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Supporting the education of looked after children with uncertain immigration status

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Guidance for professionals

This briefing is intended as a general reference for teachers and other professionals in Scotland. It provides guidance on how to support young people with an uncertain immigration status in their journey to post-school education or employment.

Consultation with young people and professionals suggests that there is significant confusion about the support that looked after children with uncertain immigration status can access with regard to post-16 education.

This briefing sets out what it means in practice to have an uncertain immigration status, the intersection between being looked after and having an uncertain immigration status, and the implications for the journey through education and employment.

Migrant Young People and Immigration Status in Scotland

The term 'young people' in this briefing is used to refer to individuals under the age of 26, and so includes 'children' (those under the age of 18), and young people up until their 16th birthday. This reflects the age group to which corporate parenting responsibilities apply (please refer to Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014 for further details). Migrant young people in Scotland can hold one of a range of immigration statuses. Depending on the status held these children will be able to access different supports and entitlements. Typically, migrant young people will hold one of the following migration statuses:

- Indefinite Leave to Remain (ILR)** is a form of permanent residence. A young person with indefinite leave to remain is free to stay in the UK indefinitely, without restrictions on their rights to access benefits, education, and health care, or to work. This form of status can be revoked if the young person commits a particularly serious crime, or spends more than two years outside the UK.
- Refugee Status and Humanitarian Protection (HP)** are both forms of international humanitarian protection granted to children or young people who cannot safely be returned to their home countries.

These typically confer five years' limited leave to remain, during which time the child must also be given access to benefits, education, health care, or work, on equal terms to children who are permanently resident. At the end of the five-year period, the child must make a further application for ILR, which will normally be granted, unless there has been a significant change in the young person's circumstances such that international humanitarian protection is no longer necessary, or the young person has committed a particularly serious crime.

- **Limited Leave to Remain (LLR) and Discretionary Leave (DL)** are subsidiary and discretionary forms of leave, granted for varying lengths of time, depending on the circumstances; for example, for cases considered in accordance with the Human Rights Act this is generally 30 months. Children or young people may hold this form of leave if, for example, they were formerly dependent on a parent who had been granted leave for a temporary period to study or work in the UK, or if their asylum claim had been refused, but there were no adequate reception arrangements in their home country (in which case they are granted leave until the age of 17.5). Children who have been identified as victims of trafficking are also sometimes granted a one-year residence permit under DL, and children who are in the care of a local authority can be granted a limited form of leave for this reason alone.

Holders of these forms of leave can access education and health care, and can work, *unless* the leave is subject to conditions (specified in writing). Such conditions can include, for example, a prohibition on accessing 'public funds'. The benefits and services listed as 'public funds,' however, *do not include* access to the National Health Service, education, or any education funding (for example, being assessed as a 'home' fee-payer or being eligible for student support) – so a 'public funds' condition should not be a barrier to accessing these services.

In order to remain lawfully resident, young people must apply for an extension of leave in these categories before their current leave to remain expires. The outcome of such applications is generally dependent on showing that the applicant continues to meet the requirements of the immigration category under which they are applying. This is a somewhat precarious position for a young person whose immigration status is dependent on the immigration status of a parent who no longer has care of them. There are also implications for young people embarking on post-school education in terms of the length of the course they pursue and the added stresses (sometimes at significant points in their educational journey) which will emerge as a consequence.

- **Temporary Admission (TA)** is a form of temporary leave that is granted to some asylum seekers while their asylum claim is under consideration. During this time, holders have the right to reside in the UK, but they do not have equal access to all public benefits, and they do not have the right to work. Children in asylum-seeking families are normally accommodated and supported through the Home Office Asylum Support system, and those in the care of the local authority are accommodated and supported through local authority funding for looked after children.

Temporary admission expires if a child has been granted asylum (and therefore has Refugee Status), or if a child's claim is refused and the child has exhausted all appeal rights, in which case the child will either hold some form of LLR or DL (therefore having access to benefits and services as outlined above), or will become unlawfully resident and removable to the home country.

As it is difficult for other professionals to predict the outcome of a child's asylum claim, or indeed, even the timing of such a decision, this also has clear implications for young people who are considering their post-school education options.

