



Scottish Refugee Council Resource Archive

SRC Factsheets 1–9

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Introduction

Scottish Government adheres to the policy that integration begins on day one of a person’s arrival in Scotland. Access to rights such as housing, financial support and education is critical to the integration process.

These factsheets give an overview of people’s rights and entitlements at different stages of their journeys seeking protection and integration in the UK. We hope that this will ensure that refugees across Scotland will be able to access their rights; and that advisers and supporters will be able to confidently assist them to do so.

These factsheets resulted from a partnership project, facilitated through the New Scots Strategy, involving voluntary and statutory sector agencies from Local Authorities across Scotland. They should be read in conjunction with our Refugee Family Integration Good Practice Guide.

Definitions

In these factsheets we provide information relating to refugees and to people seeking asylum (asylum seekers) under separate headings. We define these terms as follows.

Refugee: any person who has been recognised as being in need of international protection by the UK Government. This includes people who have been granted:

- Refugee status following a claim for asylum in the UK, and resettled refugees
- Humanitarian Protection following a claim for asylum in the UK, and resettled refugees
- Discretionary Leave to Remain following a claim for asylum
- UASC Leave (for people who arrived as unaccompanied asylum seeking children).

Asylum seeker: any person who has made a claim for asylum under the terms of the 1951 Refugee Convention.

Topics

Our factsheets summarise the following topics:

- 01 Introduction
- 02 Human rights and equalities
- 03 Education
- 04 Employment and volunteering
- 05 Financial support
- 06 Health and social care
- 07 Housing
- 08 Access to legal advice
- 09 How to claim asylum.

Resources for further information and advice are given at the end of each factsheet.

Immigration advice regulations

It is illegal for an unqualified person to give immigration advice. Non-legal advisers wishing to provide immigration advice or engage in advocacy must register with the Office of the Immigration Services Commissioner (OISC) to become a regulated immigration adviser at one of three levels.

Advisers whose work is restricted to signposting to regulated immigration advisers or to the provision of general information on immigration and asylum systems do not need to apply to the OISC for registration.

For further details, refer to the OISC website:

www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner

Human rights and equalities

– a summary framework

Upholding human rights standards is fundamental to the successful reception and integration of people seeking international protection.

International Law

The UK is a signatory to [the 1951 UN Convention Relating to the Status of Refugees](#). This treaty is a cornerstone of international human rights law and provides a legal definition of the term ‘refugee’. It enshrines the right of any person fleeing persecution not to be returned to a country where they are likely to face further persecution.¹

The UK is also a signatory to other international human rights treaties including:

- [The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [The UN Convention on the Elimination of all Forms of Discrimination Against Women](#)
- [The UN Convention on the Rights of the Child.](#)

These Conventions safeguard the rights of everyone living in the UK, regardless of their immigration status.

European Union Law

Member States of the European Union (including the UK) have agreed common standards for receiving, and processing asylum claims from people seeking protection.² These include the right to:

- Receive information in one’s own language
- An interpreter when required
- Basic living standards.

There is no guarantee this framework will still apply once the UK leaves the European Union.

The Human Rights Act

The Human Rights Act came into force in Scotland in 1999 and means that public bodies must have regard to people’s human rights in all the decisions they take. The human rights protected by the Human Rights Act come from the European Convention on Human Rights and include the right to:

- Freedom from inhuman or degrading treatment³
- A family life⁴
- Privacy⁵
- Freedom of religion.⁶

1. This is commonly referred to as the right to non-refoulement.
 2. The Procedures and Reception Conditions EU Directive – often known as the “Reception Directive”.
 3. Article 3
 4. Articles 8 and 12
 5. Article 8
 6. Articles 9 and 14

Equalities

Under the UK Equality Act 2010 and the Public Sector Equality Duty in Scotland, public sector employees and those working on behalf of the public sector, are required to promote equality (including race equality) in accessing their services.⁷ Since April 2018, an additional Fairer Scotland duty requires public bodies to consider how they can reduce inequality caused by socio-economic disadvantage when making strategic decisions. These provisions apply equally to everyone living in Scotland.

Children's rights

Public bodies have a duty to actively promote the rights enshrined in the UN Convention on the Rights of the Child for asylum seeking children as for any other child living in the UK.

The provisions of the Scottish Government Getting it Right for Every Child (GIRFEC) framework with its focus on improving outcomes for vulnerable children, apply equally to children seeking asylum.⁸

Language support rights

Interpretation and translation services should be uniformly available to enable access to rights and services. Interpretation must be of sufficient and reliable quality. Public Authorities must provide interpreting services to meet their Public Sector Equality Duty under the Equality Act 2010.

