

asylum in scotland

child's welfare paramount?

a guide for members from BASW
and UNISON Scotland



asylum in scotland child's welfare paramount?

asylum seeker families and unaccompanied asylum seeker children

a guide for members from BASW and UNISON Scotland

“Their experiences can open the minds of the other children and help combat issues such as racism and intolerance.”

Glasgow head teacher Tom McDonald
(BBC 26/4/06)

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purpose of guidance

This guidance is designed to provide a framework for ethical practice for UNISON and BASW members in Scotland who are social work and social

care practitioners and who are providing a service to the children of asylum seeker families or to unaccompanied asylum seeker children.

principles

- Asylum seeker children living in Scotland have the same rights under Scottish legislation as any other child living in this country and the local authority has the same duty towards them.
- Social workers employed by local authorities to provide services to children and families have a statutory duty to protect the rights and interests of all children.
- The SSSC Codes of Practice for social workers and employers describe standards of professional conduct and the practice required of social service workers in Scotland; and the responsibilities of

employers to support and regulate these standards. The Codes inform ethical practice with all service users including asylum seeker children and their families.

- BASW members are also bound by the BASW Code of Ethics.
- All policies and procedures established by the Scottish Executive and individual local authorities in respect of the welfare and protection of children apply equally to the children of asylum seekers and to unaccompanied asylum seeking children.

“Everyone has the right to seek and to enjoy in other countries asylum from persecution”
Universal Declaration of Human Rights Article 14

the law

Children (Scotland) Act 1995

The Act states in its over-arching principles that the welfare of the child must be paramount and that the child's views should be taken into account in all matters affecting him or her. These principles are underpinned by the UN Convention on the Rights of the Child and apply to all children living in Scotland.

It is considered that because of their particular circumstances and vulnerabilities, asylum seeker children, whether unaccompanied or living with their families, can be considered ‘children in need’ under Section 93 of the Children (Scotland) Act 1995. This is defined as:

- a) being “in need”, is to his being in need of care and attention because-
- (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are

provided for him, under or by virtue of this Part, services by a local authority;

(ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;

(iii) he is disabled; or

(iv) he is affected adversely by the disability of any other person in his family;

These children are therefore entitled to all the rights and services accorded to ‘children in need’ under the Act.

The Children (Scotland) Act 1995 s22 places a duty on local authorities to safeguard and promote the welfare of children in need and so far as is consistent with that duty to promote the upbringing of such children by their families by providing appropriate services including assistance in cash or in kind.





The UN Convention on the Rights of the Child...

“is that luminous living document that enshrines the rights of every child without exception to a life of dignity and self-fulfilment.”

Nelson Mandela, 2000

The Children (Scotland) Act 1995 s29 and the Regulation of Care (Scotland) Act 2001 s73 provide for throughcare support for children and young people.

However, the entitlement to support for the families of asylum seeker children under this legislation has been compromised in some circumstances by the Immigration and Asylum Act (IAA) 1999, the Nationality, Immigration and Asylum Act (NIAA) 2002, the Asylum and Immigration (Treatment of Claimants,

etc.) Act 2004 and the Immigration, Asylum and Nationality Act 2006.

It should be noted that the British Government has placed a reservation on the UN Convention on the Rights of the Child in relation to asylum and immigration matters. This does not affect the rights of asylum seeker children where these are enshrined in Scottish legislation except where these are deemed to be compromised by immigration legislation.

The Children's Commissioner in Scotland includes in her jurisdiction all children living in Scotland, regardless of their immigration status.

Therefore where there are concerns about the rights of the children of asylum seekers or unaccompanied asylum seeker children, these can be referred to the Scottish Commissioner for Children and Young People. (SCCYP).

definitions

Asylum or Refugee Status?

Asylum and immigration legislation (and associated orders) changes all the time. The 2006 legislation will be implemented in a period up to 2008. All of this legislation can affect the status of children coming to Scotland.

Therefore, the following is just a brief

outline gathered from a range of advice sources at the time of writing and is not a definitive or current statement on the law.

