

Policy & Legal review for children in alternative care & unaccompanied and separated children from Ukraine arriving in: POLAND

Contributors: UNICEF Poland; SOS Children’s Villages Poland; Polish Foster Care Coalition; Association for Legal Intervention; Eurochild

1. What are the laws and/or policies covering care arrangements for children temporarily or permanently deprived of family care (with translation into English if available)?

GENERAL OVERVIEW

I. Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country, the last amended of April, 27, 2022.

1. The Act stipulates a register of:
 - a. children from alternative care or cared by other institutions for children,
 - b. children who are in PL without legal guardians in accordance with the law in force in the Republic of Poland.

“The register of minors” (in Polish: ewidencja małoletnich) is stipulated in art. 25.a.1 of the very Act.
2. Art.27 of the Act refers to alternative care standards in regard of needs of UA children. The given article stipulates easing of standards of alternative care in Poland.
 - a. alternative care interventions both family and institutional type, that have been already operating and/or are planned to be opened, but that were/are dedicated for mainly Polish citizens (children).
 - i. Number of children per institution – Act of 2011 on family support and alternative care system stipulated limits of children per foster family (including all professional types of family type care) and per institution, whereas according to the art. 27 of the Act of 12 March 2022 on Assistance for Ukrainian Citizens, those limits do not refer to Ukrainian citizens (children) that might be placed in PL alternative care, regardless the above mentioned limits
 - ii. Age of children placed to institutional care. The mechanism is parallel as described above. Act of 2011 on family support and alternative care system stipulated age limits of children placed in an institutional type of alternative care, that is more than 10 years of age, to be placed in institutional type of care, whereas according to the art. 27 of the Act of 12 March 2022 on Assistance for Ukrainian Citizens, those age limits do not refer to Ukrainian citizens (children) that might be placed in PL institutional alternative care, when turned age 3. UA children younger than age of 3 are placed in institutional care if their parent is placed in the same institution of there are

other circumstances that such placing siblings together in one institution, or when placement in an institution is in a child's best interest.

- b. educational standards of staff related to:
 - i. any Polish citizen who is not a sibling or ascendant of a child and who is a candidate to become a foster parent for Ukrainian citizen child. This candidate is entitled to host a UA child upon decision of PL court for family and minors (probation period is max. 6 month, and a candidate is obliged to fill in requirements stipulated for foster parents in the Act of 2011 on family support and alternative care system),
 - ii. Ukrainian citizens who legally entered Poland:
 - the article is easing standards of hiring Ukrainian citizens as a staff of institutional and family types of alternative care;
 - requirement for Ukrainian citizen to become a foster parents is easing, no matter if a person used to be a foster parent in Ukraine and is experienced and trained in the field;
 - the article is easing standards of hiring Ukrainian citizens as a pedagogues or psychologists to be a staff of a team responsible for family type foster care (organizator rodzinnej opieki zastepczej, literally translated: organizer of the family type care) that is in charge of development and monitoring of family type care in a district. Usually a team is a unit of a District Center for Family Support. Local authorities are in charge of a District Center for Family Support.
- c. institutional type of alternative care interventions, that have been already operating (opened after Feb. 24, 2022) and/or are planned to be opened and are dedicated only for UA citizens (children).
 - i. those institutions may not fill in the standards stipulated in art. 106 of Act of 2011 on family support and alternative care system (easing quality standard of running care institution);
 - ii. the article is easing standards of hiring staff to alternative care facilities dedicated to children from Ukrainian institutions;

II. A Hub for children in Stalowa Wola

A hub in Stalowa Wola in Podkarpackie Province for UA children fleeing to PL who were cared of by any type of alternative care and institutional care.

