



**ROYAL NORWEGIAN MINISTRY OF CHILDREN,
EQUALITY AND SOCIAL INCLUSION**

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**GUIDELINES FOR PROCESSING CHILD WELFARE CASES
WHERE CHILDREN HAVE TIES TO OTHER COUNTRIES**

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Guidelines for processing child welfare cases where children have ties to other countries

Many children in Norway have ties to another country and have parents or other family members living abroad. Children who are foreign nationals may stay in Norway for a short or long period of time and may have legal or illegal residence. Some families apply for protection (asylum), and some children are living in Norway because their parents are labour immigrants. They may be EEA citizens or nationals from countries outside the EEA cooperation area. The child welfare service must take such matters into consideration when assessing which child welfare measures are in the child's best interests.

Child welfare cases that involve children with foreign citizenship or children who have strong ties to other countries may be challenging for the child welfare service. It may be difficult to have these cases adequately examined, and it may be demanding to assess which measures will be in the child's best interests. These type of cases may also attract a great deal of political attention and media focus abroad. The circular will provide information about how the child welfare service can handle these type of cases, including examinations, measures and the possibility of alternative follow-up of the child abroad. The circular also include a chapter on how to deal with children who apply for asylum or who are illegally residing in Norway. One chapter also deals with the child welfare service's cooperation with the immigration authorities.

An increasing number of foreign service missions in Norway would like to assist children or parents in child welfare cases. For example, foreign consular missions want to have access to information in individual cases, participate in meetings with the child welfare service, witness cases in the County Social Welfare Board and meet children under the care of the child welfare service. The circular will provide information on the role foreign authorities may play in child welfare cases, and on how the child welfare service can deal with enquiries from foreign consular missions.

This circular has been written with input from the Ministry of Justice and Public Security and the Ministry of Foreign Affairs. The Directorate for Children, Youth and Family Affairs, the Directorate of Immigration, the National Office for the County Social Welfare Board and the Immigration Appeals Board have also contributed.

Main points in the guidelines

- **The child welfare service must consider the child's ties to Norway and other countries when assessing which child welfare measures are in the child's best interest.**
 - The child may be a Norwegian or foreign citizen, have permanent or temporary residence in Norway, have an on-going case processed by the immigration authorities or be legally or illegal in the country. These circumstances may have significance when assessing which child welfare measures that are in the child's best interest.
- **Good communication with parents is very important for building trust and cooperating on assistance measures.**
 - The child welfare service must ensure that the family understands the situation and the implications of the case and how the child welfare service can provide assistance. Qualified interpreters must be used in situations where there language problems may arise. Children may not be used as interpreters.
- **The child welfare service work is based on the principle of the least possible intervention, and no decision relating to the issuance of a care order is to be made unless it is necessary and in the child's best interest.**
 - A care order cannot be issued in regard to children in Norway on holiday or travelling through the country. In other cases a concrete assessment must be made as to whether the child's ties to Norway are strong enough to justify such an invasive measure.
- **The child welfare service must assess whether the child has ties to another country before initiating a care order.**
 - The child welfare service must always attempt to contact parents abroad.
 - If the child has strong ties to another country, such as family members in the country where the child is a citizen, the child welfare service must assess whether the child can be followed-up abroad as an alternative to issuing a care order in Norway.
 - How thorough such investigations are to be will depend on the circumstances in each case.
 - Currently the Child Welfare Act does not regulate placement in another country. Solutions abroad as an alternative to measures in Norway may only be an option when the parents consent to this.
- **Cooperation between the child welfare service and the immigration authorities.**
 - If the family has an on-going immigration case, the child welfare service must obtain information about the child and the family from the immigration authorities.
 - The child welfare service is encouraged to give information to the immigration authorities when this is in the child's best interest.
- **The child welfare service's processing of enquiries from foreign authorities.**

- Foreign authorities, particularly embassies/consular missions, often request to be informed about and wish to have access to their citizens who are under the care of the child welfare service (consular assistance).
 - The child welfare service shall as a general rule facilitate for consular contact when the child and the parents consent. The child welfare service may only refuse consular contact in exceptional cases if specific circumstances indicate that this would not be in the child's best interest.
- **The child welfare service should cooperate with foreign authorities, including embassies, to have the case adequately examined and to safeguard the child.**
 - The child welfare service may cooperate with foreign authorities (gain and disclose information) if the parents consent or if the child welfare service finds that cooperation would inform the child welfare case and thus be in the child's best interest.
- **Adoption requires particularly weighty grounds. In an adoption, all legal ties between a child and the biological parents and other family members are broken.**
 - The Ministry finds that no decision relating to adoption should be made against the will of the parents when the child and the parents do not have a permanent residence permit or long-term right to stay in Norway.
- **The child welfare service must contact the County Governor when advice and guidance are needed. The County Governor may consult with the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) when necessary.**
- **The Hague Convention of 1996**
 - The Government's aim is that Norway will ratify the Hague Convention of 1996 1. July 2016. The Convention arrange for cooperation and exchange of information between the Contracting States.
 - Once Norway has ratified the Convention, new regulations on voluntary placement in foster homes or institutions in other Contracting States will come into force. A child welfare case may also in exceptional cases be transferred to another Contracting State when this is deemed to be in the child's best interest.
 - A central authority will be appointed pursuant to the Convention to provide guidance to the local authorities and assist in dialogues with foreign authorities. The circular will be adjusted when the Convention enters into force in Norway.

1. Legal framework

1.1 The Constitution

Pursuant to Article 104 of the Norwegian Constitution, children have the right to respect for their human value. They have the right to be heard in matters relating to them, and their opinion should be given importance in accordance with their age and development. The child's best interests must be a fundamental consideration when actions are taken and decisions are made that concern children. Children have the right to protection of their personal integrity. The state authorities must also facilitate for the development of the child, including ensuring that the child receives the necessary security in terms of financial affairs, social matters and health, preferably in their own family.

1.2. The UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child from 20 November 1989 (the CRC) is the most important set of international rules we have for the protection of children's rights. The Convention has been embedded in Norwegian legislation in the Human Rights Act, cf. Item 2. If there is discord between the Convention and other legislation, the Convention shall have precedence, cf. Article 3 of the Human Rights Act.

Particularly relevant provisions in the Convention are Articles 2, 3, 9, 12, 20 and 21. Pursuant to the Convention, Norway is obliged to protect all children residing in Norway in a non-discriminatory manner. The best interests of the child shall be a primary consideration in all decisions that involve children. Children must be allowed the opportunity to be heard in all cases that concern them. In exceptional cases, the Convention opens for children being moved to a foster home or institution or to be adopted against the will of the parents, if it is necessary and in the best interests of the child.

1.3. The European Convention on Human Rights

The European Convention on Human Rights from 4 November 1950 has been embedded in Norwegian legislation in the Human Rights Act, cf. section 2. If there is discord between the Convention and other legislation, the Convention shall have precedence, cf. Article 3 of the Human Rights Act.

Pursuant to Article 8 of the European Convention on Human Rights, everyone has the right to respect for his or her private life and his or her family life. The right to family life according to Article 8 is not absolute. The public authorities may intervene in family life if the conditions for intervention specified in paragraph 2 of Article 8 are satisfied. The intervention must be in conformity with the law, must be necessary in a democratic society and must be based on more defined considerations. In child welfare cases this will be the consideration of the best interest of the child. What is deemed "necessary in a democratic society" will depend on the circumstances in each case. It must be assessed whether the measure is reasonable and appropriate and the measure must be considered in the light of developments in the law and society. The decisive factor is that the state apply acceptable measures to achieve the intended purpose (proportionality). Issuing a care order for a child against the will of the parents is intervention in family life. However, this may be a necessary and proportionate intervention in consideration of the child's best interests.

1.4 The Child Welfare Act

The work of the child welfare service's is regulated by the Act dated 17 June 1992 relating to Child Welfare Services (the Child Welfare Act) and its regulations. Child welfare cases in Norway must be resolved within the framework of the Child Welfare Act.

The Child Welfare Act applies to all children residing in Norway, cf. section 1-2 of the Child Welfare Act. This applies regardless of a child's citizenship, residence status or time of residence in Norway. All children in Norway must be protected against violence, abuse and neglect. The child welfare service must, however, include the ties the child and the family have to Norway and other countries in its comprehensive assessment of which measures should be taken to safeguard the child.¹ The child's best interest is a fundamental principle in the Child Welfare Act. Decisive importance must be attached to finding measures that are in the child's best interests.

The child's right to participation

Children must be given the opportunity to participate and it shall be arranged for conversations with the child. Children may have their own trustperson who shall contribute to strengthen the participation of children and young people and their influence in child welfare cases. See section 4-1 of the Child Welfare Act and the regulations on participation and trustperson.²

A child who has reached the age of 7, and younger children who are capable of forming their own opinions, shall receive information and be given an opportunity to state his or her opinion before a decision is made in a case affecting him or her. The child's opinion must be given due weight in accordance with the child's age and maturity. Children may have a special spokesperson appointed for them in cases heard by the County Social Welfare Board, cf. section 7-9 of the Child Welfare Act and its regulations. The spokesperson shall act as the voice of the child, and must be independent of the child welfare service and the child's parents.³ The County Social Welfare Board frequently appoints a spokesperson for children under 15 years of age.

A child may appear as a party in a case and exercise his or her rights as a party if he or she has reached the age of 15 and understands the subject-matter of the case. The County Social Welfare Board may grant a child under 15 years of age rights as a party in special cases. In a case concerning measures for children with behavioural problems or children who may have been subjected to human trafficking, the child shall always be regarded as a party. This is laid down in section 6-3 of the Child Welfare Act.

1.5 The Immigration Act

The conditions for foreign nationals to enter and reside in Norway are regulated by the Act of 15 May 2008 on the Entry of Foreign Nationals into the Kingdom of Norway and their Stay in the Realm (the Immigration Act) and its regulations. Foreign nationals, adults and children coming from countries outside the EEA and who intend to stay in Norway must have a residence permit if the stay lasts longer than three months.

¹ See the preparatory work Ot. prp. nr. 44 (1991-1992) p. 17 and p. 18.

² <https://lovdata.no/dokument/SF/forskrift/2014-06-01-697?q=medvirkning>

³ <https://lovdata.no/dokument/SF/forskrift/2013-02-18-203?q=forskrift+om+talsperson>

As a general rule, the Directorate of Immigration (UDI) is the first instance (after application) that determines whether the conditions for being granted a residence permit have been satisfied. A rejection by the UDI may be appealed to the Immigration Appeals Board (UNE), which is an independent appeals body. The decision-making authority may in exceptional cases be delegated to the police or a Norwegian foreign service mission. The UDI will in such cases be the appeals body if a rejection is appealed.

The grounds for being granted a residence permit in Norway may differ, and include labour immigration, education, family immigration, protection (asylum) or because there are strong humanitarian considerations or special ties to Norway (residence on humanitarian grounds). If the requirements for protection (asylum) are not satisfied, the UDI must on its own initiative assess whether there are grounds for granting a residence permit on humanitarian grounds. A residence permit grants the foreign national the right to stay in Norway and take employment here. All these grounds initially grant a time-limited (temporary) residence permit. The residence permit may constitute the grounds for a permanent residence permit pursuant to section 62 of the Immigration Act. A permanent residence permit may today be granted after three years of legal residence in Norway if certain conditions are satisfied.⁴ It has been proposed, however, that the requirement for legal residence should be raised to five years.⁵

EEA nationals have the right to stay in Norway and consequently are under no obligation to apply for a residence permit. EEA nationals may stay in Norway for up to three months provided they do not become a burden on public welfare programmes. Residence longer than three months requires that they are able to provide for themselves, for example through personal funds or employment. Family members who are not EEA nationals may be granted family reunification with EEA nationals. EEA who have had continuous legal residence in Norway for five years may be granted permanent right of residence.

Foreign nationals from countries outside the EEA who are to work or undertake business activities must have a residence permit which confers the right to work in Norway.

Consideration of the child's best interests is a fundamental consideration in all cases involving children. This is in accordance with Article 3 of the Convention on the Rights of the Child, and is explicitly embedded in key provisions in the Immigration Act, see the third paragraph of section 38 and the first paragraph of section 70. Children also have the right to be heard in cases which concern them, pursuant to Article 12 of the Convention on the Rights of the Child. Children who have turned seven years of age, and younger children who are able to form their own points of view must be informed about and given the right to be heard before a decision is made in cases that concern them, pursuant to the Immigration Act, cf. the second paragraph section 81 of the Immigration Act and section 17-3 of the Immigration Regulations.

