

Supporting Children and Young People with Learning Difficulties

Essential Rights Guide



The Salvesen Mindroom Centre

no mind left behind

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How To Use This Guide

The Salvesen Mindroom Centre recognises that there are many excellent sources of advice and information available throughout Scotland and the UK and, where appropriate, we always signpost families to existing sources of information. In this guide, you may see a reference to some key agencies or organisations, highlighted in ***BOLD ITALICS***. You can find their details in the following section if you want to get in touch with them.

If you need individual advice or information about a child or young person with learning difficulties, you can contact our Direct Help and Support team:

directhelp@mindroom.org

0131 370 6730

Agency and Organisation Listings

Children and Young People's Commissioner for Scotland

🌐 www.cypcs.org.uk

Children and young people's free telephone helpline

☎ 0800 019 1179

Contact is a UK-wide charity which provides support, advice and information for families with disabled children, no matter what their condition or disability.

🌐 www.contact.org.uk

☎ 0808 808 3555

✉ info@contact.org.uk

Enquire – the Scottish advice service for additional support for learning. All of the Enquire factsheets referred to in this guide can be downloaded from their website. Hard copies are available on request from Enquire.

🌐 enquire.org.uk ☎ 0345 123 2303

✉ info@enquire.org.uk

Equality Advisory and Support Service

(an independent service signposted by the EHRC)

🌐 www.equalityadvisoryservice.com

☎ 0808 800 0082

✉ eass@mailgb.custhelp.com

Equality and Human Rights Commission (EHRC)

🌐 www.equalityhumanrights.com

GOV.UK – information on all UK government services and information

🌐 www.gov.uk

You can find the claim form for carers allowance on this page of the website www.gov.uk/carers-allowance/how-to-claim

My Rights, My Say

🌐 help@myrightsmysay.scot

Office of the Public Guardian (Scotland) – for information about guardianship, Power of Attorney and Intervention Orders.

🌐 www.publicguardian-scotland.gov.uk

General Enquiries ✉ OPG@scotcourts.gov.uk

General Enquiries ☎ 01324 678300

Reach – Enquire’s website offering pupils advice and information about getting the right support in school.

🌐 www.reach.scot ✉ advice@reach.scot

Schoolhouse is Scotland’s national home education support charity providing independent information and

support. Enquiries can be made via their website or facebook page  @schoolhouseHEA.

 www.schoolhouse.org.uk

Scottish Government

 www.gov.scot

For information about entitlement to childcare -

 www.earlylearningandchildcare.scot

To apply for or renew an Education Maintenance Allowance (EMA)'  www.mygov.scot/ema

Scottish Independent Advocate Alliance (SIAA)

 www.siaa.org.uk

 enquiry@siaa.org.uk

 0131 524 1975

The Scottish Transitions Forum aims to improve the experience of children and young adults (14 to 25 years) as they make the transition to adult life.

 www.scottishtransitions.org.uk

Self Directed Support Scotland

 www.selfdirectedsupportscotland.org.uk

Tax credits helpline  0345 300 3900.

Turn2us is a national charity that helps people in financial hardship gain access to welfare benefits, charitable grants and support services.

 www.turn2us.org.uk

UNICEF

 www.unicef.org.uk

Unicef Rights Respecting Schools

 www.unicef.org.uk/rights-respecting-schools

The Rights of the Child

United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC is an international agreement that protects the human rights of children under the age of 18. The Convention has 54 articles that cover all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. It also explains how adults and governments must work together to make sure all children can enjoy all of their rights.

Nearly every country in the world has agreed to make sure children's rights are protected by signing up to the UNCRC, including the UK & Scottish governments. For further information on the UNCRC, look at the [**UNICEF**](#) website.

Many schools have signed up to become 'Rights respecting schools,' to put the UNCRC into practice. You can find out whether your child's school has achieved this award by visiting the [**UNICEF Rights Respecting Schools**](#) website.

Scotland has appointed a [**Children and Young People's Commissioner**](#) whose job it is to make sure that your child's rights are protected and respected everywhere. Children and young people can call the Commissioner's office for advice on a Freephone number.

Equality Act 2010

The Equality Act 2010 gives a clear framework for effectively confronting disadvantage and discrimination. The Act legally protects people with 'protected characteristics' from discrimination in education, the workplace and in wider society. The following characteristics are protected characteristics under the Act:

- age
- being or becoming a transsexual person
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion, belief or lack of religion/belief
- sex
- sexual orientation

You are also protected from discrimination if:

- you are associated with someone who has a protected characteristic, e.g. a family member or friend
- you have complained about discrimination or supported someone else's claim

To find out more about the Equality Act, contact the ***Equality and Human Rights Commission (EHRC)***.

