

**Scottish contribution to the 2007
UK report to the UN Committee on
the Rights of the Child**

Scottish Executive

Comments on draft report submitted by
Scottish Refugee Council

31 January 2007

About the consultation

The UK is a signatory to the United Nations Convention on the Rights of the Child (UNCRC) which was implemented across the UK in January 1992. The Convention is a list of 54 Articles that cover all aspects of life for young people under the age of 18. It is not enforceable in UK or Scottish legislation but the policy of the Scottish Executive is to reflect the provisions of the Convention wherever possible in developing legislation and policy towards children. Under Article 44, each state signatory must report to the UN Committee on the Rights of the Child on measures they have adopted which give effect to the rights as set out in the Convention. The previous reports by the UK Government¹ to the Committee were submitted in February 1994 and August 1999. [The Scottish Executive is currently consulting on their draft report which will form part of the UK report to the Committee in July 2007.](#)

About Scottish Refugee Council

Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues. We are also an active member of the European Council on Refugees and Exiles (ECRE), a network of over 80 refugee-assisting organisations across Europe.

1. Introduction

- 1.1 Scottish Refugee Council welcomes the opportunity to give our comments to the Scottish Executive's draft report. We are happy for our responses to be made public and are happy to comment further on any of the issues we raise.
- 1.2 As an organisation supporting refugees in Scotland, our comments relate in the main to refugee children², (specifically: unaccompanied asylum-seeking children; accompanied asylum-seeking children; children of asylum-seekers; and children granted refugee status, humanitarian protection or discretionary leave). And, subsequently, our comments centre on the pages of the draft report which discuss this group (pp.102-104).
- 1.3 Except for initial comments, our response focuses on the content (and omissions) of the draft report, rather than our broader concerns around refugee children where we believe the UK Government and / or the Scottish Executive is not compliant with the Convention.

2. General comments

- 2.1 Scottish Refugee Council recognises and welcomes the steps that the Scottish Executive has taken to ensure that refugee children are treated first and foremost as children and not simply as people subject to immigration control. We are pleased that the Scottish Executive endeavours to develop policy to reflect this and support the principles of the Convention:

¹ UK Initial report (1994): <http://www.everychildmatters.gov.uk/files/94F5895124E73123F50112C79FAE388B.doc>

UK Second report (1999): <http://www.everychildmatters.gov.uk/files/BF94620FCF68B530D970BFA445D6B4AC.pdf>

² We use 'refugee children' throughout our response unless there is a particular need to define certain children's rights and entitlements.

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2.1 [The Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognises that, while the Scottish Executive has no direct responsibility for the operation of the immigration and asylum system, it is responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC³

2.2 However, we would like to take this opportunity to stress again our opposition to the UK Government's general reservation as it applies to refugee children as we believe this reservation is not compatible with the general provisions and principles of the Convention. In addition we believe that the UK Government's contention that the reservation is necessary to maintain effective immigration control is not substantiated.

2.3 The rights promoted by the Convention should apply to all children and Article 22⁴, in particular, guarantees the protection and rights of refugee children. The UK has however entered a general reservation to the UNCRC as regards the entry, stay in and departure from the UK of children who are subject to immigration control⁵.

2.4 Scottish Refugee Council is extremely concerned by the UK Government's insistence on maintaining such a reservation to the UNCRC. We are concerned that this has been too widely interpreted by the Government and the impact of the reservation extends beyond the determination of refugee status, and leaves asylum-seeking children and refugee children with less protection in terms of their rights under the UNCRC. This reservation has been criticised by many bodies including the Joint Committee on Human Rights in the UK Parliament and the UN Committee on the Rights of the Child⁶ itself. We support the calls from these bodies for this reservation to be withdrawn.

3. Specific comments on draft report

3.1 Scottish Refugee Council believes that the Section VIII *Special protection measures a) Children in situations of emergency* broadly reflects the developments that the Scottish Executive has made and is making with respect of refugee children in Scotland. We would however like to raise certain points under each of the headings as they appear in the draft report.

