



# POLICY PRIMER

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## Irregular Migrant Children and Public Policy

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AUTHOR: DR NANDO SIGONA  
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This policy primer looks at the tensions between child protection laws and immigration and asylum laws in the UK and the broader international context and examines the implications for both policy-making and for undocumented children.

### **The issue: Immigration control and the vulnerability of irregular migrant children in the UK child protection system**

The importance of protecting children is broadly recognised in mainstream public policy. But in dealing with the protection needs of irregular migrant children and children to irregular migrant parents, governments face the challenge of how to comply with their international and humanitarian obligations at a time when their overall concerns have shifted towards tougher immigration policies and stricter border control to curb unauthorised immigration (UKBA 2010).

The tension between these two policy agendas – that is ensuring the protection of children vis-à-vis controlling immigration – is producing a diverse range of policies and practices, and has significant implications for local authorities and service providers, particularly in relation to the provision of education and healthcare, as well as on minors' vulnerability in employment as a result of their non-status.

This policy primer first discusses definitional issues and their policy implications. It then provides a profile of the undocumented children population in the UK, and outlines the legal and policy framework governing their presence. In conclusion, it argues that the focus of current political debate in the UK is too narrow, failing to adequately address the situation of tens of thousands of irregular migrant children and UK-born children to irregular migrant parents who form a diverse and largely hidden population.

### **Definitional issues and policy implications**

Defining who is a child and who is an irregular migrant is not straightforward. If we take the definition adopted by the United Nations Convention on the Rights of the Child (UNCRC) as a starting point, a child is 'every

human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier' (Art 1). This definition adopts biological age as the main, almost exclusive, criterion for the identification of a human being as a child. However, to ascertain the biological age of an individual is not always an easy task, not least because not everyone has their birth registered when they are born or a document to prove it. In the case of irregular migrant children, this may be even more complicated because of the policy and practice implications (e.g. duty of care by local authorities) that the recognition as a child may bring to the migrant. The lively debate on the reliability of age assessment procedures and its frequent use against minors claiming asylum (Crawley 2007, PICUM 2008, Kvittingen 2010) exemplifies the political relevance of this task.

The UNCRC definition itself reveals the constructed nature of this categorisation by, first of all, identifying a threshold (i.e. under 18 years old) below which every human being is a child, but also by admitting that by law it is possible to attain majority earlier. However, the legal and social construction of childhood is not limited to the definition of the target population, but also involves the construction and governance of systems of values, rights, entitlements and their attached obligations, which are space and time specific. The tension between, on the one hand, a universal image of childhood embodied for example in the UNCRC and rooted in what Hart terms 'the project of saving the children' (Hart, 2006) and, on the other hand, more contextualised, culturally-aware and localised accounts of childhood which challenge the 'seeming naturalness of a conceptual boundary between childhood and adulthood' (idem: 7) is recognised in the literature (Boyden 1997, James and Prout 1997, Baker and Hinton 2001, Punch 2003, Heissler 2009, Sigona and Hughes 2010).

To define irregular immigration is equally difficult (see the Migration Observatory briefing on 'Irregular Migration in the UK' for a detailed discussion). As Ruhs

and Anderson (2010) argue, the partition of migrants into two mutually exclusive and jointly exhaustive parts – either ‘legal’ or ‘illegal’ – dominant in political and public discourse is neither clear in practice, nor conforms to migrants’ own experiences and conceptions of their status. Migrants often move between different statuses over time, and that they can be regular in one sense and irregular in another (e.g. they can legally reside in the UK but work illegally). In the policy realm, Woodbridge’s study (2005) for the Home Office singles out three distinct categories of irregular immigrants: illegal entrants, overstayers and failed asylum seekers. More recently, the Home Office (2007) has identified the following four entry routes: document fraud; clandestine entry; unfounded asylum claims; and legal visitors overstaying.

