



Asylum Seekers, Insecure Immigration Status and Destitution

Introduction

On 1 November 2016, the Committee received [joint written evidence](#) from:

- British Red Cross (Scotland)
- Children and Young People's Commissioner Scotland
- Scottish Refugee Council

And endorsed by:

- Scottish Women's Aid
- Engender

The organisations called for the Committee to undertake an inquiry into:

“...the human rights-compatibility of the current arrangements in Scotland for assessment, decision-making and support of persons with insecure immigration status subject to No Recourse to Public Funds (NRPF) conditions”.

This includes people:

- with no legal right to stay in the UK
- who potentially have that right but need to establish it
- that have such a right but have lost documents to prove it.

The submission said that one group at acute risk of suffering destitution are those refused asylum and have No Recourse to Public Funds. There are other groups, including women and children survivors of domestic abuse who have insecure immigration status and have No Recourse to Public Funds.

The Committee launched its inquiry on [Destitution, Asylum and Insecure Immigration Status in Scotland](#) on 25 January 2017 (updated 25 February). The Committee is considering the issue of destitution as it relates to asylum seekers and those with insecure immigration status in Scotland, and the ways in which public services can mitigate destitution. The call for evidence closed on 8 March 2017.

Context

The submission highlighted a range of factors to explain why it is important to consider the situation for destitute asylum seekers and people with insecure immigration status. This includes reduced support for families who have been refused asylum under the Immigration Act 2016, and plans to increase the number of dispersal areas in Scotland.

Immigration Act 2016

The UK Government has said that the Immigration Act 2016 will “introduce new sanctions on illegal working, prevent illegal migrants accessing services and introduce new measures to enforce immigration laws”¹.

Section 66 of the Act (not yet in force) aims to restrict the support given to people whose claims for asylum have been rejected (and their dependents). The UK Government “expect more illegal migrants to leave the UK rather than access support.”²

Currently, families with children who have had their asylum claim rejected, continue to receive support under section 95 of the Immigration and Asylum Act 1999 (see below). This support will stop.

“...support will only be available to failed asylum seekers and any dependent children if there is a genuine obstacle that prevents them from leaving the UK at the point their appeal rights are exhausted.”³

Sections 68-73 of the Immigration Act 2016 seek to “reduce pressures on local authorities and simplify support for migrants pending resolution of their immigration status or their departure from the UK”.

The 2016 Act creates an exception to local authority care obligations based on migration status. A local authority would no longer be required to support a formerly looked-after child who reaches the age of 18. The UK Government states:

“These are adult migrants whose asylum claims and any subsequent appeal have failed. As such, it is wrong that Local Authorities should have to support them under Children Act provisions geared to the needs of those leaving Local Authority care whose long-term future is in the UK. We also want to discourage unaccompanied children from seeking to come to the UK to claim asylum for the wrong reasons, especially where this involves dangerous travel routes controlled by people smugglers and traffickers”⁴.

Dispersal of asylum seekers

There are indications that the Home Office plans to increase the number of asylum dispersal areas in Scotland.

While Glasgow has been the sole dispersal area in Scotland, a small number of people in the asylum process who do not require housing and/or support continue to live in different local authority areas.

The table on page 9 shows the number of asylum seekers receiving Section 95 support in Scotland, for the period October-December 2016. The total number of asylum seekers on Section 95 support for this period in Scotland was 3,350. The vast

¹ Home Office (2015) [Immigration Act 2016](#). Includes links to a range of factsheets on the Act.

² Home Office (2015) [Immigration Act 2016: Factsheet – support for certain categories of migrant](#).

³ Home Office (2015) [Immigration Act 2016: Factsheet – support for certain categories of migrant](#).

⁴ Home Office (2015) [Immigration Act 2016: Factsheet - Availability of local authority support](#)

majority of dispersed asylum seekers, 3,311, were in Glasgow. Of these, 3,282 were living in dispersal accommodation, while 29 were in receipt of subsistence only.