⁴ See section 62 of the Immigration Act.

⁵ See the letter relating to the hearing from the Ministry of Justice and Public Security dated 27/03/2015 - "Høring – endringer i utlendingsloven og utlendingsforskriften – hevet botidskrav for permanent oppholdstillatelse mv. – endringer i statsborgerloven" [Hearing – Amendments to the Immigration Act and the Immigration Regulations – increased demand for time in residence for permanent residence permit etc. – Amendments to the Norwegian Nationality Act]

1.6 The Vienna Convention 1963 on Consular Relations

Norway is a party to the Vienna Convention on Consular Relations from 1963 (the Consular Convention). The Consular Convention facilitates for a consular station being able to offer assistance to its nationals abroad. Consular assistance is often defined as the services the authorities in a country can offer its citizens abroad. The consular station could be the child's embassy, general consulate or consulate (hereinafter foreign consular missions). This means that foreign consular missions in Norway may assist their own nationals in their encounter with the Norwegian authorities. The Consular Convention contains provisions relating to notification, information about and access to children who are foreign nationals. The opportunities foreign consular missions have to protect their nationals' interests in Norway must, however, be practised within the framework of Norwegian law, including the UN Convention on the Rights of the Child and the Child Welfare Act. See more about consular assistance under item 12.

1.7 International Conventions on child abduction

Norway has acceded to two international conventions on child abduction: the Hague Convention from 25 October 1980 and the European Council Convention from 20 May 1980. Both conventions are embedded in Norwegian law through the Act dated 8 July 1988 no. 72 (the Child Abduction Act). Moreover, Norway is a party in a Nordic convention that applies to the Nordic countries. The Hague Convention from 1980 is the most practical of these conventions and is the one that is applied by most countries. When a child has been abducted from the care of the child welfare service, the Norwegian authorities may demand the return of the child pursuant to the international conventions. See more about abduction from the child welfare service in item 13.2.

1.8 The Hague Convention 1996

Norway is in the process of ratifying the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. The Convention is an international set of rules for preventing and solving parental disputes, child welfare cases and child abduction cases where children have ties to several countries.

The Convention provides rules about:

- Which country's authorities may decide protection measures for children (jurisdiction)
- Cooperation and exchange of information between the countries that are party to the Convention (Contracting States). Each Contracting State must have a central authority which the countries can communicate through
- Procedures for placing children in foster homes and institutions in another Contracting State
- Procedures and terms for exceptional transfer of a case from a Contracting State to another

In June 2015, the Norwegian Parliament (Stortinget) consented to ratifying the Hague Convention of 1996. The Parliament also adopted a separate Act relating to implementation of the Convention and amendments to the Children Act, the Marriage Act and the Child Welfare Act to adapt Norwegian law to the Convention.⁶ The Ministry is planning that the

⁶ See the preparatory work, Prop. [Law Proposition] 102 LS (2014-2015) on ratification of the Hague Convention 1996 and about proposed amendments to the Children Act, the Marriage Act and the Child Welfare

Convention and amendments, hereby in the Child Welfare Act, will enter into force in Norway 1. July 2016.

When the Convention comes into force, the jurisdiction provision in section 1-2 of the Child Welfare Act will be amended in accordance with the provisions in the Convention. The general rule of the Convention is that the state where the child has its habitual residence may decide all necessary protection measures for the child. This also applies to children who are refugees or internationally displaced persons, or if the child's domicile cannot be determined. If a child resides in one country, but its habitual residence is in another country, the country where the child is present may make temporary decisions and decisions in emergency situations. This will be reflected in section 1-2 of the Child Welfare Act.

A new section 4-4a will be amended in the Child Welfare Act stating that children may be placed in a foster home or institution in other Contracting States as a voluntary assistance measure. A number of conditions must be satisfied, including that parents and children over 12 years of age must consent to the placement, and that the placement must be proper and in the child's best interests. Such placements may only be carried out as an assistance measure and not after a care order. The provision will also open for placing children in a foster home or institution in Norway according to a decision made by another Contracting State.

Articles 8 and 9 of the Hague Convention 1996 allow a child welfare case to be transferred from one Contracting State to another in exceptional cases. A transfer of a case may take place at all stages of the case, and must comply with the process rules applicable to the type of case. This means that a child welfare case may be transferred even after an enforcement measure has been decided in Norway. The important condition for transferring a case is that the other country is in a better position to assess what is in the child's best interests. Transfer of jurisdiction is regulated in Section 5 in a new Act relating to implementation of the Hague Convention 1996.

Most children and parents who apply for asylum in Norway come from countries which have not acceded to the Hague Convention 1996. As a general rule it will therefore not be possible to voluntarily place children in a foster home or institution in countries asylum seekers come from, or to transfer child welfare cases to these countries.⁷

The Ministry draws attention to the fact that the Hague Convention 1996 and the amendments to the legislation first will come into force during 2016. The Ministry will therefore provide more information about the Hague Convention 1996's application in child welfare cases when the Convention enters into force.

2. Child welfare service investigation

2.1 Good communication and cooperation with the family

The child welfare service has the right and duty to make investigations into a child's care situation when there are reasonable grounds to assume that the child or the family may need child welfare measures, cf. section 4-3 of the Child Welfare Act. The duty of the child welfare service to initiate an investigation applies to all children present in Norway.

Act which were unanimously adopted by *Stortinget* in June 2015:

<https://www.regjeringen.no/nb/dokumenter/prop.-102-1-2014-2015/id2406764/>

⁷ In 2015, 41 countries have acceded to the Convention, including all the EU countries.

It is important that the child welfare service investigates the child's total care situation and family relations. However, these investigations must not be more comprehensive than necessary, and must therefore be adapted to the level of seriousness of the case and the measures that may be relevant.

The child welfare service must have the case adequately examined within the time limits led down in the child welfare act.⁸ However, the investigation must be conducted in a careful manner, and must not have a wider scope than justified by its purpose. The child welfare service must in each case assess the scope of its investigation and the information that is necessary to determine whether there are grounds for implementing measures.

Good communication and cooperation with the family are important aspects of the child welfare service's work. The child welfare service must take into account the family's linguistic, religious or cultural background. The child welfare service must take the necessary time to get to know the family and their situation and needs.

Not all families are acquainted with the child welfare service as a public authority. It is therefore important that the child welfare service provides thorough and good information about its work, about how the family can be assisted and about the rights of children and their parents.

2.2 Using an interpreter

The Child Welfare Act authorises child welfare measures that can be implemented without the consent for children and parents. Safe proceedings and the legal rights of the private parties are therefore important in child welfare cases. In the child welfare service's work with each family, it is important that all the parties understand the details in and consequences of what is stated and written. This is important if the child welfare service is to satisfy its guidance and information duties to families and to ensure that the case is as well informed as possible before any decision is made.⁹ The child welfare service must employ qualified interpreters in situations where language problems might arise. Children may not be used as interpreters in cases being processed by the child welfare service.¹⁰

2.3 Contacting parents abroad

Today's family patterns may mean that a child may have ties to two homes. If the parents live separately, this means that the child welfare service in most cases must contact both parents to obtain the necessary information for determining the child's total care situation. Both parents, regardless of parental responsibility, shall normally be informed that an investigation has been initiated and about the grounds for the case.

The child welfare service must therefore also contact parents living abroad to inform them that an investigation has been initiated. It cannot, however, be expected that comprehensive

⁸ An investigation must be carried out without undue delay and at the latest within three months. In special cases the time limit may be six months, cf. section 6-9 of the Child Welfare Act. The child welfare service must investigate and illuminate the case pursuant to the rules in section 4-3 of the Child Welfare Act and section 17 of the Public Administration Act.

⁹ Cf. Sections 11 and 17 of the Public Administration Act.

¹⁰ The Ministry of Children, Equality and Social Inclusion has sent a hearing proposal relating to an amendment to the Public Administration Act which introduces a ban on using children as interpreters. See the hearing memorandum: <https://www.regjeringen.no/nb/dokumenter/Innforing-av-et-forbud-mot-bruk-av-barn-som-tolk-i-forvaltningsloven/id761108/>

searches should be carried out to determine where a parent abroad resides when an investigation has been initiated. However, if the child welfare service is considering to bring proceedings for a care order to the Country Social Welfare Board, it is particularly important that parents abroad are contacted.

A parent who resides abroad and wishes to have custody, including rights relating to the care of his or her child in Norway, may receive information from the child welfare service. The service can give information about the possibility of going to court pursuant to The Children Act to obtain parental responsibility and/or custody rights.¹¹

If the child welfare service has contact with both parents, the service may more easily determine the ties the child has to people in Norway and other countries, including whether the child has other family members abroad.

The child welfare service may enquire with the authorities in the country where the parent is staying to come into contact with the parent. The child's foreign service mission in Norway or a Norwegian foreign service mission abroad may assist with contact information for the local authorities abroad. The immigration authorities in the Directorate of Immigration (UDI) or the Immigration Appeals Board (UNE) may also have information of interest that has been brought to light in the immigration case. The immigration authorities may provide contact information or other information about a parent or other caregivers abroad.¹²

If one of the parents has stated that she or he does not have or does not wish to have contact with the child, the child welfare service can use this information as the basis for its further proceedings in the case.

If the child welfare service is in doubt about the family's residence status in Norway, it must obtain information from the immigration authorities. The child welfare service has a duty to have a case examined as well as possible before a decision is made.¹³ The family's residence status may impact the assessment of the child welfare case and which care solution is found to be in the child's best interests. See more about cooperation with the immigration authorities in item 7.

2.4 Contacting other caregivers or child welfare authorities abroad

The child welfare service must investigate the total care situation of the child and its family relationships. This may also include investigating of the child's other family members or network, or child welfare authorities abroad.

If the child welfare service is considering a care order and the child has strong ties to another country, the service shall assess whether the child can receive follow-up from other family members/network or authorities in that country. How comprehensive such investigations should be must be the subject of a concrete assessment based on such matters as the child's

¹¹ The Child welfare service does not have the authority to decide on parental disputes. See the Ministry's guidelines relating to the relationship between the Children Act and the Child Welfare Act: <https://www.regjeringen.no/nb/dokumenter/ny-veileder-om-forholdet-mellom-barnever/id731863/>

¹² Most children with foreign citizenship will have contact with the immigration authorities. It will therefore be probable that there is information in the immigration case about the child's ties to other countries and caregivers abroad. See more about cooperation with the immigration authorities in item 7 and about child welfare cases when families apply for asylum or are residing illegally in item 8.

¹³ See section 17 of the Public Administration Act.

ties to Norway and other countries, as well as the nature of the case. Whether the parents wish to have follow-up abroad will also impact the scope of such investigations.

The Child Welfare Act has no rules relating to placement of children abroad. The child welfare service therefore cannot place a child abroad as a measure pursuant to the Child Welfare Act. If a child is to be taken care of abroad as an alternative to a child welfare measure in Norway, this must be undertaken in cooperation with the parents.¹⁴

See more about alternative follow-up abroad in item 4.

3. Child welfare measures

3.1 Assistance measures

The child welfare service can provide assistance measures for all children present in Norway, regardless their citizenship, residence status or residence time in Norway. This also applies to children and families who live in asylum reception centres and children with illegal residence.¹⁵

The child welfare service shall provide assistance measures when a child due to circumstances in the home or for other reasons has special needs for assistance, cf. section 4-4 of the Child Welfare Act. The purpose of providing assistance measures is to give the child good living conditions and opportunities to develop.

The child welfare service works according to the principle of the least possible intervention. This means that it should not be applied more invasive measures than necessary. Some parents may need help in strengthening their parenting skills and the relationship between the child and the parents. The child welfare service can offer a number of parental-supporting measures. It is important that the child welfare service has a good dialogue with the parents and that the parents have the opportunity to cooperate on assistance measures. This may have a preventive effect and may be an alternative to issuing a care order.

