right and the official decision is frequently changed as a result of assessments by social workers and paediatricians. It is not always possible to ensure that this evidence is available within the strict timescales required for transfers under the Dublin II regulation, particularly when a young person is detained. This means that some children are erroneously treated as adults and returned to another country under the regulation.

Yusuf came to the UK from Iran. He was detained because the immigration officer felt that Yusuf's appearance suggested that he was an adult. The Refugee Council was informed that his age had been disputed and a specialist adviser made an appointment with the detention centre to see him. When the adviser arrived for the appointment she was told that Yusuf had been moved to another detention centre. When the adviser tried to make an appointment to see Yusuf there she was informed that he had been removed to Greece. Yusuf had never had any legal advice; he had not been seen or spoken to by a child care professional. He was removed within 48 hours of arriving in the UK, despite his claim to be a child. Professionals in the UK are particularly worried about Yusuf as it is likely he will have been detained and/or denied access to the asylum procedure in Greece.

### **What could be done under the current regulation to ensure that unaccompanied children receive adequate protection?**

1. The UK Government should appoint an independent guardian for all unaccompanied children. Part of the guardian's role would be to conduct an assessment of the child's best interests.
2. The Home Office should write an instruction for immigration officials to ensure that they make efforts to trace family members in the EU using the information provided by the child at his/her screening interview. If children claim not to be aware of the whereabouts of close family members, they should be informed of their right to request an EU wide search for family members and of how they can be helped to do this. Lithuania and Poland currently report that they actively seek family members in this way.<sup>10</sup>
3. The UK Government should apply the 'opt out' clause to unaccompanied children's cases so that they are only returned if the guardian's assessment states that this is in the child's best interests. Norway and Finland currently report that this is their policy<sup>11</sup>
4. Age disputes should be resolved before removal directions are issued, to ensure that the UK does not erroneously remove children from the UK.

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<sup>9</sup> Figures from the Refugee Council relating to assessments of age disputed applicants detained in Oakington and subsequently assessed to be children during the period November 2003 – January 2006.

<sup>10</sup> As reported in ECRE/ELENA, *Summary Report on the Application of the Dublin II Regulation in Europe*, March 06

<sup>11</sup> *ibid*

5. Young people whose age has been disputed should not be moved from one detention centre to the other as this impedes access to an assessment of their age by a child care or medical professional.

6. Where the UK has accepted that the applicant is a child, the prospective receiving country should be asked to confirm that they will be treating the applicant as a child before a removal is enforced. If that confirmation is not received, the UK government should exercise discretion under the 'opt out' clause and consider the child's asylum application here.

### **How can the Dublin II regulation be amended to ensure that children's needs are met and that they are not put in danger?**

1. Article 6 of the regulation should be amended so that where a child has claimed asylum and subsequently travelled to another member state, s/he should be returned there only if it is in his/her best interests. The assessment of what is in the child's best interests should be conducted by a child care professional independent of the government department responsible for asylum policy. This assessment must take into account the wishes and feelings of the child. Any decision that does not concur with this assessment must be subject to judicial oversight.<sup>12</sup>

2. The definition of family in Article 2 (i) should be revised to include extended family members as well as anyone who was previously involved in caring for the child.

3. A new duty should be inserted into the regulation to ensure that where the state is to be involved in the care of a child on return, the relevant agency shall be provided with all relevant assessments and plans conducted by the country that has had responsibility for the child prior to return. No child shall be transferred to another member state until direct contact has been made between the two caring agencies to discuss the care needs of the child.

4. A new duty should be inserted into the regulation to ensure that anyone claiming to be a child shall not be removed until they have had access to an assessment by the relevant agency and that all parties are satisfied that the dispute has been resolved.

Saba arrived in the UK from an African country. She had travelled through Belgium where she had been sexually exploited for a year. After escaping to the UK, Saba was looked after by social services in London for 9 months until they were informed by the Home Office that she was to be returned to Belgium. The professionals involved with Saba were very concerned and tried to prevent her removal on the grounds that she was beginning to recover from her traumatic experiences with care and therapy. Home Office officials refused to use the 'opt out' clause and reassured professionals caring for Saba that she would receive the appropriate help and treatment in Belgium. Unfortunately this was not the case. Saba was returned to Belgium and left to fend for herself. After phoning those who had helped her in the UK to tell them that she was receiving no support, Saba was never heard from again.

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Registered charity no. 1014576 Registered company no. 2727514 Registered address: 240-250 Ferndale Road London SW9 8BB



<sup>12</sup> The decision on whether or not a child should be returned should be made by the court that has jurisdiction over decisions on children where that is different from that dealing with immigration decisions.