7. www.equalityhumanrights.com/en/commission-scotland/public-sector-equality-duty-scotland

8. Factsheet Six provides further details on health and social care entitlements.

Education

Pre-school, primary and secondary provision

UN Convention on the Rights of the Child – Article 28

Every child has the right to an education. Primary education must be free and different forms of secondary education must be available to every child.

www.unicef.org.uk

Eligibility to education

Children seeking asylum, refugee children and children subject to immigration control, have the right to attend pre-school and school education provided by their local education authority. They have the same right as a Scottish resident child.¹

They are automatically entitled to the same free provision accorded to all families who are in receipt of income-based benefits.² This provision includes part-time nursery provision from age 2 onwards.

Eligibility criteria for school clothing grants are set locally by individual councils. Local Authorities can use their discretion to provide free-school meals and clothing grant to children of asylum seeking families. For example, Glasgow City Council assist asylum seeking families with both clothing grant and free school meals –

www.glasgow.gov.uk/index.aspx?articleid=17885

Additional support

Children of both asylum seeking and refugee families are entitled to additional support for learning provided by their local education authority to suit their specific needs.³ Requests for additional support for learning under the Additional Support for Learning Act 2004 are made to individual schools and/or educational authorities. The Act and the supporting Code of Practice set out the rights of children and parents and also provide the framework for schools, local authorities and other agencies to follow.

Support can include, but is not limited to, internal support within school using school resources, for example to assist with language (English as Additional Language). It can also include external support such as assistance from social workers or physiotherapists.

1. *United Nation Convention on the Rights of the Child* (UNCRC), www.unicef.org.uk/what-we-do/un-convention-child-rights/; *European Convention on Human Rights*, www.echr.coe.int/Documents/Convention_ENG.pdf; Children and Young People (Scotland) Act 2014, www.legislation.gov.uk/asp/2014/8/section/2/enacted; Standards in Scotland's Schools etc. Act 2000, www.legislation.gov.uk/asp/2000/6/section/1/enacted
 2. 'Help Paying for Childcare', myscot.gov, www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare/; 'School Meals', myscot.gov, www.mygov.scot/school-meals/
 3. 'Supporting Children's Learning: Code of Practice (2017)', Scottish Government, <https://beta.gov.scot/publications/supporting-childrens-learning-statutory-guidance-education-additional-support-learning-scotland/>

Engagement

Education authorities must “*seek and have regard to the views of*” pupils and parents, voluntary organisations, and others as the authority thinks appropriate, in order to identify additional learning needs and put in place an effective plan to meet those needs.

Further Education – people seeking asylum

There is no legal restriction that prevents people seeking asylum from accessing further education, provided that they meet the academic requirements to be offered a place. However, access to Further Education will be limited due to asylum seekers’ eligibility to free tuition fees and support with travel and study costs. Such eligibility is limited to:

- A full-time or part-time English for Speakers of Other Languages (ESOL) course
- Part-time advanced or non-advanced courses.⁴

If asylum seekers wish to attend other courses, they will be charged International Students fees.

Higher education – people seeking asylum

People seeking asylum have no legal limitation to accessing Higher Education however they will not be considered home students for fees purpose and will not be eligible for support from the Student Award Agency for Scotland (SAAS). They will be charged international fees to study unless an institution has adopted a consistent policy of charging asylum seekers ‘domestic’ fees.⁵ Individual institutions can offer scholarships to prospective asylum seeking students, and there is no legal restriction on people accepting these, however it is best for such scholarships⁶ to offer support in kind so they do not impact on entitlements for Home Office support.

Further and Higher Education – refugees

People with refugee status, Humanitarian Protection, or Discretionary Leave to remain in the UK can access further and/or higher education on the same basis as Scottish residents.

They are therefore entitled to ‘domestic’ fee status and SAAS (Student Award Agency for Scotland) loans and bursaries, subject to the same conditions as other students who are resident in Scotland, providing that they:

- Have been resident in the UK since they were granted status; and
- Are ordinarily resident in Scotland.

Refugees are exempted from the three years residency rule to be deemed a ‘home student’.

Additional support

Scottish Refugee Council

Scottish Refugee Council’s Services and Helpline can be contacted for advice – more information is available here:

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

Skills Development Scotland

SDS supports individuals across Scotland to build their career management, work-based and employability skills, throughout their career journey, from school, into further learning opportunities and employment.

www.skillsdevelopmentscotland.co.uk/

Bridges Programmes

The Bridges Programmes supports the social, educational and economic integration of refugees, asylum seekers, migrants, and anyone for whom English is a second language.

www.bridgesprogrammes.org.uk/

4. Further details and clarification on terms such as ‘advanced’, ‘non-advanced’ and ‘part-time’ can be found in ‘*Support for Asylum Seekers in Further and Higher Education*’, Scottish Government. This document is updated annually. www.sfc.ac.uk/web/FILES/Funding_Streams_Student_Support/Support_for_Asylum_Seekers_in_Further_Higher_Education.pdf

5. There are some very limited circumstances in which young people aged 25 or under, and whose families applied for asylum prior to 1st January 2006, may be eligible for domestic fees. Full details can be found at the document in footnote 4 above.

