



INITIAL PRESENTATION

What you need to know

ABOUT THIS GUIDANCE



The aim of this guide is to set out the relevant law and guidance to increase the confidence of decision makers involved when firstly meeting an unaccompanied young person stating they are under the age of 18. For ease, we will refer to this initial stage as brief enquiry.

Age assessments are a complex task as it can be extremely difficult to accurately determine someone's age, and the consequences of an age assessment can be huge for the young person involved.

The Scottish Government has published guidance to support practice in the area: [Scottish Government \(Age Assessment Practice Guidance for Scotland, March 2018\)](#) ('the age assessment guidance').

Whilst the age assessment guidance addresses initial presentation (page 9-10), it does not cover in detail what enquiries social workers need to make at this stage and what safeguards need to be in place.

WHICH LOCAL AUTHORITY HAS RESPONSIBILITY?

When a local authority is notified that an unaccompanied young person has presented or is residing in the area, they must respond and arrange to meet the young person as soon as practicable.

Section 25 of the Children (Scotland) Act 1995 states that a local authority has a responsibility to engage and provide support to any unaccompanied child who is in need and is either residing or has been found in their area. Having being found in this context means, for instance, where the young person first encountered the police.

From this, it follows that, in cases where a young person firstly presented in a local authority and was later moved to a different local authority, both local authorities could have an obligation to engage under Section 25.

This can happen, for instance, if a young person is trafficked from one local authority area to another. It can also happen where a young person is moved to accommodation provided by the Home Office or Migrant Help in a certain local authority, having initially being found in a different local authority.

As the practical implications of this provision have not been clarified by the courts yet, in cases where two local authorities have potential responsibility, it is crucial that an agreement is reached between them as to who is responsible.

This is essential and should be done quickly to avoid situations where a young person is left in a vacuum where no local authority is taking responsibility for them.

Local authorities should bear in mind that, where they are refusing to engage with a young person on the basis of another local authority having responsibility and this is resulting in the young person being left with no support, this could amount to a failure to comply with their obligations under Section 25.

WHAT IS A BRIEF ENQUIRY?

When first meeting the young person, social workers from the local authority will need to establish whether the young person is, or could be, a child.

To do this they ought to speak with the young person, conduct a welfare and health check, and seek to gain a basic understanding of how they came to be in the local authority. They also make observations on the appearance and demeanour of the young person.



During that interaction, it is also important to investigate whether there are any indicators that the young person might be a potential victim of trafficking. Under Scottish legislation, if there are grounds to believe that a person who may be a child is a victim of trafficking, they ought to be presumed to be a child until further enquiries are made.^①

It is therefore important to ensure that all staff members who may be meeting and assessing young people are aware of and trained on trafficking indicators and how these may present.

This enquiry should take place when workers first meet an unaccompanied young person who presented in their local authority. Importantly, this enquiry should not be prolonged and, where any doubt exists as to their age, young people should be brought into care and a full Merton compliant age assessment should be carried out.

^① Section 12 of the Human Trafficking and Exploitation (Scotland) Act 2015

WHAT IS A BRIEF ENQUIRY?

Aims & safeguards

Approaches to the initial presentation phase must be flexible and practical to avoid unnecessary delays. However, where practicable, safeguards should be put in place to ensure that brief enquiries are conducted fairly.

At a minimum, efforts ought to be made to arrange for an interpreter to be present when a brief enquiry takes place, to ensure that the young person is able to communicate clearly.



It is best practice for the interpreter to be arranged face-to-face. However, where this is not possible, phone interpretation can be used but workers should keep in mind that this might require additional efforts to ensure the young person is able to understand fully what is being discussed and communicate effectively.

Appropriate adults, as defined at [page 20](#) of the age assessment guidance, where available, also represent an important safeguard for young people at this initial stage. Where local authorities are planning in advance to go and see a young person for a brief enquiry, for example at an adult asylum accommodation, efforts ought to be made for an appropriate adult to be arranged, especially in cases where the young person is already supported by a guardian or a caseworker.

The Scottish Government Guidance also notes that any decision relating to a young person's age should be clearly recorded, outlining all the reasons and relevant considerations, and communicated to the young person, to enable them to seek appropriate advice² and to have a meaningful opportunity to respond. It is best practice for the worker to ensure that the young person is given a copy of the decision letter in writing. This should be done as soon as possible to ensure the young person is able to access legal advice.

² P.11, Scottish Government, [Age Assessment Practice Guidance for Scotland](#), March 2018

WHAT IS A BRIEF ENQUIRY?

Is there a possibility that the young person could be a child?

If the workers believe the young person is, or could be, a child then they must take the young person into care. Enquiries at initial presentation stage should not be prolonged and, if any doubt exists, further enquiries should only be made once the young person has been taken into care.

Support should only be refused by the local authority if the social workers have no doubt that the young person is “clearly and obviously” over the age of 18. This would not apply in ‘borderline’ cases but only in cases where the young person clearly presents as an adult.

Workers should keep in mind that young people at this stage are likely to have recent experience of abuse and exploitation as well as unmet medical and mental health needs. They are often malnourished, dehydrated and sleep deprived.

As a result, there is a very wide margin of error in considering a young person’s physical appearance and demeanour at this critical moment in the young person’s journey.

