

# Immigration law and care Local authority responsibilities

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# What does the Migrant Children's Project do?

Free guidance and resources

[www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)

Advice line:

[mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk)

Training

Outreach

Policy

Legal

# *Local authorities*

# Duties - Children Act 1989

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Section 17 - to assist 'children in need'

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Section 20 – looked after and accommodated

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Presumption of section 20 support for UASC

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Care order

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Care leavers

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# Support – Section 17

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Is the child 'in need'?

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Which local authority – ordinary residence

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Interim accommodation can be provided

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Promote growing up in family

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Assessment – HRA part of it if excluded

# Support for separated children

## UASC

- 4,560 (31<sup>st</sup> March 2017) – 6% of LAC
- Increased from 1,950 in 2013
- Does not include care leavers

## EU & non-EU children

- Much more difficult to gather statistics
- Unclear how many/age of migrant children in care
- May be supported in a number of ways

# Recent legislation

## Children and Social Work Act 2017

- Corporate parenting principles
- The 'local offer'
- Personal advisers

## Immigration Act 2016

- Number of changes in immigration law
- Some parts are in force, some are not
- **Major changes to asylum support & care leavers not in force**

# Planning & legal advice

Importance of planning around children's immigration status

*Statutory guidance*

Consequences of not resolving issues



# Who can receive leaving care support?

**Refugee**

**Humanitarian  
protection**

**Indefinite leave to  
remain**

**Limited leave or  
Section 3C leave**

**Outstanding  
asylum claim or  
appeal**

**Appeal rights  
exhausted**

# Can leaving care support be stopped?

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Right to leaving care support continues *at least* until  
ARE

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Schedule 3 of the NIAA 2002

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'A failed asylum-seeker'

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'A person unlawfully in the UK'

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Removal of support - human rights assessment

# *Legal representation*

# Finding legal representation

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Immigration law is highly regulated

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Not regulated = can't give advice

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Legal aid not available for many types of cases

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Children in care – legal aid being brought back in

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Exceptional case funding

## Legal aid

Available

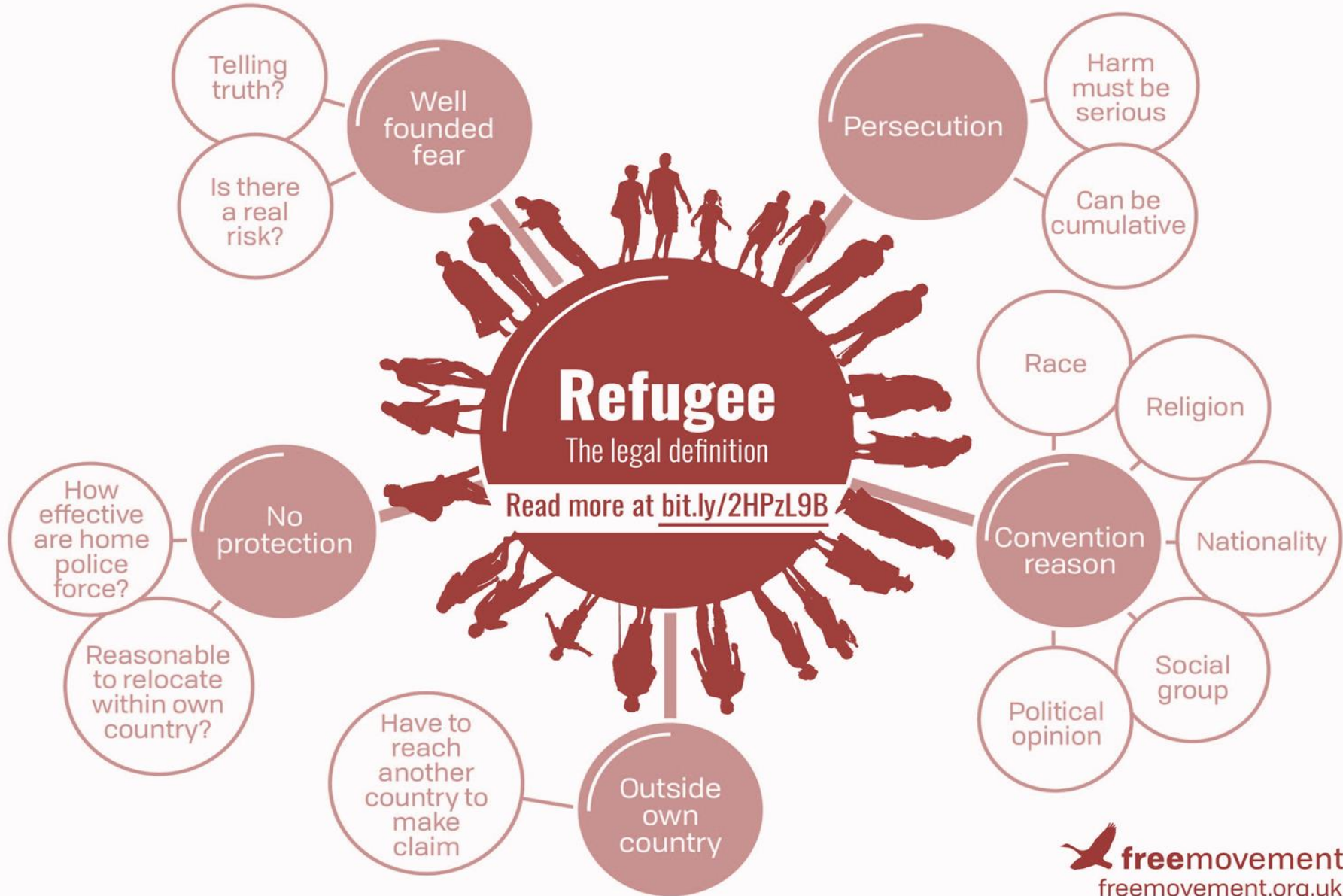
- Asylum & Protection
- Trafficking (if recognised as a PVoT)
- Judicial review
- Community care

