

Resources Guide for Legal Practitioners Working with Refugee Children

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Third Edition
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FUNDED BY

The logo for the Diana Princess of Wales Memorial Fund, featuring the name 'Diana' in a purple, cursive script.

Princess of Wales Memorial Fund
THE WORK CONTINUES

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About this Guide

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 950 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, including UK Border Agency, and other consultative and advisory groups.

ILPA runs a Refugee Children Project, funded by The Diana, Princess of Wales Memorial Fund. The project aims to improve advice and representation for refugee children through the provision of training and resources. This guide, which developed out of preparatory work for the training courses, and has been augmented with material from subsequent courses and from the publications produced as part of the project, is made available as a resource for all practitioners as part of that work. ILPA thanks the Fund for supporting this guide.

This guide is aimed at legal practitioners working with refugee children. It provides a list of child-specific resources covering legislation, policy and research based publications on a variety of themes.

Legal and policy documents have been sorted into international, regional and national instruments. Documents include hard and soft law, guidance and instructions and good practice publications. Within sections, documents are in reverse chronological order unless otherwise stated.

National documents presented include legislation specific to children; immigration legislation; immigration rules; UK Border Agency guidance and instructions; asylum policy notices; asylum support policy bulletins; UK Border Agency enforcement instructions and guidance; UK Border Agency detention service orders; as well as guidance produced by other government departments and the courts and tribunals.

The resources guide lists reports produced by official bodies, such as by the HM Chief Inspector of Prisons and the Children's Commissioner for England. All relevant ILPA publications and ILPA information sheets that are child-specific have also been included. Reports by non-governmental organisations and academic articles are included. For this third edition we have taken the opportunity not only to supplement the material, but to rationalise its presentation. We trust that you will find this edition clearer, more logical and thus easier to use.

This resources guide is accurate as of May 2012. Law, policy and practice change over time, as do web links – full titles have been provided for all documents to make searching easier when a link no longer functions. All entries are listed in reverse chronological order.

ILPA intends by gathering all these resources together, to save busy practitioners time and to ensure that they are able to draw on a wide range of resources in their work. This guide can be downloaded and there is thus the possibility for the user to cut and paste particular extracts from the document cited into the body of the guide, or to add links of their own. It can also be used to develop an index to a file of hard copy resources if desired.

ILPA welcomes suggestions for links or topics to be included in future editions of this guide.

Resources Guide

International Law

The following lists the key international legislation and conventions relevant to working with refugee children either as separated or part of a family unit and associated published guidelines and comments.

Conventions and other international instruments

United Nations

Optional Protocol to the Convention on the Rights of Persons with Disabilities (2007)

<http://www2.ohchr.org/english/law/disabilities-op.htm>

UN Convention on the Rights of Persons with Disabilities (2006)

<http://www2.ohchr.org/english/law/disabilities-convention.htm>

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)

<http://www2.ohchr.org/english/law/crc-sale.htm>

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

<http://www2.ohchr.org/english/law/protocoltraffic.htm>

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)

<http://www2.ohchr.org/english/law/crc-conflict.htm>

UN Convention on the Rights of the Child (1989)

<http://www2.ohchr.org/english/law/crc.htm>

with status of ratifications, declarations and reservations

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

UN Convention on the Status of Refugees (1951)

<http://www2.ohchr.org/english/law/refugees.htm>

Hague Conference

Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)

<http://www.hcch.net/upload/conventions/txt33en.pdf>

Convention on the Civil Aspects of International Child Abduction (1980)

<http://www.unhcr.org/refworld/docid/3ae6b3951c.html>

International Labour Organisation

Worst Forms of Child Labour Convention (International Labour Organisation Convention 182) (1999)
<http://www2.ohchr.org/english/law/pdf/childlabour.pdf>

Council of Europe

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.X.2007, Council of Europe Treaty Series No.201 (2008)
<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CL=ENG>

Council of Europe Convention on Action against Trafficking in human beings and its Explanatory Report. Council of Europe Treaty Series no.197 (2005)
www.coe.int/T/E/human_rights/trafficking/PDF_conv_197_trafficking_e.pdf

European Convention on Human Rights (1950)
http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

European Union

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

Council Directive 2005/85/EC of 1 December 2005 on minimum standards for procedures in Member States for granting and withdrawing refugee status
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

Council Regulation No.1560/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ('Dublin II Regulation')
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>

Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>

Charter of Fundamental Rights of the European Union (2000/C 364/01) (see in particular Article 24)

http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Organisation of African Unity

Organisation of African Unity, African Charter on the Rights and Welfare of the Child (1999)

[http://www.africanunion.org/official_documents/Treaties %20Conventions %20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africanunion.org/official_documents/Treaties%20Conventions%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf)

Supervisory Bodies

United Nations General Assembly

Assistance to Unaccompanied Refugee Minors, UN General Assembly Resolution 54/145 of 12 February 2000

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.54.145.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.54.145.En?Opendocument)

United Nations Secretary General

Report of the UN Secretary-General (1997) *Assistance to Unaccompanied Refugee Minors*

<http://www.un.org/documents/ga/docs/52/plenary/a52-273.htm>

United Nations Committee on the Rights of the Child

General Comments

General Comment No. 6 (2005) *Treatment of unaccompanied and separated children outside their country of origin.*

[www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/\\$FILE/G0543805.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/$FILE/G0543805.pdf)

General comment no. 5 (2003), *General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5

<http://www.unhcr.org/refworld/docid/4538834f11.html>

Consideration of reports submitted by States Parties

Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 20 October 2008

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

Consideration of Reports submitted by States parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 2002

www.unhcr.org/refworld/docid/4906d1d72.html

United Nations International Children's Emergency Fund (UNICEF)

UNICEF (undated): *Female Genital Mutilation/Cutting* (resources portal)
http://www.unicef.org/media/media_pr_mutilation.html

UNICEF, Hamilton, C. et al. for (2011) *Administrative Detention of Children: A Global Report*
www.unicef.org/protection/files/Administrative_detention_discussion_paper_April2011.pdf

UNICEF, Smith, T. and Brownlees, L. for (2011) *Age Assessment Practices: a Literature Review and Annotated Bibliography*.
http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf

UNICEF, Brownlees, L. and Finch, N. for (2010) *Levelling the playing field: A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England*.
<http://www.unicef.org.uk/Documents/Publications/levelling-playing-field.pdf>