³ Executive amendment to Parliamentary debate on asylum-seeking children 22 September 2005

⁴ *States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

⁵ The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time

⁶ Concluding observations of the Committee on the Rights of the Child: CRC/C/15/Add.34. 1995

3.2 Asylum seeker and refugee children

3.2.1 Whilst this section gives a good broad introduction to the history of refugees in Scotland and the Scottish Executive's policy towards asylum seekers and refugees, we believe that there are several omissions. Firstly, whilst the title of this section is "asylum seeker and refugee children", there is actually little reference to children in this section. We believe the following points should be included to give the UN Committee a more comprehensive view of refugee children in Scotland

3.2.2 Paragraph 400 should include:

- Statistics on the number of refugee children in Scotland, their status and nationality; and
- Mention of the increased percentage of families in Glasgow compared to other dispersal sites in the UK (due to various reasons including Glasgow City Council's contract with the National Asylum Support Service).

3.2.3 Paragraph 401 which discusses reserved and devolved issues should include reference to the Executive's responsibilities towards refugee children.

3.2.4 Paragraphs 402 and 403 which describe the Scottish Refugee Integration Forum (SRIF) should highlight more the aspects of the Action Plans as they relate to children, in particular the action points developed by the Children's sub-group of the current SRIF Action Plan.

3.2.5 We would like to see at the beginning of this section an affirmation by the Scottish Executive to refugee children in Scotland and their rights under the UNCRC. Such a statement has already been made by Robert Brown in the Executive's amendment to the debate on asylum-seeking children in the Parliament on 22 September 2005⁷. We also believe that reference is made to the Executive's strategy: *Getting It Right for Every Child* as this does not exclude refugee children.

3.3 Discussions with the Home Office on family removals

3.3.1 Scottish Refugee Council welcomed the Scottish Executive's concern and intervention in the treatment of asylum seekers and their children subject to forced early-morning removals. Whilst this section gives a good representation of the actions taken by the Executive, we remain deeply concerned by the process and we feel that the resultant review undertaken by the Home Office (described in paragraph 4.11) was too narrow and will not address many of the concerns which we raised in our submission.⁸

We would like to raise the following points in this section:

3.3.2 In paragraph 404 we believe that reference should also be made to the impact of these removals on Scottish children. We believe that the fear generated by forced removals is having a profound effect on the mental and physical well-being of many young people - not

⁷ <http://www.scottish.parliament.uk/business/chamber/mop-05/mop05-09-22.htm>

⁸ http://www.scottishrefugeecouncil.org.uk/pub/Family_Removal

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just those in families who may be subject to forced removal but also amongst their friends and schoolmates.

- 3.3.3 In paragraph 406 we believe that the sentence: “... *removals are carried out using proportionate and humane approaches which respect the interests of the child*” should read “... *removals are carried out using proportionate and humane approaches which respect the best interests of the child*”. As stated in paragraph 2.2, refugee children are not exempt from the UNCRC, and their rights, such as those under Article 3 (1)⁹ should be promoted. We believe that the Executive’s report should mirror the language of the Convention.
- 3.3.4 Paragraph 408 states that “... *the Home Office are bringing forward legislation to establish the legislative basis on which the removals process can be inspected.*” We do not believe that this statement fully reflects the current situation as regards the regulation and monitoring of immigration enforcement. The Police and Justice Bill did originally contain provision for an Inspectorate for Justice, Community Safety and Custody with the remit to inspect and scrutinise enforcement actions of immigration officers in the UK. However, this will not now be implemented. Instead, the Immigration and Nationality Directorate is currently consulting on developing a new single regulatory body. It is envisaged that the remit of this body will include inspecting removal processes. We believe that the Executive’s report should include a commitment by the Executive to consult with the Home Office on the development of such a body to ensure, in particular, that forced removals of refused asylum-seeking families in Scotland will be subject to parity of proper and independent scrutiny.
- 3.3.5 The Bill did include provisions allowing Regulations to be laid enabling the Independent Police Complaints Commission (IPCC) to investigate serious complaints arising from immigration enforcement activities where coercive powers are used within the community. This will apply in England and Wales and, subject to Parliamentary approval of implementing legislation; it is planned that the IPCC will take up this new role in April 2007. The Home Office consultation states that “*parallel measures are being developed for Scotland (Police Complaints Commission for Scotland)*”. We believe that the report should refer to this avenue of scrutiny of immigration enforcement activities.
- 3.3.6 Under Section 191, the report discusses the implementation of the Protection of Vulnerable Adults Bill: “*This legislation will provide the framework for an improved vetting and barring scheme which will extend the coverage of positions considered as child care*”¹⁰. We broadly welcomed the proposed legislation¹¹ recognising that this is an important step to ensure that children are protected from harm. Scottish Refugee Council previously raised concern around the lack of enhanced disclosure of immigration staff who have unsupervised access to children and we are pleased the Executive and the Home Office went some way to