## No legal aid

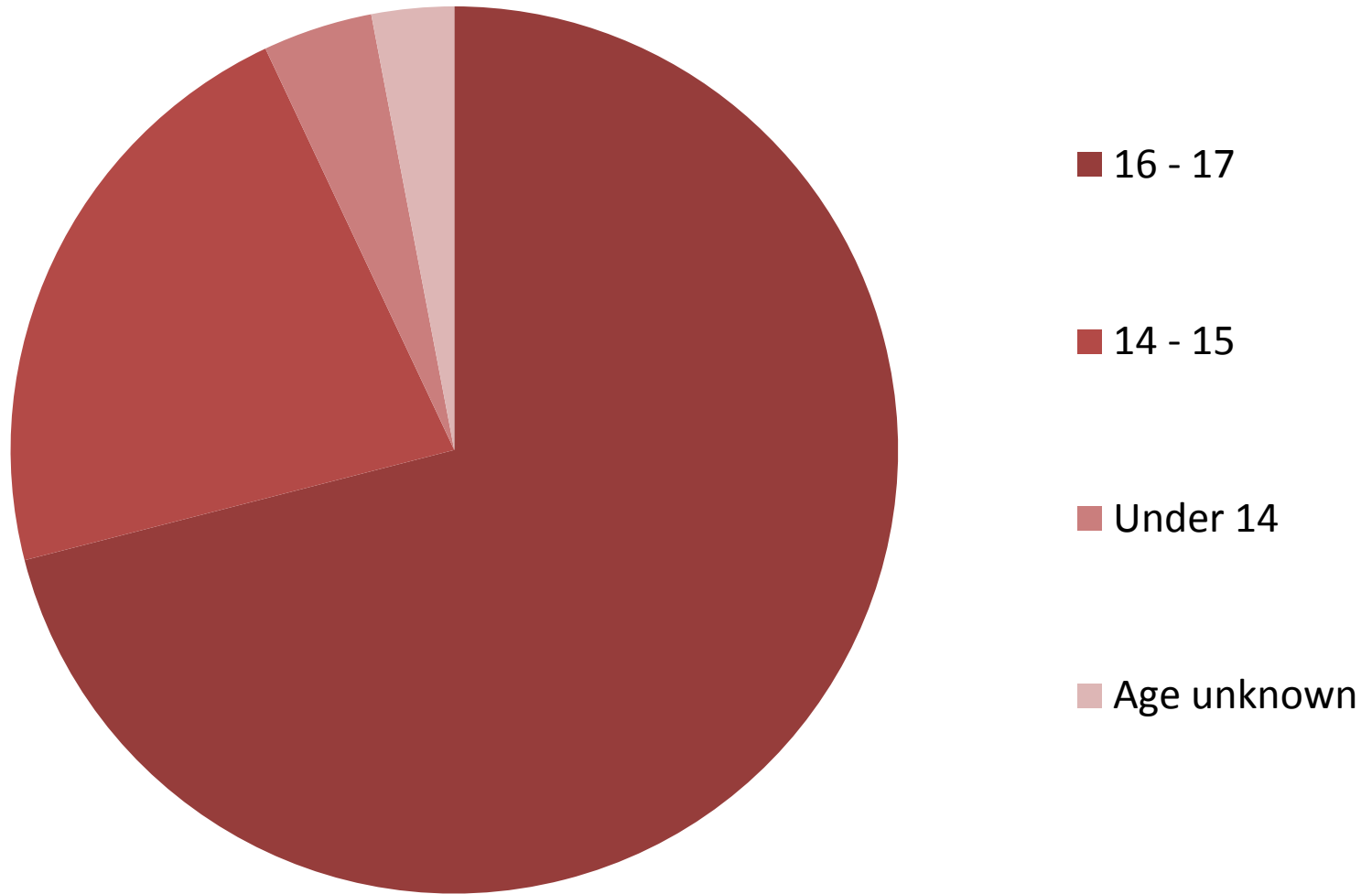
Not available

- Immigration Cases
- Article 8 (right to family & private life)
- Nationality cases
- EU cases

# *Asylum*



# How old are UASC?





# Assessing age in the UK

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Many children not believed about their age