In hub are placed for a short period:

1. UASC – to be placed in alternative care or if possible to find a child's relatives who are already in EU, and are ready to take care of a child;
2. groups of children from UA institutions in order to find a hosting district and premises for a group in Poland;
3. groups of children from UA institutions in order to organize a further travel of a group out of Poland in line with PL-UA and a hosting country agreements;

III. Two operational centers run by Ministry of Family and Social Policy:

1. Child Evacuation Staff (logistics and transport)

2. Accommodation data base for children from alternative care and other institution for children

LEGISLATION BINDING IN POLAND

1. UN Convention (1951) and protocol (1967) relating to the status of refugees
POL: Konwencja dotycząca statusu uchodźców sporządzona w Genewie dnia 28 lipca 1951 r. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19911190515/O/D19910515.pdf>;
Protokół dotyczący statusu uchodźców, sporządzony w Nowym Jorku dnia 31 stycznia 1967 r. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19911190517/O/D19910517.pdf>
2. EU temporary protection for refugees from Ukraine
POL: Ochrona tymczasowa dla osób uciekających z Ukrainy w wyniku wojny – decyzja Rady UE <https://www.gov.pl/web/rpp/ochrona-tymczasowa-dla-osob-uciekajacych-z-ukrainy-w-wyniku-wojny-decyzja-rady-ue>
3. Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland
<https://www.legislationline.org/download/id/1282/file/1f23eff0b917ece7d435a3d363d2.pdf>
POL: Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf>
4. Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country
POL: Ustawa z 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa
<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000583>
INFORMATION IN ENG: <https://www.gov.pl/web/udsc-en/the-law-on-assistance-to-ukrainian-citizens-in-connection-with-the-armed-conflict-on-the-territory-of-the-country-has-entered-into-force>
5. Act of 2011 on family support and alternative care
POL: Ustawa z 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20111490887/U/D20110887Lj.pdf>
6. Agreement of May 24, 1993 between the Republic of Poland and Ukraine on legal assistance and legal relations in civil and criminal matters given in Kiev (text of the Act is not available in ENG)
POL: Umowa między Rzeczpospolitą Polską a Ukrainą o pomocy prawnej i stosunkach prawnych w sprawach cywilnych i karnych sporządzona w Kijowie dnia 24 maja 1993 r. (<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940960465/O/D19940465.pdf>)

7. Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (attached).
We were informed that some of PL Courts for Family and Minors refers to the Convention, in regard of children who enter Poland from Ukraine or other country but those who fled from UA due to war, and who are not Ukrainian citizens.
8. UNHCR Policy on Adoption of Refugee Children
<https://www.unhcr.org/protection/globalconsult/3bd035d14/unhcr-policy-adoption-refugee-children.html?query=adoption>
9. Code of Administrative Procedure
POL: Kodeks postępowania administracyjnego, 14 June 1960
<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19600300168>
10. Code of Civil Procedure
POL: Kodeks postępowania cywilnego, 17 November 1964
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640430296/U/D19640296Lj.pdf>
11. Family and Guardianship Code
POL: Kodeks rodzinny i opiekuńczy, 25 February 1964 – guardianship: arts. 145, 148, 178 (2).
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf>

2. What are the laws and/or policies or bi-lateral agreements covering care arrangements for unaccompanied and separated children (UASC) from foreign countries (with translation into English if available)?

GENERAL OVERVIEW

1. Temporary guardianship – a legal instrument only for UA children enter Poland

Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country, stipulates in art. 25 that a child, UA citizen, who enters Poland after Feb. 24, 2022, and who is not accompanied by an adult recognized by PL law as a legal guardian of a child, will get the temporary guardianship established by a court for families and minors.

Legal guardianship is monitored by PL social services.

Summary of legislation is available here:

POL: <https://ukraina.interwencjaprawna.pl/ustawa-o-pomocy-obywatelom-ukrainy/>

English: <https://ukraina.interwencjaprawna.pl/the-act-on-assistance-for-ukrainian-citizens/>

It's still possible for a child (UASC), UA citizen to apply for refugee status according to Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of

Poland (a child will obtain a guardian according to the Act) instead of legalization of the stay in Poland in line with the Act of March 12, 2022, on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country. However, powers provided by Act of March 12, 2022 seem to be more beneficial for a UA UASC child.