UNICEF Innocenti Report Card 9: Crawley, H. (2009) *The situation of children in immigrant families in the United Kingdom*.
http://www.childmigration.net/files/iwp_2009_18.pdf

UNICEF (2007) *Children and the Millennium Development Goals: Progress towards a World Fit for Children*, New York; United Nations Children's Fund
http://www.unicef.org/publications/files/Children_and_the_MDGs.pdf

United Nations High Commissioner for Refugees (UNHCR)

Executive Committee (EXCOM)

UNHCR (2009) *A Thematic Compilation of Executive Committee Conclusions* (4th edition)
<http://www.unhcr.org/3d4ab3ff2.html>

EXCOM (2007) *Conclusion on Children at Risk*, No. 107 (LVIII)
<http://www.unhcr.org/4717625c2.html>

Guidance

UNHCR (2009) *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08
<http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

UNHCR (2008) *Guidelines on Determining the Best Interests of the Child*
<http://www.unhcr.org/refworld/docid/48480c342.html>

UNHCR (2006) *Guidelines on International Protection No.7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked*
<http://www.unhcr.org/443b626b2.html>

UNHCR (1999) *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3c2b3f844>

UNHCR (1997) *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*

www.unhcr.org/refworld/docid/3ae6b3360.html

UNHCR (1994) *Refugee Children: Guidelines on Protection and Care* ('UNHCR Children's Guidelines')

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3470>

UNHCR (1992) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992)

<http://www.unhcr.org/3d58e13b4.html>

UNHCR (1979) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*. Reedited, Geneva, January 1992

<http://www.unhcr.org/3d58e13b4.html>

Other

UNHCR and others, Separated Children in Europe Programme, Thematic Group on Age Assessment (2011), *Review of Current Laws, Policies and Practices Relating to Age Assessment in Sixteen European Countries*

www.edustajat.fi/pdf/20110927_ageassessment_report.pdf

UNHCR and others, Separated Children in Europe Programme (2010) *Statement of Good Practice* (4th revised edition)

<http://www.unhcr.org/refworld/pdfid/415450694.pdf>

UNHCR, Christine Mougne for UNHCR (2009) *Trees only move in the wind: A study of unaccompanied Afghan children in Europe*.

www.unhcr.org/4c1229669.html

UNHCR and others, Separated Children in Europe Programme (2000) *Separated Children Seeking Asylum in Europe: A Programme for Action*

http://www.separated-children-europe-programme.org/separated_children/publications/reports/index.html#programme_action

Council of Europe Commissioner for Human Rights

'Methods for assessing the age of migrant children must be improved' CommDH018 (2011)

http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=166

Council of Europe Parliamentary Assembly

Resolution 1579 (2007) *Prostitution – Which stance to take?*

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1579.htm>

Recommendation 1778 (2007) *Child victims: stamping out all forms of violence, exploitation and abuse*

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1778.htm>

Resolution 1307 (2002) *Sexual exploitation of children: zero tolerance*

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERES1307.htm>

European Union: European Commission

European Commission (2010) *Communication from the Commission to the European Parliament and Council: Action Plan on Unaccompanied Minors (2010-2014)*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

European Union: other

FRONTEX for the European Commission (2009) *'Unaccompanied Minors in the Migration Process - a Tailored Risk Analysis'*.

http://frontex.europa.eu/assets/Attachments_News/unaccompanied_minors_public_5_dec.pdf

European Union Agency for Fundamental Rights, FRA (2009) *Separated, Asylum-seeking Children in European Union Member States*.

http://fra.europa.eu/fraWebsite/attachments/SEPAC-SUMMARY-REPORT_en.pdf

Guidance published by overseas governments

Alphabetical by country

Canada, Immigration and Refugee Determination Board (1996) *Child Refugee Claimants: Procedural and Evidentiary Issues*

<http://www.irb.gc.ca/eng/brdcom/references/pol/guidir/Pages/ChiEnf.aspx>

Finland (2002), Directorate of Immigration *Guidelines for Interviewing (Separated) Minors*

http://www.unhcr.org/refworld/publisher,FIN_DI,,,430ae8d72,0.html

Ireland, Office of the Refugee Applications Commissioner (2003) *Refugee Status Determination for Unaccompanied Minors/Separated Children Seeking Asylum: Procedures for case processing*

Netherlands (2009), *Guidance of Unaccompanied Minor Asylum Seekers in the Netherlands*

United States of America, United States Bureau of Citizenship and Immigration Services (formerly Immigration and Naturalization Service) (1998), *Guidelines for Children's Asylum Claims*

<http://www.unhcr.org/refworld/docid/3f8ec0574.html>

United States of America: United States Bureau of Citizenship and Immigration Services (2009), *Asylum Officer Basic Training Course, Guidelines for Children's Asylum Claims*

<http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf>

UK

Legislation and rules

Selected Legislation: Children

Rights of Children and Young Persons (Wales) Measure 2011 (2011 nawm 2)
www.legislation.gov.uk/mwa/2011/2/contents/enacted

Children Act 2004
<http://www.legislation.gov.uk/ukpga/2004/31/contents>

Children (Leaving Care) Act (Northern Ireland) 2002
<http://www.legislation.gov.uk/nia/2002/11/contents>

Children (Leaving Care) Act 2000
<http://www.legislation.gov.uk/ukpga/2000/35/contents>

The Children (Northern Ireland) Order 1995 SI 1995/755 (NI 2)
[1995 No. 755 \(N.I. 2\)](http://www.legislation.gov.uk/nisr/1995/755/nisr-1995-755)

Children Scotland Act 1995
<http://www.legislation.gov.uk/ukpga/1995/36/contents>

Children Act 1989
www.legislation.gov.uk/ukpga/1989/41/contents

Children and Young Persons Act 1933
<http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/contents>

Selected Legislation: Immigration

Acts of Parliament

Borders, Citizenship and Immigration Act 2009
<http://www.legislation.gov.uk/ukpga/2009/11/contents>

UK Borders Act 2007
<http://www.legislation.gov.uk/ukpga/2007/30/contents>

Immigration, Asylum and Nationality Act 2006
<http://www.legislation.gov.uk/ukpga/2006/13/contents>

Asylum and Immigration Act 2004
<http://www.legislation.gov.uk/ukpga/2004/19/contents>

Nationality, Immigration and Asylum Act 2002
<http://www.legislation.gov.uk/ukpga/2002/41/contents>