- **EEA Right of Residence** is a right to live, work and access benefits and services in the UK conferred on EEA (European Economic Area) nationals and their EEA and non-EEA family members who are exercising free movement rights under European Community law. Children who hold this status have an unrestricted right of residence, so long as they or their family members are exercising this right, but this can be terminated if they cease exercising this right. Again, as this may lie outside the control of the child, holding this status may make it difficult for children and professionals supporting them to plan the transition to post-school education.
- If children do not hold any of the above forms of leave, they may be **Unlawfully Resident**, meaning they may not have formal legal permission to live in the UK, or to access benefits. Where a child holds some form of leave or right of residence as a dependant of a primary leave holder (the parent or carer) the condition of leave is affected if the child's relationship with the primary leave holder breaks down (e.g. where the child is taken into care by the local authority). In such circumstances the child becomes unlawfully resident, though in practice their leave to remain continues to be valid unless the Home Office curtails or cancels it. Irrespective of whether a child or young person is 'lawfully resident' or not, if aged under 18 years and 'looked after' they have the same rights, and are owed the same protections and services by the local authority (and their Community Planning Partners), as any other looked after child in Scotland.

Uncertain immigration status

For the purposes of this briefing the term '**Uncertain Immigration Status**' refers to circumstances where children and young people are unsure of their current immigration status, or status in the short-to-medium term future due to unresolved immigration issues. The term can include those who are in the process of seeking asylum, those whose parents are in the process of seeking asylum, and also those who have been granted some form of leave to remain which is subject to a time constraint. It therefore encompasses all the categories described above except for 'refugee status,' 'HP,' or 'indefinite leave to remain'.

Professionals working with young people may be unaware that the young person's immigration status is 'uncertain'. The child or young person themselves may not be aware until such time as issues arise due to their immigration status (e.g. as they attempt to move into post-school education, training or employment).

Separated children and Unaccompanied Asylum Seeking Children (UASC) tend to have an uncertain immigration status. A '**Separated Child**' is a child under the age of 18 who is outside their country of origin and separated from their parents or legal or customary care giver. Some separated children may make a claim for asylum due to fears of persecution if they were to be returned to their home country, and these children are often referred to as **Unaccompanied Asylum Seeking Children**.

Numbers of looked after children affected

There are no reliable data available on the total number of migrant children and young people in Scotland, or the number within this group that may have an uncertain immigration status. In addition, there are no accurate demographic data on the number of asylum-seeking and refugee children in Scottish (or indeed any UK) schools, since disclosure of immigration status is voluntary, and the number of known cases is likely to be less than the total numbers actually present.ⁱ

According to the Pupil Census Supplementary Dataⁱⁱ 697 pupils in Scotland in 2014 were identified as asylum seekers and 1,760 were identified as refugees; a subset of these individuals is likely to be looked after. It is difficult to know how accurate these data are as they are based on school

records and it is very likely that schools will not always have full informationⁱⁱⁱ. These data also do not reflect all categories of 'uncertain immigration status'.

Responses to a Freedom of Information (FOI) request submitted as part of research carried out in 2014 by the Legal Services Agency suggested that up to 117 'separated children' were accommodated across Scottish local authorities in the years 2012 and 2013. (A more realistic figure was estimated to be between 60 and 70 following resolution of ambiguities in responses to the FOI request).^{iv} A majority of these were accommodated by Glasgow City Council, with seven other local authorities reporting that they accommodated between one and five separated children.

This report suggests that the numbers are small but significant. The authors note that the practice in relation to accommodating these young people has been inconsistent, and potentially detrimental to the wellbeing of the young people in question. The total number of looked after children with an uncertain immigration status is also certain to be higher than these numbers suggest as they do not capture children and young people who fall into categories other than 'unaccompanied asylum seeking'.

Being Looked After and Immigration Status

What is the issue?

Migrant children may be unsure of their immigration status in the present or in the short-to-medium-term future due to unresolved immigration issues. This may be because they, or their parents, are in the process of seeking asylum, or because they have been granted some form of leave to remain which is subject to a time constraint. They may be 'separated children' who are or have been^v:

- Cared for by the local authority and whose immigration status has never been fully considered
- Accommodated by the local authority because of conflict within families
- In private fostering arrangements
- Brought in as visitors and remained in the UK after their period of leave expired
- Brought into the UK for adoption but the adoption order was refused or the arrangement failed
- Arrived in the UK as international students, or as the under-18 dependants of international students, but studies have not continued
- Children who are members of a family split between countries or where the actual family relationships are difficult to determine

Children with an uncertain immigration status can become looked after by a Scottish local authority for reasons which may be related to their immigration status, including being an unaccompanied asylum-seeking child or because they were trafficked to Scotland for the purposes of exploitation. They can also become looked after for the same range of reasons that apply to children in general, such as the absence of a parent or guardian who can care for them, or the experience of abuse or neglect.