6. Strathclyde University offers scholarship to asylum seeking students – www.strath.ac.uk/studywithus/scholarships/asylumseekersscholarship/

Employment and volunteering

Employment

Asylum seekers

Asylum seekers are not usually entitled to work in the UK. However, the Home Office may grant an asylum seeker permission to work if:

- They are already legally working in the UK when they apply for asylum;¹
- A decision at first instance² on their asylum application has not been made within 12 months from the date the application was lodged;³ AND
- The delay in this decision is not considered to be the fault of the applicant.

If an asylum seeker is granted permission to work under these circumstances, there are conditions on their employment, which include:

- Only working in a post which, at the time the employment is accepted, is on the government's list of shortage professions;⁴
- Not working in a self-employed capacity;
- Not setting up their own business.

Refugees

Refugees have unrestricted access to the labour market.⁵ It is important to note that some work opportunities within the Civil Service are

only open to UK citizens and citizens of the commonwealth, therefore only refugees who are also citizens of the commonwealth will be entitled to access those.

Refugees face barriers to accessing employment opportunities. Good practice models of providing employability support tailored to the needs of refugees can be found in Section Three of the Practice Guide.

Volunteering

Asylum seekers are entitled to undertake voluntary work.⁶ They are entitled to have their expenses, including travel and food, covered by the organisation but no other form of payment or benefits may be offered.

Refugees have the same entitlement to undertake volunteering activities as UK citizens.

Experience from integration services in Scotland has found that volunteering provides an opportunity for refugees and asylum seekers to develop skills, expand their social networks (providing a source of future references) and bring them closer to the UK labour market as a result.

It is important to explain to refugees that volunteering activities should be documented and count towards employability related activities they may agree with the Department for Work and Pensions.

1. www.gov.uk/government/publications/working-whilst-an-asylum-claim-is-considered/working-in-the-uk-whilst-an-asylum-case-is-considered
 2. Meaning an initial decision from the Home Office. If the initial decision has been made, but appealed, this ceases to apply.
 3. Immigration Rules, Home Office, <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b>
 4. 'Immigration Rules Appendix K: shortage occupation list', Home Office, www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list

5. DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011, European Parliament, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0095&from=EN>
 6. 'Permission to Work and Volunteering for Asylum Seekers', Version 7.0, Home Office, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583192/Permission-to-work-v7.pdf

Additional support

Scottish Refugee Council

Scottish Refugee Council's Services and Helpline can be contacted for advice – more information is available here

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

Volunteer Scotland

Volunteer Scotland is the national agency supporting people to access volunteering opportunities and supporting organisations to work with volunteers. All local authority areas have a Volunteer Centre which can advise on local volunteering opportunities and provide support.

www.volunteerscotland.net/

Skills Development Scotland (SDS)

SDS support individuals across Scotland to build their career management, work-based and employability skills, throughout their career journey, from school, into further learning opportunities and employment.

www.skillsdevelopmentscotland.co.uk/

Fair Start Scotland

Fair Start Scotland is a Scottish Government funded employability support service being delivered in nine contract areas across Scotland by a range of private, public and third sector delivery partners including specialist providers. Participation is voluntary and support is designed to help people who face significant barriers to access work opportunities. More information can be found here

<http://www.employabilityinscotland.com/find-support/about-fair-start-scotland/>

Bridges Programmes

The Bridges Programmes is a specialist agency, supporting the social, educational and economic integration of refugees, asylum seekers, migrants, and anyone for whom English is a second language, living in Scotland.

Bridges works with employers and partners to ensure that refugees and migrants have support to help them into work (if eligible), education or further training.

www.bridgesprogrammes.org.uk/

Financial support

Entitlement to social security depends on an individual's entitlement to public funds. It is important to note that 'public funds' are clearly defined and include an exhaustive list of benefits. The full details can be found here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772305/Public_funds_v14.0ext.pdf

Public funds are not all funds distributed by a public authority, e.g. support from local authorities' social work services does not qualify as a public fund.

People seeking asylum

Navigating the asylum support system can be complex, and regulations change regularly.

We advise that organisations supporting people who are still seeking asylum seek specialist advice from one of the organisations listed at the end of this factsheet to ensure that they provide correct and up-to-date advice on people's eligibility for Home Office support.

Asylum seekers and their dependants¹ do not have recourse to public funds.

Once someone registers an asylum claim and until they are appeal rights exhausted, they can access support (accommodation and financial support) from the Home Office. This is commonly known as Section 98 and Section 95 support.²

The eligibility criteria are to:

- Have an ongoing asylum claim; AND
- be destitute or expected to become destitute within 14 days.