See pages 8 and 9 for useful links and contacts. **It is important to check first and take advice on any child's status.**

Refugee status

The Home Office recognises refugee status and grants asylum when they consider that someone falls within the 1951 UN Convention definition of a refugee.

People deemed to be refugees are automatically given Indefinite Leave to Remain (ILR). There is no limit on the time they may stay in the UK.

In most cases they may apply for British citizenship five years after their arrival in the UK, are entitled to a UN Convention Travel Document in the meantime and also to apply for family reunification.

People with refugee status are entitled to the same social and economic rights as UK citizens. That means they have -

- Full rights to work under employment law
- Full access to medical treatment, benefits, education and housing

The UK also awards Discretionary Leave (DL) and Humanitarian Protection (HP), which allow applicants to stay in the country for shorter periods of time, typically five years. These do not allow access to the same economic and social rights.



Asylum seekers

Asylum seeker means a person who has applied for asylum under the 1951 Refugee Convention on the Status of Refugees on the ground that if s/he is returned to his country of origin s/he has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group.

S/he remains an asylum seeker for so long as her/his application or appeal is pending. Only after all appeal rights have ended unsuccessfully, may the person be considered a failed asylum seeker.

Asylum seekers cannot work and cannot claim welfare benefits.

They can apply to the National Asylum Support Service (NASS), the government department responsible for destitute asylum applicants, for basic food and shelter.

Section 122 of the IAA 1999 (as replaced by NIAA 2002 s 47) **requires** NASS (National Asylum Support Service) support to be made available to the households of destitute asylum seekers which include dependent children under 18, and prohibits local authorities from providing assistance under the Children (Scotland) Act 1995 s22

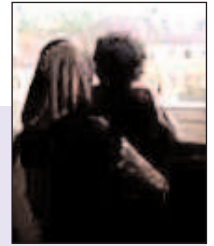
and other provisions where NASS is or could be providing it.

NASS support can be removed where the conditions of its grant are broken. This could be because of causing nuisance or breaching another condition of the support.

Section 22 duties remain intact for children and families whose NASS support has been removed for this reason.

Their entitlement has not been affected by the IAA 1999 or the NIAA 2002 because the exclusions apply where NASS is or could be providing support.

Those who arrived before August 2000 and claimed asylum in the country rather than at the port of entry are still the responsibility of local authority social work services. It is intended that they will be absorbed into the NASS system.



“Some of them who’ve been clearly persecuted, there are loads in the world, they’ve seen their family executed in front of them, they escape and get away here and we say to them you can’t work, go and stay in the Red Road flats, and everyone’s going ‘look at him, he’s got a TV’”.

Glasgow man quoted in ‘Warm Welcome: Understanding attitudes to asylum seekers in Scotland’ by Miranda Lewis available from www.ippr.org

Unaccompanied asylum seeker children

The UN defines unaccompanied children as ‘those who are separated from both parents and are not being cared for by an adult who, by law or custom, has responsibility to do so’.

The Home Office uses the term to describe a child under 18 (or if there is no proof, appears to be under 18) outside their country of origin who is not accompanied by a close relative (regardless of whether or not that relative usually cares for the child). This makes it a more narrowly defined term than ‘separated’ children in the UN Convention.

The Immigration and Nationality Directorate (IND) does not consider a child to be unaccompanied if he or she is being cared for by an adult prepared to

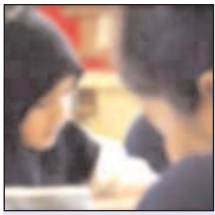
take responsibility for them. The IND says it will involve social services in any case where there is concern about the child’s relationship with the ‘responsible’ adult.

They are not included in the definition of “asylum seeker” while they are under 18 so there is no limitation on their entitlement to Children (Scotland) Act support.

Local authorities have the same duties to young unaccompanied asylum seekers (or separated children) as they would have to any other children in their area who are unaccompanied and/or separated from their families. So they are eligible for the full range of support under the Children (Scotland) Act 1995 and other provisions (see legal resources on page 9).