Assessment, Early Intervention and Childcare

Children under age 3

If your child is under three and has additional support needs because of a disability, health professionals working with your child, such as a health visitor, or community paediatrician, should tell the education authority. The education authority must provide additional support.

A multi-agency community team may be formed to assess your child's needs and to plan support with you. The team could include a health visitor, a pre-school home visiting teacher, a social worker and perhaps someone from a voluntary agency. One of them may act as a key worker – a single point of contact for you and the other professionals. Support will vary according to your child's needs but is likely to focus on helping their development and preparation for pre-school (nursery) education.

If you are worried that your child may have additional support needs which have not been investigated, discuss this with your health visitor or GP and request a full assessment.

Enquire's factsheet *Assessment* provides a summary of useful information. **Contact's** publication, *The Helpful Guide for Families with Disabled Children* has a section on diagnosis and medical conditions.

Education

Early learning and childcare

In Scotland, every child aged three and four is entitled to a free, part-time pre-school (nursery) place from the school term following the child's third birthday. Two year olds may also be entitled to free childcare if, for example, they are looked after by a local authority, or if the family receives certain benefits. You can find out more about entitlement on the [Scottish Government](#) website 'Early learning and childcare.'

Any child aged three or over who appears to require additional support to benefit from school or pre-school education must, by law, be assessed by the education authority. Additionally, children under three who need additional support because of a disability must be assessed.

In some local authority areas, for children with complex needs pre-school education may be provided by a Pre School Educational Home Visitor.

Further information: The [Enquire](#) Factsheet on *Early learning and childcare* explains the services, help and support you can expect to receive if your child under three has additional support needs, and what to expect at pre-school.

School-aged children

Scottish Government policy at present promotes inclusive education. Parents are encouraged to send their children to mainstream schools, where appropriate provision should be made for the child's

additional support needs. For some children, it is recognised that education should take place in a special school or in a supported setting within mainstream. As a parent, you have the right to request an alternative school placement if you feel the present provision does not meet your child's needs adequately.

Enquire has a full range of factsheets covering most aspects of school education, as well as a *Parents' guide to additional support for learning*.

Post 16 education and transitions

Educational Maintenance Allowance (EMA) provides financial support to eligible young people age 16 - 19 who want to continue learning. You can find out about eligibility for EMA on the **Scottish Government** website.

The process of moving between schools, or on from school to post-school education or training, and into adult life, is known as 'transition'. The **Enquire** information sheet: *Transition timescales - Summary of duties* is a handy one-page summary of school transition timescales for pupils with additional support needs.

The Scottish Transitions Forum has produced *The Principles of Good Transitions 3*, which provides a framework to inform, structure and encourage the continual improvement of support for young people age 14 - 25 with additional needs, who are making the transition to young adult life.

Home education

The law in Scotland says that every child has a right to an education. It also says that it is the duty of the parent of every school age child to provide efficient education, either by sending the child to school, or by other means. Home education is a key aspect of parental choice, and is an equally valid choice alongside the option to send a child to school.

The **Scottish Government** has published *Home Education Guidance*, and **Schoolhouse** is Scotland's national home education support charity providing independent information and support.



Additional Support for Learning (ASL)

Support for learning

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended), referred to as the ASL Act, sets out a system for supporting children's and young people's learning by outlining the rights of parents, carers and young people, and the duties of education authorities. The ASL Act is accompanied by a **Scottish Government** document, *Supporting Children's Learning: Code of Practice*, which provides detailed guidance on the system. Under this law, any child or young person who needs more or different support to what is normally provided in schools or pre-schools, is said to have 'additional support needs'.

An excellent starting point to finding out your child's rights and entitlements is the **Enquire** booklet: *Parents' guide to additional support for learning*. This comprehensive document can be downloaded from Enquire's website, or you can request a paper copy via email or phone.

Getting it right for every child (GIRFEC)

GIRFEC is a national programme with the aim of improving outcomes for all children and young people in Scotland. It promotes appropriate early intervention and encourages professionals from different services to work together to enable each child to reach their potential. GIRFEC is built on a set of values and principles that keep the child at the centre of all decision making and that are applicable to any setting

or circumstance. This is based on the key principle of improving the wellbeing of children and young people. The definition of wellbeing includes the following factors, which together are known under the acronym, SHANARRI: Safe / Healthy / Achieving / Nurtured / Active / Respected / Responsible / Included.

Information about GIRFEC and SHANARRI can be found on the [Scottish Government](#) website (search under Topics/People and Society/Children, Young People and Families).