Social workers must apply “**the benefit [or margin] of doubt**” when carrying out a brief enquiry and, when any doubt exists, take the young person into care. The Courts³ have clarified that local authorities would be acting unlawfully if workers fail to acknowledge this wide margin of error inherent to these assessment throughout the initial presentation stage. Therefore, decisions finding a person to be “clearly and obviously” over 18 are likely only appropriate in limited, clear-cut cases.

The wide margin of error at initial stage is also recognised in the Scottish Government Guidance which states: “In practice, it is rare that social workers encounter a case where it is this clear or this obvious, but it can happen from time to time”.⁴

³ AB v Kent County Council [2020] EWHC 109 (Admin) and BF (Eritrea) v Secretary of State for the Home Department [2021] UKSC 38

⁴ P.10, Scottish Government, [Age Assessment Practice Guidance for Scotland](#), March 2018



WHAT IS A BRIEF ENQUIRY?



Previous assessments

Under section 25 of the Children (Scotland) Act 1995, all local authorities in Scotland have a duty to accommodate and look after unaccompanied children. When an unaccompanied young person has presented in the area, staff must be mindful of this duty. A local authority cannot solely rely on a previous brief enquiry carried out by a different local authority or by the Home Office to discharge this duty. This duty would only be discharged when a full, Merton compliant has previously taken place.

Local authorities should be mindful that a date of birth recorded in Home Office records does not constitute proof of a full, Merton compliant age assessment having taken place. The Home Office will often in their practice use brief enquiries to assign dates of birth to young people on arrival. On this basis, a local authority cannot refuse to engage with the young person solely on the basis of their recorded date of birth in Home Office records as this might amount to a breach of their obligations under Section 25.

In cases when it transpires that a brief enquiry has been carried out by either the Home Office or another local authority, social workers should conduct their own enquiries as set out above and, if there is any doubt that the person is not “clearly and obviously” over the age of 18, the young person should be taken into care pending a full age assessment.

Where a local authority refuses to carry out a brief enquiry and engage with a young person solely on the basis of a previous brief enquiry conducted by a different local authority or by the Home Office, this could amount to a failure to comply with their obligations set out in Section 25.

WHAT IS A BRIEF ENQUIRY?

Onward Referrals for Young People over the age of 18

If young people are assessed as being clearly and obviously over 18 by the local authority, they are not eligible for support from children's services. As such, there is a risk that these vulnerable young people might be left with no form of support, with many becoming homeless as a result. This also places these young people at risk of exploitation and trafficking.

It is crucial that attempts are made to mitigate these serious risks—and it should be borne in mind that they are still vulnerable young people even if they are over 18. Indeed, these young people often have not exhausted legal avenues to have their age accepted. Therefore, there is a need to be vigilant about potential safeguarding risk.

It is best practice for appropriate referrals to be made, either to another agency or another statutory power. For example, a referral to Migrant Help for asylum support, or it may be the case that the young person is eligible for social services support under Section 12(1) of the Social Work (Scotland) Act 1968 or the Adult Support and Protection (Scotland) Act 2007.

Social workers should also consider making referrals to third sectors organisation who support this particularly vulnerable group of people, such as the British Red Cross.

Local authorities should also refer to the Migrants' Rights and Entitlement guidance published by COSLA and the Scottish Government on support available to people with no recourse to public funds.⁵

⁵ [Social services' support – adults | Migration Scotland](#)



THE DUTY TO REASSESS

The case law governing age assessment established that they need to be “working definitions”.^⑥

Because of this, a fresh brief enquiry should be carried out if new, material evidence is presented to the local authority by the young person or someone representing them.

The *Merton and AB v Kent County Council* cases both note that, whilst it can at times be legitimate for a local authority to assess age based on physical appearance and demeanour, such an assessment ought to be viewed as provisional. Therefore, if a decision is provisional, it should be reassessed when new information comes to light.

The Scottish Government Guidance also sets out the procedure that should be followed when new information becomes available.^⑦ It states that, if new information becomes available that could significantly change the outcome of the existing assessment, a further assessment should be undertaken.

For example, this would apply if new information comes to light that gives the relevant authority reasonable grounds to believe the young person is a potential victim of trafficking. It would also apply if the young person instructs a legal representative who provides the local authority with new evidence supporting the young person’s age, such as supporting letters from qualified professionals or ID documents proving the age.

Therefore, if new information becomes available that could significantly change the outcome of the existing assessment, a further assessment should be undertaken.

Reconsideration requests should be dealt with in a transparent manner and a decision on whether or not a reconsideration will take place should be clearly communicated to the person or organisation making the request.

^⑥ L v Angus Council [2011] CSOH 196

^⑦ P.33, Scottish Government, [Age Assessment Practice Guidance for Scotland](#), March 2018

SUMMARY

1 Meeting the young person

- Meet the young person, conduct a welfare and health check, and seek to understand how they have come to be in the local authority area;
- Check for any trafficking indicators;
- Make observations on the appearance and demeanour of the young person.



2

Is there any doubt that the person is clearly and obviously over the age of 18?



3



Yes

- Young person should be taken into care
- Where any doubts remain about age, a full Merton Compliant Age Assessment should take place



No

- Decision must be clearly recorded and explained to the young person
- Onward referrals to support agencies
- Duty to re-assess if new information is provided

This guidance has been issued by JustRight Scotland in collaboration with British Red Cross.

We would like to thank COSLA's Migration, Population and Diversity team for their contribution.

JustRight Scotland

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703).

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