Immigration and Asylum Act 1999
<http://www.legislation.gov.uk/ukpga/1999/33/contents>

British Nationality Act 1981
<http://www.legislation.gov.uk/ukpga/1981/61>

Immigration Act 1971
<http://www.legislation.gov.uk/ukpga/1971/77/contents>

Secondary legislation

The Refugee or Persons in Need of International Protection (Qualification) Regulations 2006
<http://www.legislation.gov.uk/uksi/2006/2525/contents/made>

Immigration (European Economic Area) Regulations 2006
<http://www.legislation.gov.uk/uksi/2006/1003/contents/made>

The Asylum Seekers (Reception Conditions) Regulations 2005
<http://www.legislation.gov.uk/uksi/2005/7/contents/made>

Immigration Rules
<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

Selected Legislation – Other

Identity Documents Act 2010
<http://www.legislation.gov.uk/ukpga/2010/40/contents>

Criminal Justice and Immigration Act 2008
<http://www.legislation.gov.uk/ukpga/2008/4/contents>

Mental Health Act 2007
<http://www.legislation.gov.uk/ukpga/2007/12/contents>

Identity Cards Act 2006
<http://www.legislation.gov.uk/ukpga/2006/15/contents>

Criminal Procedure Rules 2005 (SI 2005/384)
<http://www.legislation.gov.uk/uksi/2005/384/contents/made>

Criminal Justice Act 2003
<http://www.legislation.gov.uk/ukpga/2003/44/contents>

Anti-Social Behaviour Act 2003
<http://www.legislation.gov.uk/ukpga/2003/38/contents>

Powers of Criminal Court (Sentencing Act) 2000
<http://www.legislation.gov.uk/ukpga/2000/6/contents>

Crime and Disorder Act 1998

<http://www.legislation.gov.uk/ukpga/1998/37/contents>

Police and Criminal Evidence Act 1984

<http://www.legislation.gov.uk/ukpga/1984/60/contents>

Forgery and Counterfeiting Act 1981

<http://www.legislation.gov.uk/ukpga/1981/45/contents>

Magistrates Court Act 1980

<http://www.legislation.gov.uk/ukpga/1980/43/contents>

Misuse of Drugs Act 1971

<http://www.legislation.gov.uk/ukpga/1971/38/contents>

Theft Act 1968

<http://www.legislation.gov.uk/ukpga/1968/60/contents>

Criminal Appeal Act 1968

<http://www.legislation.gov.uk/ukpga/1968/19/contents>

UK Border Agency Guidance and Instructions

Asylum Policy Unit Notices

Notice 3/2007, Amendment to Discretionary Leave Policy relating to Asylum Seeking Children

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/amendmenttodlpolicyasc.pdf?view=Binary>

Notice 4/2003, One-off exercise to allow families who have been in the UK for three or more years to stay

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/oneoffexercise.pdf?view=Binary>

Asylum Process Guidance

Active review of unaccompanied asylum seeking children (UASC) discretionary leave (DL) (version 5 undated, version 4 was 26 October 2009)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/consideringapplications.pdf?view=Binary>

Considering Applications for Further Leave (at age 17 and a half) following Grants of Discretionary Leave under the Policy on Unaccompanied Asylum Seeking Children [Active Review] (version 5, undated but references only change from version 5 (undated, version 4 was 26 October 2009)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/consideringapplications.pdf?view=Binary>

Transition at 18 (Version 2, 4 November 2011)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/transition-age-18.pdf?view=Binary>

Detained Fast Track processes (version 4, 29 March 2011)

www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddsaintakeselection?view=Binary

Human trafficking supplementary guidance (version 1, 13 October 2010, now removed from the UK Border Agency website)

<http://webarchive.nationalarchives.gov.uk/20100512221427/http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/human-trafficking-guide.pdf?view=Binary>

Processing an asylum application from a child (version 5, 11 August 2010)

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

Family Relationship Testing (2009) [now archived]

<http://webarchive.nationalarchives.gov.uk/20091207105340/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/family-relationship-testing-DNA?view=Binary>

Asylum Support Policy Bulletins

Policy Bulletin 31, Dispersal Guidelines (version 6, 18 October 2011)

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/dispersal/pb31?view=Binary>

Policy bulletin 82 Asylum seekers with care needs (version 3, 18 September 2009)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/general/pb82?view=Binary>

Policy Bulletin 78 Additional payments to pregnant women and children aged under 3 (version 2, 5 August 2004)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accesstosupport/pb78?view=Binary>

Policy bulletin 83 Duty to offer support, family unity, vulnerable persons, withdrawing support (version 4, 14 October 2009)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accesstosupport/pb83?view=Binary>

Detention Services Orders

Detention services order 11/2011 (Replaces DSO 04/2005) Definition of a family for the purposes of accommodation in an immigration removal centre or pre-departure accommodation

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/family-detention.pdf?view=Binary>

Detention Services Order 10/2011 Arrangements for families to undertake activities away from Cedars pre departure accommodation

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/cedars-predeparture-accom?view=Binary>

with Annex A Cedars Family Activity Request Form

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/annexa-cedars-family?view=Binary>

Enforcement Instructions and Guidance

(in order of chapter number)

Identifying Victims of Trafficking (undated)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectiona/chapter9?view=Binary>

Chapter 26, Unaccompanied Children (undated)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter26?view=Binary>

Chapter 45, Family Cases (undated)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter45?view=Binary>

Chapter 55, Detention and Temporary Release (undated)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary>

Chapter 60, Judicial Review and Injunctions (undated)

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60_11012010.pdf?view=Binary

Other

UK Border Agency website – guidance on how to complete the Humanitarian Protection/Discretionary Leave (HPDL) form (undated)

<http://www.ind.homeoffice.gov.uk/settlement/applicationtypes/applicationformHPDL/>

UK Border Agency website, Asylum Support: Education (undated)

<http://www.ukba.homeoffice.gov.uk/asylum/support/education/>

Criminal Casework Directorate *Children and Family Cases Process Instruction* (Undated, available from ILPA)

Guidance for the Competent Authorities (version 1, 13 October 2010)

<http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-0980.pdf>

Victims of Trafficking, guidance for frontline staff (version 1, 13 October 2010)
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Table of Cases

What follows does not purport to be exhaustive. It draws attention to some of the cases that have received particular attention from tutors on the Refugee Children's Project courses, in the project publications and in information sheets. Cases are set out by court/tribunal and thence alphabetically.