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Serious implications for accessing services, asylum cases

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ADCS guidance

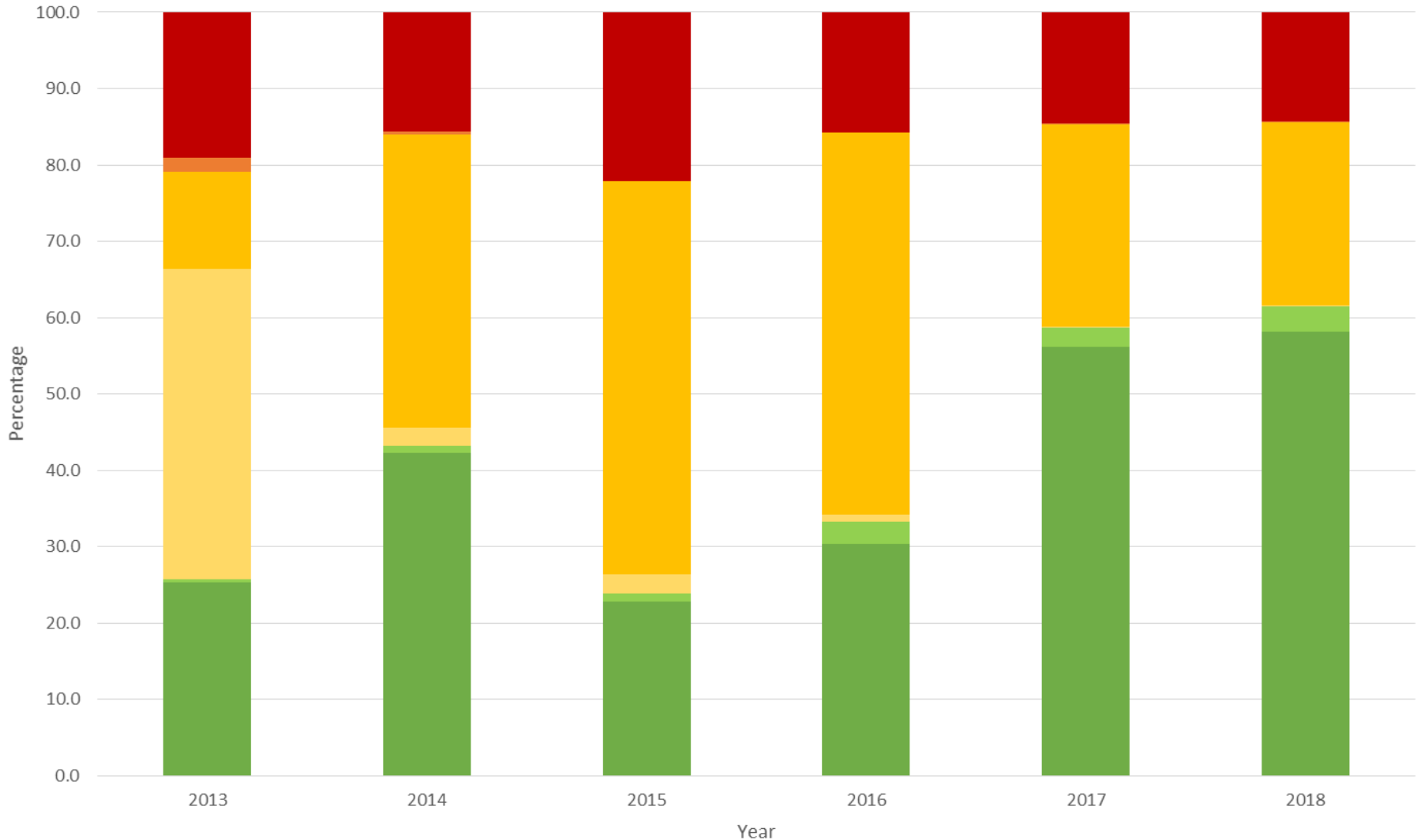
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Age assessments should not be a routine part of local authority practice