⁹ Article 3 (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

¹⁰ p.46

¹¹ See our response to the consultation: http://www.scottishrefugeecouncil.org.uk/pub/Vetting_Barring

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address this issue (described in paragraph 409). However, we firmly contend that all children in Scotland should be afforded the same rights and privileges and this should include refugee children. Therefore, we would seek assurances that the individuals working and coming into contact with such children, in particular immigration officers at ports and in communities, will also be covered by the proposed vetting and barring scheme once implemented.

3.3.7 Scottish Refugee Council welcomed the appointment of a Regional Director for Scotland for the UK Immigration Service (as mentioned in Section 410). We share the Executive's concerns that communications between the Home Office and local agencies has been "haphazard"¹² and that "there have not been good systems for ensuring good communications and routes to raise concerns with the Home Office"¹³. We would also contend that communications between the Home Office and the Scottish Executive have also been 'haphazard'. Whilst we believe that this appointment will go some way to facilitating better dialogue, we believe it is vital there is better understanding at the Home Office of devolved issues and consideration of how UK asylum legislation and policy will impact in Scotland. For example, in August 2006 the Home Office consulted on the transposition of the EU Qualification Directive (2004/83/EC)¹⁴ into UK legislation. The consultation document omitted reference to the Children (Scotland) Act 1995 when citing local authorities' duties to unaccompanied asylum-seeking children. Furthermore, it appeared that key departments at the Scottish Executive with responsibility to implement aspects of the Directive, such as the Housing and Regeneration Unit and the Equality Unit, were not consulted. Therefore, we believe in the Executive's report commitment should be made to work closely with the Home Office and UK Government to ensure any refugee children in Scotland are not disadvantaged when UK asylum policy and legislation is developed. We also believe that the Executive should seek to ensure that in the final UK report there is a commitment by the Home Office to liaise closely with the Executive¹⁵ when asylum policy and legislation is developed which will impact on refugee children in Scotland.

3.4 Provision for unaccompanied minors

3.4.2 Similar to the point we raised in 3.2.2, in order to better contextualise the report we believe it is important to define the number of unaccompanied minors in Scotland.

3.4.3 Whilst we agree with the criticisms in paragraph 413 and 414 concerning local authority support provision for unaccompanied asylum-seeking children, we do not believe that these will be wholly resolved by the proposed UASC reform programme and the suggested proposal to support all children in Glasgow. We remain concerned that children continue to be supported in inappropriate accommodation. Recent research we conducted¹⁶ found that

¹² p.103

¹³ ibid

¹⁴ This Directive outlines the minimum standards for the recognition of refugees and others in need of international protection and the content of status given to such persons

¹⁵ And the devolved administrations in Wales and Northern Ireland

¹⁶ "This is a good place to live and think about the future...", The needs and experiences of unaccompanied asylum-seeking children in Scotland, The Glasgow Centre for the Child and Society / Scottish Refugee Council, March 2006, http://www.scottishrefugeecouncil.org.uk/pub/UASC_report

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many young people were being housed in inappropriate accommodation: homeless hostels, hotels or bed and breakfast accommodation with inadequate access to cooking facilities or social support. In responding to the recent Home Office consultation on the transposition of the Qualification Directive¹⁷, we stated that this inadequate service provision evidences non-compliance with the Article 30 of the Directive.