European Court of Human Rights

Boultif v Switzerland (Application no. 54273/00), 2 August 2001

<http://www.bailii.org/cgi-bin/markup.cgi?doc=eu/cases/ECHR/2001/497.html&query=boultif&method=boolean>

Concerns the circumstances in which expulsion will be a disproportionate interference with the right to private and family life and the principles governing such cases.

Kanagaratnam and others v Belgium (Application No. 15297/09) 13 December 2011)

<http://www.unhcr.org/refworld/docid/4ef0a7902.html>

Tamil woman with three children (aged 13, 11 and 8 at the time). They claimed asylum upon arriving in Belgium and were detained. Their asylum claims were refused and their appeals discussed. European Court of Human Rights granted a Rule 39 measure to stop their expulsion. They remained in detention. They were subsequently granted asylum. Court relied on previous judgments against Belgium (*Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (App. No. 13178/03) and *Mushkhadzhiyeva et ors v Belgium* (App.No.41442/07)) and found that the children's detention violated Article 3 and Article 5(1).

Maslov v Austria (Application no. 1638/03), 22 March 2007

<http://www.unhcr.org/refworld/country,,ECHR,,BGR,,464423e22,0.html>

Case in which expulsion of a 19 year old who had lived in Austria since he was six was held to be proportionate under Article 8.

Muskhadzhiyeva and Others v. Belgium (Application no. 41442/07), 19 January 2010

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=861160&portal=hbkm&source=externalbydocnumber&tabl>

Detention of children under immigration powers for over a month in a closed centre which was not designed to house children, in circumstances in which concern had been expressed by independent doctors about the children's state of health, was a violation of Article 3 (inhuman or degrading treatment or punishment).

Neulinger and Shuruk v Switzerland [2010] ECHR 1053 (6 July 2010)

<http://www.bailii.org/eu/cases/ECHR/2010/1053.html>

A child abduction case, worthy of consideration by those working with refugee children because it emphasises the universal nature of the UN Convention on the Rights of the Child and legally binding nature of the the EU Charter of fundamental rights which contains in Article 24, three sets of child-specific obligations based directly upon Articles 3, 9 and 12 of the UN Convention on the Rights of the Child: the best interests, protection, participation and family unity rights.

Popov v France (App.Nos.39472/07 and 39474/07) January 2012

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=898962&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

Two young parents of Russian ethnic origin from Kazakhstan with two young children (aged five months and three years). They were detained for 15 days while an attempt was made to expel them. The detention centre, while ostensibly adapted to the needs of children, was not. France held to be in violation of Articles 3 and 5 (1) in respect of the children (but not the parents). Violation of Article 8 in respect of the entire family because, although they were not separated, the strain imposed on the family was not justified. There was no clear indication that the family intended to abscond.

Rantsev v Cyprus and Russia (Application No. 25965/04) 7 January 2010
www.unhcr.org/refworld/docid/4b4f0b5a2.html

A human trafficking case that had resulted in Ms Rantsev's death, where there was found to be a violation of Article 2 (right to life and security of person) because the Government of Cyprus had failed to carry out an effective investigation. There were also found to be violations of Article 4 (prohibition of trafficking or forced labour) because of the Government of Cyprus's failure to put into place an appropriate legislative framework and to take protective measures. Both Cyprus and Russia had violated Article 4 because they had not investigated human trafficking. There was also a violation of Article 5 (right to liberty and security of person).

Rodrigues da Silva and Hoogkamer v Netherlands (Application no. 50435/99) July 2006
<http://www.unhcr.org/refworld/pdfid/464dcaca2.pdf>

Refusal to grant a residence permit to mother with no lawful leave to be in Netherlands in circumstances in which this would prevent her from maintaining contact with her daughter (who lived with paternal grandparents) was a disproportionate interference with rights of mother and child under Article 8.

Siliadin v France (Application no. 73316/01) 26 July 2005
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=782169&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

Concerns domestic slavery and obligations under Article 4. Elucidates the positive duties on States imposed by Article 4: '85... "Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity." Articles 19, 32 and 36 of the UN Convention on the Rights of the Child considered.

Üner v Netherlands (Application no. 46410/99), 18 October 2006
<http://www.unhcr.org/refworld/category,LEGAL,,NLD,45d5b7e92,0.html>

Deportation of a person who had been in Netherlands since he was 12 and had lived there for 25 years, was found to be proportionate under Article 8. Added a child specific duty to the criteria to be considered in Article 8 expulsion cases set out in *Boultif v Switzerland* (*supra*.)

Court of Justice of the European Union (formerly European Court of Justice)

Gerard Ruiz Zambrano v Office national de l'emploi (ONEm) (Case C-34/09 8 March 2011)

Two Belgian children had been born in Belgium to Colombian parents and had never left or exercised free movement rights. Their father, whose claim for asylum had failed and had no leave to be in Belgium, sought permission to stay and to work to support them. If father left Belgium children would leave with him (to Colombia). This, court held, would be an unjustified interference with the

children's enjoyment of their rights as citizens of the European Union and therefore father should be given permission to remain in Belgium and to work to support them.

London Borough of Harrow v Nimco Hassan Ibrahim and SSHD (Case C-310/08), 23 February 2010

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0310:EN:NOT>

Case on free movement of persons and retained rights. The children's father, a Dutch national who had been a qualified person under Directive 2004/38/EC (the free movement Directive), having left the UK, the children were entitled to remain for so long as they remained in education. Being small children, giving effect to this right necessitated their mother was able to remain to care for them, although she would not have been a qualified person in her own right and was in receipt of State benefits (see also *Maria Teixeira v London Borough of Lambeth and SSHD* Case C-480/08 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0480:EN:NOT>).

NS - C-411 21 December 2011

<http://curia.europa.eu/juris/liste.jsf?num=C-411/10&language=en>

This was a reference by the UK Court of Appeal to the Court of Justice of the European Union about removals to a 'safe' third country, the effect of the UK and Polish Protocol (so-called 'opt out') to the EU Charter of Fundamental Rights and the circumstances in which the risk of being in breach of the Charter would prevent transfer of a person seeking asylum to another Member State. It was held that there is no conclusive presumption that a member State responsible under the 'Dublin Regulation' (Council Regulation No 343/2003 of 18 February 2003 *establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*) would not comply with the person's fundamental rights under the Charter. The Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No. 343/2003 if due to the systemic deficiencies in the asylum procedure and in the reception conditions in that Member State, there is a risk that the person will be subject to inhuman or degrading treatment. This is no less the case for the UK; the Protocol does not call this into question.