The weekly allowance is loaded onto a debit card (ASPEN card) each week. The card allows asylum seekers to get cash from a cash machine. Current support rates can be found on the GOV. UK website.³

Expectant mothers and parents with new babies can apply for additional financial support from the Home Office and will need to provide a MATB1 ('Maternity') certificate to do this.

Asylum seekers living in Home Office accommodation are not liable for council tax or utilities bills.

People refused asylum

Families whose asylum claims are refused, will remain eligible for asylum support until their youngest child reaches the age of 18.

1. Broadly, dependants are taken to mean people who are already registered as dependants on a person's asylum claim; and/or spouses, partners and children aged under 18. For full guidance see Home Office asylum support regulations.

2. This asylum support was introduced by the Immigration and Asylum Act 1999

3. www.gov.uk/asylum-support

Single people, or couples without dependent children, will have their asylum support stopped 21 days after their appeal rights are fully refused.

Some people in this situation may be eligible for a limited form of cashless support known as Section 4 support. To qualify for Section 4 support, refused asylum-seekers must be destitute and meet a narrow set of criteria:

- To be taking all reasonable steps to leave the UK or facilitate their departure;
- To be unable to leave the UK due to a physical impediment to travel or for some other medical reason;
- That in the opinion of the Secretary of State there is no viable route of return to their country of origin;
- To be granted permission to proceed with an application for judicial review of the decision on their asylum claim; OR
- That the provision of support is necessary to avoid breaching their human rights.

Weekly allowances are paid on a pre-paid Visa card (ASPEN card) but unlike Section 95 support, Section 4 recipients cannot withdraw money using ATM machines.

This is a complex area of work and specialist advice should be sought from the organisations listed at the end of this factsheet.

When asylum seekers are not entitled to Home Office support but have significant community care needs, they can receive support from their local authority under Section 12 or 13a of the Social Work (Scotland) Act 1968.

When asylum seeking families are not entitled to Home Office support, they can receive support from their local authority under Section 22 of the Children Act (Scotland) 1995.

National Guidance is now available to support local authorities to support people with No Recourse to Public Funds. See section on additional support for references.

Unaccompanied Asylum Seeking Children are the responsibility of local authority Social Work Services under Sections 29 and 30 of the Children (Scotland) Act 1995.

Refugees

People granted refugee status or Humanitarian Protection do have recourse to public funds. Some people granted Discretionary Leave to Remain may not have access to public funds. If so, this can be reviewed by the Home Office if requested.

Refugees can start applying for benefits from the day they are granted status and should do so before their asylum support stops,⁴ as the level of benefit paid to asylum seekers by the Home Office is lower than that of mainstream benefits.

Asylum support will end 28 days after the date of the decision to grant status. This is called 'the move-on period'.

Refugees who arrive through resettlement can apply as soon as they arrive in the UK.

Refugees have the same access as other UK residents to mainstream benefits and public funds, provided by DWP, HMRC, Local Authorities and including the Scottish Welfare Fund.

It is worth highlighting the two following benefits which have eligibility rules specifically for refugees and people who have been granted Humanitarian Protection:

- **Personal Independent Payment (PIP)**
People who are granted Refugee Status and Humanitarian Protection are exempted from the Past Presence test.⁵
- **Integration loan**
In addition to mainstream benefits, refugees can apply for Integration Loans available from the Home Office to support with integration costs. These are interest free but have to be paid back. They are only available to people granted refugee or humanitarian protection status and dependants over 18 years old. More information on eligibility and how to apply is available here

www.gov.uk/refugee-integration-loan

Only one loan is permitted for each individual or couple (where they have made a joint application).

4. As per the Government guidance for new refugees www.gov.uk/government/publications/refugees-guidance-about-benefits-and-pensions/help-available-from-the-department-for-work-and-pensions-for-people-who-have-been-granted-leave-to-remain-in-the-uk#what-to-do-now-you-have-been-granted-status
5. To meet the past presence test was deemed discriminatory contrary to the UK's obligations under the Refugee Qualification Directive (2004/83/EC) and Article 14 of the European Convention on Human Rights – www.cpag.org.uk/content/dla-refugee-children and <https://www.gov.uk/pip/eligibility>

Habitual Residence Test

Refugees need to take the first part of the Habitual Residence Test,⁶ i.e. DWP checks that they have the appropriate right to reside. The second part about the amount of time spent in the UK before claiming benefits does not apply to refugees.

National Insurance Numbers

Refugees should be issued with a National Insurance Number (NINo). It is now added on the back of refugees' Biometric Resident Permit.

Not having a NINo is not a barrier to starting a benefit claim to the DWP, HMRC or Scottish Welfare Fund grants.⁷

Pathways when access to benefits is delayed/denied

In any cases where benefit claims are blocked due to the lack of a NINo or perceived failure of the Habitual Residency Test criteria, the decision should be challenged via DWP escalation routes, which are provided to advice agencies such as Scottish Refugee Council and Citizen's Advice Bureaux.