In some cases assistance measures are insufficient to improve the child's care situation. In such cases the child welfare service may decide that the child, shall move outside the home for a temporary period of time, for example with other family members or network, cf. section 4-4 fourth paragraph of the Child Welfare Act. Such removal requires consent from the parents and the child if the child is a party in the case.¹⁶ For some families voluntary placement outside the home combined with other follow-up measures provided to the family may contribute to positive changes so that a care order is unnecessary.

Some families may have relatives abroad who the parents would like to have as caregivers for the child instead of moving the child to a foster home in Norway. At present time, however, there are no rules in the Child Welfare Act that regulates placements of a child in a foster home or institution abroad as an assistance measure.¹⁷ If a child is to be given due care

¹⁴ See item 1.8 about the Hague Convention 1996 and amendments to the Child Welfare Act which open for voluntary placements and transfer of cases to other convention states.

¹⁵ See more about child welfare measures when families apply for asylum or have illegal residence in item 8.

¹⁶ If the child is a party in the case, the child must also give its consent. See more about children's co-participation under item 1.4. From 1 April 2016 section 4-4 fourth paragraph will become sixth paragraph.

¹⁷ Item 1.8 relating to the Hague Convention 1996 should nevertheless be consulted as well as section 4-4a of the new Child Welfare Act relating to voluntary placement in a foster home or institution abroad.

abroad as an alternative to a child welfare measure in Norway, this must be arranged in cooperation with the parents. See more about alternative follow-up for the child abroad in item 4.

3.2 Ordering assistance measures

The Norwegian Parliament (Stortinget) has adopted amendments to the Child Welfare Act and widened the scope for ordering assistance measures. The purpose of the amendments is to improve the child's situation and prevent more invasive measures such as a care order, if this can be avoided. It will be possible to order assistance measures for anyone present in Norway, regardless of the child's citizenship, residence status or residence time in Norway. Through this amendment of the Act the child welfare service will have the opportunity to intervene with assistance in the home at an earlier stage, also in the cases where the parents do not wish to have assistance. This is consistent with the basic principles behind the Child Welfare Act where it is stated that children should grow up with their biological parents and assistance primarily should be given in the home.

The amendments to the Act are scheduled to enter into force on 1 April 2016.

3.3 Interim decisions in emergencies

The head of the child welfare administration or the prosecuting authority may make a temporary interim decision to place a child outside the home when there is danger that the child may suffer material harm by remaining in the home, cf. section 4-6 second paragraph of the Child Welfare Act. Interim decisions can be made relating to all children present in Norway, regardless of the child's citizenship, residence status or residence. Also children with weak ties to Norway, for example children who are passing through the country or on holiday, must be given assistance in an emergency situation.¹⁸

To pass a care order, the child must have stronger ties to Norway than a holiday visit.¹⁹ If an interim decision has been made for a child on holiday or another short-term stay in Norway, the service must as a general rule contact the child welfare authorities in the country where the child normally resides and request that they follow up the child and the family. See more about the opportunity for alternative follow-up abroad in item 4.

3.4 Care orders

The County Social Welfare Board may make a decision to deprive parents of the care for the child (care order) if the child is subjected to serious care deficiencies pursuant to the conditions in section 4-12 first paragraph of the Child Welfare Act. Examples of serious care deficiencies are when the child is mistreated or subjected to serious abuse in the home or when there are other serious deficiencies in the daily care given to the child. A care order may only be made when it is necessary due to the child's current situation. A care order may not be made if satisfactory conditions can be created for the child through the provision of assistance measures, cf. section 4-12 second paragraph of the Child Welfare Act. In accordance with section 4-1, decisive importance shall be attached to finding measures that are in the child's best interests.

The Child Welfare Act applies to all children in Norway. It does not emerge from the Act that the child must have special ties to Norway to pass a care order. The preparatory documents for the Act state, however, that intervention of a more long-term nature may only be relevant

¹⁸ See the preparatory work, Ot. prp. nr. 44 (1991-1992) p. 18.

¹⁹ See the preparatory work, Ot. prp. nr. 44 (1991-1992) p. 18.

in the case of long-term residence in Norway.²⁰ A care order will often be a long-term measure. However, when a stay is considered as long-term, and whether or not this requires legal residence in Norway, is not an issue mentioned in detail in the preparatory documents for the Act. The Ministry finds that the County Social Welfare Board cannot make decisions about a care order for children passing through Norway or on holiday here. In other cases the County Social Welfare Board must assess whether the child has sufficiently strong ties to Norway for the Norwegian authorities to decide on a care order. The County Social Welfare Board must undertake a concrete assessment based on the circumstances in each case. Relevant issues in the assessment will be the grounds for the stay, the length of the stay and the child's other ties to Norway.²¹

The child welfare service must undertake thorough assessments as to whether a child is subjected to serious care deficiency, and whether a care order is necessary and in the child's best interests. Before the child welfare service brings a case before the County Social Welfare Board, it is important that the child welfare service investigates whether the child has ties to other countries. See more about alternative follow-up for the child abroad in item 4. If the child welfare service is in doubt about the family's residence status in Norway, the child welfare service must contact the immigration authorities to obtain more detailed information. See more about cooperation with the immigration authorities and care orders for children applying for asylum or staying in Norway illegally in items 7 and 8.

3.5 Deprivation of parental responsibility

When the County Social Welfare Board has decided a care order, it may also decide to deprive the parents of their parental responsibility entirely, cf. section 4-20 first paragraph of the Child Welfare Act. Deprivation of parental responsibility means that parents no longer have any right of co-determination in decisions affecting the child. When parents are deprived of parental responsibility, a new guardian must be appointed for the child.

The Child Welfare Act applies to all people present in Norway, but the main principle is that intervention pursuant to the Child Welfare Act must be adapted to the duration of the stay in Norway.²² The child's ties to Norway will therefore be of importance for the assessment of whether the County Social Welfare Board can deprive the parents of their parental responsibility.

Deprivation of parental responsibility is a highly invasive measure, and the Ministry finds that a decision for deprivation of parental responsibility can only be made in very special cases when the child and the parents do not have a permanent residence permit or leave to remain in Norway.²³ A concrete assessment must be undertaken according to the circumstances in each case. It may, for example, be necessary and in the child's best interests to deprive the parents of their parental responsibility in situations where the parents have disappeared so that important decisions that are part of parental responsibility can be dealt with by a guardian.

If the child welfare service is in doubt about the family's residence status, the child welfare service must obtain information from the immigration authorities about the status in the immigration case and the child and the family's situation and family relationships to have the

²⁰ See the preparatory work, Ot. prp. nr. 44 (1991-1992) p. 18.

²¹ See item 1.8 relating to amendments to section 1-2 of the Child Welfare Act in accordance with the Norwegian ratification of the Hague Convention 1996.

²² Cf. the preparatory work Ot. prp. nr. 44 (1991-1992) p. 17-18.

²³ See more about the Immigration Act in item 1.5

case adequately informed before a decision is made. Such information must be submitted to the County Social Welfare Board.

3.6 Forced adoption

When the parents have been deprived of their parental responsibility for the child, the County Social Welfare Board may consent to adoption against the will of the parents if the conditions in section 4-20 second and third paragraphs are satisfied. Consent may be granted if it must be found probable that the parents will be permanently unable to give the child appropriate care, or if the child has gained such ties to persons and the environment where it is that, according to a total assessment, it is found it may cause serious problems for the child if it is moved. Moreover, it is required that the adoption will be in the child's best interests, that the adoption applicants have been foster parents for the child and have proved to be fit to raise the child as their own. It is also required that the conditions for granting adoption after the Act relating to Adoption (Adoption Act) are present.²⁴ It is, for example, a requirement that children 12 years of age or older must give their consent. A decision for forced adoption must be in compliance with the UN Convention on the Rights of the Child and the European Human Rights Convention, including Article 8 relating to the right to family life.

Forced adoption is a highly invasive measure which means that the legal ties between parents and the child and other family members are broken. The Child Welfare Act applies to all children in Norway, but the main principle is that intervention pursuant to the Child Welfare Act must be adapted to the duration of the stay. The child's ties to Norway will therefore be of importance for the assessment as to whether the County Social Welfare Board can consent to adoption against the will of the parents.

The Ministry finds that no decision shall be made concerning adoption against the will of the parents when the child and the parents do not have a permanent residence permit or leave to stay in Norway.²⁵ If the child welfare service has brought a case to the County Social Welfare Board concerning forced adoption where the child and the family have an immigration case, the child welfare service must submit to the Board information from the immigration authorities about the status in the immigration case and the child and the family's situation and family relationships.

The Child Welfare Act does not prohibit decisions about adoption against the will of the parents when a child has strong ties to another country, for example through citizenship. The child's ties to another country will nevertheless be a key issue in the assessment of whether forced adoption is necessary and in the child's best interests, considering, for example, the child's language, culture and religion. In accordance²⁶ with section 18 of the Adoption Act, importance must also be attached to whether it will entail a considerable disadvantage for the child if the adoption not will be valid in the country that the child has strong ties to. This must be included as an element in the assessment of whether or not the adoption is in the child's best interests, cf. section 22 and section 18 of the Adoption Act.

²⁴ The Adoption Act of 28 February 1986. <https://lovdata.no/dokument/NL/lov/1986-02-28-8>

²⁵ See the statements by the Ministry of Children, Equality and Social Inclusion relating to forced adoption in the preparatory work, Ot. prp. no. 64 (2004-2005) *Om lov om endringer i lov 17. juli 1992 nr. 100 om barneverntjenester* [On the Act relating to amendments to the Act dated 17 July 1992 no. 100 on Child Welfare Services] and *Lov 13. desember 1991 nr. 81 om sosiale tjenester (sosialtjenesteloven) m.v.* [Act dated 13 December 1991 no. 81 relating to Social Services (the Social Services Act) etc.] p. 40.

²⁶ The Adoption Act of 28 February 1986. <https://lovdata.no/dokument/NL/lov/1986-02-28-8>

A child with foreign citizenship who is adopted by a Norwegian national becomes a Norwegian citizen when it is adopted, if the child is under 18 years of age at the time of the adoption. The child is automatically granted Norwegian citizenship, but will also retaining its original citizenship.²⁷

4. Alternative follow-up of the child abroad

4.1 The child welfare services assessment in care order case

For some children it will be in the child's best interests that the parents receive assistance from family/networks abroad or from foreign child welfare authorities to provide care for the child rather than issuing a care order and placement in Norway. This will depend on the child's ties to Norway and the child's ties to another country, for example through citizenship, earlier residence, language, culture, family and network. The child welfare service must consider the child's ties to Norway and other countries when assessing which measures are necessary and in the child's best interests.

Currently, the Child Welfare Act does not have rules about placing children in a foster home or institution abroad as a measure pursuant to the Child Welfare Act. The service can therefore not decide that the child shall leave Norway or receive follow-up from people or authorities abroad. If the child is to be given care abroad as an alternative to a child welfare measure in Norway, this must be carried out in cooperation with the parents. Only the parents can decide that a child shall move abroad. Parents may decide this by virtue of their parental responsibility, provided that the child welfare service has not taken over the care for the child, either temporary by an interim decision or after care order. If the parents do not wish that their child should be given care abroad, the child welfare service should nevertheless enter into dialogue with the parents and foreign authorities to investigate whether it is in the child's best interests to receive follow-up abroad.

If the child welfare service considers initiating a care order case, and the child has strong ties to another country, it is important that the service assesses whether the child may receive follow-up from other family members/network or authorities in the country in question. The scope of such investigations must be based on a concrete assessment of the child's ties to Norway and other countries. The child welfare service cannot undertake such investigations outside Norway's borders, and is therefore dependent on cooperation with the child's parents and authorities abroad. The child welfare service may request information and disclose information to the foreign authorities if the parents consent to this, or if the purpose of the information exchange is to ensure the child's interests.²⁸ The child welfare service may also contact a Norwegian foreign service mission in the country in question for assistance.

According to the information from the parents or foreign authorities, the child welfare service may, for example, investigate whether there are aunts, uncles or grandparents abroad who wish to take care of the child, or whether the child may receive assistance from foreign child welfare authorities.

²⁷ The child will then have dual citizenship. See *Lov om norsk statsborgerskap 10. juni 2005 nr. 51 (statsborgerloven)* [Section 5 of the Norwegian Nationality Act]. See the preparatory work, Ot. prp.nr 41 (2004-2005) p. 75.