To date, there has been no official announcement of plans to increase the number of dispersal areas. There have been discussions between the Scottish Government and the Home Office to increase the number of local authorities in Scotland involved in dispersal of asylum seekers. In March 2016, the Scottish Government noted that:

“This process is likely to take some time, but, depending on the outcome of these discussions, there will be work for the group to do in terms of sharing learning with new councils and inviting them to become involved in the strategy”⁵.

In a House of Commons debate⁶ on the asylum seeker dispersal policy (3 May 2016) James Brokenshire said the Home Office were working with local authorities to increase the number of local authority dispersal areas⁷. This was in recognition of the increase in asylum seekers in the previous year.

“We have been proactively engaging with all areas that to date have not participated in asylum dispersal, with a view to negotiating voluntary agreements for them to do so. The number of participants now stands at 103, with approximately 20 more signed up. We are engaging with areas that to date have not participated. Since 2015, 21 new local authority areas have agreed to become dispersal areas, with another 28 areas in discussion with us and our housing providers”.

The Immigration and Asylum Act 1999 contains a power for the UK Government to designate dispersal areas. This power has never been used. Instead the UK Government works with local authorities to achieve agreements on dispersal. James Brokenshire said this approach would continue and that it was his intention to write out to local authorities following the local council elections.

The Home Affairs Committee at the House of Commons recently published a report on its inquiry into asylum accommodation⁸. The Committee said the accommodation provided was a disgrace and identified a range of problems. As well as recommendations on improving the accommodation, the Committee said that asylum seekers should be dispersed more fairly between local authorities. It has called for this before, but the Committee said it had seen no progress:

“If local authorities still unreasonably refuse to become involved in providing asylum accommodation on a voluntary basis after the measures recommended have been in place for 12 months then the Government should use its powers to require them to do so”.

Robert Goodwill is the current Minister of State for Immigration.

Syrian Vulnerable Person Resettlement Programme (VPRP)

⁵ Scottish Government (March 2016) [New Scots: Integrating Refugees in Scotland's Communities: Year 2: Implementation Progress Report](#).

⁶ Hansard (3 May 2016) [Asylum seeker dispersal policy](#)

⁷ House of Commons Library (April 2016) [Policy on the dispersal of asylum seekers](#).

⁸ Home Affairs Committee (31 January 2017) [Asylum accommodation](#)

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16 March 2017**

EHRiC/S5/17/7/2(P)

The VPRP was established in 2014 to provide a route for selected Syrian refugees to come to the UK. It first prioritised victims of sexual violence and torture, older people and disabled people trying to survive in neighbouring countries. Several hundred refugees were expected to arrive to the UK over three years, although there was no fixed quota.

The scheme was extended in September 2015 and the UK is now planning to resettle up to 20,000 refugees from the Syrian region over the next five years.

The resettled refugees are given five years' Humanitarian Protection status, with permission to work and access public funds.

The programme is only open to Syrian refugees registered in Jordan, Lebanon, Iraq, Egypt and Turkey.

On 17 November 2016, the Scottish Government said that Scotland had welcomed more than 1,200 Syrian refugees since the first flight arrived in Glasgow one year ago⁹. Angela Constance, the Cabinet Secretary for Communities, Social Security and Equalities, said that 29 local authorities had received Syrian refugees to date. The table on page 9 shows a breakdown by local authority.

No recourse to public funds

Section 115 of the Immigration and Asylum Act 1999 states that a person subject to immigration control will have 'no recourse to public funds'. The 1999 Act provides a list of what is included as a public fund, but generally includes non-contributory benefits such as child benefit, universal credit, and disability benefits. It also includes the Scottish Welfare Fund. The NHS and education do not count as public funds.

If a person with NRPF becomes destitute, they might turn to their local authority for support. Financial support from a local authority under social work or children's legislation is not a 'public fund'. According the NRPF Network, in most cases social services departments will conduct an assessment of an individual's needs and if it is determined that the person is eligible for support then the local authority is required to meet those needs, which may include provision of accommodation and subsistence.

The Home Office provides a document detailing what counts as a public fund and what does not¹⁰.