Turning 18 and implications for support and status



“My message to the government is - take care of young people and help them and support them in their education; it's very difficult without your family.”

Bilal, age 16

Several issues face young people when they reach 18. Support systems change, they have to find their own accommodation, they may be dispersed and have their Leave to Remain reassessed. They may face return to their country of origin. Case law has established

(through the 'Hillingdon case') the possibility of aftercare for asylum seeker children who were deemed 'looked after' children in England.

The Children (Scotland) Act 1995 s29 and the Regulation of Care (Scotland) Act 2001 s73 may offer throughcare support but this will depend on a number of individual factors and practitioners should take advice.

Failed asylum seekers

This term is used to describe people who have exhausted the asylum legal process and not been granted refugee status.

Families are still entitled to get NASS support after their asylum appeals have failed up until directions have been set for their removal from the UK (i.e. until a flight has been arranged for them to leave the UK

but the family have not got on it).

“Newspapers and politicians say we should go home. Do you think that if our

home was safe we would want to come here? No. We would be in our home. One day I hope to go home and build a place where homeless people can go.”

Lindica, 14.

Newham Children's Fund. (2002)

Dreams, Struggles and Survivors:

Messages from Young Refugees

After that, if NASS withdraws support, local authorities have to provide assistance to children and also to adults to whom assistance has to be provided in order to avoid a breach of a person's Convention Rights or their rights

under European Community Law. This is covered in NIAA 2002 schedule 3.

New regulations mean accommodation can still be provided to failed asylum seekers by NASS on condition that they undertake community work. However, this plan has faltered as the main charity involved has pulled out due to concerns about 'slave labour'. It is argued that local authorities still have the power and duty to give social welfare services to families under the Children (Scotland) Act 1995 and other legislation.

Note: Section 9 of the 2004 Act allowed the Secretary of State to certify that a family has failed without reasonable excuse to take reasonable steps to leave the UK. In that case financial support could not be provided for the family by the local authority.

A failed pilot and huge opposition from BASW, UNISON and many others led to a clause in the new Immigration Asylum and Nationality Act (2006) allowing the Secretary of State to repeal this.

Migrant workers

Migrant workers include members of the EU, who are allowed to work and settle in the UK. For example, A8 citizens (from Latvia, Slovakia, Czech Republic, Lithuania, Slovenia, Estonia, Hungary and Poland) can work in the UK and have the same employment rights as UK citizens.

As long as they are registered with the Home Office and paying National Insurance, they are entitled to some basic

benefits, such as housing benefit, council tax benefit and tax credits while they are working, although this is not always understood.

Only after they have worked continuously for 12 months can they access social, health and education services and claim jobseeker's allowance. However, if they become unemployed within the 12 months, they lose access to all these benefits.



Refugees International



codes of practice

SSSC Code of Practice

This requires social service practitioners to work to a set of professional standards when providing a service. The following standards may be particularly relevant in working with asylum seeker families and their children:-

1. As a social service worker you must protect the rights and promote the interests of service users and carers.

This includes:

- 1.1 Treating each person as an individual;
- 1.2 Respecting and, where appropriate, promoting the individual views and wishes of both service users and carers;
- 1.3 Supporting service users' rights to control their lives and make informed choices about the services they receive;
- 1.4 Respecting and maintaining the dignity and privacy of service users;
- 1.5 Promoting equal opportunities for service users and carers; and,

- 1.6 Respecting diversity and different cultures and values.

3. As a social service worker you must promote the independence of service users while protecting them as far as possible from danger or harm.

This includes:

- 3.1 Promoting the independence of service users and assisting them to understand and exercise their rights;
- 3.4 Bringing to the attention of your employer or the appropriate authority, resource or operational difficulties that might get in the way of the delivery of safe care;
- 3.8 Recognising and using responsibly the power that comes from your work with service users and carers.
- 6.1 Meeting relevant standards of practice, and working in a lawful, safe and effective way;



UNISON position

In line with the union's rules and procedures on representation, UNISON will advise and support qualifying members whose practice with asylum seeker families conforms to the

SSSC Codes of Practice, the Children (Scotland) Act 1995 and UNISON's general policies and principles of equality and anti-discriminatory practice.