²⁸ See more about cooperation and information exchange with foreign authorities in item 9.

The Norwegian immigration authorities may also have relevant information about family relationships in Norway or abroad that has been brought to light in the immigration case and about other circumstances that are important to be aware of, such as relevant information about the country in question. If the family has an immigration case or the child welfare service is in doubt about the family's residence status, the child welfare service shall obtain information from the immigration authorities.

If the child welfare service finds that the best solution will be that the child receives follow-up abroad, there is no need for the service to proceed with a care order case. The Ministry is aware that in these cases the child welfare service will have to make challenging assessments. However, these assessments are necessary to determine the type of follow-up that will be in the child's best interests.

Parents may also cooperate with their foreign service mission and the authorities in their country of origin to obtain information about alternative follow-up abroad. The parents should submit such information to the child welfare service. The child welfare service is responsible for having the case adequately informed and must therefore assess information from the parents about alternative follow-up abroad. If the child welfare service still chooses to raise a care order case, information about alternative follow-up abroad and the assessment made by the child welfare service must be attached to the petition for measures submitted to the County Social Welfare Board. The parents may also provide information through their lawyer in their notice of intention to defend.²⁹

The County Social Welfare Board must undertake a comprehensive assessment of all information in the case and determine whether the conditions for a care order are satisfied, including whether the care order will be necessary and in the child's best interests. In this assessment it will be important to ascertain whether or not the parents can give the child proper care abroad, possibly with assistance from family/network or foreign authorities.

4.2 Revocation of a care order

A care order must be revoked for the parents to legally take their child abroad. This also applies if the parents wish to obtain assistance from family/network or authorities abroad to take care of the child. If the parents take the child out of Norway before a care order is revoked, this would constitute an illegal abduction from the child welfare service.³⁰ Only the County Social Welfare Board or the Courts can revoke a care order, cf. section 4-21 of the Child Welfare Act. The County Social Welfare Board can only return the child to its parents, and not directly to other persons or foreign authorities.³¹

Changes in circumstances in the child's and family's situation may indicate that the child welfare service or parents raise a case to revoke the care order. Some parents may have had a temporary work permit which expires while the child is under the care of the child welfare service. Others may have been in an asylum-seeker phase, and the parents' application for a residence permit may have been rejected and they have to leave Norway (see more about this under item 8). These are examples of significant changes in the child's situation which may suggest that the County Social Welfare Board must evaluate the case again. The child welfare

²⁹ Cf. section 7-11 of the Child Welfare Act.

³⁰ See more about abduction from the child welfare service in item 13.2 and on: www.barnebortforing.no

³¹ When Norway ratifies the Hague Convention 1996 child welfare cases will be able to be transferred to other convention countries, see item 1.8.

service has particular responsibility for assessing whether it should petition the County Social Welfare Board to revoke the care order.

The County Social Welfare Board must revoke a care order when it is highly probable that the parents are able to provide the child with proper care. The decision shall, nonetheless, not be revoked if the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her, see section 4-21 first paragraph of the Child Welfare Act. Decisive importance must be attached to consideration of what is in the child's best interests, cf. section 4-21 first paragraph of the Child Welfare Act.

It cannot be ruled out that in some cases parents are able to give the child proper care with assistance from family/network or authorities abroad. However, this must be considered in comparison to the child's ties to the foster home (or institution). A concrete evaluation must be undertaken as to whether it will be in the child's best interests to revoke the care order. In this assessment it will be important to consider the grounds for the care order, what type of follow-up and care situation the child may have abroad, the reason why the parents are leaving Norway and whether access that has been determined by the County Social Welfare Board or the court can continue. Other relevant issues may be whether the child will lose contact with its family and whether it may be difficult to maintain the child's language, religion and culture.

5. Foster home placement

5.1 Foster home placement in the child's family or close network

When voluntarily placement has been ordered or a care order has been issued, most children move to a foster home. When selecting a foster home for a child, decisive importance must be given to what is in the child's best interests. Consideration must be given to the child's special nature and the need for care in a stable environment. Appropriate consideration must also be given to the child's ethnic, religious, cultural and linguistic background, the probable duration of the placement, and whether it is possible and desirable that the child has access to and other contact with the parents, cf. section 4-15 of the Child Welfare Act. The child welfare service must assess whether the foster parents have the necessary qualities to take care of the child's particular needs, see the Regulations relating to Foster Homes (the Foster Home Regulations).³²

If family members serve as the foster home for a child, this may give stability and security for many children, and may provide better opportunities for taking care of the child's linguistic, cultural and religious background. Moving a child to other family members will therefore be in the best interests of many children.

The child welfare service must always assess whether a person in the child's family or close network may be selected as foster parents, cf. section 4 second paragraph of the Foster Home Regulations. The child welfare service must therefore assess the opportunity for such placement. This generally applies both when members of the child's family or close network ask to be assessed and when no such a request has been presented.

³²The Foster Home Regulations: <https://lovdata.no/dokument/SF/forskrift/2003-12-18-1659>

The child's family or close network must also satisfy the general requirements posed for foster parents in section 3 of the Foster Home Regulations.³³ However, it must be possible to deviate slightly from these requirements if it undoubtedly will be in the child's best interests to be placed with the family or network. When placing a refugee child with relatives, due to their situation, the relatives may not always satisfy the requirements relating to a sound financial situation, large enough dwelling, social network etc.

The Ministry would like to draw attention to the fact that pursuant to the rules and regulations in force, there are no rules for placing a child with family or network abroad as a measure pursuant to the Child Welfare Act. However, see item 4 about the possibility for alternative follow-up abroad.

5.2 Consideration of the child's ethnic, religious, linguistic and cultural background

The child welfare service must consider the child's ethnic, religious, linguistic and cultural background when choosing a foster home. If the child belongs to a linguistic or religious minority and no persons in the family or close networks can serve as foster parents, it will not always be possible to find a foster home with the same background as the child. A foster home which the parents clearly object to, for example for religious or cultural grounds, should be avoided whenever possible.

If the foster parents have another background than the child, the child welfare service must still take into account the child's ethnic, religious, linguistic and cultural background when the child is living in a foster home. The child welfare service is responsible for following up children in foster care. The child welfare service must therefore assess whether the child needs measures to provide for its language or cultural background in the daily life. Some children and parents may for example wish that the child is given language teaching in their native language or that the child may take part in activities connected to its cultural background. The child welfare service may cooperate with parents or potential foreign service missions (embassies) or communities in Norway on implementing measures. The child shall have the opportunity to state his or her opinion relating to decisions that concern the child, cf. section 6-3 and section 4-1 second paragraph of the Child Welfare Act and its regulations.

6. Rights of access to a child in alternative care

6.1 Using native language

As a general rule, children and parents have the right of access to each other after the issuance of a care order, cf. section 4-19 of the Child Welfare Act. The County Social Welfare Board determines whether and how often there is to be access, and whether this access should be provided under supervision.

Children and parents may normally communicate in their native language during their access. If the County Social Welfare Board determines that access should be conducted with

³³ Foster parents must in particular have the ability, time and energy to give the child a safe and good home. The foster parents must have a stable life situation, general good health and good cooperative abilities. They must also have adequate economy, housing and a social network that allows the child the opportunity for activities in life. Foster parents must have good conduct and produce a comprehensive certificate of good conduct issued by the police, see section 6-10 third paragraph of the Child Welfare Act.

supervision, it may also decide that an interpreter should be present during the access sessions.

6.2 Access to siblings

When it is determined that siblings will be moving in foster home, the child welfare service shall aim at finding a foster home that can accommodate both / all children, unless this is not in their best interest.

When children live in foster care, the child welfare service must facilitate for access with siblings when consideration of the child does not indicate otherwise. This is stated in section 4-16 of the Child Welfare Act. Access to siblings may enhance continuity and preserve (family) belonging. For many children, siblings are a source of friendship and emotional support in the early-development years. Siblings may have mutual positive influence on learning, development and behaviour. Spending time with siblings may be valuable during the foster placement and for life as an adult. It is important, however, that no one should be forced to have access with their siblings.

6.3 Access to other family members

It is only a limited possibility to get a right to access to the child established by the County Social Welfare Board for anyone other than the child's parents. If one or both parents have very limited right of access to the child, or one or both of the parents are dead, relatives, or others that the child has strong ties to, can require that the County Social Welfare Board will decide whether the person should be entitled to access to the child.

Relatives or others that the child has strong ties to that want to visit a child in a foster home or institution, can still turn to the Child Welfare Service with their request. The Child Welfare Service can allow for visits if the service considers that it is best for the child and it is not contrary to the County Social Welfare Board decision.

6.4 Coverage of expenses for access when the parents live outside Norway

Each municipality shall make available the necessary allocations to provide the services and measures that the municipality is responsible for according to the Child Welfare Act, cf. section 9-1. Access is a measure pursuant to the Act, and the municipality must therefore cover the costs that are necessary to facilitate access. This is generally also the case if the parents live abroad.

Whether it is necessary to cover parents' travel expenses for access will depend on a concrete and comprehensive assessment of each case. It must inter alia be assessed what is reasonable when considering the parents' financial situation. Other aspects that may be relevant in the assessment are the extent of the travel expenses, the parents' influence on the choice of where the child has been placed, the frequency of the access and whether the parents have been ordered to pay fostering contributions, cf. section 9-2 of the Child Welfare Act. In cases where the parents have low or little income, there might be situations where even minor expenses will have to be covered by the child welfare service.

Access between children and parents is important, and it would be unfortunate if an access arrangement deemed to be in the child's best interests cannot be carried out due to the parents' inability to cover travel expenses. However, this must always be the subject of a concrete assessment.

If the parents must leave Norway because they do not have a residence permit or leave to stay while the child is under the care of the child welfare service, the Ministry generally finds sound reasons for the child welfare service to cover access expenses. However, this must be determined according to a concrete assessment, considering such aspects as parental finances and the grounds for the parents' departure from Norway.

A decision to cover expenses in connection with access is an individual decision. Rejection of an application to cover expenses may therefore be appealed to the County Governor.

6.5 Visa for exercising rights of access in Norway

If the parents must leave Norway because they do not have a residence permit, it may be difficult to exercise access rights. For many it will be necessary to have a visa to enter Norway, including when exercising one's right to access. This will depend on which country a parent moves to. The immigration authorities are the ones who decide the parents' application for a visitor's visa.

Due to immigration regulations visas should, as a general rule, not be granted to parents whose application for protection (asylum) has been rejected. Pursuant to the Immigration Act, particular importance must, however, be attached to children's need for contact with their parents when considering whether a Schengen-visa should be granted. The Directorate of Immigration (UDI) therefore maintains a liberal visa policy when the purpose of the visit in Norway is to exercise one's right of access to one's children.

7. Cooperation with the immigration authorities

7.1 The child welfare authorities and the immigration authorities

The child welfare authorities are the agency with the competence to make child welfare measures. The County Social Welfare Board, or the Norwegian courts, in the event of an appeal, can decide that the child shall be taken into care by the child welfare service. The immigration authorities, represented by the Directorate of Immigration (UDI) and the appeals body, the Immigration Appeals Board (UNE), determine whether children and parents who have applied for protection (asylum) may be granted a residence permit in Norway.

Consideration of what is in the child's best interests is a fundamental principle for decisions made by both the child welfare authorities and the immigration authorities. It is important that both these authorities are well informed about the child and the family's situation before making decisions that affect the child. Therefore it is important that there is a good dialogue between the child welfare authorities and the immigration authorities when a family has both a child welfare case and an immigration case, and that this dialogue is established as early as possible.

7.2 Obtaining information from the immigration authorities and the reception centre

If the child welfare service is concerned about a child and the family has an on-going immigration case, or the child welfare service is in doubt about the family's residence status, the child welfare service shall contact the immigration authorities as early as possible in its investigations. The immigration authorities (UDI or UNE) will have information about the status in the child's and the parents' immigration case. The child welfare service has a duty to have the child welfare case adequately examined. If the family has an immigration case, information about the status in the immigration case can be particularly relevant when

assessing the family's situation and possible needs for child welfare measures. The immigration authorities also have other information which may be relevant for the child welfare case and the assessment of what is in the child's best interests, such as information about any family members and conditions in the country of origin.³⁴ The rules governing confidentiality do not impede the child welfare service from obtaining information from the immigration authorities to inform the child welfare case.