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Ultimately, a decision on age can be made by the court

# Children's Asylum Decisions



# *Nationality & Citizenship*

# Is the child British?

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Was one of the parents British/settled at time of birth?

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Indefinite leave to remain

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Permanent residence

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Historical rules regarding born to unmarried parents  
prior to July 2006

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Paternity issues?

# Registering for citizenship

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Child born in UK + parent becomes British/settled

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Child born in UK and lives in UK first 10 years

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Discretionary application

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Fee £1,012

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No legal aid - **CCLC project, KIND UK, PRCBC**

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If refused, no appeal right – challenge by judicial review

# *Immigration routes*

# Some routes

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Family routes – parent of British/settled child

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Family routes – partner route

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Discretionary ILR/best interests (children)

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Home Office policy for children in care

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Long residence – Immigration Rules

## Immigration Health Surcharge

- NO SURCHARGE for LAC, asylum, trafficking
- £400 per person per year of leave
- Not required for ILR application

## NRPF conditions

- No NRPF condition - application stage
- Form if need to remove NRPF condition
- Judicial review? Legal aid available



# What about child trafficking?

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Definition – children and adults

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Consent is irrelevant for child victims

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National Referral Mechanism (NRM)

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First responders

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Conclusive decisions

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Identifiers

# *EU families and children*

# Local authorities

## Section 17

- EU family
- Zambrano carer

## Section 20

- EU child looked after and accommodated
- EU care leaver

## Care order

- EU child
- EU care leaver

# EU rights?

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Working or self employed

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Job-seeking

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Studying, retired or self-sufficient + CSI

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In a family, only one EU national needs to be exercising rights

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5 years exercising treaty rights = permanent residence

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Rights of family members - linked to the EU national until they gain PR

# EU Settlement Scheme

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Launched fully on 30<sup>th</sup> March 2019

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Apply for settled or pre-settled status

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Based on continuous residence

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Not documentation - email/login to show status

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Done through app, regulated advice (OISC level 1)

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Local authority guidance for children in their care

# Other issues

Trafficking/modern slavery

Travel and documents

Statelessness

Working

Family reunion

Volunteering

Family tracing

Bank accounts

Age assessments

Housing

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