BASW code of ethics for social work

The Code of Ethics encompasses the SSSC Codes of Practice but offers a more comprehensive framework for ethical practice. Its five basic values state that social work should both promote respect for **human dignity** and pursue **social justice**, through **service to**

humanity, integrity and competence.

BASW will support all members whose practice with asylum seeker families conforms to their Code of Ethics and where they have followed all the protocols of their employing agency. See the full code at www.basw.co.uk

Seek early advice: Members faced with the issues outlined in this booklet may wish to seek advice from their union or professional association.

It is always better to seek advice from BASW or UNISON at an early stage in the process in advance of any perceived difficulties.



policies and procedures

Getting it Right for Every Child (GIRFEC)

The Scottish Executive has made it clear that the children of asylum seekers living in Scotland (currently only Glasgow) will be provided a service in line with the GIRFEC

“I don't have happy memories of childhood. I remember the

sound of people being beaten, and women screaming.”

Eshe from Somalia quoted at www.refugee-action.org.uk

proposals. These will be underpinned in due course by legislative reform to be implemented by 2010.

The proposals place duties on all agencies involved with a child to be alert to their needs and to act to improve

their situation. It proposes that there be a “lead professional” who will co-ordinate a multi-agency assessment as appropriate to the needs of the particular child. In the case of asylum seeker children, there is no agreement that the Home Office will take such an assessment into account when looking at decisions to grant asylum, however, this may inform decisions about the timing and nature of deportation.

In addition, such assessments will be shared with the families who can then use the information in any appeal process or other legal action.

practice issues

UNISON and BASW believe that in conformity with Article 9 of the UN Convention on the Rights of the Child, social workers should only seek to separate children from their parents where this is adjudged to be in the best interests of the child and where no other options are available.

In our view, children of failed asylum seekers should not be separated from their families unless they are at risk of significant harm. Separating children from their parents even for short periods of time can result in lifelong emotional damage.

Children who have experienced violence including murder, torture and rape (often state perpetrated) will already be severely scarred (i.e. psychologically and possibly physically by this trauma) and consequently will suffer further devastation by being

separated from their parents and may perceive this as the ultimate punishment in their already damaged young lives.

It should also be borne in mind that separating children from their parents may ultimately increase the incidence of self-harm and suicide.

According to research conducted by the National Expert Centre for the Treatment of Victims of Persecution, War and Violence, unaccompanied refugee minors have high severity levels of psychosocial problems (anxiety, depression and traumatic stress reactions) more so than those who are accompanied by their parents.

Their need for additional services to help them to cope with their experiences should be considered.

issues faced by children seeking asylum

Children and families may have experienced loss, bereavement and separation, along with problems related to asylum itself and the arrival in a new country.

Fears of being sent back, detention and the stresses of poverty, culture shock, obstacles to integration, racism, unemployment and

boredom are common issues. They have to adjust to a new culture, language and to construct a new sense of identity/belonging.

Young people are trying to manage these transitions at a crucial time in their own development. Many children may be suffering from trauma which might lead to



perceived behavioural problems. Some may have guilt feelings about having to escape leaving family members behind.

Some may have experienced extreme events like torture, other assault or uncertain imprisonment. They may have witnessed inhumane acts or had to deal with the aftermath of these.

Especially in the case of unaccompanied children, they may be extremely anxious about the security of personal information and trust-building will be a key issue.

What awaits children if they are deported?

There is current concern about how assessments are made in countries to which children are returned, about the support for children and their families and the training and qualifications of the people undertaking the assessment.

For example, a child who has been sold by their parents and subsequently trafficked may have a different reunification with their parents from a child who has been sent by their parents to escape traumatic experiences like war or persecution.