UK Supreme Court (formerly UK House of Lords)

R(A) v LB Croydon, R(M) v LB Lambeth [2009] UKSC 8

www.supremecourt.gov.uk/docs/uksc_2009_0106_judgment.pdf

The leading UK case on the assessment of age. An age assessment is a decision of objective fact which, in disputed cases, can only be determined by the court on evidence and on the balance of probabilities

Beoku-Betts v The Secretary of State for the Home Department [2008] UKHL 39

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/beoku-1.htm>

The Asylum and Immigration Tribunal should take into account the rights of family members not party to the proceedings. Thus, in a case of removal, taking into account the effect on British children who would be separated from the parent removed.

Chikwamba v The Secretary of State for the Home Department [2008] UKHL 40

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/chikwa-1.htm>

In cases involving family life under Article 8, and particularly those involving children, rarely will making a person without leave go back to their country of origin to make an entry clearance application be proportionate.

EM (Lebanon) v Secretary of State for the Home Department [2008] UKHL 64

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm>

EM had divorced her husband in Lebanon due to his violent behaviour. He had been imprisoned inter alia for failing to support their son, AF of whom EM had sole custody. In Lebanon, this she would lose when AF attained the age of seven, under Lebanon's Shari'a-based family law that would automatically award custody to the father or a male member of the family. AF was not in touch with his father or any family in Lebanon. AF had had no contact with his father or with any family in Lebanon. Held that on the particular facts of the case it would be a flagrant denial of the right to respect to family life under Article 8 of the European Convention on Human Rights for the government to remove EM and AF to Lebanon. Their rights to family life would be completely denied or nullified; the very essence of the right destroyed. It was not Shari'a law but its effect given the facts of the particular case that caused the breach.

Huang v SSHD [2007] UKHL 11

<http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070321/huang%20-1.htm>

Leading UK case on Article 8.

Re W (Children) [2010] UKSC 12

http://www.supremecourt.gov.uk/docs/UKSC_2010_0031_JudgmentV2.pdf

This case is about the principles guiding the exercise of the court's discretion in deciding whether to order a child to attend to give evidence in family proceedings. It removed the presumption that a child will give evidence only in exceptional cases. The essential test is whether justice can be done to all the parties without further questioning of the child and the court sets out the relevant considerations. The relevant factors are simply an amplification of the existing approach. What the court has done however is remove the presumption or starting point; that a child is rarely called to give evidence will now be a consequence of conducting a balancing exercise and not the threshold test

ZH (Tanzania) v SSHD 2011 UKSC4

www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0002_Judgment.pdf

The leading case on the best interests of the child, which makes clear that they must be the primary consideration in any decision about a removal or deportation with implications for children: whether those who will go with their parents or carers or those who will be left behind in the UK. It also highlights the importance of taking the child's views into account.

Court of Appeal

AA (Afghanistan) [2007] EWCA Civ 12

<http://www.bailii.org/ew/cases/EWCA/Civ/2007/12.html>

Re. the correct approach to return of separated children, whose claims for asylum have failed, to their country of origin.

AJ (India) [2011] EWCA Civ 1191

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/1191.html>

Consideration of the best interests of a two-year old child and of Article 8. Removal not unlawful; the child had no ties outside the family. Held that no express reference to section 55 of the Borders, Citizenship and Immigration Act is necessary for a decision to comply with the duty.

R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 (20 December 2011)

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/1590.html>

Dealt with the issue of burden of proof in judicial reviews of age assessments – the lower court in this case had incorrectly placed the burden of proof on the putative child. The Court of Appeal decided that the issue is one of balance of probabilities.

DS (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 305 22 March 2011
<http://www.bailii.org/ew/cases/EWCA/Civ/2011/305.html>

Child orphans are a particular social group in Afghanistan. The Secretary of State is under a duty on under Article 19(3) of Directive 2003/9/EC to initiate attempts to 'trace' the family members of a separated child seeking asylum. The duty rests upon the Secretary of State to initiate family tracing although it also remains as part of the burden upon the child claimant to establish his/her claim for asylum. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to consider the best interests of a child. Failure to do so will render the decision unlawful. The matter is justiciable before the tribunals. There is a duty to cooperate and a burden on all the parties and also on the tribunal, to ensure that the child's interests are safeguarded and sufficient information is available to establish the protection needs of the child.

R (FZ) v LB of Croydon [2011] EWCA Civ 59
<http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html>

Provides guidance on the conduct of age assessments, as follows: i) There should be an opportunity as part of the interview process to respond to points the interviewers considered adverse to the case before the decision as to age is taken; ii) there should be the opportunity to have an appropriate adult present at the age-assessment interview. The Court held that it is not sufficient to ask whether the interview process had been "Merton compliant" (a reference to *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)). The court should ask whether the material before the court raises a factual case which, taken at its highest, could not properly succeed in a contested factual hearing.

HK (Afghanistan) & Ors v SSHD [2012] EWCA Civ 315
<http://www.unhcr.org/refworld/pdfid/4f7081f72.pdf>

Concerns the situation of separated children whose application for asylum has been refused but where the Secretary of State has not taken steps to trace the child's family. Held that the Upper Tribunal was not precluded from drawing an adverse inference from failure by a child to seek to get in touch with family members in his or her country of origin although this should not alone be determinative of whether there would be family support on return. A finding that there were no family members to receive the child in Afghanistan would not, in itself, necessarily show the child to be at risk if returned. The matter is one of evidence. The child's failure did not relieve the Secretary of State of her obligation to comply with the duty to trace, under Regulation 6 duty of Directive 2009/3/EC and her duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

KA (Afghanistan) and others v SSHD (C5/2011/1092)
(judgment awaited)

Whether Afghan minor applicants for asylum who attain majority by the time of the hearing before the First-Tier or Upper Tribunal should retain the advantages (in immigration terms) of [their] minority. Concerned the failure of the Secretary of State, over a four year period from 2006-2010, to discharge her EU law and domestic law duty to endeavour to trace the Appellants' family members, and of the Secretary of State and the First-tier Tribunal to have regard to the best interests of the child and, in particular, to section 55 of the Borders, Citizenship and Immigration Act 2009.