The child welfare service should also obtain information from and cooperate with the asylum reception centre if the family is living in an asylum reception centre. For example, reception centre staff may have relevant information about the child's care situation according to observations of or conversations with the family.

7.3 Disclosing information about the child welfare case to the immigration authorities

The principle of the child's best interests is a fundamental consideration when the immigration authorities assess whether the child and the parents may be granted a residence permit pursuant to the Immigration Act. Information used as the grounds for a decision pursuant to the Child Welfare Act, and the degree to which the child can be assured necessary and proper care in the country of origin, are circumstances that are deemed important for this assessment. It is therefore important for the immigration authorities to know whether there is an active child welfare case, also when the case is in an early stage, such as in an investigation phase or when assistance measures are being considered or implemented. It will be particularly important that the immigration authorities are aware that the child welfare service is considering to initiate a care order case. The outcome of the immigration case may also impact the assessment of the child welfare case.

As a general rule, the child welfare service has a duty of confidentiality about information in child welfare cases, including in relation to other Norwegian authorities.³⁵ Information from the child welfare service to the immigration authorities should therefore as a general rule only be disclosed with the consent of the parents and children who are parties in the case. The child welfare service may disclose information to others if the person who has the right to demand confidentiality consents to this, cf. section 13 b no. 1 of the Public Administration Act.

The child welfare service should inform the parents about the importance of making the immigration authorities aware of the fact that the family has a child welfare case. It is important that all relevant information about the family's situation is known to the immigration authorities (UDI/UNE). Information about the child welfare case may be important for the outcome of the immigration case. If the family is applying for asylum, information about the child welfare case may also be important for decisions relating to offering the family suitable housing or other assistance while seeking asylum. The child welfare service should endeavour to obtain consent from the parents if the service wishes to disclose information to the immigration authorities.

³⁴ The immigration administration's expert office for country information (Landinfo) has much general information about conditions in different countries. Landinfo also has information about different cultural matters relating to the care of children and child welfare in other countries, see www.landinfo.no.

³⁵ The point of departure is that information in a child welfare case concerns personal matters under the obligation of confidentiality pursuant to 6-7 of the Child Welfare Act, cf. sections 13 to 13e of the Public Administration Act.

The child welfare service may, however, also make information known to other administrative bodies without the consent of the parents if it is necessary for carrying out the child welfare service's duties, or for preventing material danger to life or serious harm to any person's health, cf. section 6-7 third paragraph of the Child Welfare Act. This means that the child welfare service may give information to the immigration authorities, including about a person's contact with the child welfare service and about decisions made if the information is given to facilitate the child welfare service's duties. The primary duty of the child welfare service is to ensure that children living under conditions that may harm their health and development receive assistance and care at the right time. The child welfare service thus has an important responsibility for taking care of and protecting children in vulnerable situations. This means that it can be relevant to give information about a child welfare case to the immigration authorities in connection with the processing of the child's and parents' immigration case.³⁶ Such disclosure requires that the child welfare service considers it necessary to safeguard the child's best interests.

7.4 Cooperation in care order cases

If the child welfare service considers initiating a care order case, it is particularly important that the service obtains relevant information from the immigration authorities. Such information must be included in the assessment of whether the child welfare service should initiate a care order case. It will also be important for the immigration authorities to obtain information about the child welfare case so it can have all relevant information for assessing what is in the child's best interests in the child's and parents' immigration case.

If the child welfare service consider initiating a care order case and the family has an ongoing immigration case, typically an application for a prolonged work permit or application for asylum, the child welfare service should contact the immigration authorities to clarify whether the immigration case can be given priority processing. In this way the child welfare service will have the family's residence status clarified before a possible case relating to a care order. However, the immigration authorities cannot guarantee that immigration cases can be given priority and processed within the time limits that apply for the child welfare case. If the child welfare service raises a care order case with the County Social Welfare Board, the information from the immigration authorities must be submitted to the County Social Welfare Board.

If the immigration case cannot be decided before a care order case is heard by the County Social Welfare Board, the immigration authorities may instead assess whether the immigration case can be put on hold or grant the parents a temporary residence permit until the care order case has been processed.

In a care order decision the County Social Welfare Board may presuppose that the child welfare service will take the initiative to have the case processed again if substantial changes occur in the child's situation, for example if the child and the parents have different outcomes with respect to their applications for residence.

In cases where the child welfare service has taken over care of a child before an immigration case has been decided, the child welfare service has a particular responsibility for considering

³⁶ See the statements made by the Ministry in the preparatory work, Ot. prp. nr. 28 (2007–2008) *Lov om endringer i lov 17. juli 1992 nr. 100 om barneverntjenester mv* [Act relating to amendments to Act dated 17 July 1992 no. 100 relating to child welfare services etc.]. (Care for unaccompanied minor asylum seekers until settlement or return), page 49. <https://www.regjeringen.no/nb/dokumenter/otprp-nr-28-2007-2008-/id496950/>

what is in the child's best interests, also in an immigration case. After the issuance of a care order, the child welfare service has the ongoing and comprehensive responsibility for following up the child, cf. section 4-16 of the Child Welfare Act. Information that may be important in the immigration case which the immigration authorities (UDI/UNE) should be informed about includes:

- the grounds for and estimated duration of the care order
- the child's ties to the parents' and the parent's access rights
- the child's ties to the foster home

Such information will be relevant when the immigration authorities assess an immigration case. If the County Social Welfare Board makes a care order decision after a final rejection of the application for a residence permit, this may form grounds for reassessing the child's (and possibly the parents') immigration case. Information about the child welfare case will be new information for the immigration authorities, and the parents have the opportunity to request re-examination of the immigration case. Consideration of the child's best interests shall, as mentioned, also be a fundamental consideration when the immigration authorities make decisions pursuant to the immigration rules and regulations.

8. Child welfare cases when families apply for protection (asylum) or their application for a residence permit has been finally rejected (illegal residence)

8.1 Families applying for protection (asylum)³⁷

Pursuant to the UN Child Convention, Norway is obliged to protect all children in Norway, including children who apply for asylum. It would be a violation of our obligations pursuant to international law if children in Norway were subjected to a serious deficiency of care without state intervention.

The child welfare service must follow the general rules for processing a child welfare case when a family applies for asylum in Norway. There are, however, special matters that must be considered in these cases.

The Child Welfare Act applies to all children who stay in Norway, including children in an asylum-seeker phase. The child welfare service must include the family's residence status and situation in a comprehensive assessment to determine whether the child/family is in need of child welfare measures, and if so, which measures are to be initiated to safeguard the child. Decisive importance must be attached to what is in the child's best interests.

Families in an asylum-seeker phase are often in a vulnerable and difficult situation. It is challenging to arrive in a foreign country where one does not know the language and culture, and has no network or job to go to. Many experience loss and trauma. It can also be mental strain to wait for the outcome of an asylum application, to be rejected or to be notified of a

³⁷The child welfare service's responsibility for unaccompanied minor asylum seekers is not especially dealt with in this circular. Refer to the circular from the Ministry of Children, Equality and Social Inclusion Q-06/2010 *Barneverntjenestens ansvar for enslige mindreårige asylsøkere og andre mindreårige personer i mottak, omsorgssentre og kommuner* [The child welfare service's responsibility for unaccompanied minor asylum seekers and other minors in reception centres, care centres and municipalities]: <https://www.regjeringen.no/nb/dokumenter/barneverntjenestens-ansvar-for-enslige-m/id629534/>

final rejection with the obligation to return to the country of origin. All in all, an asylum-seeker situation may be a challenging situation and may influence the parental caregiving ability, thus being a situation-specific temporary deficiency in one's caregiving ability. This is something the child welfare service must consider and assess when meeting the family in question. Many parents may need special follow-up and guidance in handling the parental role in this demanding situation.

If employees at asylum reception centres report on concern for a child, it is important that the child welfare service follow-up and obtains necessary information from the immigration authorities/asylum reception centres. The child welfare service shall request information from the immigration authorities if the family has an ongoing immigration case. The immigration authorities have information about the status in the immigration case and may have other information about the family's situation or conditions in the country of origin. See more about cooperation with the immigration authorities in item 7.

The child welfare service shall provide assistance measures and make interim decisions for children who are in need of these measures, also when children are staying in an asylum reception centre. It is particularly important that parents are well informed about the work of the child welfare service, and that they are given the opportunity to cooperate on assistance measures. Parents and children in an asylum-seeker phase will often have little knowledge about Norwegian society and the child welfare service as a public authority. Child welfare service officials must spend as much time as necessary on informing children and parents about the duties and work of the service so that the parents can understand how the service may help the family. The child welfare service must use qualified interpreters in situations where language problems may arise. Children shall not be used as interpreters.

Some parents may come from cultures with views on rearing children that differ from the Norwegian views. In such situations it is important that the child welfare offer service family counselling as an assistance measure.³⁸ Some asylum reception centres may also contribute by allowing the family to move to normal flats connected to the asylum reception centre (so-called decentralised asylum reception centres) if extra support from the child welfare service is necessary in the home. Voluntary placement in a foster home combined with measures supporting the parents may contribute to positive changes in the family. The child welfare service should in this context investigate whether the child has other family members or a network in Norway that the child may possibly live with for a temporary period of time, cf. section 4-4 fourth paragraph and section 4-7 of the Child Welfare Act. See also item 5.1 on foster home placement in family and close networks.

If the child welfare service is seriously concerned about the child, it is important to investigate whether the child's care situation is situation-determined and whether it is possible to improve the situation with assistance measures. The child welfare service shall not initiate a care order case if satisfactory conditions can be created for the child by assistance measures. Often, assistance measures may not serve as a genuine alternative unless the parents have received proper information and have been given the opportunity to cooperate.

In some cases, however, it will be necessary and in the child's best interests that a care order decision is made. This must be founded on a concrete assessment in each individual case. In

³⁸ Much general information about different cultural circumstances relating to caregiving for children is available from the country database to the immigration administration's expert office for country information (Landinfo): www.landinfo.no. Landinfo is administratively under the UDI.

the assessment it is, as mentioned above, necessary to bear in mind the family's special situation as asylum seekers.

If the child welfare service is assessing a care order, it is particularly important that the service obtains relevant information from the immigration authorities and the asylum reception centre. If a care order case is brought before the County Social Welfare Board information from the immigration authorities must be submitted to the Board. See more about cooperation with the immigration authorities in item 7.

As mentioned above, the County Social Welfare Board may decide to deprive parents of parental responsibility and consent to adoption against the will of the parents. This is a very invasive measure. The Ministry is of the opinion that only in very special cases may a decision be made about deprivation of parental responsibility when the child and the parents do not have a permanent residence permit or permanent leave to stay in Norway. A concrete assessment must be undertaken based on the circumstances in each case. The Ministry is furthermore of the opinion that measures relating to adoption against the will of the parents shall not be made when the child and the parents do not have a permanent residence permit or permanent leave to stay in Norway.³⁹

Alternative follow-up abroad for children when the family's asylum application is being processed

The discussion of alternative follow-up of children abroad in item 4 is also the basis in cases where families with children apply for asylum. However, some special circumstances need to be taken into consideration in asylum cases.

The child welfare service cannot place children abroad as a measure pursuant to the Child Welfare Act. Only the parents, by virtue of their parental responsibility, may decide that the child should move abroad to receive follow-up by family/network or foreign authorities. Even if the child welfare service cannot decide that a child shall move abroad, the service may cooperate with the parents and foreign authorities to investigate whether it is in the child's best interests to receive follow-up abroad. If the child welfare service finds that follow-up abroad is in the child's best interests, and the parents consent to such a solution, there is no need for the child welfare service to bring a care order case to the County Social Welfare Board petitioning for a placement in Norway.

Families applying for asylum will normally not want to return to their country of origin while the application for asylum is being processed in Norway. Children and parents applying for asylum normally have the right to stay in Norway while the application is being processed by the UDI. When a rejection by the UDI is appealed to the UNE, the family will have the right to stay in Norway while the appeal is being processed, if the UDI has granted deferred enforcement. Follow-up in the country of origin will therefore rarely be a genuine alternative because the parents do not want the child to receive follow-up in the country of origin. Therefore, it is not as relevant at this point in time that the child welfare service investigates the possibilities for the child to receive alternative follow-up abroad. It is important that the child welfare service has a close dialogue with the immigration authorities in such cases, see item 7.4.