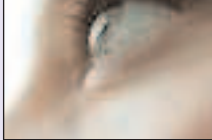
If children are removed, detained or displaced by Immigration authorities, it must be acknowledged that this can compromise a child's recovery from often significant trauma.

This is exacerbated if children have been settled for a time in Scotland, have built new identities and have begun to rebuild their lives.

The uncertainty itself may be enough to undermine recovery.

Social workers need to be confident that the child is returning to a welcoming and supportive environment and that they will not suffer further harm or abuse.

The guidelines for this assessment are found in the UN Convention on the Rights of the Child.



“They tried to shoot my dad but my sister started to scream. Because she was making lots of noise they shot her instead. They took my father away. My family was like this: mum, dad, three sisters and a brother. But now it was me and my mum, my sister and brother. All of us buried my sister and left Afghanistan.”

Hannah, aged 11
<http://uk.oneworld.net/>

dilemmas for practitioners

Practitioners in the social work and social care professions are well equipped to help children and their families recover from all of the effects outlined above.

Practical assistance (where possible) and referral to specialist advocates is one part of this process. However, it should not be the only part of the process.

It must be complemented by a recognition that many families will need the individual and family emotional support and therapy we can and should provide.

It is clear that progressive Scottish legislation, designed to meet and support the needs of children with the central principle that the child's welfare is paramount, is compromised by immigration legislation. Dilemmas arise when it is apparent that the child's welfare is being compromised by that legislation and by how that legislation is being applied.

UNISON and BASW are lobbying consistently for the interests and rights of children and against legislation that compromises those interests and rights. But significant change, even if there is a will for that change, will take time.

Practitioners should not collude with practices and procedures that do not have children's interests at their heart. It is not a social work role to put a human face on to inhumane practices. But where possible, they should do all they can to promote the child's interests.

That should include using to best effect all the legislation we have at our disposal and being prepared to intervene and challenge within the parameters of the SSSC Code of Practice and the UN Convention on the Rights of the Child.

We should expect the support of our agencies in doing that.



wider campaigning

UNISON and BASW have made many representations to Government at Scottish and UK level to campaign for the interests of asylum seeking children and their families.

Dear Prime Minister

I wish if you can come to Glasgow and go to an asylum seeker's flat so you can see how an asylum seeker lives. How the people when they see you treat you, go to shop with voucher and everybody look at you. After come to me and tell me how you are feeling.

'Starting again...'

Young asylum seekers views on glasgow
www.savethechildren.org.uk

UNISON has had several meetings with Scottish civil servants to challenge the infamous 'dawn raids' and the inhumane removal of children. It continues to pursue these issues with ministers.

The union has a policy of seeking an amnesty for all asylum seekers who have been in the UK for more than a year. It has also published an 'Asylum Myths' booklet as part of its 'Many

Cultures Working in UNISON' campaign.

Along with other organisations, we have had some success and the Scottish Executive is working towards a range of initiatives we have called for. These include an end to dawn raids, a 'protocol' involving communication between agencies, a lead professional for all asylum seeker children, a real assessment of their needs, enhanced disclosure checks for immigration staff deal-

ing with children and a review of removals.

However, as we went to print in October 2006, more dawn raids took place to remove families outwith this 'protocol'. There is therefore a need to maintain the campaign at all levels.

At a UK level UNISON is working with a range of organisations for asylum seekers' rights and against racism.

BASW has been campaigning on a UK level and been involved in lobbying at Westminster, given that these are reserved issues. They have also pursued issues with the Minister for Communities, Malcolm Chisholm and the Commissioners for Children in the four countries of the UK. BASW are members of the Refugee Children's Consortium and the Stop deporting Children Group who regularly lobby at the UK Parliament.

They are also concerned in a new group coordinated by BAAF investigating the quality of 'voluntary returns' for young people.

The next step for both organisations is to build a broad coalition of a range of groups in Scotland to campaign jointly for the rights of asylum seeker children ■

contacts

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UNISON Scotland

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Glasgow G2 6RX

Tel: 0870 7777 006 Fax: 0141 331 1203

Text tel: 0141 248 3981

See: www.unison-scotland.org.uk/contacts for local branches and resource centres.