R (MA & Ors) v. Secretary of State for the Home Department [2011] EWCA Civ. 1446
<http://www.unhcr.org/refworld/pdfid/4f5a288a2.pdf>

The Court of Appeal has referred to the Court of Justice of the European Union a question about how the Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003) is to work in relation to the removal of separated children seeking asylum to other European Union countries.

The Court of Appeal was concerned as to how under the Dublin Regulation the best interests of a separated child seeking asylum are to be considered when he or she does not have a family member in any European Union country. One possibility is that rather than delay the child's asylum claim by seeking to return the child to another European Union country, the UK may be required to deal with the child's asylum claim unless it would be in the best interests of the child to be returned to another European Union country.

R (Medical Justice) v SSHD [2011] EWCA Civ 269

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/269.html>

In this case removal without notice, a practice that has led to peremptory removals of both separated children and young people who are the subject of age disputes, has been found to be unlawful. Seventy-two hours' notice of removal must be given, so that challenges to removal can be brought in appropriate cases. In the course of the hearing before the High Court (*R (Medical Justice Network) v Secretary of State for the Home Department* [2010] EWHC 1925 (Admin)) it was revealed that the UK Border Agency had suspended its policy on removing children without notice since the case of *R (AM/BT) v Secretary of State for the Home Department* (unreported) in March 2011 (a case in which a child who had been trafficked to Italy had been returned without notice to the streets of that country), and had suspended it in all other children's case since April 2010, a policy change that had not previously been publicised. The suspension of the policy was, as a result of the Medical Justice case, by order of the court.

R (SO) v Barking and Dagenham & Anor [2010] EWCA Civ 1101

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/1101.html>

Respective responsibilities of the Secretary of State and a local authority toward a separated child turning 18. Held that the local authorities had obligations under leaving care provisions toward a 'former relevant child' (a child who had formerly been looked after under s 20 of the Children Act 1989), rather than the Secretary of State becoming responsible for his accommodation and support (under section 4 of the Immigration and Asylum Act 1999).

High Court

R(A) v Lambeth [2010] EWHC 2439 (Admin) did not concern a person seeking asylum, but the Administrative Court's ruling on the inadequacy of the local authority's 'pathway plan' is as likely to be of importance to unaccompanied child asylum-seekers as to any other child supported by a local authority.

R(A & WK) [2009] EWHC 939 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/939.html>

Judgment of the High Court in what became *R(A) v LB Croydon*, *R(M) v LB Lambeth* [2009] UKSC 8.

AA (Afghanistan) CO/2761/2011

Any individual the subject of an incorrect age assessment, where a correct assessment would have found them to be under 18 years prior to April 2007, or under 17 years and six months since April 2007, during their stay in the United Kingdom should be granted three years discretionary leave.

R (ABC (a minor) (Afghanistan)) v Secretary of State for the Home Department [2011]

EWHC 2937 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2937.html>

A separated child, abused by his siblings in Afghanistan, killed his half-brother while the latter was beating him and fled to the UK aged 14. Excluded from refugee status and humanitarian protection

by the Secretary of State on the basis that he had committed a serious crime. Granted six months discretionary leave. He challenged his exclusion from asylum and humanitarian protection and the refusal to grant discretionary leave to age 16 ½. There was an acknowledgement by the Secretary of State of a real risk that detention conditions in Afghanistan would violate Article 3. Held that the decision that ABC had committed a serious crime was not lawful because the Secretary of State has misapplied English law on self-defence and provocation. The age and maturity of the young person and facts of what happened are all relevant and should have been taken into account. HK's being left in limbo by the six month grant is deprecated; there had been a fundamental failure to consider the welfare of the child under section 55 of the Borders, Citizenship and Immigration Act 2009 save as an afterthought.

R (AS) v LB Croydon [2011] EWHC 2091 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2091.html>

An age assessment case. Cites the Royal College of Paediatrics and Child Health guidance on assessing age (see NGOs below). Holds that the most appropriate approach is "to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive and behavioural and emotional assessments" undertaken by appropriately trained social workers. An age assessment must, as a minimum be 'Merton compliant' ((a reference to *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)). A challenge to an age assessment will normally entail both the claimant and the social worker giving evidence, where required.

R(B) v London Borough of Merton [2003] EWHC 1689 (Admin)

www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html

This case sets out guidance on the conduct of age assessments to which all references to an assessment being 'Merton compliant' in judgments refer back.

R (BN) v SSHD [2011] EWHC 2367 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2367.html>

Whether a fresh Article 8 human rights claim had been made, given assertions of previous failures of the Secretary of State properly to consider the claimant's and her children's circumstances and to have regard to section 55 of the Borders, Immigration and Citizenship Act 2009. Held that it had been unreasonable of the Secretary of State not to have accepted that a fresh human rights claim with a realistic prospect of success on an appeal to the Tribunal had been made, especially given a detailed report by a social worker and in light of the judgment in *ZH (Tanzania)* [2011] UKSC 4. The court criticised the UK Border Agency for failing to pass the social worker's report to its Office of the Children's Champion. It was held that the decision not to defer removal of the claimant so as to give the Children's Champion proper opportunity to give informed advice in light of the new material was also unreasonable.

R (F) v Southwark LBC [2009] EWHC 3542 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/3542.html>

The first case on age assessment following the decision of the Supreme Court in *R(A) v LB Croydon*, *R(M) v LB Lambeth* [2009] UKSC 8. Provides guidance about how the court will carry out its fact-finding role in age assessment judicial reviews. Held that if local authorities want to defend the age assessment reports, social workers who prepared the reports will have to give oral evidence and submit to cross examination. The applicant must be available if required to give evidence. Medical and paediatric evidence are admissible provided that the local authority has had the opportunity to consider them.

R (J) v SSHD [2011] EWHC 3073 (Admin)

The refusal of the claimant's asylum claim and his detention had been unlawful because the UK Border Agency had failed to ensure that the age assessment on which it relied (which in the judge's

view obviously did not comply with the guidance in *R(B) v London Borough of Merton* [2003] EWHC 1689 (Admin)) was 'Merton-compliant'. There was "an independent obligation on the part of the [Secretary of State] to consider that assessment and to reach her own conclusion as to whether or not it was Merton compliant." The age assessment was unlawful (*inter alia*) because it was carried out by only one social worker; the claimant was not given the opportunity of having an appropriate adult present during the process.

R (MXL & Ors) v Secretary of State for the Home Department [2010] EWHC 2397 (Admin).