According to PL Family and Minors Code, an UASC child is placed in an alternative care and a child gets guardianship.

2. Registration: The Act stipulates a register of:
 - d. children from alternative care or cared by other institutions for children,
 - e. children who are in PL without legal guardians in accordance with the law in force in the Republic of Poland.

“The register of minors” (in Polish: ewidencja małoletnich) is stipulated in art. 25.a.1 of the very Act.

LEGISLATION BINDING IN POLAND

1. Code of Administrative Procedure (procedure of obtaining refugee status)
POL: Kodeks postępowania administracyjnego, 14 June 1960
<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19600300168>
2. Code of Civil Procedure (alternative care and guardian)
POL: Kodeks postępowania cywilnego, 17 November 1964
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640430296/U/D19640296Lj.pdf>
3. Family and Guardianship Code (alternative care and guardian)
POL: Kodeks rodzinny i opiekuńczy, 25 February 1964 – guardianship: arts. 145, 148, 178 (2).
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf>
4. Act of 2011 on family support and alternative care
POL: Ustawa z 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20111490887/U/D20110887Lj.pdf>
5. Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland
<https://www.legislationline.org/download/id/1282/file/1f23eff0b917ece7d435a3d363d2.pdf>
POL: Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej
<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf>
6. Act of 12 December 2013 on Foreigners <https://www.refworld.org/docid/54c0b9384.html>

POL: Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach. The Act stipulates forms of legalization of stay other than the refugee procedure

<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130001650>

3.

- a. What is the legal status of unaccompanied and separated children (UASC) [from Ukraine] in this country?
- b. Does this status guarantee that a child will be able to return to Ukraine once the situation normalises? Or if there is no such “guarantee”/clause please also indicate.
- c. Is there a difference in how the legal system treats the child classified as unaccompanied vs. separated?
- d. Does this status allow the adoption of the Ukrainian child who has entered this country without the consent or participation of parents and/or representatives of Ukrainian relevant state parties?

- a. Children entering PL from UA without a legal guardian have a temporary guardian appointed (for details: see Section 2.1), and are placed in alternative care.
- b. **YES**, there are not any limitations to return to Ukraine in any time.
- c. **NO**. Each child “separated” of “unaccompanied” is entitled to: temporary guardianship established by PL court for family and minors; and a temporary guardian is entitled to receive social benefits for a child based on general regulations;
- d. **NO**. The Agreement of May 24, 1993 between the Republic of Poland and Ukraine on legal assistance and legal relations in civil and criminal matters given in Kiev refers to adoption children from Ukraine. There is no ability to adopt a child from UA without participation of representatives of Ukrainian relevant state parties. In the pipeline, a MOU with similar provisions has been drafted between two governments, yet to be signed.

4.

- a. What is the legal status (especially the length of the status, benefits and restrictions) of the Ukrainian guardian accompanying a Ukrainian separated child arriving in this country (for example a member of staff from the evacuated institutions which has been appointed by

the Ukrainian authorities as a guardian for a group of children during evacuation of an institution)?

- b. What safeguarding measures are in place to check and protect the best interests of the child if the child has a guardian from Ukraine (i.e., verifying who the guardian is, approve the guardian status in relation to the child, provide support and monitoring, etc.)?

a.

Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country stipulates “temporary guardianship” and “a temporary guardian”.

UA citizens, who enter Poland, will get the temporary guardianship established by a court for families and minors (for example relatives of a child, but also a PL citizen may be established as the guardian). The rights of a temporary guardian are comparable to those of a parent or legal guardian.