### **Irregular migrant children and children of irregular migrants in the UK: Counting the uncountable**

Increased interest in research on irregular migration is partly based on the premise that many countries in Western Europe, North America and elsewhere have seen a significant increase in the numbers of migrants residing in these countries ‘illegally’ or using ‘illegal’ entry channels. Significant numbers of these are presumably individuals under 18. Indeed, children have always been part of migration flows. However, like women, minors as a specific social group, by and large, have been off the migration agenda. If migrating as dependants, their experiences of migration has often been assimilated to those of their parents or guardians; if migrating alone, their mobility has been interpreted often as the result of coercion on the child (e.g. human trafficking) or as a menace to the welfare system of the country of destination (e.g. adult migrants claiming to be minors in order to access social benefits).

Since the mid-1990s and in correlation with the Palermo Protocols (2000) child migration has been framed in the public discourse prevalently as the result of ‘human trafficking’. Anderson urges caution when addressing the topic of trafficking in human beings and argues that ‘loose definition of terms conceals both practical and philosophical problems with framing trafficking as an immigration issue’ (Anderson 2007: 2).

Similarly, O’Connell Davidson and Farrow (2007: 20) argue that this frame provides a convenient perspective for destination countries for two main reasons. Firstly, it directs attention towards traffickers (very often foreigners themselves) and creates the impression that ‘independent migration by children invariably entails rights violations’. This, in turn, legitimises repressive policy measures to curb ‘illegal’ migration. Secondly, it deflects attention away from those vulnerabilities which are produced by the immigration regime and specific policy measures taken to combat ‘illegal’ migration, instead addressing trafficking as a crime and within the area of responsibility of the Serious Organised Crime Agency (SOCA) and the police.

In the United Kingdom, estimating the numbers of irregular migrants is difficult, and rarely includes disaggregated data on children. The methods used are also much debated (Lukes et al. 2009). Problems arise in particular from the very nature of the target population that is hidden and mostly wants to remain as such (Bloch et al. 2007). The different definitions of ‘illegality’ adopted in the studies also pose a significant challenge to the comparability of the data (Vollmer 2008).

Given the combination of these factors estimating the numbers of undocumented migrant children in the UK is difficult.

There are few studies on the irregular migrant population in the UK, of which only a few have put forward an estimate on the size of the population. The two estimates that are generally accepted as being more rigorous are those of Woodbridge (2005) and Gordon et al. (2009).

Woodbridge (2005) uses a ‘residual’ method that compares the total de facto foreign-born population derived from the 2001 Census with estimates of ‘the lawfully resident’ foreign-born population and takes the total foreign-born population minus the number of the regularly residing foreign-born population to estimate the ‘unauthorised (illegal)’ population of the UK. His estimate of the irregular population of the UK in 2001 oscillates between 310,000 (lower estimate) and 570,000 (higher estimate).

More recently, a study carried out by the London School of Economics (Gordon et al. 2009) estimated the irregular migrant population of the UK by updating the Woodbridge’s estimate according to the following categories: a) illegal entrants (those who evade migration controls and those who present false papers); b) migrants who have been lawfully present in the country but remain after the end of the permitted period (this includes failed asylum seekers and overstayers); and c) children born in the UK to irregular migrant parents.

Gordon et al. (2009) also take into account other factors not included in Woodbridge’s estimate: the continued arrival of asylum seekers, the clearance of asylum applications’ backlog, further illegal migrants entering and leaving the country, more migrants overstaying, and the regularisation of EU accession citizens. The most significant change in this estimate is however the inclusion of children born in the UK to irregular migrants. The estimates by Woodbridge and Gordon et al. are shown in table 1.

Table 1: Estimate on the undocumented migrant population at end 2007

	Central estimate	Lower estimate	Higher estimate
Woodbridge (2005) end 2001	430,000	310,000	570,000
Gordon et al. (2009) end 2007	618,000 (incl. 85,000 UK-born)	417,000 (incl. 44,000 UK-born)	863,000 (incl. 144,000 UK-born)

Drawing on Labour Force Survey 2008, Gordon et al. (2009) also construct an age breakdown for the central estimate (including UK-born children), which estimates that minors make up 25% of the undocumented population. Based on Gordon et al.’s estimate, Sigona and Hughes (2010) calculated that at end-2007 the stock of irregularly resident minors in the UK oscillates between 104,000 and 216,000 with a central estimate of 155,000.