GIRFEC is supported by a number of government policies and initiatives such as the Curriculum for Excellence, Scottish Attainment Challenge and the National Improvement Framework which set out the strategies for local authorities and provide guidance on their implementation. Information about those key policies can be found on the [Scottish Government](#) website (search under Topics/Education/Schools).



Mediation and Dispute Resolution

The ASL Act (see page 12) places duties on education authorities to provide access to independent mediation for resolving disputes with parents and carers of children and young people with additional support needs. Mediation is a free service to parents, carers and young people. It is a voluntary process during which a neutral third person (a mediator) helps those involved in disagreement or dispute to work towards finding a mutually acceptable agreement.

Enquire has produced a number of factsheets on mediation and various processes for resolving disputes, including a process known as independent adjudication. Through good practice, disputes or conflicts should be resolved at school or local authority level. However, if this is not possible you can apply to have your disagreement referred to independent adjudication.

The **Equality Advisory Support Service** (EASS) can also advise on reaching informal resolutions, help work out if you are eligible for legal aid, refer on to mediation services and tell you about what is available locally.

Advocacy Services

Advocacy services help people, particularly those who are most vulnerable in society, to have their voices heard. The Mental Health (Care & Treatment) (Scotland) Act 2003 identifies that every person with a mental disorder has a right to independent advocacy. The Act places a duty on local authorities and the NHS to ensure that such services are available.

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) states that young people (age 16+) and parents have the right to have a supporter or advocate present at meetings or discussions with an education authority about the authority's duties under the Act. From November 2017, this right was extended to children aged 12 and over who have capacity, in relation to these discussions or to making representations on their own behalf. A service, **My Rights, My Say**, has been set up to provide this advocacy to young people.

Advocacy services provide someone who is independent of your family, your friends and statutory services such as an education authority, social work department or the NHS. An advocate can help you to:

- access information and services
- be involved in decisions about your life
- explore choices and options
- defend and promote your rights and responsibilities
- speak out about issues that matter to you.

An advocate's role can include arguing your case

when you need them to, and making sure the correct procedures are followed in meetings and official processes. They are there to represent your wishes without giving their personal opinion.

An advocate might help you access information you need or may go with you to meetings or interviews in a supportive role. You may want your advocate to write letters on your behalf, or speak for you in situations where you don't feel able to speak for yourself.

For more information and to find a local advocate contact the ***Scottish Independent Advocacy Alliance (SIAA)***.

Benefits and Tax Credits

You may be entitled to a number of benefits including Disability Living Allowance (DLA) or Personal Independence Payment (PIP) and Carers Allowance. The ***Contact*** website provides a comprehensive list with guides to each benefit. In this section you will find some basic information about several key benefits. However, while the information is correct at time of going to press, be aware that the benefits system is liable to change from time to time.

DLA and PIP

Disability Living Allowance is a benefit available to disabled children up to age 16. It is not means-tested, so it does not depend on income or savings. Instead, it relates to the level of mobility, and/or care needed. Personal Independence Payment is for those aged 16 and over. It relates to both mobility and care needs.

You can find out about claiming these benefits on the [Contact](#) website or from [Turn2us](#).

Carers allowance

If you care for someone for more than 35 hours per week you may be able to claim carers allowance, depending on your income. If your child receives the middle or higher rate of DLA Care component or the Daily Living component of PIP or attendance allowance then you may qualify. There is an online form to complete to claim this benefit available on the [GOV.UK](#) website.

Tax credits

Tax credits are means tested benefits (the amount you get is related to your income). There are 2 types that you can potentially apply for, Working Tax Credit and Child Tax Credit. Both tax credits are paid by HM Revenue and are claimed via a form available from your local HM Revenue office or [the tax credits helpline](#).

Universal credit

Universal credit is gradually replacing working tax credit, child tax credit, housing benefit, income support, income-related employment and support allowance and income-based jobseeker's allowance.

If you currently receive any of these benefits or tax credits, it is expected that you will move to universal credit sometime from 2019 onwards. Any entitlement will depend on your household circumstances, savings and income.

You should get advice from a local advice agency before making a universal credit claim if you are

currently receiving tax credits or any of the other benefits above. More information is available from [Turn2Us](#).

Self-directed support (SDS)

The Social Care (Self-directed Support) (Scotland) Act 2013 places a duty on local authority social work departments to offer people who are eligible for social care a range of choices over how they receive their support. Under SDS, care can be delivered using four options:

- a direct payment (a cash payment)
- funding allocated to a provider of your choice (the council holds the budget but you are in charge of how it is spent)
- the council can arrange a service for you
- or you can choose a mix of these options for different types of support

The amount you get is derived from a care needs assessment. More information is available from [Self Directed Support Scotland](#).