Social benefits for temporary guardian of children placed in alternative care in Ukraine: According to art. 26.4c, foster parents and caregivers for UA children who entered Poland together with children in their care are established as temporary guardians of those children. Those very type of temporary guardians are entitled to social benefits, stipulated in art. 26 and art. 31, only in kind or as a reimbursement, covered by local (district) social services.

b.

Registration: Art. 25.a. of the *Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country* stipulates a register of children who enter Poland without a legal guardian

Monitoring of a temporary guardian:

- A temporary guardian is established by Polish court for family and minor and if needed can/should be changed. The court may appoint a candidate as a temporary guardian for children, before a temporary guardian is established by the Polish court.
- Local social services are in charge of monitoring the quality of guardianship.
- If needed district social services (district center for family support) ensures a support staff for a temporary guardian.

5.

- a. What are the regulations and procedures in case a child arrives without parents and any legal guardian (or any papers authorizing the person to care for the child), e.g., a child which is looked after by an adult (e.g., a family friend, a neighbour, someone who found the child alone on the street and took it along to keep it safe...)?

b. May the return of these children to Ukraine, after the normalisation of the situation, be questioned/hampered by the legal status they receive?

a.

Procedure:

Border Guard encounters an unaccompanied minor - on a legal border crossing or not (art. 61 act on granting protection to foreigners within the territory of the Republic of Poland). The Border Guard (or an NGO) applies to the nearest Family Court to: - appoint a curator* (preferentially a relative travelling with a child if there is one) to submit an application for international protection; place a minor in institutional care within 3 days

Doubts about age: If there is any doubt as to the minor's age, the Border Guard may order a medical analysis

Minors' detention: Unaccompanied minors over the age of 15 can be put into Guarded Center for Foreigners

The Special Act: act on assistance to Ukrainian citizens:

- temporary guardianship (art. 25) -of factual and legal character
- registering of the unaccompanied and separated minors(art.25a) - Ministry of Family and Social Policy + Poviats family support centers
- possibility of registering Ukrainian citizens as foster families (art.27) - without specifying the requirements (no requirements analogous to those provided for Polish foster families).

Procedure and regulations for temporary guardians

Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country stipulates “temporary guardianship” and “a temporary guardian”:

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Social benefits for temporary guardian of children placed in alternative care in Ukraine: According to art. 26.4c, foster parents and caregivers for UA children who entered Poland together with children in their care are established as temporary guardians of those children. Those very type of temporary guardians are entitled to social benefits, stipulated in art. 26 and art. 31, only in kind or as a reimbursement, covered by local (district) social services.

Application to the Family Court is submitted by a candidate or another legal entity (e.g. Border Guard). Alternatively, the court takes up the case ex officio) in this case a minor should be directed to the Stalowa Wola center.

The Family Court within 3 days issues a decision - the procedure should include hearing of the parties, including the minor. The decision may include care limitations & the decision can be changed later, also ex officio.

Cases of orphanages:

- temporary care is also a solution dedicated to evacuated institutional care institutions (orphanages)
- there is no limit to the number of children for whom a person can be a temporary guardian
- if the temporary guardian has more than 15 children, the head of the powiat family support center employs, a person to help with care.

For further details see:

- ENG version – scroll down: <https://www.strazgraniczna.pl/pl/cudzoziemcy/najczesciej-zadawane-py/5003,6-Czy-niepelnoletni-cudzoziemcy-moga-samodzielnie-podrozowac-i-przekraczac-grani.html>
 - <https://ukraina.interwencjaprawna.pl/i-am-planning-to-migrate-from-ukraine-to-poland-i-am-17-years-old-and-i-will-travel-alone-what-documents-do-i-need-in-this-case/>
- b. **NO.** A “temporary guardianship” does not question/hamper the return of children to Ukraine.

6. Which government ministry/department is responsible for the:

- a. the care of children temporarily or permanently deprived of family care & would it be possible to provide immediate contacts?
- b. the care of unaccompanied and separated children (UASC) [from Ukraine] & would it be possible to provide immediate contacts?

a.