Crisis Grants, available through the Scottish Welfare Fund, can be applied for when refugees are destitute due to waiting for new benefits after their asylum support has stopped.

Additional Support

■ Asylum

Asylum Support Appeal Project (ASAP)

ASAP offers legal representation and advice to asylum seekers and refused asylum seekers appealing against Home Office decisions to refuse or withdraw their housing, financial subsistence, or both. ASAP also offers training and second tier advice to practitioners supporting asylum seekers.

www.asaproject.org/

Scottish Refugee Council

Scottish Refugee Council's Services and Helpline can be contacted for advice – more information is available here

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

British Red Cross

British Red Cross offices offer services to asylum seekers and refugees

www.redcross.org.uk/get-help/get-help-as-a-refugee##

No Recourse to Public Funds – NRPF

Migrants' Rights and Entitlements to Local Authority Services and Support, National Guidance, February 2019

This guidance sets out the current legal framework and good practice to assist local authorities in meeting their statutory duties and delivering an effective social work response when working with people who have no recourse to public funds (NRPF).

www.migrationscotland.org.uk/migrants-rights-entitlements/introduction/1-1-how-use-guidance

Migrant Help

Migrant Help is a charity contracted by the Home Office to provide advice and information to all asylum seekers in the UK. They run an asylum helpline that is free.

Free asylum helpline: 0808 8000 630

6. www.gov.uk/government/publications/refugees-guidance-about-benefits-and-pensions/help-available-from-the-department-for-work-and-pensions-for-people-who-have-been-granted-leave-to-remain-in-the-uk#eligibility-and-habitual-residence-test

7. *Scottish Welfare Fund Guidance* June 2018 – www.gov.scot/publications/scottish-welfare-fund-statutory-guidance-9781788519687/pages/8/

■ Refugees

Child Poverty Action Group Scotland (CPAG)

CPAG Scotland works to improve life for low-income families in Scotland through campaigning and lobbying, and to ensure families get the correct information through welfare rights work, training, information and an advice line for advisers.

CPAG has a range of publication on Migrants and Refugees' entitlement to welfare benefits, including:

<https://cpag.org.uk/shop/cpag-titles/benefits-migrants-handbook-11th-edition>

CPAG also offers a dedicated advice line for frontline advisors and support staff in Scotland

www.cpag.org.uk/content/advice-line-frontline-advisers-and-support-staff-scotland

www.cpag.org.uk/scotland

Citizens Advice Scotland and Citizens Advice Bureaux

Citizens Advice Scotland compiles helpful resources including on housing rights

www.citizensadvice.org.uk/scotland/housing/

For individual advice, Citizens Advice Scotland offers advice on the phone, via live chat or face-to-face in a Citizens Advice Bureau

www.citizensadvice.org.uk/scotland/about-us/get-advice-s/

Scottish Refugee Council

Scottish Refugee Council's Services and Helpline can be contacted for advice – more information is available here

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

■ Reunited families

British Red Cross

British Red Cross offices offer services to asylum seekers and refugees

www.redcross.org.uk/get-help/get-help-as-a-refugee##

FACTSHEET

06

Health and Social Care

Healthcare is provided to all.

The law exempts from all charging for NHS services anyone who has made a formal application for leave to stay as a refugee in Scotland.¹

4) “No charge shall be made in respect of any services forming part of the health service provided for an overseas visitor, being a person or the spouse or child of a person –(c) who has been accepted as a refugee in the United Kingdom, or who has made a formal application for leave to stay as a refugee in the United Kingdom.”

Scottish Government Guidance for health providers states that anyone who has applied for asylum, whether pending or unsuccessful, is entitled to treatment on the same basis as an ordinarily resident UK national while they remain in Scotland.²

In relation to asylum seekers, refused asylum seekers and those granted refugee status, the guidance is very clear:³

32) “Anyone who has made a formal application for asylum, whether pending or unsuccessful, is entitled to treatment on the same basis as a UK national who is ordinarily resident in Scotland while they remain in the country. If their application to remain in the UK is successful, they will be granted refugee status and will continue to be exempt from NHS charges on the same basis as a person ordinarily resident in Scotland.”

This means that refugees, asylum seekers and people who were refused asylum will have the right to register with a GP, access specialist health care services and secondary care with no restrictions.

Help with additional health costs

As an NHS patient most healthcare and services are free. However, NHS patients in Scotland are asked to pay for some additional costs such as dental care, glasses, contact lenses, wigs and fabric supports. Travel expenses to attend hospital appointments can also be prohibitive for people on low incomes.