NRPF applies to different categories of migrants. For example:

- those refused asylum and appeal rights exhausted
- those with no asylum support who are fearful or unable to return to their country of origin and the human rights abuse or persecution or re-trafficking that may entail¹¹.
- those on spousal visas

⁹ Scottish Government (November 2016) [One year since the first Syrian arrivals](#)

¹⁰ Home Office (last updated April 2016) [Public Funds: This guidance is based on Immigration Rules](#)

¹¹ [Joint submission from British Red Cross, Scottish Refugee Council, Children and Young People's Commissioner Scotland.](#) (November 2016)

The Committee has met a number of individuals who have NRPF, living in Scotland, facilitated by the Scottish Refugee Council, British Red Cross and Shakti Women's Aid. People have shared their experiences of destitution in Scotland, which includes:

- A woman who was forced into a marriage of domestic slavery, but having escaped, has no documentation to prove who she is.
- People living in fear for their life and the lives of their children, including fear of honour killing, FGM, incarceration and death.
- Women who have stayed with abusive partners so as not to become destitute, or have left abusive partners and are now destitute.

The Committee has heard distressing evidence about how people who are destitute try and cope. This has resulted in:

- Homelessness
- Relying on financial support from charities and food banks
- Negative impact on mental health
- Social isolation, exacerbated for many by language and cultural differences.

Who is destitute?

Destitution is defined in section 95 of the Immigration and Asylum Act 1999. A person is destitute if:

- a. they do not have adequate accommodation or any means of obtaining it (whether or not essential living needs are met); or
- b. have adequate accommodation or the means of obtaining it, but cannot meet other essential living needs.¹²

What support is available?

For those seeking asylum, there is support available via the Home Office. However, the Committee has heard evidence about the length of time it takes for an asylum seeker to prove they are destitute, which may require them to rely on support from elsewhere.

UK level

There are three main types of support for people who have made an application for asylum in the UK, under the Immigration and Asylum Act 1999:

Section 95 support – this is for the period until a final decision on an asylum application is made. It applies to asylum seekers and their dependents. A dependent includes a spouse or civil partner and children under 18. The asylum seeker must show they are destitute or likely to become destitute.

¹² Immigration and Asylum Act 1999 c.33. Available at: <http://www.legislation.gov.uk/ukpga/1999/33/contents>

When making an application, a person is regarded as destitute if there is a likelihood of destitution within 14 days.

An asylum seeker and their family will be housed somewhere and each person in the household will receive £36.95 in cash each week.

Section 98 support – this is temporary, often called emergency support, available to asylum seekers waiting for a decision on their application for Section 95 support. This emergency support can be provided if it appears that a person may be destitute at the time of the application. Temporary support cannot be given on the basis that a person is likely to be destitute within 14 days, that is for Section 95 support.

Section 4 support – failed asylum seekers who have reached the end of the appeal process and exhausted all appeal rights, are not entitled to support from the Home Office. It is expected they will return to their country of origin. To receive section 4 support, people must be destitute and satisfy one of these five criteria:

- Taking all reasonable steps to leave the UK – such as applying for travel documents
- Unable to leave the UK because of a medical condition which prevents travel
- Unable to leave the UK because there is no viable route of return – the Secretary of State would need to declare there is no safe route. This is rare.
- They have applied for judicial review – this would be to challenge a decision that refused their asylum claim
- Section 4 is necessary to avoid a breach of human rights. A person would need to show it is not reasonable for them to leave the UK, and that they have, for example, applied for judicial review, no safe route of return, an application to the European Court of Human Rights.

Those in receipt of Section 4 support will receive £35.39 on the payment card - [Azure card](#). This is on a weekly basis for each member of the household. To receive Section 4 support, the person or family would have to accept the accommodation provided by the Home Office.

The Committee has heard evidence that people using Azure cards have experienced discrimination when trying to purchase items from supermarkets.