UNISON Direct (6am-midnight Mon-Fri, 9-4 Sats). 0845 355 0845

Freephone Textphone 0800 0 967 968



helpful resources

Association of Directors of Social Work

Professional organisation of senior social work officers in local government in Scotland
www.adsw.org.uk

Asylum Myths - a race awareness briefing from UNISON Scotland dispels the popular asylum myths.
www.unison-scotland.org.uk/activists/asylum.html

BASW Scotland - code of ethics, professional information, advice and representation and briefings on asylum. www.basw.co.uk click on BASW Scotland.

Child Poverty Action Group Scotland - information on entitlement to benefits.
www.cpag.org.uk/scotland/

Citizens Advice Scotland - asylum information and migrant workers rights - www.cas.org.uk/

CoSLA Refugee & Asylum Seekers

Consortium - manages and monitors the commissioning and provision of accommodation and other services for asylum seekers in Scotland. A range of very useful links. www.asylumscotland.org.uk

Health for Asylum Seekers and Refugees Portal - rights, legal and health issues
www.harpweb.org.uk

Immigration and Nationality Directorate - The Home Office. Interpretation, rules, forms and guidance. www.ind.homeoffice.gov.uk/applying/asylumapplications/

Joint Council for the Welfare of Immigrants independent national voluntary organisation, campaigning for justice and combating racism in immigration and asylum law and policy - www.jcwi.org.uk

Medical Foundation for the Care of Victims of Torture - www.torturecare.org.uk

No Place For a Child - joint agency campaign against detention of children
www.noplaceforachild.org

Save The Children Child Asylum and Refugees Issues in Scotland - extensive briefings on law, rights, procedures and benefits with useful links. - www.savethechildren.org.uk/caris/legal/home

Scotland's Commissioner for Children and Young People - www.sccyp.org.uk

Scottish Ethnic Minorities Law Centre - provides ethnic minority communities with access to professional services to address unmet legal needs
www.emlc.org.uk/

Scottish Refugee Council
www.scottishrefugeecouncil.org.uk

Unaccompanied refugees and asylum seekers turning 18

- 2006 booklet from Save The Children. Covers English legislation but is very helpful both in terms of law and professional practice.
www.savethechildren.org.uk/scuk/jsp/resources/details.jsp?id=4186&group=resources§ion=publication&subsection=details

UNISON Scotland - Scottish site of the public service union. Briefings, campaigns, advice and support on asylum, immigration, anti-racism and employment issues. Links to the extensive UK UNISON site - www.unison-scotland.org.uk.

United Nations Convention on the Rights of the Child www.unhchr.ch/html/menu3/b/k2crc.htm

WorkSMART - TUC advice for migrant workers.
www.worksmart.org.uk/rights/viewsubsection.php?sun=82

Useful legal resources

Children (Scotland) Act 1995

www.opsi.gov.uk/acts/acts1995/Ukpga_19950036_en_1.htm

Children's Legal Centre - national charity with extensive section on asylum and Immigration.
www.childrenslegalcentre.com

Immigration and Nationality Directorate Immigration Rules www.ind.homeoffice.gov.uk/lawandpolicy/immigrationrules/

Immigration Law Practitioners' Association established in 1984 by a group of leading UK immigration practitioners to promote and improve the advising and representation of immigrants - www.ilpa.org.uk

Legal Services Agency - Scottish law centre with asylum advice and links - www.sclc.org.uk

Scottish Child Law Centre includes free legal advice number for children
www.sclc.org.uk/

Scottish Executive's Working Group on the Throughcare and Aftercare of Looked After Children in Scotland.

www.scotland.gov.uk/Publications/2002/08/15325/10518

The Support and Assistance for Young People Leaving Care (Scotland) Regulations 2003 (SSI 2003/608)

www.opsi.gov.uk/legislation/scotland/ssi2003/20030608.htm





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