3.4.4 Under section 10.9 of the 1999 UK report to the UN Committee¹⁸ it states that: “*All asylum-seeking children and all asylum-seekers who claim to be minors are referred as a matter of routine to the Children’s Panel of the Refugee Council.*” However our experience and research proves that this is not the case. There is ambiguity about the geographical coverage of this Panel. (British) Refugee Council staff have stated that the Panel is only funded to work in England (although their leaflet states that the Panel works across the UK), while others claim that the Panel is operated by Home Office funding, and so should offer a pan-UK service. However, what is clear is that unaccompanied asylum-seeking children in Scotland have not benefited from the services offered by the Panel of Advisors, and are losing out as a result of this. Scottish Refugee Council is seeking to rectify this situation by piloting a similar service in Scotland. We believe that the Executive report should reference this and the Executive should ensure that a similar statement like the above is not repeated in the 2007 UK report.

3.4.5 We believe that in the report it is important to raise issues of better practice. We warmly welcomed the recent changes made by the Executive to improve access to education for refugees granted humanitarian protection by removing the 3-year ordinary residency requirement for funding¹⁹ In particular we were very pleased with the move to include those granted Discretionary Leave as well as allowing the provision of Educational Maintenance Allowance (EMA) and Independent Learning Accounts (ILA). This will allow unaccompanied asylum-seeking children in Scotland, many of whom are initially granted Discretionary Leave to increase their educational chances by accessing EMAs and further their development towards more successful integration.

4. Concluding remarks

Scottish Refugee Council welcomes this Scottish report, the first produced by the Executive. We look forward to working with the Executive in the future to ensure that the rights of refugee children are compliant with the Convention.

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¹⁷ <http://www.scottishrefugeecouncil.org.uk/pub/Qualification>

¹⁸ <http://www.everychildmatters.gov.uk/files/BF94620FCF68B530D970BFA445D6B4AC.pdf>

¹⁹ [Link here](#)

Appendix - Text of section relating specifically to refugee children in the draft report pp.102-104

VIII SPECIAL PROTECTION MEASURES

a) Children in situations of emergency

Asylum seeker and refugee children

400. Scotland has a long history of welcoming refugees and asylum seekers and their children. The UK government's dispersal policy, introduced in 1999, led to large numbers of asylum seekers and refugees settling in Scotland, particularly Glasgow. The Scottish Refugee Council estimates there are currently approximately 10,000 refugees and asylum seekers living in Scotland, mainly in Glasgow.

401. Immigration and asylum are reserved issues. The Executive is responsible for devolved issues which relate to asylum seekers who are living in Scottish communities while their immigration application is being processed. This includes integration initiatives, such as English language classes and interpreting/translation assistance, and services such as healthcare, education and legal advice.

402. The Executive is committed to supporting the effective integration of refugees and asylum seekers into Scottish society. The Scottish Refugee Integration Forum (SRIF) was established in January 2002 to allow Scotland's statutory and voluntary agencies to work in partnership to support refugees more effectively. The Forum produced an Action Plan in 2003 which identified a number of key actions designed to make a real difference to the lives of asylum seekers and refugees in Scotland. These actions related to improving access to services, translation and interpretation support and breaking down barriers to employment.

403. The Forum was reconvened in December 2005 to draw up a further set of actions to address any new and emerging issues affecting integration since the Action Plan was published. Six subgroups were set up to look specifically at housing, access to justice, employment and training, health and social care, community development and children's issues. The actions, which will primarily be for the Executive to implement, will feed into the Executive's Race Equality strategy and Action Plan.

Discussions with the Home Office on family removals

404. In autumn 2005, there was public, political and Ministerial concern in Scotland about the processes used by the UK Immigration Service to remove failed asylum seekers – in particular the treatment of families with children. Concerns centred round the family removal process, for example early morning removals (so-called “dawn raids”) were seen by many as unnecessary. There was concern about children and families being uprooted from communities where they had lived for many years while waiting for their cases to be concluded.

405. In the light of these concerns, Executive Ministers undertook to explore with the Home Office what steps could be taken to ensure that the children of asylum seekers were properly supported while in Scotland and that when a removal was required it was carried out humanely.

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406. Discussions between Executive and Home Office Ministers and officials covered a wide-range of issues and led to the development of a significant package of measures, announced in March 2006. This package will ensure that decisions about removals are made on the basis of all relevant information, that removals are carried out using proportionate and humane approaches which respect the interests of any children involved, and that the removals process is subject to independent scrutiny and review. Individual decisions about asylum, and about whether, when and how failed asylum seekers will be removed will continue to be made by Home Office.