Any NHS patient on a low income, including refugees on low income, asylum seekers and people refused asylum, can apply for an exemption from these additional costs by completing an HC1 form, available from GP practices, Jobcentre Plus, NHS hospitals, pharmacies and advice agencies. If accepted, an HC2 certificate will be issued. Patients should present their HC2 certificate along with travel receipts at NHS hospital appointments to receive a refund for travel expenses or when asked to pay for any additional costs such as dental care or glasses.

1. The statutory regulations ('the law') governing charging for National Health Service (NHS) healthcare for refugees and asylum seekers in Scotland are the 1989 The National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 / 364(as amended)

2. <https://www2.gov.scot/Topics/Health/Services/Overseas-visitors>

3. CEL 09 (2010) Overseas Visitors' Liability to Pay Charges for NHS Care and Services.

Social care

Refugees and asylum seekers are entitled to access social work services. Their social care needs should be assessed and met on the same basis as for UK nationals under Section 12 of the Social Work (Scotland) Act 1968.

However, asylum seekers are not entitled to general social work services or residential care under the Social Work (Scotland) Act 1968 or services under the Mental Health (Scotland) Act 1984, where those needs only arise because the person is destitute or because of the physical effects (or anticipated physical effects) of the person's destitution.⁴

Asylum seeking and refugee children in Scotland have the same rights under Scottish legislation as any other child. The Local Authority has the same statutory duty toward them. There are no restrictions for either refugees or asylum seekers on when social workers can intervene under the Children (Scotland) Act 1995.

All policies and procedures established by the Scottish Government and individual local authorities in respect of the welfare, well-being and protection of children apply equally to the children of asylum seekers and refugees.

In recognition of their particular circumstances and vulnerabilities, children seeking asylum, whether unaccompanied or living with their families, should be regarded as 'children in need' under Section 93 of the 1995 Act. Section 22 of the 1995 Act 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.

Additional support

Scottish Refugee Council

Scottish Refugee Council's Services and Helpline can be contacted for advice – more information is available here

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

British Red Cross

British Red Cross offices offer services to asylum seekers and refugees

www.redcross.org.uk/get-help/get-help-as-a-refugee##

4. S120 of the Immigration and Asylum Act 1999.

FACTSHEET

07

Housing

People seeking asylum

Eligibility and quality of housing under Home Office Support

The Secretary of State has a duty to provide accommodation to asylum seekers who are, or are likely to become destitute.¹ This includes people whose claim has been refused but who are unable to leave the UK.

Accommodation provided by the Home Office is given on a no-choice basis and asylum seekers can be dispersed to any local authority in the UK which takes part in the dispersal programme.

Accommodation providers, contracted by the Home Office, are required to meet the requirements as per Schedule 2 of Statement of Requirement, COMPASS Project – ACCOMMODATION & TRANSPORT.

From September 2019, a new contract will be in place and the accommodation requirements are yet to be published.

End of support

Families whose asylum claims are refused, will remain eligible for asylum support until their youngest child reaches the age of 18.

Single people, or couples without dependent children, will have their asylum support stopped 21 days after their appeal rights are fully refused.

Some people in this situation may be eligible for a limited form of cashless support known as Section 4 support (See Factsheet Five).

The application of Scottish legislation relating to eviction of asylum seekers from their Home Office accommodation is being debated amongst legal practitioners and legal challenges are currently going through the courts.

Other housing options

- When asylum seekers are not entitled to Home Office support but have significant community care needs, they can receive support from the local authority under Section 12 or 13a of the Social Work (Scotland) Act 1968.²
- When asylum seeking families are not entitled to Home Office support, they can receive support from the Local Authority under Section 22 of the Children (Scotland) Act 1995.
- Unaccompanied Asylum Seeking Children are the responsibility of Local Authority Social Work Services under Sections 29 and 30 of the Children (Scotland) Act 1995.
- Asylum seekers have the right to rent from private and social landlords. They will however not be eligible for Universal Credit Housing Cost, Housing Benefit and Council Tax Reduction to help with the rent cost.
- Asylum Seekers can apply for housing to Housing Associations, but not to Local Authorities, and can be added to social housing waiting lists.³

1. As described in Fact Sheet Five, this is the asylum support introduced by the Immigration and Asylum Act 1999, Part VI, Para (95) & (98), www.legislation.gov.uk/ukpga/1999/33/part/VI/enacted

2. National Guidance are now available to support Local Authorities to support people with No Recourse to Public Funds. See section on additional support for references.

3. *Social Housing Allocations: A Practice Guide* 2011, <https://beta.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2011/03/social-housing-allocations-a-practice-guide/documents/98f7cbb2-8894-43af-8d1a-ad4d86047915/98f7cbb2-8894-43af-8d1a-ad4d86047915/govscot:document/>

Refugees

People with refugee status, Humanitarian Protection and Discretionary Leave to Remain (the latter with no restriction on access to public funds) have the same housing rights as UK citizens.