³⁹ See items 3.5 and 3.6 about deprivation of parental responsibility and forced adoption.

If the parents wish that the child should receive follow-up abroad as an alternative to a care order, the child welfare service shall investigate this further. The scope of such investigations will depend on the circumstances in each case. The child welfare service must in such cases contact the UDI/UNE, as they can provide information about the immigration case. The child welfare service can also contact the Norwegian Country of Origin Information (*landinfo*), which has general information about the conditions in various countries, and which may also have information about child welfare in the country in question.⁴⁰ The child welfare service may also contact the Norwegian foreign service mission in the country in question for assistance.

The child welfare service must inquire with the immigration authorities if they would like to contact the authorities in the family's country of origin. The fact that a person is applying for asylum is sensitive information, and contacting foreign authorities may not be compatible with the need for protection. The immigration authorities are in the best position to assess whether it is justifiable for the child welfare service to contact foreign authorities in such cases.⁴¹

The Ministry assumes that in practice there will be few cases where it is relevant to investigate alternative follow-up for children abroad when the family has applied for asylum, as the family's wish is to reside in Norway.

8.2 Families whose application for a residence permit has been finally rejected (illegal residence)

If both the child and the parents have had their applications for a residence permit rejected, the family is obliged to leave Norway. If the family leaves Norway and the child welfare service is concerned about the child's care situation, the child welfare service may contact the authorities in the country where the family is headed and ask them to follow up the child and the family. The child welfare service must enquire with the immigration authorities if they wish to contact the authorities in the family's country of origin. The fact that a person is applying for asylum is sensitive information, and contacting foreign authorities may not be compatible with the need for protection.

Some families choose to remain in Norway and stay illegally in the country. The National Police Immigration Service (PU) is the authority that after a final rejection from the UDI and the UNE can deport immigrants staying illegally in the country. Child welfare authorities cannot decide that a child shall be placed abroad as a forced measure or that the family must leave Norway to care for the child abroad.

Pursuant to the Child Welfare Act the child welfare service has a duty to give assistance to all children in Norway, including those with illegal residence. The child welfare service shall review reports, open investigations and make the necessary assistance measures also for these children. If the child welfare service is concerned about a child who is assumed to be staying in Norway illegally, the service shall obtain information from the immigration authorities about the immigration case and other relevant information about the child and the family. The child welfare service should also inform the immigration authorities about their concern for the child's care situation.

⁴⁰ See <http://www.landinfo.no/id/162.0>

⁴¹ See more about cooperation and information exchange with foreign authorities in item 9, including item 9.3 relating to restrictions in the Personal Data Act.

The child welfare service shall raise a case with the County Social Welfare Board if the service finds that the child is subjected to serious care deficiency and that it is necessary and in the child's best interests to issue a care order. This also applies to families with illegal residence who do not depart voluntarily or is not transported out of the country by the National Police Immigration Service.

It is important that the child welfare service is in close dialogue with the immigration authorities in such cases, including the prospects of the family being transported out of the country if they do not leave voluntarily. See more about cooperation with the immigration authorities under item 7.

8.3 Cases where the parents' application for asylum is rejected and the child is granted a residence permit

The fact that a child is under the care of the child welfare service will be important information for the immigration authorities when assessing whether the parents can be granted a residence permit. However, the parents do not have a right to be granted a residence permit in Norway for the reason alone that the child is under the care of the child welfare service. In a few cases a child under the care of the child welfare service may have been granted a residence permit in Norway while the parents' application has been rejected and are therefore obliged to leave the country.

It is important to have a close dialogue between the immigration authorities and the child welfare service when the family is involved in both a child welfare case and an immigration case. In the few cases where a care order decision has been made and the child is given a resident permit and the parents' application is rejected, it will be particularly important that the authorities are well informed about developments in the case and the grounds for the decision. See also item 7.4.

If a care order decision has been made before an asylum application has been decided, the County Social Welfare Board will often not have assessed whether the care order continues to be in the child's best interests if the parents' application is rejected and they must return to their country of origin. In such cases, both the child welfare service and the parents may take the initiative to petition that the care order decision be revoked. The fact that the parents must leave the country may be a significant change in the child's situation that may indicate that the County Social Welfare Board should reassess the case in light of the changed circumstances.

If the County Social Welfare Board issues a care order after a final rejection of the parents application for a residence permit, this may constitute the ground for reassessing the child's (and possibly the parents') immigration case. If the care order decision is new information for the immigration authorities the parents have the opportunity to request a retrial of the rejection of the asylum case. As mentioned, consideration of what is in the best interests of the child shall also be a fundamental consideration when the immigration authorities make decisions pursuant to the immigration rules and regulations.

8.4 Cases where families are returned to another country in Europe

Some families who come to Norway to seek asylum must be returned to another European country because they have a residence permit in that country, or because that country is

responsible for processing the family's application for protection pursuant to the Dublin III Regulation.

In cases where the child welfare service is concerned about a child's care situation it shall contact the UDI through the Dublin Regulation office. Contact with the UDI will give the child welfare service more information about possible time limits that might impact the choice of child welfare measures. In dialogue with the UDI the child welfare service may contact the child welfare authorities in the country where the family is going to and request that they follow up the child.

9. The possibility of the child welfare service obtaining information from the foreign authorities

9.1 Introduction

The Child Welfare Act has no particular rules about cooperation with other countries, nor does it have rules about placing children abroad, or rules for transferring a child welfare case to another country. However, the child welfare service may within the current regulations obtain information from foreign authorities to have the case adequately informed and to safeguard the child. The child welfare service may for example need to obtain information about parents or caregivers abroad to assess whether a child welfare measure in Norway is in the child's best interests, or whether it is best for the child to receive follow-up in another country where the child has stronger ties.

See item, 10.2 about foreign authorities' access to information in child welfare cases.

9.2 Obtaining information to inform the child welfare case

In some cases the child welfare service may find that it is necessary to contact foreign authorities to inform a child welfare case, for example if the child has strong ties to another country and the child welfare service wishes to examine whether the child has caregivers or can receive other follow-up from authorities abroad. In other cases the child welfare service may wish to cooperate with a foreign service mission, for example to offer language instruction or a support person who speaks the child's native language.

If the child welfare service is to be able to obtain information from foreign authorities it will be necessary to inform such authorities of the existence of the child welfare case in Norway. This is generally confidential information that prevents the child welfare service from contacting foreign authorities. The child welfare service may, nevertheless on certain conditions obtain information in the child welfare case from foreign authorities.

Obtaining information with consent

The child welfare service may give information to others, including foreign authorities, if the person who has the right to confidentiality consents. This means that the child welfare service normally may disclose and obtain information if the parents and child who are parties in the case give their consent. This is in accordance with section 13 a no. 1 of the Public Administration Act.

Obtaining information to achieve the purpose the information has been given or is requested for

Pursuant to section 13 b first paragraph no. 2 of the Public Administration Act, the child welfare service's duty of confidentiality does not prevent information from being used to achieve the purpose it was given or requested for, such as in the context of case preparation, decision-making, implementation of a decision, follow-up and control. The provision does not stipulate any impediments in terms of who may receive the information. The child welfare service thus also has the opportunity to disclose information pursuant to this provision to foreign authorities, as long as the information is disclosed to achieve the purpose for which it was given or requested. The child welfare service shall undertake a concrete assessment as to whether the conditions for disclosing information have been satisfied.

The primary purpose of the work carried out by the child welfare service is to protect and safeguard the individual child. The child welfare service may for example make enquiries with foreign authorities in a case if the service assumes that the foreign authorities have relevant information for the child welfare case. In order to disclose the information about the child welfare case to the foreign authorities, the purpose must be to safeguard the child in the best possible way.

The child welfare service should always attempt to obtain consent from the child's parents before disclosing information to foreign authorities. If the parents do not consent, the child welfare service must undertake a concrete assessment as to whether it may disclose information. The child welfare service shall not disclose more information than necessary.

9.3 Limitations in the Personal Data Act

A condition for disclosing personal information is that the receiving country has a proper system for dealing with personal information. Information may, however, be disclosed to countries without a proper system for dealing with personal data if the person concerned consents, or if the transfer of information is necessary to preserve the vital interests of the person in question. This is in accordance with sections 29 and 30 of the Personal Data Act.

If the child welfare service is in doubt as to whether the receiving country has a proper system for dealing with personal information or whether the child welfare service has the authority to disclose information, the child welfare service may contact the County Governor or the Norwegian Directorate for Children, Youth and Family Affairs (Norwegian abbreviation, Bufdir) for assistance.

If the child welfare service is in doubt as to whether it is appropriate to contact the foreign authorities when the family has applied for asylum in Norway, it is important that the service contacts the immigration authorities.

10. Foreign authorities' access to information in a child welfare case

10.1. Foreign authorities are not a party in a child welfare case

The child welfare service, parents and children over 15 years of age are parties in a child welfare case and have access to the documents in the case. Children have rights as a party even before turning 15 if the case concerns forced placement in an institution for serious behavioural difficulties, or if the County Social Welfare Board has assigned the child rights as a party in the case. Foreign authorities, including foreign service missions, are not parties in a child welfare case and generally have no access to information in the case.

10.2. Access to information from a private party

Parents and children who are parties in the case (hereinafter the private parties) have the right to access to the case documents. The child welfare service may, however, withhold certain information in the case documents from a party pursuant to the provisions in section 18 and section 19 of the Public Administration Act, for example information about the health of other persons that is not essential information for the party in question.

A private party who wishes to have assistance from foreign authorities may allow the foreign service mission access to the document the party has access to. Foreign authorities may make enquiries to the private party directly or to the party's lawyer.

10.3. Access to information from the child welfare service

Foreign authorities may petition to have access to case documents from the child welfare service. The child welfare service must process the petition for access in the normal manner pursuant to the provisions in the Freedom of Information Act and the Public Administration Act.

As a general rule, the child welfare service may not disclose confidential information to foreign authorities as they are not a party in the case. The child welfare service may, however, disclose information if the person with the right to confidentiality consents to this, or if the information is disclosed to achieve the purpose it was given or requested for, cf. below. If the child welfare service rejects a petition for access to the documents in a case, the decision may be appealed to the County Governor. The child welfare service must inform the foreign authorities about this right of appeal.

Disclosing information after consent

The child welfare service's duty of confidentiality does not prevent it from giving access to information to foreign authorities if the person or persons who have the right to confidentiality consent to this. This is in accordance with section 13 a no. 1 of the Public Administration Act. This means that the child welfare service may disclose information about a parent in a child welfare case if this person consents. If the child welfare service is to be able to disclose information about the child, both parents and the child who are parties in the case must consent.

Information in documents in the child welfare case may refer to additional persons than those who are parties in the case. If it is problematic to obtain consent from those concerned, such information must be withheld from disclosure.

Example:

The father and the mother are parties in a child welfare case for their child who is under the care of the child welfare service. The mother is a foreign national and wishes to have assistance from her foreign service mission. The foreign service mission requests access to case documents from the child welfare service. The mother consents to allowing the child welfare service to disclose information in the child welfare case to the foreign service mission. The child welfare service should in such cases enquire with the father whether he also consents to giving the foreign service mission access to the information. If the child is a party in the case, the child must also consent. If the father and the child who are parties in the case consent, the child welfare service shall disclose the information. This is in accordance with section 13 of the Freedom of Information Act.

Disclosing information to achieve the purpose the information was given or requested for
Pursuant to the Public Administration Act, the child welfare service may give out otherwise confidential information if the information is disclosed to achieve the purpose it was given or requested for. This is in accordance with section 13 b no. 2 of the Public Administration Act. Information may be disclosed in connection with case preparation, decision-making, implementation of a decision, follow-up and control. The provision does not establish any restrictions in terms of who may receive the information. The child welfare service may therefore also disclose information pursuant to this provision to foreign authorities as long as the information is disclosed to achieve the purpose it was given or requested for. The child welfare service must undertake a concrete assessment as to whether the conditions for disclosure are satisfied.

The purpose of the child welfare service receiving and requesting information about children and families is to protect and safeguard the child. The child welfare service may not disclose information pursuant to this provision if the purpose is only that foreign authorities wish to be informed about the case.