Implications for Teachers and other Professionals

A child's immigration status does not affect his or her rights of access to school education or health and care services. Such a looked after child will have a placement in residential or foster care, in an arrangement supervised and resourced by a local authority. They will have a social worker, a foster carer or, if in residential care, a personal or 'key' worker. If the local authority has used an external foster care provider, that agency may also employ an education specialist to support the carers and teachers in helping the child to settle at school. Every looked after child (regardless of their immigration status) must have a care plan (from 2016, reflected in the statutory [GIRFEC](#) 'Child's Plan') kept under regular review.

As in the case of all looked after children, it is important that teachers, particularly those with the role of '[designated manager for looked after children](#)' within their school, are fully aware of the placement arrangements, know the carers and key professionals, and ensure that the child's educational progress is given priority in care planning arrangements. In these respects, the considerations for children with an uncertain immigration status are no different to those of other looked after children attending the school.

There are some particular considerations for teachers in the case of children with an uncertain immigration status, and these are outlined below. Teachers should be familiar with:

- **Corporate parenting responsibilities:** It is important for teachers to be aware that they share responsibility for the local authority's obligations as a [corporate parent](#). This includes considerations which apply to all looked after children, such as being aware of the placement arrangements and the details of the child's plan. There may be particular risks for children with uncertain immigration status, including experiencing bullying and name-calling, and the stress of navigating the complex asylum and immigration process.
- **The immigration status of the child:** Teachers should check (typically by asking the social worker) whether the immigration status of the young person has been established. It is imperative that the immigration status of a migrant child who is taken into care by a local authority is established as soon as possible, and that the child is assisted in accessing independent legal advice in order to do so. This information can then be fed into all subsequent care planning for the child, including planning and advice in relation to education and post-school opportunities.
- **Specialist support:** Teachers should check (by asking the social worker) whether the child or young person is receiving specialist support available to some groups of separated children, such as is available from the [Scottish Guardianship Service](#). Not all children with uncertain immigration status will meet the eligibility criteria for support but it is better to check than for a child who is eligible not to receive a service. The service supports unaccompanied asylum seeking and trafficked children and young people; if a young person arrives in Scotland with their parents and subsequently becomes looked after they may not have been referred to the guardianship service.
- **Legal support:** Teachers should check (again, by asking the young person's social worker) that the child or young person has received specialist legal support in relation to their immigration status, and that they are able to continue to access this support, particularly if circumstances change, or the need arises. A young person's immigration status should not be considered to be 'dealt with' as it will pose different issues at different stages of their educational journey. This is clearly important for the child's future living circumstances but there is also an important educational consideration, since immigration status has implications for planning a young person's post-school education and employment (explained more fully later in this guidance) once they reach their 18th birthday.
- **'Out of authority' placements:** Teachers should be aware that getting appropriate advice and support may be more complicated where the child has been placed with carers who live outside the home local authority's boundaries. Where this happens, the child is likely to be enrolled in a local school (ie not one managed by the child's home local authority). In such circumstances the school's designated manager for looked after children will need to liaise with the 'home' authority to ensure that the child's legal and other support needs are not forgotten; the school's own local authority should provide assistance with this.

What is the issue?

Article 28 of the UNCRC articulates the right to education; it stresses the importance of free primary education, the availability of secondary education, and the accessibility of higher education based upon a child's ability to benefit from it. Article 29 of the Convention calls for the development of a child's talents, personality and abilities. Rights under both Articles should be respected without discrimination in accordance with Article 2. The corporate parenting responsibilities introduced by Part 9 of the Children and Young People (Scotland) Act 2014 mean that the responsibility for a looked after child with uncertain immigration status does not end at age 18. Corporate parents continue to have a duty to provide support to looked after children and care leavers until their 26th birthday.