Homelessness support

Refugees are entitled to homelessness support on the same basis as Scottish residents.⁴ This includes⁵ the right to get a homeless assessment and, if found to be homeless non-intentionally, refugees can access:

- emergency accommodation;
- Support to secure settled housing; and
- A housing support assessment.

If a refugee is assessed as homeless they can be housed along with any family members residing with them. This may include family members who have arrived through family reunion, and family members who do not yet have leave to remain.⁶ Local authorities need to assess the impact of their decisions on the right to family life⁷ of those families.

Housing Options

Refugees can access all housing options including social housing, from both local authorities and Housing Associations as well as private rented accommodation. Refugees are legally entitled to become home owners but may experience challenges with regards to mortgage approval due to feasibility of credit history checks and limited leave to remain. Further specialist advice should be provided in such cases.

Future changes – watch this space!

The Immigration Acts 2014 & 2016 make a number of changes designed to tighten up the UK's immigration system and restrict the rights of migrant to access certain public services, including health services and rented property. The 2016 Act requires private landlords (including Housing Associations who let their properties directly to applicants) to check the immigration status of their tenants, to prevent those with no right to live in the UK from accessing rented housing.

The scheme was rolled out across England on 1 February 2016 but has not yet been extended to Scotland.

Additional Support

Asylum Support Appeal Project (ASAP)

ASAP offers legal representation and advice to asylum seekers and refused asylum seekers appealing against Home Office decisions to refuse or withdraw their housing, financial subsistence, or both. ASAP also offers training and second tier advice to practitioners supporting asylum seekers.

<http://www.asaproject.org/>

4. *Housing (Scotland) Act 1987, Part 2*, www.legislation.gov.uk/ukpga/1987/26/part/II/enacted?view=plain

5. *Code of Guidance on Homelessness*, Scottish Government, www.gov.scot/Publications/2005/05/31133334/33366

6. *Housing (Scotland) Act 1987, Part 2*, www.legislation.gov.uk/ukpga/1987/26/part/II/enacted?view=plain

7. *Human Rights Act 1998, Article 8*, www.legislation.gov.uk/ukpga/1998/42/schedule/1

Scottish Refugee Council

- **Scottish Refugee Council's Services and Helpline** can be contacted for advice –more information is available here <https://www.scottishrefugeecouncil.org.uk/direct-support/>
- **A Housing Practitioners guide to Integrating Refugees.** This Guide is for housing practitioners working in Scottish local authorities, housing associations and the third sector who are assisting the integration of asylum seekers and /or refugees. It has been written by Scottish Refugee Council with Scottish Government support and published with the assistance of the Chartered Institute of Housing Scotland. <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2020/11/Housing-Practitioners-Guide-phase-2-FINAL.pdf>
- **Training – Refugee rights to housing** www.scottishrefugeecouncil.org.uk/what_we_do/training/refugee_rights_to_housing

Shelter Scotland

Shelter Scotland provides independent housing advice and in some cases can offer legal representation.

Their website offers accessible housing information and individual advice is provided over the phone, via live chat or face-to-face.

<https://scotland.shelter.org.uk/>

Migrant Help

Migrant Help is a charity contracted by the Home office to provide advice and information to all asylum seekers in the UK. They run an asylum helpline that is free.

Free asylum helpline: 0808 8000 630

Citizens Advice Scotland and Citizens Advice Bureaux

Citizens Advice Scotland compiles helpful resources including on housing rights

www.citizensadvice.org.uk/scotland/housing/

For individual advice, Citizens Advice Scotland offers advice on the phone, via live chat or face-to-face in a Citizens Advice Bureau

www.citizensadvice.org.uk/scotland/about-us/get-advice-s/

Legal Services Agency

In Glasgow, the Legal Service Agency offers housing advice and legal representation to all. Daily, there is a homeless drop-in to assist people with urgent homeless cases

www.lsa.org.uk/lisa.php?id=95&n=1

British Red Cross

British Red Cross offices offer services to asylum seekers and refugees

www.redcross.org.uk/get-help/get-help-as-a-refugee##

No Recourse to Public Funds – NRPF

Migrants' Rights and Entitlements to Local Authority Services and Support, National Guidance, February 2019

This guidance sets out the current legal framework and good practice to assist local authorities to meet their statutory duties and deliver an effective social work response when working with people who have no recourse to public funds (NRPF).

www.migrationscotland.org.uk/migrants-rights-entitlements/introduction/1-1-how-use-guidance

Access to legal advice

Legal aid

People who are seeking asylum and are in receipt of asylum support are entitled to legal aid to assist them to prepare their claim for asylum, appeal and prepare further submission.

For other matters, asylum seekers and refugees have the same entitlement to legal aid and assistance as any UK national resident in Scotland. This includes:¹

- Applying for legal aid through the Scottish Legal Aid Board with regard to civil matters and children’s legal assistance.
- Legal aid, if granted, which includes oral and written advice from a solicitor and any steps a person might appropriately take in order to apply Scots law to the circumstances.

