



## The admission into school of children previously in state care outside of England

On 4 December 2017, the Minister of State for School Standards wrote to all local authorities and admission authorities about giving priority in their oversubscription criteria to children who have previously been in state care outside of England, and have ceased to be in state care as a result of being adopted. This advice has been produced to help admission authorities implement this.

### Key points

- School admission authorities are currently required to give looked after children<sup>1</sup> and previously looked after children<sup>2</sup> highest priority in their oversubscription criteria<sup>3</sup>. On 4 December 2017, the Minister announced that when the opportunity arises he intends to amend the School Admissions Code (the Code) to ensure that children who were previously in state care outside of England, and have ceased to be in state care as a result of being adopted, also receive the same highest priority for admission into a school in England.
- **Until such a time, however, the Minister wishes admission authorities to introduce oversubscription criteria to give these children second highest priority for admission into school. Any changes to admission arrangements will need to be consulted upon in the normal way.**
- By children previously in state care outside of England, we mean children who have been looked after outside of England by a public authority, a religious organisation or another provider of care whose sole purpose is to benefit society. The care may have been provided in orphanages or other settings.
- **Admission authorities must ensure that they apply their oversubscription criteria fairly and lawfully. In the case of children adopted from state care overseas, admission authorities will want to satisfy themselves that a child is eligible by asking the child's parents for appropriate evidence of their previously looked-after status.**

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<sup>1</sup> A 'looked after child' is a child who is (a) in the care of a local authority in England or (b) being provided with accommodation by a local authority in England in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989).

<sup>2</sup> Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order).

<sup>3</sup> Admission authorities for schools designated with a religious character may give priority to looked after and previously looked after children whether or not of the faith, but they must give priority to looked after and previously looked after children of the faith, before other children of the faith.

- As state care systems around the world vary greatly, some having more formal arrangements than others, the evidence provided by parents may vary. Admission authorities should take a pragmatic approach and be flexible in terms of what evidence they require from parents. Where parents are, for good reason, unable to provide clear evidence of their child's previously looked after status, admission authorities will need to use their professional judgement and common sense in deciding whether a child should be regarded as adopted from state care overseas.
- Admission authorities may find it helpful to work with other admission authorities in the area, the local authority and local Virtual School Heads to agree a consistent approach.

## The admission of looked after and previously looked after children

Looked after and previously looked after children are amongst the most vulnerable in our society. We know that the vast majority of children taken into local authority care have experienced abuse or neglect and therefore require additional support. Wherever possible, they should be admitted to the school which is best able to meet their needs.

School admission authorities have been required to give looked after children highest priority in their oversubscription criteria since 2007. In 2012, this priority was extended to previously looked after children. Our intention was to ensure that all children who receive highest priority whilst looked after by the local authority continue to receive that priority once they have left care.

The Minister has now also decided that when the opportunity arises, he intends to propose further changes to the Code to ensure that children who were previously in state care outside of England, and leave that care as a result of being adopted, also receive highest priority for admission into a school in England. This is because we believe such children are also vulnerable and may have experienced abuse and neglect prior to being adopted. We believe it is right that we put these children on an equal footing for the purposes of admission into school to those children who are looked after and previously looked after by a local authority in England.

We are committed to making this change; however, any changes to the Code are subject to consultation and the will of Parliament.

Nevertheless, and until changes can be made to the Code, we are keen to ensure that such children are given the highest possible priority for school admission as soon as possible. This is why, in December last year, the Minister wrote to all local authorities and admission authorities encouraging them to use their discretion when setting school admission arrangements, to give these children second highest admissions priority in their oversubscription criteria, until the relevant changes can be made to the Code. Annex A contains advice on how this can be implemented. Any changes to school admission arrangements will need to be consulted upon in the normal way.

## Children previously in state care outside of England

The number of children in the school system who were previously in some form of state care outside of England is small. However, the vast majority of those children will be moving onto the secondary phase of their education in the next few years. Admission authorities are encouraged to introduce a priority for such children in their admission arrangements now so that it provides the maximum benefit possible for the time being for the children concerned.

It should be borne in mind that such children are also eligible for support from the local Virtual School Head<sup>4</sup>.

### Determining eligibility

We recognise that it is not always easy to establish that a child was in state care outside of England and we are aware that some admission authorities have concerns about how best to determine this. **Currently, it is for school admission authorities to check and, where necessary, request evidence from parents to demonstrate their child is eligible for priority under a particular oversubscription criterion. Similarly, admission authorities will want to satisfy themselves that a child is eligible for admissions priority by asking parents for evidence of the child's adoption from state care outside England.**

The arrangements for looking after children who cannot be cared for by their birth parents vary enormously and, in many countries, are less formal than in England and with less written evidence. In light of this, we encourage admission authorities to be pragmatic and flexible in terms of what evidence they require from parents.

The vast majority of families who have adopted children from outside of England will have some form of paperwork to evidence this e.g. a UK adoption order or a copy of the adoption order from the child's country of origin. These may not necessarily contain information about the child's background and whether the child was previously in state care. **Where parents are, for good reason, unable to provide clear evidence of their child's previously looked after status, admission authorities will need to use their professional judgement and common sense to decide whether the child should be treated as having that status.**

We also consider it important that there is local consistency in decision-making, so that parents know that the schools in their area, who are operating this priority, will reach the same conclusion about the status of any particular child. Admission authorities may find it helpful to work with other admission authorities in the area, the local authority and the local Virtual School Head to agree a consistent approach. They may also find it helpful to work with Virtual School Heads from nearby local authorities, particularly where children are applying for school places across local area boundaries.

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<sup>4</sup> Section 23ZZA of the Children Act 1989 (inserted by Section 4 of the Children and Social Work Act 2017) places a duty on local authorities to promote the educational achievement of children previously in care outside of England and Wales, which include those who were in the care of, or were accommodated by, a public authority, a religious organisation or other provider of care whose sole purpose is to benefit society.

## Annex A

### Example of how priority for children previously in state care outside of England can be written into oversubscription criteria, until the relevant changes can be made to the School Admissions Code

*Oversubscription Criterion 1: Looked after children and children who were previously looked after but immediately after being looked after became subject to adoption, a child arrangements order, or special guardianship order.<sup>1</sup>*

*Oversubscription Criterion 2: Children who appear [to the admission authority of the school] to have been in state care outside of England and ceased to be in state care as a result of being adopted.<sup>2</sup>*

*Oversubscription Criterion 3: xxx*

*Oversubscription Criterion 4: xxx*

*Oversubscription Criterion 5: xxx*

*Oversubscription Criterion 6: xxx*

<sup>1</sup> A looked after child is a child who is in the care of a local authority in England, or is being provided with accommodation by a local authority in England in the exercise of their social services functions.

<sup>2</sup> A child is regarded as having been in state care in a place outside of England if they were accommodated by a public authority, a religious organisation or any other provider of care whose sole purpose is to benefit society.