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2397.html>

Concerned the continued separation of a mother and her two children by reason of her being detained on completion of her criminal sentence of imprisonment. The failure of the UK Border Agency to give proper consideration to the welfare of her two children in its decision to detain, and to maintain detention of, the mother was a significant factor in the Court's ultimate ruling of unlawful detention.

R (PM) v Hertfordshire [2010] EWHC Civ 2056 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2056.html>

The extent to which a decision of the tribunal can bind non-parties. Addresses the situation where an immigration judge rules that a person who claims to be a child is an adult despite the decision of a local authority to accept the person to be a child and to support him/her accordingly. The local authority had responded to the decision of the immigration judge by simply terminating its support. The Administrative Court ruled that to be unlawful. The immigration judge's decision did not bind the local authority, although it would be appropriate for a local authority to consider whether such a decision required it to reconsider its age assessment.

R(SM) v Secretary of State for the Home Department [2011] EWHC 338 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/338.html>

FM, SM's British Citizen child was made an interested party to his father's challenge to his detention and application for *habeas corpus*. The Administrative Court held in this case that the detention of the father, who had been separated from his children, was unlawful and that the advice provided to him by the UK Border Agency and the Office of the Children's Champion were seriously deficient in failing to address or attempt to address the welfare and best interests of children.

R (Suppiah et ors) v SSHD [2011] EWHC 2 (Admin)

www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/suppiah-judgment.pdf

A challenge to the detention of children under immigration act powers. Held that the current UK Border Agency policy on the detention of children is not unlawful; there is a way in which it can be operated lawfully. But in the cases before the Court, the detention had not been lawful. While there was no breach of Article 3 (prohibition on torture, inhuman and degrading treatment or punishment) of the European Court on Human Rights, the judge found breaches of Articles 5 (right to liberty) and Article 8 (right to private and family life).

R (Tinizaray) v SSHD [2011] EWHC 1850 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/1850.html>

The Court held that the four decisions to refuse leave to a child's mother should be set aside as the Agency had not properly considered what was in the child's best interests. Those best interests should have been a primary consideration in the UK Border Agency's decision-making but had not been. Each family member (the applicant, her mother and her daughter) should have been considered separately, as well as collectively, under Article 8. The judge carefully considers the UK Border Agency's safeguarding duty under section 55 of the Borders, Immigration and Citizenship Act

2009 and *ZH(Tanzania)* [2011] UKSC 4 and also gives guidance as to the type of investigations that could, and should, have been made properly to discharge the duty under section 55.

R (TS) v Secretary of State for the Home Department & Anor [2010] EWHC 2614 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2614.html>

Consideration of the application of the safeguarding and welfare duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 in the context of a decision to return an separated child seeking asylum to Belgium under the “Dublin” arrangements.

Court of Session, Outer House

AM (AP) et ors v Secretary of State for the Home Department [2012] CSOH 24

<http://www.scotcourts.gov.uk/opinions/2012CSOH24.html>

The application of best interests in relation to a proposed removal of a family. Consideration given to the Administrative Court's judgment in *Tinazaray v Secretary of State for the Home Department* [2011] EWHC 1850 (Admin). On the facts before the court there was no positive duty on the Secretary of State to take further steps (e.g. by interview) to identify the views of the children where statements from those children were before her and had been considered (and those children had had the opportunity, though not taken, to attend a family interview in the course of the family removal process).

Immigration and Asylum Chamber, Upper Tribunal

AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)

http://www.unhcr.org/refworld/publisher,GBR_UTIAC,,4f293e452,0.html

Section 55 of the Borders, Citizenship and Immigration Act 2009 (duty to safeguard and promote the welfare of children) applies to substantive asylum/Humanitarian Protection decisions. Where a child wants to go back and seek protection from the State in the country of origin, but this is not in his/her best interests, then the section 55 duty is engaged. “Unattached children” (those no longer in touch with their families and therefore not receiving protection from their families) in Afghanistan are exposed to a risk “of serious harm” from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. In Afghanistan there is a distinction between children in families and those not. AA was held to be a refugee and had he not been, to have been entitled to protection under Article 3 of the European Convention on Human Rights. Comments are made about the importance of family tracing.

EA (Article 8 –best interests of child) Nigeria [2011] UKUT 00315 (IAC).

<http://www.unhcr.org/refworld/category,LEGAL,,NGA,4e56083d2,0.html>

Student parents argued that the best interests of their young child were to remain in the UK. The correct starting point in considering the welfare and best interests of a young child is that it is in the best interests of a child to live with the parents. Where this is so, the child's removal with the parents does not interfere with the right to family life. A period of substantial residence as a child leads to putting down roots – the extent to which ties to the UK are made is a question of fact in each case. *In the early years the ties are to the family.*

R (JS) and R (YK) v Birmingham City Council (AAJR) [2011] UKUT 00505 (IAC)

http://www.unhcr.org/refworld/publisher,GBR_UTIAC,,4f3277b22,0.html

First case of a judicial review of an age assessment being heard in the Upper Tribunal. Birmingham had not followed the policy on age assessment nor given any good reason for departing from it but instead simply adopted and that was different from that adopted by the Secretary of State.

Defendant's decisions quashed, on that ground alone, leaving the defendant to apply its policy and differ from the Secretary of State's assessment only by following the procedure in the protocol. The case has been appealed to the Court of Appeal.

LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278 (IAC)

http://www.bailii.org/uk/cases/UKUT/IAC/2010/00278_ukut_iac_2010_ld_zimbabwe.html

The UN Convention on the Rights of the Child is highly relevant to consideration of the right to private and family life under Article 8 of the European Convention on Human Rights in immigration cases: “Although questions exist about the status of the UN Convention on the Rights of the Child in domestic law, we take the view that there can be little reason to doubt that the interests of the child should be a primary consideration in immigration cases. A failure to treat them as such will violate Article 8(2) as incorporated directly into domestic law.”

MK (best interests of child) India [2011] UKUT 00475 (IAC)

http://www.unhcr.org/refworld/country,,GBR_UTIAC,,IND,,4ed8bf812,0.html

Applies *ZH (Tanzania)* [2011] UKSC 4. Deals with taking into account the wishes and feelings of the child, holds that consideration of the best interests of the child is an integral part of the balancing exercise under Article 8 of the European Convention on human rights but must be addressed first as a distinct inquiry. Factors relating to the public interest in the maintenance of effective immigration control must not form part of the consideration of best interests of the child. What is required is an “overall assessment.” In considering the effect upon the child's education, the impact on a child's educational development, progress and opportunities must be taken into account.