While there should be few barriers to a looked after young person with uncertain immigration status participating in pre-school or primary school, and in secondary education up to age 16, the same is currently not true for post-school education or for children arriving in Scotland over age 16^{vi}.

The major differences in terms of the barriers to accessing post-school education compared with access to school education relate to age (students typically transfer at or close to age 18), and the fact that tuition fees are involved. The immigration status, as determined by the Home Office, has implications for the entitlement to be regarded as a 'home' student. Home students in Scotland have their tuition fees for higher education paid by the Student Award Agency Scotland (SAAS) directly to the institution for a first degree or equivalent, and have access to student support, such as bursaries, student loans and discretionary funding.

Not being eligible for 'home' status usually means being regarded as self-funding as an international student. This means paying international tuition fees and having no access to government-funded student support. There would be entitlement to apply for scholarships offered by institutions to international students.

Explanation of the regulations

In what follows we have used the terminology applying to higher education (i.e. courses leading to HNC qualifications or higher) for simplicity, though the criteria for entitlement to funding apply equally to fee and student support for higher education (whether at a college or university) and to fee waiver and discretionary bursary support for non-advanced further education.

The Scottish Government provides funding to further education and higher education institutions for 'home' students. It advises institutions to determine 'home' fees eligibility using both The Education (Fees and Awards) (Scotland) Regulations 2007^{vii} (as amended) and the Education (Fees) (Scotland) Regulations 2011^{viii}. Based on these regulations, the SAAS [determines if students are to be classified as 'home' students](#). As regulations are subject to change, professionals advising young people are advised to check the current guidance published by SAAS.

Migrant children and young people who hold Indefinite Leave to Remain (ILR), who have been recognised as refugees, or who are exercising European Economic Area (EEA) rights of residence are usually entitled to home fee status^{ix}.

Individuals who have not been granted any of the above forms of status but who are allowed to remain in the UK *may* be eligible for 'home' fees provided they meet particular criteria. If they have applied for asylum and the Home Office decides that they do not qualify for refugee status but should be allowed to stay in the UK, it normally awards Humanitarian Protection (HP) or

Discretionary Leave (DL) or, in some cases, Limited Leave to Remain (LLR). Such qualified leave will have a time limit applied (e.g. three years), which may be extended on application.

To be eligible for 'home' fees in Scotland under these categories, individuals must:

- have been refused refugee status but granted leave as above, and have remained ordinarily resident in the UK and islands since the Home Office decision, and be living in Scotland on the relevant date (which depends on the start date of the course); *or*
- be the spouse / civil partner of such a person, above; *or*
- be the child of such a person, above.

Unaccompanied asylum-seeking children and the children of asylum seekers may also be eligible for 'home fees' for the purposes of further or higher education. In order to qualify for 'home' fees they must meet *all* of the following criteria:

- a) must be the child of an asylum seeker, or be an unaccompanied asylum seeking child; *and*
- b) must be living in Scotland on the relevant date (which depends on the start date of the course); *and*
- c) must have been living in Scotland for the three-year period immediately before the date in (b); *and*
- d) must have been under 18 years old on the date the asylum application was made, and that application must have been made before 1 December 2006; *and*
- e) be under 25 years old on the date in (b)

As explained earlier, unaccompanied asylum-seeking children and the children of asylum seekers are restricted in their rights to access benefits and services in the UK, and this restriction extends to 'home fees' status. The provision extending 'home fees' status to such children whose asylum applications were made prior to 1 December 2006 has now effectively expired due to the limited number of individuals who made an application for asylum prior to 2006 and are still under the age of 25. As a consequence, this group of young people will face uncertainty about their entitlement to access education and confusion about the support available to them.

There are additional regulations governing entitlement to home fees status in the special case of English for Speakers of Other Languages (ESOL) courses^x. Asylum seekers and non-asylum seekers qualify for home fees if they:

- a) are:
 - 1. an asylum seeker, or the spouse or child of an asylum seeker, who is living in Scotland; *and*
 - 2. studying on a full-time/part-time English for Speakers of Other Languages (ESOL) course, or a part-time non-advanced/advanced course, at a college.

or
- b) are:
 - 1. someone who is not seeking asylum (a 'non-asylum seeker'); *and*
 - 2. living in Scotland; *and*
 - 3. studying on a part-time ESOL course; *and*
 - 4. someone whose main purpose for being in the EEA is not to receive education.