Choosing an adviser

It is illegal for unqualified persons to provide immigration advice.

The provision of immigration advice by non-lawyers is regulated by the Office of the Immigration Services Commissioner.

The Office of the Immigration Services Commissioner (OISC) regulates immigration advisers, ensuring they are fit and competent and that they act in the best interest of their clients.

The OISC is an executive non-departmental public body, sponsored by the Home Office.

www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner

The OISC keeps a public directory of regulated advisers across the UK and publishes information on the level of competence for each level of registration.

www.gov.uk/government/publications/oisc-guidance-on-competence-2017

Lawyers and barristers who provide immigration advice are regulated by the Law Society of Scotland.

When to seek legal advice?

Qualified legal advice is essential for:

- Claiming asylum
- Appealing an asylum decision
- Preparing further submission on an asylum claim
- Applying for Family Reunion
- Applying for Travel Document and Certificate of Travel
- Understanding the conditions of leave to remain, e.g. risk of revocation
- Applying for extension of leave
- Applying for British Citizenship.

1. *Legal Aid (Scotland) Act 1986*, [www.legislation.gov.uk/ukpga/1986/47#commentary-key-d9f2921ec084e0f03c90f6325a629f31](http://www.legislation.gov.uk/ukpga/1986/47/commentary/key-d9f2921ec084e0f03c90f6325a629f31)

Additional Support

How to find an OISC regulated adviser

www.gov.uk/find-an-immigration-adviser

Scottish Refugee Council

Scottish Refugee Council's Services and Helpline can be contacted for advice – more information is available here

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

British Red Cross

British Red Cross offices offer services to asylum seekers and refugees, including family tracing and family reunion

www.redcross.org.uk/get-help/get-help-as-a-refugee##

How to claim asylum

To Register an asylum claim

Registering an asylum claim¹ is done at a 'screening'. This is a meeting with an immigration officer where people start talking about their case.

At the screening applicants:

- are photographed
- have their fingerprints taken
- have an interview to check who they are and where they are from.

They'll be asked why they want to claim asylum.

How to register an asylum claim?

People who want to claim asylum need to do so as soon as possible. It can be done in the port and airport on arrival.

If already in the UK, asylum applications must be submitted in person at the Asylum Screening Unit in Croydon.

Claimants can either make an appointment in advance or attend the walk-in service. They will be seen without an appointment if they are destitute.

If claimants have had a change of circumstances in their immigration history it is advisable to seek legal advice before claiming asylum.

If claimants are not newly arrived in the UK, it is advisable to seek legal advice from a qualified immigration adviser before claiming asylum.

People who meet vulnerability criteria, can be referred to Migrant Help who can request a screening appointment in Glasgow and support with accessing emergency support.

The Migrant Help definition of a vulnerable person is:

- A disabled person
- An elderly person
- A pregnant woman
- Lone parent with a child
- A person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence
- A victim of human trafficking
- A minor
- Any person identified in 1-7 above who has had an individual evaluation of their situation that confirms they have special needs
- A person that has an inability to access services by website or telephone advice line.

1. www.gov.uk/claim-asylum

Asylum support

Once someone registers their asylum claim, they can access asylum support (accommodation and/or financial support) from the Home Office. Application for asylum support is made via Migrant Help.

Emergency support

If an asylum applicant requires support out of office hours and support from the Home Office cannot be arranged, Local Authorities have a duty to accommodate as per Section 12 or 13a of the Social Work (Scotland) Act 1968 and Section 22 of the Children (Scotland) Act 1995. In such cases, referral to Social Work Office must be made.

Additional Support

How to find an OISC regulated adviser

www.gov.uk/find-an-immigration-adviser

Scottish Refugee Council

Scottish Refugee Council's Services and Helpline can be contacted for advice – more information is available here

<https://www.scottishrefugeecouncil.org.uk/direct-support/>

Scottish Guardianship Service

The service supports unaccompanied asylum-seeking and trafficked children and young people. All of the refugee children and victims of trafficking that we support, have arrived in the country without their parents.

www.aberlour.org.uk/services/scottish-guardianship-service/

British Red Cross

British Red Cross offices offer services to asylum seekers and refugees, including family tracing and family reunion

www.redcross.org.uk/get-help/get-help-as-a-refugee##

Migrant Help

Migrant Help is a charity contracted by the Home office to provide advice and information to all asylum seekers in the UK. They run an asylum helpline that is free. Advice can be given in several languages on:

- How to claim asylum
- Financial support
- Finding legal representation
- The asylum process
- Accessing healthcare
- Accommodation support
- Any other asylum issues.

They can also help you complete the application form for asylum support (financial and/or accommodation) and assist if you need to notify the Home Office of a change of circumstance.

Free asylum helpline: 0808 8000 630