This provision will be most relevant when the child welfare service wishes to obtain information from foreign authorities to have the case adequately informed, see item 9.

The child welfare service may issue general information

The child welfare service may always issue general information to foreign authorities about the Norwegian child welfare system and the work of the child welfare service, even if the duty of confidentiality may prevent it from providing information about individual cases. Within the framework of the obligation of confidentiality, the child welfare service should seek to refute information that appears to be erroneous or which contributes to a biased presentation of the case.

11. Advocate or agent for the private party

11.1 The right to be represented by an advocate or other agent

Private parties have the right to free assistance from a lawyer in cases concerning coercive measures which are handled by the County Social Welfare Board and the Norwegian courts. At early stages in a child welfare case, or in less serious cases, private parties are often not represented by a lawyer.

However, in accordance with section 12 of the Public Administration Act, the private party has the right to be represented by an advocate or other agent on all stages of the child welfare service's case processing. Expenses for such representation must be paid for by the private party. The private party may, for example, choose to have a representative from a foreign service mission to serve as an agent in child welfare cases.⁴² Assistance from a foreign service mission should not be a replacement for legal counsel.

An agent who is not a lawyer must submit written authorisation. Lawyers do not need to produce written authorisation unless the child welfare service finds reason to request this. An agent who has access to the information in the case may only use the information to the extent necessary to ensure the party's interests in the case. This is in accordance with section

⁴² See below about consular assistance in child welfare cases in item 12.

13 b second paragraph of the Public Administration Act. The child welfare service must draw the agent's attention to the duty of confidentiality.

11.2 The agent's access to information

The duty of confidentiality does not prevent the disclosure of information to the parties in the case or their representatives. This is in accordance with section 13 b no. 1 of the Public Administration Act.

In accordance with section 12 of the Public Administration Act, all enquiries in a case may be made by an agent. If the foreign service mission acts as an agent on behalf of the private party, the foreign service mission will in this way have access to the documents the party has the right to see, provided this is stated in the authorisation. A private party may decide that all notifications and enquiries from the child welfare service shall go through the party's agent. The party may demand to be informed in addition to or instead of the agent.

11.3 The agent's participation in meetings with the child welfare service

A private party has the right to be accompanied by an agent when meeting the child welfare service in person. If a private party, such as a father in a child welfare case, has a representative from the foreign authorities (foreign service mission) as his agent, the child welfare service cannot refuse the agent the right to attend the meetings.

The agent may attend meetings with other private parties or the child. The child welfare service cannot, however, order other private parties to attend together with the other party's agent. If the other parties, or the child, refuse to participate in a meeting because the agent is present, the child welfare service should attempt to find an appropriate way of carrying out the meeting. The agent may for example attend parts of the meeting.

11.4 Several agents

The Public Administration Act does not regulate whether a private party has the right to have two agents, for example a representative from a foreign service mission as an agent and a lawyer. The Parliamentary Ombudsman has stated that strong reasons must be present to deny a party to attend with more than one representative. It may be preferred to have more than one representative if the case is comprehensive and the agents have expertise in different fields. The child welfare service should attach strong importance to the views of the private party.

If several private parties are to attend a meeting and oppose that a party attends with two agents, the child welfare service must undertake a concrete assessment as to whether both the agents may be present. Importance must be attached to whether two agents may be a burden on the other private parties or the child. Decisive importance must be given to the child's best interests.

12. Consular assistance in child welfare cases

12.1 Introduction

Norway is a party to the Vienna Convention on Consular Relations from 1963 (the Consular Convention). The Consular Convention opens for a consular station to be able to offer assistance to its nationals abroad. The consular mission may be the child's embassy, general consulate or consulate (hereinafter foreign consular missions). Consular assistance is often

defined as the services a government can offer its citizens abroad. This means that foreign consular missions in Norway may assist their nationals in their encounter with the Norwegian authorities. The Consular Convention has provisions about notifying, informing and having access to its citizens abroad.

Assistance and support for parents and children from consular missions in child welfare cases may be valuable, such as when the family does not master the Norwegian language or has little knowledge about Norwegian society and the work of the child welfare service. The child welfare service should inform parents about the possibility of contacting their consular mission for assistance. Parents always have the opportunity to contact their consular mission for assistance.

If parents or children wish to have assistance from a foreign consular mission, the child welfare service should as a general rule facilitate such assistance. Consular assistance is primarily a right for citizens of a foreign state, and not a right for foreign authorities *per se*.

Pursuant to the Consular Convention, as a general rule, consular missions have the right to freely communicate with and have access to their citizens abroad. If the child or the parents want to have consular assistance, it will normally not be possible to deny the consular missions communication and access. Early consular contact may in many cases contribute to obtaining relevant information and safeguarding the child's cultural and linguistic needs. A consular representative cannot replace the use of an interpreter.

The Consular Convention must, however, be interpreted in light of other and later international law obligations, including the UN Convention on the Rights of the Child. The opportunity for foreign consular missions to help their citizens in Norway must also take place within the framework of Norwegian law, including the Child Welfare Act and the Public Administration Act.

12.2 Foreign consular missions' participation in meetings with the child welfare service

12.2.1 Participation in meetings when parents or the child want this

If a private party does not have a representative from the foreign consular mission as an agent, but nonetheless wishes to have consular assistance in some meetings with the child welfare service, the party shall as a general rule be allowed to do so. The consular mission may be important support and a resource for parents and children. The foreign consular mission may contribute to adequately informing the child welfare case. The child welfare service should have strong reasons if it wishes to deny a party from being accompanied by a consular representative to protect their interests in the case. The child welfare service must assign decisive importance to the child's best interests.

The consular mission may be familiar with information in the child welfare case through information from a private party. If the child welfare service is to be able to release new sensitive information about the child in a meeting (possibly also about the other parent), both parents must consent. If the child is a party in the case, the child must also consent.

If several private parties are to participate in the meeting, the parties must consent to the presence of a consular representative. Children who are not parties in the case must be informed and given the opportunity to state their opinion.

A consular representative acting in a consular capacity is not a party's agent in the sense of the Public Administration Act, unless this is specially agreed. Therefore, there is no demand for an authorisation to have a consular representative. It may be demanded, nonetheless, that the person in question submits a diplomatic passport or other ID showing that she or he is a representative of the consular mission in question. A consular representative who is not a party's agent has no right to demand access to the case documents.

To prevent the spreading of personal information, the child welfare service may inform the parties that information is provided on the condition that it is not made public.

If the parents do not want a representative from a consular mission to be present, the child welfare service should not permit consular missions to participate in meetings relating to individual cases. The child welfare service may, however, always issue information about the Norwegian child welfare system and the work of the child welfare service, even if the duty of confidentiality may prevent it from issuing information about individual cases.

12.3 Attendance by foreign consular missions in the County Social Welfare Board and the Norwegian courts

12.3.1 Attendance in the County Social Welfare Board

Child welfare cases are highly sensitive for those concerned and cases relating to care orders and other coercive measures in the County Social Welfare Board are generally held in camera. This is in accordance with section 7-16 first paragraph of the Child Welfare Act. If representatives of a foreign consular mission make a request to attend the proceedings, the County Social Welfare Board must give this a concrete assessment in each case.

When the parties petition for or consent, and the County Social Welfare Board finds this unobjectionable in accordance with section 7-16 second paragraph of the Child Welfare Act, the meeting may be open, wholly or in part. This is a strict requirement, where consideration of what is in the child's best interests must be assigned considerable weight. The preparatory documents for the Act state that great restraint must be shown when permitting meetings to be open. In accordance with statements in the preparatory documents it is found that the private parties are the ones who must give their consent.

The County Social Welfare Board has the authority to allow specific persons who are connected with a party to attend the proceedings. In this case it is also required that the parties petition for or consent and that the County Social Welfare Board finds it unobjectionable. This is in accordance with section 7-16 third paragraph a) of the Child Welfare Act. The reason for this provision is to open for a private party to be accompanied by a close relative or friend, for example to serve as support or for other acceptable reasons, during the proceedings. The County Social Welfare Board must undertake a concrete assessment where particular consideration must be given to whether or not this could cause problems for the child. Consideration must also be attached to whether such attendance would make it difficult for witnesses to give evidence freely.

All private parties are required to give their consent, thus meaning both the parents and the child, if the child is a party to the case. If the child is not a party to the case, it shall still be heard and its opinion shall be given importance in accordance with the child's age and maturity.

If the child and/or the parents wish to have a representative from the consular mission attending the proceedings in the County Social Welfare Board and the other private parties consent, then the Ministry of Children, Equality and Social Inclusion is of the opinion that consular attendance generally should be permitted. One requirement is that the attendance does not cause problems for the child.

Consular missions have the duty to assist their nationals abroad in their encounters with the local authorities. Consular missions can provide support and security for foreign citizens undergoing a serious judicial process in another country. The consular mission will not have a formal role and cannot intervene in the proceedings. Those attending the proceedings have a duty of confidentiality and are banned from recording the proceedings unless otherwise decided by the Board. This is in accordance with section 7-16 fourth paragraph of the Child Welfare Act. Permitting consular attendance can contribute to greater confidence in the Norwegian child welfare system and that the legal rights of children and parents are safeguarded in a reassuring manner.

If the parents wish that representatives from a consular mission may be present, they can address the County Social Welfare Board. A consular mission may also address the County Social Welfare Board directly.

12.3.2 Attendance for a foreign consular mission as an agent for a private party

The County Social Welfare Board is an administrative body and section 12 of the Public Administration Act therefore generally give the private party the right to have an agent. However, special rules are given in Chapter 7 of the Child Welfare Act for processing cases in the County Social Welfare Board. In accordance with section 7-8, a lawyer shall be appointed for a private party to represent him or her in a case before the County Social Welfare Board. However, there is no statutory regulation in the Act stating whether a party has the right to attend the County Social Welfare Board proceedings with his/her lawyer and in addition an agent, such as a representative from a consular mission. Such a request by a private party or a consular mission must therefore undergo a concrete assessment made by the County Social Welfare Board.

12.3.3 Attendance in court

In a judicial review (appeal) of a decision made by the County Social Welfare Board, the rules laid down in the Dispute Act apply. The documents in the case are exempted from public disclosure and court proceedings are in camera. Proceedings may be opened, however, if the private party petitions for this and the court finds this unobjectionable when it comes to the clarification of the case and the interests of the private party and others. This is in accordance with section 36-7 of the Dispute Act. In accordance with the preparatory documents for the Act, the option of keeping proceedings partly or wholly open is an exclusionary provision.

In contrast to what applies to the County Social Welfare Board, only a private party may petition to allow persons from a consular mission (or others) to attend the proceedings. The court will generally undertake the same assessments as described in item 12.3.1.

12.3.4 Representatives from a consular missions may testify in the case

Only the parties in the case may demand to attend the proceedings in the County Social Welfare Board and the court, and only they have the right to be heard and respond to the statements by the municipal authority. If representatives from a consular mission wish to make statements in the case, the person in question must be heard as a witness for a private or a public party in the case.

A private party should consult his or her lawyer about calling a representative from the consular mission as a witness. The parties generally have the right to produce the evidence they wish, but the County Social Welfare Board and the court may exclude evidence pursuant to the provisions in the Dispute Act.

12.4 The right of foreign consular missions to meet and communicate with children under the care of the County Social Welfare Board. Notification to the child's consular mission

12.4.1 The Consular Convention

Article 36 of the Consular Convention confers the right for consular missions to freely communicate with and have access to (meet) their citizens abroad. Foreign nationals generally also have the same right of access to and communication with their consular mission. Consular missions also have a right to meet with their citizens who have been arrested, put in prison or remanded in custody, or detained in another way. There are also rules about notification of consular missions in Article 37 of the Convention. Consular involvement may be valuable for the child in terms of providing assistance with the child's linguistic and cultural challenges, to obtain information relevant for the case and for assessing what measures or care solutions that are in the child's best interests.

12.4.2 Access to and communication with the child placed in a foster home or institution after a care order has been issued

If a consular mission would like to meet or communicate with a child under the care of the child welfare service, the consular mission must contact the child welfare service. When a care order pursuant to sections 4-8 and 4-12 of the Child Welfare Act has been made, the child welfare service decides who may have access to or communicate with the child. This also applies to interim decisions in emergencies pursuant to section 4-6 second paragraph of the Child Welfare Act.