With regard to ESOL courses, CELCIS understands that some colleges have imposed a general requirement such that students cannot receive more than three years of funding for any single level of study without demonstrating progress to a higher level. This restriction causes difficulties for ESOL students who consume most or all of the three years of funding in becoming sufficiently proficient in English to cope with a non-advanced further education programme leading to National Certificate (NC) qualifications.

This is because both the ESOL and NC courses are classed as the same level of study (i.e. further education). A student who might otherwise be capable of making substantial progress through non-advanced and advanced stages would thus be disadvantaged and could run out of funding entitlement before accessing vocational education courses. Our correspondents assumed that this ruling emanated from government, but it appears that colleges have discretion to make individual decisions about the use of funds in such circumstances.

It is possible for young people to have been in local authority care for several years without receiving a decision on their immigration status. Even if an application for status is made, the young person will not have lawful status until a decision is made and communicated formally. Such young people may be excluded from ESOL classes because they are ineligible under the above provisions, significantly narrowing their opportunities.

Figuring out if a young person with an uncertain immigration status can be classed as being eligible for 'home fees' is complicated by a lack of a shared understanding of terms such as 'ordinarily resident' ('Ordinary residence' has not been defined in any Act of Parliament^{xi}), nevertheless there are a number of guidance documents which offer directions on the matter^{xii}), the seemingly arbitrary December 2006 cut-off point for asylum seeking applicants, and the fact that unaccompanied asylum seeking children and the children of asylum seekers must meet *all* stated requirements, whereas other categories of immigration status must meet only one or a subset of the requirements.

The nexus between immigration status and these programmes and opportunities is complex and difficult to navigate, particularly for a young person who may have little support or experience dealing with such bureaucracy.

Implications for teachers and other professionals

Despite the difficulties that looked after children with uncertain immigration status will have faced as a result of their adverse life experiences, it has been noted in several studies^{xiii} that many have been described as being highly motivated to achieve in education.

High achievement motivation is typically expressed in terms of aspiration to have a professional career and therefore to progress to college or university studies. In such circumstances, it would be usual for an individual to receive every encouragement and support to realise their aspirations. This is also true of looked after children with uncertain immigration status; however, it is essential that the potential implications of their immigration status are explored in terms of access to college or university courses and funding, accessing specialist advice, as appropriate. Such young people must be helped to understand their options and the consequences of taking particular courses of action.

This is particularly the case where a young person has lived in the UK for many years (e.g. prior to attending secondary school) and where immigration status has long since ceased to be the uppermost consideration in their care. In such a case, barriers to progression may emerge only when a young person approaching adulthood (i.e. age 18) is called for interview by Home Office officials and subsequently receives a decision on their entitlement to remain in the UK, or makes an application for a college or university course. It is not unknown, for example, for unconditional offers of places on a course to be changed to being conditional on paying international fees following a Home Office determination on immigration status.

It is worth stating that the determination of entitlement to home status is not straightforward, as the regulations are complex and subject to frequent change. The Coram Children's Legal Centre in England notes that, due to disputes between students and institutions, it had 'on several occasions offered legal advice and clarified with student finance that a young person with leave to

remain is in fact eligible for support.^{xiv} Professionals should be prepared to support a young person to challenge decisions and to ask for a review.

There is a further role for professionals in providing practical and emotional support in the transition from school to post-school education. This is particularly the case where decisions about college and university places may be made during school holidays or where home status is denied and the young person needs help to explore alternative sources of funding.

The following checklist represents potential actions which could be undertaken by a school's designated manager for looked after children or other appropriate professional:

- Confirm with the young person's social worker that specialist legal advice and support from the Scottish Guardianship Service, if appropriate, have been made available.
- Support a young person to challenge decisions and ask for a review.
- Provide practical and emotional support during the transition from school to post-school education.
- Ensure that the [Named Person](#) (for a young person under 18) receives all relevant information.
- Use the principles of Getting It Right For Every Child (GIRFEC) in considering the young person's rights to adequate care and education.
- Check that the young person has a Child's Plan which reflects their educational ambitions and which considers the implications of their immigration status for those plans.
- Verify that the young person's legal entitlements to assessment and provision in respect of Additional Support Needs, in accordance with the provisions of the Education (Scotland) (Additional Support Needs) Act 2004, as amended by the 2009 Act, have been appropriately considered.

