

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF RESPONSIBILITY FOR RELEVANT CHILDREN
(EXTENSION TO WALES, SCOTLAND AND NORTHERN IRELAND)
REGULATIONS 2018

2018 No. 153

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 To extend provisions in the Immigration Act 2016 which relate to the transfer of responsibility between local authorities in England for unaccompanied asylum-seeking children and other relevant children so as to enable them to operate in relation to local authorities (and the devolved equivalents) in Wales, Scotland and Northern Ireland. The operation of the provisions is both in relation to transfers between local authorities in a nation (eg from one Scottish local authority to another) and transfers between local authorities across nations (eg from an English local authority to a Welsh local authority).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 Sections 69 to 72 of the Immigration Act 2016 (“the Act”) make provision in relation to the transfer between local authorities in England of responsibilities for “relevant children” (defined in section 69(9) of the Act). Section 73 of the Act enables regulations to make such provision as the Secretary of State considers appropriate to enable any of the provisions of sections 69 to 72 to apply in relation to Northern Ireland, Scotland or Wales.
- 4.2 Sections 69(6) and (10) and 70 (2)(b) of the Act provide for the Secretary of State to make regulations applicable in England only, subject to the negative resolution procedure in Parliament. Section 73 permits exercise of a power to make regulations, subject to the affirmative resolution procedure in Parliament, in relation to Wales, Scotland and Northern Ireland. Once the provisions in sections 69 to 72 of the Act are applicable in those territories it will be necessary for any exercise of the powers in sections 69(6) and (10) or 70(2)(b) of the Act to be applicable across the United Kingdom and so this instrument makes consequential provision to section 93 of the

Act to align the Parliamentary procedure, so that the affirmative resolution procedure is required in all instances where the power is exercised.

- 4.3 Section 95(2) of the Act provides that sections 69 to 72 extend to England and Wales only. This instrument extends the provisions in part 69 to 72 to Scotland and Northern Ireland and consequently repeals section 95(2).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales, Northern Ireland and Scotland.
- 5.2 The territorial application of this instrument is England and Wales, Northern Ireland and Scotland.

6. European Convention on Human Rights

- 6.1 The Immigration Minister has made the following statement regarding Human Rights:
- “In my view the provisions of the Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

- 7.1 The conflict in Syria, and events in the Middle East, North Africa and beyond saw an unprecedented number of migrants and asylum seekers arrive in Europe over the last few years. Some migrants and asylum seekers have reached the UK via Northern France and other ports, which resulted in a sharp increase in the number of unaccompanied asylum seeking children – UASC – arriving in the UK in a short period of time. In 2015, 3,253 unaccompanied children claimed asylum in the UK. This represented a 67.2% increase on the number of unaccompanied children who claimed asylum in 2014. In 2016, 3,175 unaccompanied children claimed asylum, a modest 2% decrease. The most recent Department for Education statistics confirmed that as of 31 March 2017, there were 4,560 UASC in local authority care in England alone – a rise of 134% since 2013.
- 7.2 Many unaccompanied children claim asylum in port authorities, such as Kent or Croydon, where the main asylum intake units are located. Under the Children Act 1989 (and equivalent devolved children’s legislation), the local authority where the child first presents becomes the local authority responsible for caring for them. By the end of 2015, Kent County Council had approximately 1,000 UASC in its care, 300 of whom had to be placed in other local authority areas. Understandably, this placed significant pressure on the Council and its children’s services.
- 7.3 The government was clear that a national response was needed to support local authorities such as Kent and Croydon and to ensure that UASC are appropriately safeguarded. Working with the Local Government Association and the Association of Directors of Children’s Services, the government developed a voluntary transfer scheme to ensure a more equitable distribution of caring responsibilities for UASC. Section 69 of the Act underpins those voluntary arrangements by making it easier to transfer unaccompanied migrant and asylum seeking children from one local authority in England to another. It has been used successfully on many occasions since the National Transfer Scheme was launched on 1 July 2016.
- 7.4 The government has always made clear that the National Transfer Scheme is a voluntary scheme and hopes that it remains so, but a fairer distribution of caring

responsibilities for UASC will only be achieved if all local authorities play their part. Sections 70 to 72 of the Act further underpin the voluntary transfer arrangements and include a power to enforce them should that be necessary. Section 70 enables the Secretary of State to direct local authorities to provide information about the support and accommodation provided to children in their care. Section 71 enables the Secretary of State to direct the provision of written reasons as to why a local authority refuses to comply with a request to accept responsibility for unaccompanied migrant children from another local authority. These provisions are designed to help inform arrangements made for the transfer of unaccompanied migrant children from one local authority to another. Section 72 enables the Secretary of State to require local authorities to co-operate in the transfer of unaccompanied migrant children from one local authority to another. This provision would only be used in the event that the voluntary arrangements were not successful.