Of a total of 155,000 irregularly resident children, over 85,000 are estimated to be born in the UK to irregular migrant parents. The remaining 70,000 migrant children entered the country either as dependent or independently, through a number of different routes. Importantly, among this group of undocumented

migrants, especially independent child migrants, the asylum route is likely to be much less significant than among adults. Data on unaccompanied (or separated) asylum seeking children, for example, shows that the asylum route cannot be expected to be the main entry route to ‘undocumentedness’ for independent migrant children as the large majority of asylum applicants under 17 receive some kind of leave to remain – most often ‘discretionary leave to remain’ (Home Office 2010).

It is, therefore, important to return to the earlier discussion regarding the overexposure of some categories of migrant children in the political and policy discourse – e.g. trafficked children, children in detention, and unaccompanied asylum seekers – and reflect upon the wider implications of specific framing strategies. Furthermore, it also raises important questions regarding those groups of undocumented migrants who stay invisible, uncounted and largely outside the policy agenda. ‘The lack of available information about the range of children in the UK who are subject to immigration control’ – the Commission for Social Care Inspection et al. validly noticed (CSCI 2005: 87) – ‘itself raises considerable concern about safeguarding arrangements’.

### The multilevel governance of migrant children

According to international law all people are holders of rights, including ‘undocumented’ migrants. A number of civil, political, social and economic rights apply to individuals irrespective of their legal or administrative status, which are formally guaranteed under legal instruments such as the European Convention on Human Rights, the Universal Declaration of Human Rights or the International Covenant of Economic, Social and Cultural Rights. Children’s rights in particular are internationally enshrined in the Convention on the Rights of the Child (UNCRC 1989).

International instruments, such as UNCRC, offer considerable protection to migrant children regardless of their status (CRC General Comment No. 6). However, the enforcement of such international instruments depends significantly on their incorporation into domestic law. In the UK, the UNCRC was ratified in

1991, but has yet to be incorporated into domestic law, making it not justiciable in domestic courts.

The UK Government's strategy for children is set out in the Children Act (2004) and the 'Every Child Matters' (ECM) framework which over the last decade have considerably transformed child welfare policies in the UK, marking a change in the way local and national government, and other organisations, work with children and families. The Children Act (2004) has introduced the duty of regard for the welfare of children to almost all state agencies. It has also set out a statutory framework for local co-operation to protect children. According to the ECM framework, all organisations with responsibility for services to children must make arrangements to ensure that in discharging their functions they safeguard and promote the welfare of children. Safeguarding and promoting the welfare of children is primarily the responsibility of the local authority, working in partnership with other public agencies, the voluntary sector, children and young people, parents and carers, and the wider community.

However, despite this general commitment to children's well-being, Giner (2007, 2009) has argued that British Governments have consistently adopted, until very recently and to an extent still now, a different orientation with regard to asylum seeking and migrant children and their families – taking concrete steps to prevent child-protection safeguards interfering with their asylum and migration agendas. Policy-making for this group of migrants has been marked by a constant back and forth movement between greater restrictions – in line with the overall trend in asylum (Zetter et al. 2003) and migration policy making (Geddes 2003) – and targeted policy concessions to accommodate raising internal and international concerns relating to the treatment of minors. Looking at the treatment of unaccompanied and separated asylum seeking children, Bhabha and Finch (2006) found a complex pattern of concern, neglect, and suspicion towards children claiming asylum, which, they argue, is reflected in various aspects of the asylum procedure, not least in the notable difference between adult and child asylum grant rates. In the fourth quarter of 2010, 21 per cent of initial decisions were to grant asylum to adult applicants. In the same quarter, only 16 per cent of unaccompanied

asylum seeking minors were granted asylum in the first instance (Home Office 2011).