Case studies

The following case studies have been devised to represent some of the circumstances and challenges encountered by young people with an uncertain immigration status with regard to their educational journeys. It has been noted that these children and young people may sometimes come across as being self-reliant and as having the same needs as adults. Nevertheless, these children are frequently vulnerable to harm and in need of reassurance, care and support. This is particularly true during periods of transition such as leaving care, moving to independent living accommodation and receiving decisions on their immigration matters.^{xv} Each case study presented below has a set of suggested ways in which teachers and other professionals could support this young person.

The case of 'P'

P arrived in the UK with his family at age four. At age nine he became 'looked after' due to issues of abuse and neglect at home. He lived in foster care up to age 17. He was very successful at school. His immigration status was not considered by his social worker or teachers until he began to apply for college and university, at which point he encountered a number of barriers. His social worker discouraged him from applying until his immigration status was resolved, whereas his teacher advised him to continue with his application. He felt stressed and frustrated due to the conflicting advice and the lack of a clear answer on how best to proceed. This was compounded by the uncertainty he faced due to his unresolved immigration issues.

- Teacher: ensure the young person has obtained appropriate legal advice; clarify immigration status; liaise with social worker to establish plan of action.

The case of 'K'

K arrived in the UK as an unaccompanied asylum-seeking child when she was 13. Having no guardian or customary caregiver in Scotland, she became cared for by her local authority. She enjoyed school and was on track to gain good grades in Highers. K's claim for asylum had initially been refused, and so she had lodged a number of appeals and further claims for asylum. She was offered a place at university, but still had not received a decision from the Home Office on her case. This meant that she was still an asylum seeker and so was classed as an international student (her claim was lodged after the December 2006 cut-off point). She could not afford to attend university, and was not entitled to work. She was too embarrassed to confide in her friends as to why she could not attend university.

- Career adviser: Signpost universities that provide special bursaries for young people in this situation.
- School: establish immigration status early and offer appropriate advice; liaise with local authority and ensure young person has assistance to complete relevant forms.

The case of 'S'

S is 17 years old and has a pending application for asylum. As an unaccompanied asylum seeking child he became looked after by his local authority. He was required to send various documents to the Home Office, including his passport and birth certificate. His documents have been held for months so he has been left without the documentation required by higher education institutions and employers precisely at the time he wishes to further his studies.

- School / social worker: verify that young people have made photocopies of all vital documents (e.g. identity cards). Where originals have to be sent away to Government agencies, it will usually be possible to provide certified copies for higher education institutions and employers.

The case of 'Z'

Z arrived in Scotland aged 15 as an unaccompanied asylum-seeking child. As an unaccompanied minor with no-one to care for her she became looked after by her local authority. She had no proficiency in the English language. She was placed in college rather than secondary school and struggled to make friends with the older students there. She was able to access ESOL classes, however, after three years she wished to progress to another course but could not access funding to do so because the National Certificate programme was deemed to be at the same level as ESOL and therefore the student had apparently not demonstrated academic progression.

- College adviser: ask college authorities to review the policy on offering funding for ESOL students; advocate for flexibility in the interpretation of the policy if the student could demonstrate good progress in the ESOL programme.
- Local authority managers: consider a more flexible approach in placing young people under 16 in school or college, based on an assessment of individual needs.

Vocational Training

Work placement opportunities

Some college and university courses may involve a work placement. Sometimes students taking on these placements receive a payment for their participation, or a stipend to cover travel and lunch expenses. Depending on how these placements and payments are framed, however, young people who are asylum seekers or have uncertain immigration status may be prohibited from participating, because neither group is permitted by the Home Office to take employment, and such payments can be viewed by the Home office as 'employment'. It may, however, be possible

for a young person to participate in a work placement if the payment is waived, or if the Home Office grants specific permission to the young person to participate.

Modern Apprenticeships

During the process of consultation about this briefing, a number of informants raised with us the special circumstances relating to access to Modern Apprenticeships. Those informants suggested that as an apprenticeship involves a training agreement rather than an employment contract, it might be possible to seek exemption for apprenticeships from the normal prohibition against employment for those not permitted to work. On the other hand, as payment is involved, it is difficult to see how an exemption would be permitted. We have asked Scottish Government colleagues to investigate this matter and we will update this briefing to incorporate the response we receive in due course. In the meantime, the only advice we can give is to make a request to the Home Office on a case-by-case basis.