- 7.5 Sections 69 to 72 only apply to local authorities in England. However, if we are to achieve a truly national response and build on the positive response from local authorities to the transfer of unaccompanied children from local authorities in England, from France and elsewhere in Europe, the National Transfer Scheme needs to be a UK-wide scheme underpinned by UK-wide legislation. As the provisions in the Act concern only migrant children and immigration is a reserved matter, the government is extending them to Northern Ireland, Scotland and Wales via these regulations which are subject to the affirmative procedure.
- 7.6 The regulations will enable the responsibility for unaccompanied migrant children to be transferred not only from an English local authority to the relevant authority in Northern Ireland, Scotland or Wales, but also for a local authority (or equivalent body) in one of the devolved territories to transfer responsibility for an unaccompanied asylum seeking child to another authority in the same territory. This ensures the National Transfer Scheme is able to respond to any future changes in migratory patterns and trends.
- 7.7 In Wales and Scotland, the functions equivalent to those discharged by local authorities in England under the Children Act 1989 are also discharged by local authorities in Wales and Scotland. With regard to Northern Ireland, the position is different and the equivalent functions are discharged by Health and Social Care Trusts.
- 7.8 The effect of transferring an unaccompanied migrant child is that the first local authority ceases to have any responsibility under the Children Act (or equivalent devolved legislation) towards that child and the receiving local authority becomes responsible for the care and support of the child. The government recognises that children's legislation is devolved and has worked closely with the Devolved Administrations to ensure the provisions in the Act work for each nation in the United Kingdom.
- 7.9 To help local authorities provide appropriate care and support for UASC, on 1 July 2016 the government significantly increased the funding available; by 20% for local authorities caring for UASC aged 16 and under, by 28% for local authorities caring for UASC aged 16 and 17, and by 33% for local authorities with responsibility for former UASC care leavers. The government is currently undertaking a review of the funding provided to local authorities looking after UASC.

- 7.10 The government takes its responsibility in asylum cases involving children very seriously, ensuring their welfare and safety is at the heart of every decision made. In November, it published a dedicated safeguarding strategy to strengthen the support provided to unaccompanied asylum seeking and refugee children. The strategy can be accessed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656425/UASC_Safeguarding_Strategy_2017.pdf. Extending the provisions in the Act to Northern Ireland, Scotland and Wales will further underpin the National Transfer Scheme. The Scheme is designed to relieve the burdens on those local authorities with high numbers of UASC in their care so that there is a more equitable distribution of unaccompanied migrant and asylum seeking children across the country. This will help to ensure the welfare of vulnerable children continues to be safeguarded.

Consolidation

- 7.11 This is the first exercise of the enabling power so the issue of consolidation does not arise.

8. Consultation outcome

- 8.1 The Home Office has consulted the Devolved Administrations and local government associations operating in Scotland and Wales throughout the development of the National Transfer Scheme and the drafting of the regulations. The Home Office has also discussed the regulations with officials in the Northern Ireland Executive. The Home Office has worked closely with the Department for Education, Department for Communities and Local Government, the Local Government Association and Association of Directors of Children's Services in England, as well as individual local authorities.

9. Guidance

- 9.1 A draft protocol was published in July 2016 to support the National Transfer Scheme in England. The Home Office and Department for Education intend to publish an updated protocol in the coming weeks. The UK government has worked closely with the Convention of Scottish Local Authorities and the Welsh Local Government Association to consider how the protocol can be extended to Scotland and Wales to take account of the different circumstances in those nations. The Department for Education has revised its local authority statutory guidance on the care of unaccompanied migrant children and child victims of modern slavery. This applies to English local authorities only. Similar guidance in Northern Ireland, Scotland and Wales is the responsibility of the Devolved Administrations and we will continue to work closely with each of the devolved governments to ensure our approach towards UASC is consistent.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is limited. A dedicated team has been established within the Home Office to administer the National Transfer Scheme. This has been achieved by reallocating existing resources. Additional funding has been made

available to each Strategic Migration Partnership¹ to support the National Transfer Scheme. The government is working with local authorities with limited experience of caring for UASC to ensure they are able to provide for their needs and there are a number of commitments in the recently published safeguarding strategy which will support local authorities and enhance their capability to care for UASC.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The government is considering the most effective way of publishing information about the implementation of the National Transfer Scheme. The protocol underpinning the voluntary transfer scheme is currently being updated and a revised version will be published in the coming weeks. The government is also working with Welsh and Scottish local government partners to develop separate protocols which will take account of the different legislation in those nations.

13. Contact

13.1 Alison Samedi at the Home Office Telephone: 020 7035 4084 or email: Alison.samedi@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

¹ There are 9 Strategic Migration Partnerships (SMPs) operating in England and one in Wales and one in Scotland. Equivalent structures exist in Northern Ireland. SMPs support the coordination of migration-related activity in each region, including managing the relationship between the Home Office and local authorities on issues such as asylum dispersal and the Syrian Vulnerable Persons Resettlement Scheme.