The primary example of this attitude is the reservation on the ground of immigration and nationality to Art 22 of the UNCRC which was introduced by the Conservative Government at the time of ratification of the UNCRC in December 1991. Similarly, a few years later the Labour Government discharged the then Border and Immigration Agency from the duty to safeguard the welfare of children in accordance with the Children Act (2004).

This has only recently been amended in the Borders, Citizenship and Immigration Act of 2009, as a result of the successful campaign for the lift of the above reservation in 2008. According to Section 55 of the 2009 Borders, Citizenship and Immigration Act, the UK Border Agency has now a duty to safeguard and promote the welfare of children when carrying out its duties. This has been followed more recently by the Coalition Government's action to end child detention ([link to PP on detention](#)).

Overall, evidence suggests that children in the immigration and asylum system are treated firstly as migrants, similarly to adult migrants if independent or as extensions of their parents if accompanied, and secondly as children with particular rights and needs (Crawley 2006, Sawyer 2006). Although the reservation to the UNCRC was lifted in 2008 and a code of practice for safeguarding the welfare of children in the immigration system has been developed, treatment of undocumented migrant children and children born to irregular migrant parents remains largely separated and different from the treatment of all children producing a hierarchy of more or less deserving children in the country.

## Implications for policy debates

Whether arriving in the country alone or accompanying their family, 'undocumented migrants under 18 have represented a challenge to liberal-democratic states' attempts to securitize migration' (Giner 2009). As migrants and as children, this group stands at the intersection of two policy fields in which state intervention differs considerably: migration and asylum

policy, on the one hand, and child protection, on the other. The unresolved tension between commitments to protect children and children's rights, on the one hand, and to limit 'unwanted' migration (Joppke, 1998) and secure borders (UKBA 2010), on the other hand, is embedded in the governance of undocumented migrant children and impacts on lives and livelihoods of irregular migrant children. For PICUM (2008: 6), they 'are in a position of triple vulnerability: as children above all, as migrants, and [...] as undocumented migrants.' This particular vulnerability makes them 'one of the most vulnerable groups in Europe today' according to the Council of Europe Human Rights Commissioner Thomas Hammarberg (2007).

The current political debate on children in irregular migration living in the UK is narrowly focused on a limited number of migrant children, namely trafficked children and unaccompanied asylum seekers, and specific issues such as, for example, the issue of child detention. It thereby fails to address the situation of tens of thousands of irregular migrant children and children of irregular migrants who form a diverse and largely hidden population. Despite an increasing number of policy documents, initiatives and other safeguards at the European and national level have been put in place recently to protect the rights of unaccompanied or separated migrant children, there are still a large number of irregular migrant children who do not fall into these categories, leaving them less visible to those who are responsible for ensuring their access to rights.

Moreover, even when legal provisions exist, research findings show that access to these rights in practice is often far from successful (PICUM 2008, Whitehead and Hashim 2005, PICUM 2007, Carrera and Merlino 2009). In her examination of the impact of changes in asylum and immigration law, policy and practice on children subject to immigration control, Crawley points out that

many of those working in asylum and immigration law are unaware of the broader context of children's law and policy and at the same time there is considerable confusion and misunderstanding across the social care profession about what recent changes to immigration policy and practice mean for delivery of services and

support to children and young people who are subject to immigration control' (Crawley 2006: 2).

Barriers to access can be practical, institutional and societal (PICUM 2008). Evidence suggest that lack of access to social rights and services is often due to a confusion among the service providers on what the rights of 'undocumented' migrants are (Hewett et al. 2005). This confusion is partly the result of conflicting legislation, partly due to the frequent change of policies which result in service providers being outdated and in constant need of retraining.

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### The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory's analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



### COMPAS

The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

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### About the author

Dr Nando Sigona

Senior Researcher, COMPAS and Research Officer, Refugee Studies Centre  
nando.sigona@compas.ox.ac.uk  
[www.compas.ox.ac.uk](http://www.compas.ox.ac.uk)

### Press contact

Rob McNeil

robert.mcneil@compas.ox.ac.uk  
+ 44 (0)1865 274568  
+ 44 (0)7500 970081