Scotland level

For those who have NRPF, local authorities in Scotland can provide some support. They can provide housing and/or financial support to prevent homelessness or destitution. Such assistance can be provided to:

- Families, where there is a child in need (for example, because the child is homeless or the parent cannot afford to meet the family's basic living needs)
- Young people who were formerly looked after by a local authority, for example, because they were an unaccompanied asylum seeking child (UASC), or other separated migrant child
- Adults requiring care and support due to a disability, illness or mental health condition.

Section 22 Children (Scotland) Act 1995

Section 22 of the Children (Scotland) Act 1995 has been used by local authorities to provide services for children in need and their families.

Section 22 requires local authorities to safeguard and promote the welfare of children in their area, who are in need. Local authorities should have regard to the child's cultural, racial, religious and linguistic background. A service may be provided for the child or for the family. Services may include giving assistance in kind, or in exceptional circumstances, cash.

However, the organisations expressed concern about how Section 22 is currently being interpreted by local authorities. One concern is that children might be separated from their parents when there are no safeguarding or care reasons to justify the separation. Phil Arnold, head of refugee services in Scotland for British Red Cross, is quoted as saying¹³:

"In our experience social services have used section 22 of the Children (Scotland) Act [1995] to provide accommodation and financial assistance to families as a unit in order to prevent the destitution of the children within the family. Recently, we have supported families to seek support from social services and families have been advised that the only type of support they were willing to provide was to take the children into care, despite there being no concerns about the care provided to the children by their parents."

The organisations are calling for the child needs assessment undertaken by local authorities under Section 22 to follow a human rights assessment procedure. It is argued that human rights assessments have been recognised by the courts as legal documents in NRPF cases.

The organisations state in their submission:

"It is of course in the best interests of Scottish local authorities that their decisions are lawful. We suggest that decisions to withdraw or refuse support to an individual or family refused asylum and appeal rights exhausted with a NRPF condition and no other options for publicly-funded assistance, may not be lawful in so far as it is not backed up by a human rights assessment".

Section 29 and 30 Children (Scotland) Act 1995

A young person who is 19 and not yet 26, who has been looked-after, can ask the local authority for after-care support, advice and assistance. The local authority must conduct a needs assessment and then provide the appropriate support, advice or assistance to meet any needs (Section 29).

Section 30 provides a power for local authorities to provide financial assistance to a young person who has been looked-after. This might be to help with education or training, or for accommodation and maintenance when a young person is seeking work or working, or receiving education or training.

¹³ The National (16 August 2016) [Destitute refugee families told their children must go into care to get help](#)

It is unclear at this stage whether the Immigration Act 2016 will affect these specific duties and powers (see page 2 above).

Section 12 and 13A Social Work (Scotland) Act 1968

Local authorities have a duty to promote social welfare, by making available advice, guidance and assistance to adults in their area who are in need. They may require assistance in kind, or in exceptional circumstances, cash (Section 12). Section 13A concerns the provision of residential accommodation with nursing.

However, Schedule 3 of the Nationality, Immigration and Asylum Act 2002 excludes four cases of people from support under sections 12 and 13A. These are:

- Those who have refugee status in another EEA state
- EEA nationals
- Failed asylum seekers
- Persons unlawfully in the UK

This exclusion is qualified and applies only where the sole reason for being in need is that they are destitute, as defined in the Immigration and Asylum Act 1999. There must be another reason such as disability, illness or domestic violence for a person to qualify for support.

Even where an individual is excluded from support, local authorities will need to consider whether refusal of support could result in a human rights breach¹⁴.

Guidance from COSLA Strategic Migration Partnership¹⁵ also refers to similar restrictions in local authority support under:

- Section 13B Social Work (Scotland) Act 1968 (provision of care and after-care)
- Sections 25 to 27 (provision of services) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Section 20 Local Government in Scotland Act 2003

This concerns the local authority power “to promote wellbeing” to its area or to persons in the area. Therefore this could be used to support destitute asylum seekers or those with insecure immigration status. However, it is a power and not a duty and will be subject to limits on finance and services.