A request from a consular mission concerning access to a child must be given a concrete assessment by the child welfare service. This assessment must consider the circumstances in each case and the points of view of the child and the parents. If the child wishes to meet the representatives from the consular mission, this should be assigned strong importance. If the child and the parents wish that the child should meet representatives of a consular mission, the child welfare service may only refuse this in exceptional cases. Concrete circumstances must exist indicating that a meeting is not in the child's best interests.

12.4.3 Access to and communication with children placed without their consent in an institution due to serious behavioural problems

Consular missions have a right to have access to and communication with their citizens who are in prison, remanded in custody or otherwise detained. This is in accordance with Article 36 no.1 c of the Consular Convention. When children are placed in an institution against their will due to serious behavioural problems pursuant to section 4-24 of the Child Welfare Act, the same considerations indicate that the consular mission should be allowed to have access

to the child. It is therefore found that representatives of a consular mission generally should be allowed to have access to the child if the parents and the child consent. The wishes of the child and the parents shall be assigned strong importance, and a meeting shall not take place if the child and the parents do not consent. The same applies to interim placements in emergencies pursuant to section 4-25 second paragraph.

The Consular Convention must be interpreted in light of the UN Convention on the Rights of the Child. The child welfare service can in exceptional cases refuse or limit access if there are concrete circumstances that indicate it would not be in the child's best interests.

12.4.4 Rejection – not an individual decision that may be appealed

If the child welfare service does not permit a consular mission to have access to a child under the care of the child welfare service, this decision is not an individual decision that can be appealed pursuant to the Public Administration Act. Parents, children or consular missions disagreeing with the assessment made by the child welfare service may, however, contact the office of the County Governor. The County Governor can assess the matter and may give advice and guidance to the municipal authority.

12.4.5 Notification to the consular mission on appointing a guardian or trustee

In accordance with Article 37 b of the Consular Convention, the foreign national's consular mission must be notified if the appointment of a guardian or trustee for the child in question is being considered. The child welfare service is therefore under the obligation to notify the child's consular mission when bringing a case to the County Social Welfare Board regarding deprivation of parental responsibility or forced adoption of a child who is a foreign national. If a decision is made in such cases, a guardian must be appointed for the child. Additionally, there is a duty to notify the child's consular mission if the authorities consider the appointment of a guardian to take care of the child's assets.

However, the obligation to give notification must be interpreted in light of other obligations under international law, particularly the UN Convention on the Rights of the Child. Before the consular mission is notified, the child welfare service should ask the parents and the child whether they want the child's consular mission to be notified. The points of view of the parents and the child must be assigned strong importance.

If the parents and the child wish that the consular mission should be notified, the child welfare service may only in exceptional cases refuse to notify the child's consular mission. There must be strong and concrete reasons indicating that consular notification is not in the child's best interests. The fact that notification will entail a certain amount of additional work in the form of enabling contact is not a valid ground for failing to notifying the consular mission.

12.4.6 Notification to the consular mission in care order cases

The Consular Convention does not activate an obligation to notify consular mission in a case involving a care order pursuant to section 4-8 and section 4-12. If a care order is issued, the parents retain the parental responsibility of the child.

Many consular missions nevertheless demand to be notified if a foreign citizen comes under the care of the child welfare service. Pursuant to Article 36 of the Consular Convention, representatives of a consular mission have the right to have access to their citizens who are interned, in custody or in prison, but this provision is not found to give consular missions the right to demand to be informed about care orders that involve foreign children.

The child welfare service should, however, as a routine procedure ask the parents whether they wish that their consular mission is notified when a care order is initiated. Notifying consular authorities is generally in the child's best interests. The points of view of the parents and the child must be assigned strong importance when deciding whether notification should be given.

The child welfare service should also ask parents whether they wish that their consular mission should be notified if the head of the child welfare service or the public prosecuting authority makes an interim emergency decision to place the child outside the home, cf. section 4-6 second paragraph and section 4-9 of the Child Welfare Act.

12.4.7 Notification in the event of enforced placement of children with serious behavioural difficulties

In accordance with Article 36 no. 1 b of the Consular Convention, it is found that in cases involving forced placement of a child in an institution for serious behaviour difficulties, cf. section 4-24 of the Child Welfare Act, the child's consular mission shall generally be notified that the child has been placed in an institution, if the child and the parents so wish. This also applies to interim placements in emergencies pursuant to section 4-25 second paragraph.

The child welfare service shall inform the child and the parents about the possibility of notifying the consular mission. The provision of information to consular authorities is generally in the child's best interests. The views of the parents and the child must be assigned strong importance. The child welfare service may in exceptional cases refuse to notify the foreign consular mission if concrete circumstances indicate that notification is not in the child's best interests.

12.4.8 Parents may always contact the consular mission

If the child welfare service does not notify the child's consular mission, this do not prevent the parents from contacting the consular mission and informing about the case and requesting assistance.

13. Children who leave Norway

13.1 Contacting child welfare authorities abroad

If a child is not under the care of the child welfare service, the parents decide whether a child is to travel or move abroad.⁴³ If the child welfare service is concerned about a child who has left Norway, and the child is not under the care of the child welfare service,⁴⁴ the service may report their concern to the child welfare authorities in the country the child is travelling to and request that they follow up the child and the family.

Forwarding concern for a child to the authorities in other countries may be an appropriate way to close a child welfare case in Norway. The child welfare service may forward its concern for the child to foreign authorities if the service finds it proper and necessary to protect and safeguard the child. It will be up to the foreign authorities to determine whether and how they wish to follow up the concern from the Norwegian authorities.

⁴³ This must be carried out pursuant to the provisions in The Children Act, see sections 40 and 41.

⁴⁴ Applies to both interim decisions and care order decisions, see more in item 13.2.

The child welfare service shall not disclose more information than necessary. It is therefore recommended that in the initial notification to the foreign authorities, the child welfare service briefly explain the grounds for the concern, and if relevant, which measures were initiated before the family left Norway. After a closer dialogue with the foreign authorities, the child welfare service may assess whether or not to provide more information. If the child welfare service is uncertain about where to enquire, it may contact the Ministry of Foreign Affairs or a Norwegian foreign service mission for assistance.

If the child welfare service is concerned about a child who has previously applied for asylum in Norway, it must consult with the immigration authorities if it wishes to contact the foreign authorities. The fact that a person has applied for asylum is sensitive information, and contacting foreign authorities may violate the need for protection. The immigration authorities are best placed to assess whether it is appropriate for the child welfare service to contact the foreign authorities in such cases.⁴⁵

13.2 Abduction from the child welfare service

Norway has acceded to two international conventions on child abduction: the Hague Convention from 25 October 1980 and the European Council Convention from 20 May 1980. Both conventions are embedded in Norwegian legislation through the Act dated 8 July 1988 no. 72 (the Child Abduction Act). The Hague Convention from 1980 is generally applied by most countries to demand the return of an abducted child. To demand that a child should be returned pursuant to the Hague Convention 1980, the child's habitual residence must be in Norway.

When the child welfare service has taken over the care of a child, taking the child abroad without the consent of the child welfare service will be an illegal child abduction. This applies if one of the following decisions has been made:

- Care order and deprivation of parental responsibility, pursuant to section 4-8 second paragraph, sections 4-12 and 4-20 of the Child Welfare Act
- Ban on moving the child when it is living away from home pursuant to section 4-8 first paragraph of the Child Welfare Act
- Placement and detention in an institution without the child's consent pursuant to section 4-24 of the Child Welfare Act
- Interim decisions in emergencies pursuant to section 4-6 second paragraph, section 4-9 and section 4-25 of the Child Welfare Act

It is not a requirement that the decision is final or legally binding, but there must be a valid decision.

The Ministry of Justice and Public Security assists in child abduction cases when a child has been abducted to a country which has acceded to the Hague Convention 1980 and the European Council Convention 1980. The Ministry of Foreign Affairs assists in child abduction cases to countries that have not acceded to the conventions. The police assist in locating the child or abductor, and receive formal complaints and notifications of missing persons. If a child has been abducted from the child welfare service, the service should report

⁴⁵ See more about cooperation and information exchange with foreign authorities in item 9, including item 9.3 relating to restrictions in the Personal Data Act.

the crime to the police and contact the Ministry of Justice and Public Security or the Ministry of Foreign Affairs for assistance.

1. January 2016 new amendments to the Child Abduction Act, the Child Welfare Act, the Norwegian Penal Code 2005 and the Act relating to Free Legal Aid. The amendments shall contribute to solving child abduction cases more quickly and more effectively, and to strengthen the child's perspective. It now follows from section 4-13 of the Child Welfare Act that a care order decision remains in force for one year when the child welfare service has opened a child abduction case. The head of the County Social Welfare Board may extend the time limit further. A new section 31 in the Child Welfare Act regulates in which cases it is illegal to take the child out of Norway without the consent of the child welfare service. For instance it is illegal when a care order is made or when an interim measure in an emergency situation is implemented. For more information about the new amendments are referred to in the preparatory work, Prop. 143 L (2014-2015).⁴⁶ For more information about child abduction see the Government website: <https://www.regjeringen.no/en/sub/child-abduction/id468120/>

14. Advice and guidance for the child welfare service

The child welfare service may contact the County Governor if it is in need of assistance in child welfare cases where children have ties to other countries. The County Governor can assist the municipal authorities with advice and guidance. The County Governor can also assist the child welfare service by participating in meetings with foreign service missions or when enquiries are made by the media. The Norwegian Directorate for Children, Youth and Family Affairs can give guidance with respect to legislation and rules.

The Directorate for Children, Youth and Family Affairs is designated as Central Authority for the 1996 Hague Convention. The Convention will enter into force 1 July 2016. The Directorate will then assist the child welfare services in their dialogue with authorities in other Contracting States.

15. Contact information for relevant agencies

Ministry of Children, Equality and Social Inclusion

Telephone: +47 22 24 90 90

Child welfare department: +47 22 24 26 01

E-mail: postmottak@bld.dep.no

Postal address: Postboks 8036 Dep 0030 Oslo

Ministry of Justice and Public Security

Switchboard: +47 22 24 90 90

Postal address: Postboks 8005 Dep 0030 Oslo

E-mail: postmottak@jd.dep.no

Ministry of Foreign Affairs

Switchboard: + 47 23 95 00 00

⁴⁶<https://www.regjeringen.no/contentassets/78d73e2cf7cc4cd5a59a5ddecfa0d4f2/no/pdfs/prp201420150143000dddpdfs.pdf>

Postal address: Postboks 8114 Dep. N-0032 OSLO
E-mail: post@mfa.no

The regional offices of the Directorate for Children, Youth and Family Affairs (Bufetat)

E-mail: postmottak@bufetat.no
Postal address: Postboks 2233, 3103 Tønsberg

Norwegian Directorate for Children, Youth and Family Affairs

<http://www.bufdir.no/barnevern/>
Telephone: +47 466 15 000
E-mail: postmottak@bufetat.no
Postal address: Postboks 2233, 3103 Tønsberg

Directorate of Immigration (UDI)

Telephone: +47 23 35 15 00
Postal address: Postboks 8108 Dep, 0032 Oslo
E-mail: udi@udi.no
www.udi.no/kontakt-oss/

County Governors

For information about the various County Governors visit: www.fylkesmannen.no

Municipal child welfare service

Contact information is available on *Barnevernvakten*: <http://barnevernvakten.no/kommune>

County Social Welfare Boards

Central unit for the County Social Welfare Board

<http://www.fylkesnemndene.no/en/>
Telephone: +47 23 32 10 00
E-mail: sentralenheten@fylkesnemnda.no
Postal address: Postboks 8199 Dep., 0034 Oslo

Immigration Appeals Board (UNE)

Telephone: +47 21 08 50 00
Postal address: Postboks 8165 dep. 0034 Oslo
E-mail: postmottak@une.no

In the case of child abduction

Visit: www.barnebortforing.no
The Ministry of Justice and Public Security on telephone: +47 22 24 54 51
E-mail: barnebortforing@jd.dep.no
The Ministry of Foreign Affairs on telephone +47 22 24 36 00
E-mail: post@mfa.no.
Local police: +47 02800 Police emergency telephone: 112
Kripos on telephone: +47 23 20 88 88
post.kripos.desken@politiet.no