Social Care Assessment

Scottish local authorities have a general duty under the Children (Scotland) Act 1995, to safeguard and promote the interests of children in need. The law recognises disabled children, and children adversely

affected by the disability of a family member, as being in need. This means your local authority should carry out an assessment of your child if you ask them to under Section 23 of the 1995 Act.

Duties of Social Work Department:

- providing a social worker service
- providing information about services which may be available
- assessing the needs of disabled children and their carers
- providing a range of services to meet these needs

You also have a right to have your child's and family's care needs assessed. An assessment of your care needs is carried out with you by care professionals from your local council's social care department. It is used to find out what your care needs are, and how they can be met. Legislation in 2002 introduced a right for parents to request a carer's assessment at any time, conditional upon providing care on a 'substantial and regular' basis. From 1st April 2018, carers' needs will be met by the Carers (Scotland) Act 2016, which says that your local authority should provide an adult carer support plan if you care for a child (up to age 18) for reasons other than their young age. This moves away from a definition of disability of the cared-for person in the earlier legislation, meaning that, for example, caring for a child with autism or ADHD will be included. Young carers will be entitled to a young carers statement. Key duties for local authorities under the 2016 Act include:

- A new adult carer support plan
- A new young carer statement
(Both of the above are to set out identified personal outcomes, identified needs and any support to meet those needs)
- Duty to support carers including by means of local eligibility criteria
- Duty to prepare a local carer strategy
- Duty to provide an information and advice service and publish a short breaks services statement
- Duty to involve carers in the discharge from hospital of the people they care for

Search the [Scottish Government](#) website under Topics/Support and Social Care/Unpaid carers for more information.

Guardianship, power of attorney and intervention orders

Under the Adults with Incapacity (Scotland) Act 2000, anyone who is considered to be an adult (age 16+) with incapacity (i.e. not able to look after their own affairs) may require to have a guardian appointed. This is a court appointment, which gives authority to the guardian to act and make decisions on behalf of the person with incapacity. As it is a legal process, you may find it best to consult a solicitor for advice

about guardianship, and Legal Aid may be available, depending on your circumstances.

It is possible to apply for a guardianship order up to 3 months before a young person reaches age 16, so that the guardianship will take effect on the date of their 16th birthday. However, planning and preparation may take a year or more, so you should begin the process in good time. Information about guardianship is available from the **Office of the Public Guardian (Scotland)**.

If an adult has capacity, but you or they anticipates that capacity may be lost in the future, the individual can grant a power of attorney to safeguard their welfare and/or manage their finances. A power of attorney does not need a court to make an order, is flexible, and can last indefinitely, but the young person must have enough understanding to grant appropriate powers to their chosen attorney(s).

One-off decisions can be taken in relation to an adult with incapacity by means of an intervention order, which is made by application to the Sheriff Court. The **Office of the Public Guardian (Scotland)** can provide information about when these options are appropriate, and the process.

Support Services

Therapies/support services

There are a range of therapies and support services which may be appropriate for your child or young person.

The main therapies are:

- speech and language therapy
- occupational therapy
- physiotherapy
- Child and Adolescent Mental Health Service (CAMHS)

You can request an assessment by any of these services. Ask your GP or consultant paediatrician to make the referral.

In addition, there are a number of national and local charities providing various support services to suit a variety of needs and conditions. Details have been provided for some national organisations in the introduction to this guide. You can also email The Salvesen Mindroom Centre at directhelp@mindroom.org or call 0131 370 6730 for details of specific services you can contact in your area.



Care has been taken to ensure the accuracy of the information in this booklet, which is provided for guidance and reference purposes only. The Salvesen Mindroom Centre recommends consultation with relevant medical, educational and legal professionals on the treatment of conditions or management of learning difficulties and all associated issues and shall not be held responsible for damage or loss resulting from the information within this document.

Who we are

The Salvesen Mindroom Centre is an independent Scottish charity committed to raising awareness of all kinds of learning difficulties, and to ensuring that every person with a learning difficulty receives the recognition and the support they need to achieve their potential. We aim to do this by providing advice, information and tailored one-to-one support to the families of those who need it.

We are also committed to building a programme of research with partners, including the University of Edinburgh and NHS Scotland to understand better and resolve learning difficulties and influence best practice.

Contact Us

If you would like more information about services available from The Salvesen Mindroom Centre, or if you have a specific or personal question about a child or young person with a learning difficulty, please:

email: directhelp@mindroom.org **or call** 0131 370 6730

The Salvesen Mindroom Centre, Suite 4/3 Great Michael House, 14 Links Place, Edinburgh EH7 6EZ

t: 0131 370 6731 (general office)

e: admin@mindroom.org (general office)

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