The power to promote wellbeing is also subject to ‘limiting provisions’ in section 22. This means that the power does not enable a local authority to do anything which, by virtue of a limiting provision, it is unable to do. Local authorities will need to consider whether the restrictions set out in the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002 constitute such ‘limiting provisions’¹⁶. This may mean that local authorities could not use the power of wellbeing to provide support to groups specifically excluded in earlier legislation.

¹⁴ COSLA Strategic Migration Partnership (March 2012) [Establishing Migrants’ Access to Benefits and Local Authority Services](#)

¹⁵ Ibid.

¹⁶ Ibid

How many people are affected?

The British Red Cross recently said that it had come to the aid of 14,909 destitute refugees and asylum seekers, including dependents, without adequate access to food, housing or healthcare in the last year. This is an increase of nearly 10% on the 13,660 people they saw in 2015¹⁷.

The British Red Cross in Scotland reported that the number of destitute refugees and asylum seekers it had helped in Glasgow had increased from 326 in 2014 to 820 in 2016. The BRC in Scotland said that the figures reflect, to some extent, the overall increase in people seeking protection. However it is also claimed that changes made in 2014 to support and advice offered by the Home Office has increased destitution¹⁸.

The Home Office provides statistics on immigration and asylum. This includes the numbers receiving Section 95 support by local authority and those who are participating in the Syrian VPRP. There is no local authority breakdown for those receiving Section 98 (emergency support), or Section 4 support. However, at the end of the last quarter of 2016, there were 1,990 people in the UK receiving Section 98 support, and 2,424 people receiving Section 4 support.

Asylum seekers receiving Section 95 support, compared with Syrians resettled under VPRP scheme in Scotland

	Total supported under Section 95	In receipt of subsistence only	In dispersed accommodation	Syrians resettled under VPRP Total since Q4 2015
*Total Scotland	3,350	64	3,286	1,295
Aberdeen	4	4	0	67
Aberdeenshire	0	0	0	68
Angus	0	0	0	33
Argyll and Bute	0	0	0	69
Clackmannanshire	0	0	0	44
Dumfries and Galloway	0	0	0	18
Dundee	8	8	0	50
East Ayrshire	1	1	0	16
East Dunbartonshire	0	0	0	0
East Lothian	0	0	0	21
East Renfrewshire	0	0	0	32
Edinburgh	9	9	0	101
Eilean Siar	0	0	0	8
Falkirk	1	1	0	19
Fife	1	1	0	41

¹⁷ British Red Cross (3 March 2016) [Asylum destitution on the rise](#)

¹⁸ BBC News (3 March 2016) [More asylum seekers are being 'left destitute' in Scotland](#)

Glasgow	3,311	29	3,282	142
Highland	0	0	0	29
Inverclyde	0	0	0	37
Midlothian	0	0	0	22
Moray	0	0	0	19
North Ayrshire	0	0	0	53
North Lanarkshire	0	0	0	79
Orkney Islands	0	0	0	0
Perth and Kinross	3	3	0	32
Renfrewshire	4	4	0	83
Scottish Borders	0	0	0	21
Shetland Islands	0	0	0	0
South Ayrshire	2	2	0	17
South Lanarkshire	4	0	4	54
Stirling	1	1	0	14
West Dunbartonshire	0	0	0	81
West Lothian	1	1	0	25

Guidance

The concern raised in the submission is that, given the current context, there will be increasing pressure on local authorities in Scotland to support destitute asylum seekers and those with insecure immigration.

In England the [No Recourse to Public Funds Network](#) published practice guidance for English local authorities on [Assessing and Supporting Adults who have No Recourse to Public Funds \(NRPF\)](#) (April 2016). It covers the need for local authorities to undertake a human rights assessment which assess the risk of a person returning to their country of origin.

In Scotland, the COSLA Strategic Migration provides guidance to local authorities in [Establishing Migrants' Access to Benefits and Local Authority Services in Scotland](#) (2012). However, the organisations argue that this needs to be updated. This is because the advice on human rights assessment focuses on what no support would mean in terms of a human rights breach in the UK, and not the risk faced if a person returns to their country of origin.

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9 March 2017