For regular cooperation:

Ministerstwo Rodziny i Polityki Społecznej, Departament Polityki Rodzinnej (Ministry of Family and Social Policy - Department of Family Policy). Ministry contacts: <https://www.gov.pl/web/rodzina>; Ministry number: +48222500108

Director: Olgierd Podgórski; +48 22 461-60-60
Deputy Director: Dorota Gierej; +48 538 117 230
e-mail: sekretariat.dsr@mrips.gov.pl

For emergency contact:

Sztab Ewakuacja Dzieci - Child Evacuation Staff (logistics and transport)

phone: +48 532-402-575; email: ewakuacjadzieci@mrips.gov.pl

Sztab Miejsca dla Dzieci - Accommodation database for children from alternative care and other institution for children

phone: +48 666-383-956; email: miejscedladzieci@mrips.gov.pl

b.

The Office for Foreigners / Urząd do Spraw Cudzoziemców
Department of Social Services / Departament Pomocy Socjalnej
Director: Mr. Szymon Hajduk
Deputy Director: Mr Tomasz Dzięcioł
Sekretariat: tel.: +48 47 72 174 46
e-mail: dps@udsc.gov.pl
<https://www.gov.pl/web/udsc/departament-pomocy-socjalnej>

The Department is also in charge of providing support to unaccompanied minors residing in Poland and applying for asylum based on the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland.

7. Has the government adopted specific legislation/policy or bi-lateral agreements on USAC from Ukraine? If not, would the government develop such legislation / regulations or bilateral agreements?

Apart from the acts/laws mentioned in Section 1, the Government of Poland and the Government of Ukraine drafted a Memorandum of Understanding (MoU) related to the evacuation of children from residential care institutions, but this MoU is still not signed.

8.

a. Has the government in this country put in place a system/process to track children from Ukraine, especially UASC?

b. Who is responsible for identification and registration of these children, as well as accommodation and care?

a.

YES, (the register should cover this issue, the implementation of the register should be monitored)

b.

Minister of Internal Affairs and local authorities on district level are responsible for filling in the register.

Accommodation and care of UASC is organized as stipulated in the Act of 2011 on family support and alternative care. Additionally, institutional care facilities can be organized based on Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country (art. 27).

There is a hub in Stalowa Wola in Podkarpackie Province for UA children fleeing to PL from UA who were cared of by any type of alternative care and institutional care and operational centers run by Ministry of Family and Social Policy. Stalowa Wola serves as a hub and the first point of identification and registration of children evacuated from residential care institutions from Ukraine and as a temporary shelter before more permanent accommodation is identified by Polish authorities.

<https://www.gov.pl/web/rodzina/w-mriips-powstaly-dwa-sztaby-do-ewakuacji-i-rozlokowania-w-polsce-dzieci-z-ukrainy>

9. Which authorities have responsibility for family tracing and reunification? Contact information provided where available.

According to the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland the related body is the Office for Foreigners. However, those responsibility refers to foreigners who are asylum seeking based on the very act. Monitoring of fulfillment of the given responsibility would be needed <https://www.gov.pl/web/udsc/urzed-do-spraw-cudzoziemcow>

In Act of 12 March 2022 on Assistance for Ukrainian Citizens in connection with the armed conflict on the territory of the country does not stipulates any family tracing and reunification track.

Additional relevant information & resources:

- Dedicated website: <https://www.gov.pl/web/ua-en>
- Helpline of the Office for Foreigners: +48 47 721 75 75
- Helpline for the victims (24h): +48 222 309 900
- Helpline for the Ukrainians seeking medical help (24h): 807 190 590
- The Child's Ombudsmen Help Line: in Ukrainian and Russian
<https://brpd.gov.pl/2022/02/25/uwaga-pomoc-800-12-12-12-po-ukrainsku/>