Sanade and others (British children - Zambrano – Dereci) [2012] UKUT 00048(IAC)

http://www.bailii.org/uk/cases/UKUT/IAC/2012/00048_ukut_iac_2012_ms_ors.html

Considers *ZH (Tanzania) v SSHD* [2011] UKSC 4. That children are British is a strong pointer to their future lying in the United Kingdom. Case C-34/09 *Ruiz Zambrano* now makes it clear that where the child is a British citizen and therefore a citizen of the European Union, as a matter of EU law it is not possible to require the family as a unit to relocate outside of the European Union or for the Secretary of State to submit that it would be reasonable for them to do so. Where in the context of Article 8 one parent (“the remaining parent”) of a British citizen child is also a British citizen (or cannot be removed as a family member or in their own right), the removal of the other parent does not mean that either the child or the remaining parent will be required to leave, thereby infringing the Zambrano principle, see C-256/11 *Murat Dereci*. The critical question is whether the child is dependent on the parent being removed for the exercise of his Union right of residence and whether removal of that parent will deprive the child of the effective exercise of residence.

T (s.55 BCIA 2009-entry clearance) Jamaica [2011] UKUT 00483 (IAC)

http://www.bailii.org/uk/cases/UKUT/IAC/2011/00483_ukut_iac_2011_t_jamaica.html

Section 55 of the Borders, Citizenship and Immigration Act 2009 does not apply to children who are outside the United Kingdom. Where there are reasons to believe that a child's welfare may be jeopardised by exclusion from the United Kingdom, the considerations of Article 8, the “exclusion undesirable” provisions of the Immigration Rules and the extra statutory guidance to Entry Clearance Officers to apply the spirit of the statutory guidance in certain circumstances should all be taken into account by the Entry Clearance Office at first instance and the immigration judge on appeal. When the interests of the child are under consideration in an entry clearance case, it may be necessary to make investigations, and where appropriate having regard to age, the child herself may need to be interviewed. It is difficult to contemplate a scenario where a s. 55 duty is material to an immigration decision and indicates a certain outcome but Article 8 does not.

ILPA Materials

Below you will find lists of the material available on ILPA's public site. The password-protected members' area of the site contains a wealth of additional material.

Best Practice and Guidelines

The following publications are available from:

<http://www.ilpa.org.uk/pages/publications.html>

2012

Working with children and young people subject to immigration control: Guidelines for best practice, ILPA/Professor Heaven Crawley, May 2012. Hard copy also available to order from ILPA.

2011

Working With Refugee Children: Current Issues in Best Practice, Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo for ILPA May 2011.

Resources Guide for Practitioners Working with Refugee Children ILPA May 2011 (updated September 2011)

2010

The Detained Fast Track Process a Best Practice Guide Update, ILPA April 2010

2009

Consideration by the European Court of Human Rights of the UN Convention on the Rights of the Child, 1989 ILPA, July 2009

2008

The Detained Fast Track Process a Best Practice Guide, ILPA, January 2008.

2007

When is a child not a child? Asylum, age disputes and the process of age assessment, ILPA/Heaven Crawley, May 2007, Executive Summary

2006

Non-Refoulement under Threat: Proceedings of a Seminar Held Jointly by The Redress Trust and ILPA, November 2006

Child first, migrant second: Ensuring that every child matters, ILPA/Heaven Crawley, February 2006.

2005

Representation at Immigration Appeals A Best Practice Guide, Jane Coker, Jim Gillespie, Sue Shutter, Alison Stanley, ILPA/OISC, December 2005

2004

Working with children and young people subject to immigration control: Guidelines for best practice, ILPA/Heaven Crawley, November 2004. See now 2012.

Asylum: a guide to recent legislation, ILPA and the Resource Information Service (RIS), January 2004

2003

Challenging Immigration Detention: A Best Practice Guide, Emily Burham, ILPA/Bail for Immigration Detainees/Law Society, October 2003

Best Practice Guide to Asylum and Human Rights Appeals, Mark Henderson, ILPA/Refugee Legal Group, October 2003. Updated 2009 - updated version is available through the Electronic Immigration Network

ILPA Information Sheets

The following information sheets are available from: <http://www.ilpa.org.uk/pages/ilpa-information-service-further-information-sheets.html> (listing is alphabetical on the webpage)

Family tracing 28/05/12

Best practice: working with children 28/05/12

Age Disputes (Dental X-Rays) 3 April 2012

Age Disputes and Age Assessment 4 20/02/12

Safe Third Country (Dublin) Returns 20/02/12

Strategic Legal Fund for refugee children and young people 23/01/12

Age disputes and detention 2 – 29/11/2011

Legal Aid Bill 5 - Children – 15/11/11

Appeals and Children – 10/11/11

Legal Aid Bill 4 - Children, 15/08/11

Detention of Children 5, 03/08/11

Age Disputes and Detention, 27/05/11

Age Disputes and Age Assessment 3, 01/04/11

European Citizenship Judgment (Zambrano), 30/03/11

ZH (Tanzania) Supreme Court Judgment, 09/02/11

Detention of Children 4, 04/02/11

Children's Best Interests, 6/1/11

Legal Aid Proposals – Children, 6/1/11

Leaving Care Judgements, 19/11/10

UKBA Family Returns Pilots, 19/11/10

Refugees and Family Reunion – separated children, 31/8/10

Removals and Separated Children, 9/8/10

Detention of Children 3, 9/8/10

Detention of Children 2, 18/6/10

Children – New Statutory Duty, 4/8/09

Detention of Children, 3/8/09

Age disputes and Age Assessment 2, 1/2/10

Withdrawal of the Seven Year Child Concession – DP5/96, 27/1/09

Children's Welfare, 3/12/08

Article 8 judgments, 23/8/08

Immigration Rules – Concessions on General Grounds for Refusal, 23/5/08

Article 8, 5/8/08

Age disputes and Age Assessment, 18/10/07

Children's Asylum Claims, 5/4/07

NGO Materials

Listed alphabetically by organisation and thence in reverse chronological order.

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Bail for Immigration Detainees (BID) (2010), *How to get out of detention*
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<http://www.childrensociety.org.uk/what-you-can-do/campaign-join/outcry/why-we-should-stop-immigration-detention-children/experiences-c>

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