407. Glasgow City Council will put in place “lead professional” arrangements to gather information about the health, welfare and education of the children of asylum seekers. This will be made available to the Home Office to ensure it has the relevant information to inform decisions about the timing and handling of family removals.

408. The Executive has asked HMIE to coordinate the inspection of services provided (by local agencies) for the children of asylum seekers in Glasgow up to the point where their request for asylum is granted or the point where they are removed. This Joint Inspection was carried out in autumn 2006 to help ensure the quality of the services provided – the inspection report is due in spring 2007. In addition, Home Office are bringing forward legislation to establish the legislative basis on which the removals process can be inspected. These two inspection strands will address concerns that there has been no basis on which the removals process itself, or the support provided to families and children, was subject to independent scrutiny and public reporting, against clear standards.

409. Enhanced background checks on all Home Office staff involved in family removals are being carried out to ensure it is appropriate for them to work with children. This will address concerns that staff involved in removals, who may have unsupervised access to children at times of considerable stress, have not been subjected to the same level of enhanced disclosure checking required for other staff working with children.

410. The appointment (by the UK Immigration Service) of a Regional Director for Scotland will address concerns that communications between Home Office and local agencies (for example schools) have been haphazard, and that there have not been good systems for ensuring good communications and routes to raise concerns with Home Office.

411. The Home Office has carried out a Review of the UK Removals Process, seeking a range of stakeholder views, including from the four Children’s Commissioners. It included a review of the timing and methods used in removals, including whether it is necessary/appropriate to remove families very early in the morning. The findings and recommendations of the Review are expected in early 2007.

412. There is widespread agreement that families opting to return of their own volition is preferable to forced removals. To that end, the Home Office have trialled an enhanced package of financial support for any asylum seekers opting for voluntary return. This provides a significantly enhanced lump sum, and practical support. The Home Office is also committed to improving information for and communication with local communities to help them ensure asylum seeker families have the best possible advice and information needed to judge what is in their children’s best interests. The Executive has undertaken to help take this forward in Scotland.

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Provision for unaccompanied minors

413. On arrival in Scotland, Unaccompanied Asylum Seeking Children (UASCs) are classed as “looked after” children and are supported by local authorities in keeping with their duty under the Children (Scotland) Act 1995 to provide for children in need. Currently, an individual UASC becomes the responsibility of a particular local authority for no other reason than it happens to cover the area where the person first arrived in Scotland or otherwise first came to attention as being in need of support. This is the case regardless of whether that authority is overstretched by the numbers it is already dealing with or lacks the necessary expertise and specialist infrastructure. The local authority in question then notifies the Home Office that it is supporting the individual and will receive additional funding to help provide that support. The child is looked after by the local authority until he or she turns 18 when their asylum case is heard.

414. These arrangements are not considered adequate to ensure the quality of care for these individuals either by the Home Office or local stakeholders in Scotland. The Home Office will shortly issue a consultation paper proposing to reform the way that UASCs are supported while in the UK. If accepted, these reforms will result in all UASCs being transferred to a set number of “receiving” local authorities (in Scotland this is likely to be just Glasgow). This will allow the development of specialised services, and the availability of well trained and experienced staff, at local level to support these children. It will also ensure a consistent level of service for all UASCs in Scotland and better value for money.

Use of detention for asylum seekers in Scotland

415. Following the opening of a family detention centre in England (Yarl’s Wood in Bedfordshire) the Home Office decided that failed asylum seekers with children awaiting removal from the UK would all be held there. As a result, children and families are no longer held for more than 72 hours in the Dungavel detention centre, the only such centre in Scotland, other than in exceptional circumstances. Some families that have been detained prior to removal may be held at Dungavel for a short time prior to transportation to Yarl’s Wood. In the unlikely event of a family being held for 21 days or more there is an agreement between the Centre and South Lanarkshire Council that the authority will conduct a welfare assessment. Child protection issues are also notified to social work as and when they occur. The operation of Dungavel is the responsibility of the Home Office.

416. Unaccompanied children seeking asylum are not held in detention. As with all looked after children they are provided with the same levels of support and protection as any other child in these circumstances, including the provision of appropriate accommodation.