Conclusion

Professionals working with this group should be aware of the implications of immigration status for an individual's educational journey. In particular, those offering advice, guidance and assistance need accurate information and a good awareness of what these young people are and are not entitled to, in order that they can properly direct the young people who need their help.

The most useful advice we can offer is:

- Don't ignore immigration status, even when it is well-intentioned in treating young people the same as other school pupils.
- Try to anticipate difficulties, particularly in relation to progression beyond school, and therefore to act early to ensure that a young person is receiving appropriately tailored advice and support well before problems arise.
- Don't assume someone else is dealing with the immigration issues – verify this. Schools should insist in being involved in planning support; the implications of immigration status for progress in education should be written into the child's plan.

Contact us

The authors have tried to make this briefing authoritative and accurate. This was not an easy task because the territory is complex and ever-changing. We are committed to updating this briefing in future, to correct any inaccuracies brought to our attention and to take account of further dialogue with colleagues who have direct experience of the issues raised here. Please feel free to contact us at the following addresses: g.connelly@strath.ac.uk or www.celcis.org.uk.

Sources of advice

Children's Legal Services Agency www.lsa.org.uk

Scottish Guardianship Service
www.aberlour.org.uk/how_we_help/services/248_scottish_guardianship_service

Scottish Refugee Council
www.scottishrefugeecouncil.org.uk

UK Council for International Student Affairs (for impartial advice where 'home fee' status/eligibility is in dispute)
www.ukcisa.org.uk/International-Students/About-UKCISA/Student-advice-line

Endnotes

- ⁱ Candappa, M., & Ahmad, M. (2007). [Education and schooling for asylum-seeking and refugee students in Scotland: An exploratory study](#).
- ⁱⁱ [Supplementary data set for 2014 pupil census](#).
- ⁱⁱⁱ The information required to complete the September 2014 Pupil Census was collected electronically, through local authorities, from all publicly funded primary, secondary and special schools, as part of the ScotXed programme.
- ^{iv} Ang, J. (2015). [Legal issues in the accommodation and support of asylum seeking and trafficked children under the Children \(Scotland\) Act 1995](#). Glasgow: Children's Legal Services Agency.
- ^v As described by
- Crawley, H., Bruce, G., & Coker, J. (2012). [Working with children and young people subject to immigration control: guidelines for best practice](#) (2nd ed.).
- ^{vi} School leaving age depends on when in the year the child's birthday falls. If the child's 16th birthday falls within or between March and September, they can leave school in the May of that year. If their birthday falls between October and February, they can leave at the start of the winter holidays.
- ^{vii} [The Education \(Fees and Awards\) \(Scotland\) Regulations 2007](#).
- ^{viii} [The Education \(Fees\) \(Scotland\) Regulations 2011](#).
- ^{ix} EEA nationals and family are dealt with under Sections 1 & 2 of the schedule, ILR holders are 'settled' as defined in Section 3 of the Schedule, and Refugees are considered under Section 4 of the Schedule.
- ^x Please follow this link for [Scotland's ESOL Strategy](#).
- ^{xi} [Ordinarily Resident: The Further Education Loans Regulations 2012](#).
- ^{xii} Please follow this link for more information on [determining ordinary residence](#).
- ^{xiii} For example: Stevenson, J. & Willott, J. (2007). The aspiration to access to higher education of teenage refugees in the UK. *Compare: A Journal of Comparative and International Education*, 37(5), 671-687.
- ^{xiv} Dorling, F. & Hurrell, A. (2012). *Navigating the system: Advice provision for young refugees and migrants*. London: Coram Children's Legal Centre. (p.20)
- ^{xv} Crawley, H., Bruce, G., & Coker, J. (2012). [Working with children and young people subject to immigration control: guidelines for best practice](#) (2nd ed.).

Our goal is simple. We want to make a difference. We are totally committed to making positive and lasting improvements in the experiences, life chances and outcomes for Scotland's looked after children and young people. Taking a multi-agency, collaborative approach towards making lasting change thinking and ways of working, with everyone whose work touches the lives of looked after children.

For more information

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Improving care experiences