

# Social Justice and Social Security Committee

## Note by the Clerk

7<sup>th</sup> Meeting, (Session 6), 10 February 2022

The Committee is holding two evidence sessions on Refugees and Asylum Seekers on 3 February and 10 February.

Each witness was invited to submit a written briefing in advance of the session. The Committee has received five submissions for the 10 February session which are detailed below and attached.

The Scottish Government [lodged a Legislative Consent Memorandum \(LCM\)](#) on the Nationality and Borders Bill on 1 February 2022. Following the meeting on 3 February, the Committee asked witnesses for their views on the LCM.

### 10 February submissions:

#### Panel 1

- Scottish Refugee Council (including an additional submission on the Legislative Consent Memorandum)
- JustRight Scotland

#### Panel 2

- British Red Cross
- Bridges Programmes
- Maryhill Integration Network

### Views received on the Legislative Consent Memorandum:

- COSLA Migration, Population & Diversity
- Glasgow Health and Social Care Partnership

**Note by the Clerk  
07 February 2022**

## Written Briefing from Scottish Refugee Council

Dear Members,

As promised, please find below a note that I hope is helpful to you all in advance of the oral evidence session on 10 February (just to add that I have deliberately placed *hyperlinks* in this note, and suggest connecting through these to the more detailed subject materials).

### Some relevant issues on refugee and asylum policy in or relating to Scotland

#### 1. *UK government's "rights-removing" New Plan for Immigration and Nationality and Borders Bill*

In March 2021, the Home Secretary on behalf of the UK government, published for consultation its [New Plan for Immigration](#), with our witness statement supporting the legal challenge against the inadequacies of this consultation is referred to [here](#), and the statement itself is attached (in redacted form). Scottish Refugee Council's response to that New Plan is [here](#). With JustRight Scotland, we co-led a 86-strong Scottish coalition of charities, community organisations and belief groups, against this "New Plan" in a letter to the Prime Minister, which you can find [here](#). The UK government's response arrived in June 2021, and is available [here](#). This "New Plan" is the policy framework that wraps around the [Nationality and Borders Bill](#), which was introduced into the UK parliament in June 2021, and is now at its Committee stage in the House of Lords.

We expect and fear that this Bill will become an Act by May this year. We have opposed this "New Plan" and proposed legislation (often termed the "anti-refugee bill") from the outset. At the Bill's Second Reading in the House of Commons in July 2021, we set out our substantive concerns on the Bill, including on its adverse devolved impacts, with our letter briefing to MPs in Scottish constituencies, which you can find [here](#). In that letter, we articulated how this Bill (a) severs the UK's relationship with the Refugee Convention itself; (b) substituting a refugee punishment regime for the current (flawed but nonetheless extant) refugee protection system; and (c) effectively closes off this asylum route to safety for the vast majority of refugees arriving in the UK, including criminalising de facto, the act of seeking asylum in UK territory.

To be clear, if this Bill passes, it constitutes a complete break with current and past policy that has, fundamentally been moored to the Refugee Convention and related international legal instruments. In that sense, this Bill constitutes a new nadir in UK refugee policy and law. We urge this Committee and indeed, the wider Scottish parliament to fully grasp that fact and its grim implications for prospective and current refugees in the UK and here in Scotland. These implications include, but are not confined to, (a) criminalisation with at least 12 months or at most 4 years in prison, with the knock-on effect that for those so criminalised who were actually trafficking survivors too, then they would, unless Scottish Ministers prevent this through devolved trafficking regulations, such persons will also be disqualified under the Bill from access trafficking support and assistance in Scotland – a double injustice, and a triple one if they are subsequently deported by the UK government; (b) placement possibly indefinitely in institutional holding accommodation akin to detention with (i) no right to work, (ii) no choice over food and nutrition and (iii) little to no financial

support; through to (c) no prospect of Refugee leave and a route to settlement, rather the Bill's "Group 2" refugees (please note the dehumanising marker) will if the Home Secretary cannot remove or offshore them, only get up to 2 ½ years temporary leave to remain, with a constant latent threat of sudden removal traumatising those with such diminished leave.

Aside from these direct impacts, there are clear and severe indirect consequences stemming from this "New Plan" and the Bill when passed. In particular, that unless mitigation is strengthened and adequately resourced, there will be increased [destitution](#) and therefore more exploitation. We foresee that in driving vulnerable people to the margins that means more people undocumented, rendering them with little routes out of precarious existences. We fear also that [loss of life](#) will happen, probably in silence, and that is a further damning indictment of the dehumanising approach and effect of this "New Plan" and the associated Bill. Basically, the proposed legislation could not have been better drafted than by traffickers themselves. These are all grave and foreseeable implications and they will, left unchallenged in Scotland and in the rest of the UK, be realised from later this year including in and across Scotland, exerting severe impact on devolved competence and services.

In that vein, with JustRight Scotland, we instructed Christine O'Neill QC and Brodies LLP to provide a legal Opinion on the devolved impacts of the Bill on Scotland. We wanted to get clarity, in so far as that is possible in the inherently grey area between reserved and devolved law and policy and their respective purpose and effects. From that clarity we would seek to recommend where devolved competences may be directly infringed and hence where Scottish parliament consent could be withheld, and corresponding Scottish legislation introduced to protect refugees and trafficking survivors from the worst of this Bill. Additionally, from that clarity we could recommend where devolved policy would be impacted and again, how existing and new Scottish strategies could be strengthened in order to mitigate the adverse impacts on people and devolved services.

So, the Instruction sought legal Opinion on the devolved impacts of the Bill's provisions on (a) human trafficking; (b) differential treatment for refugees; (c) age assessment; (d) criminal offences especially the new "unlawful arrival" offence that immediately renders all those who arrive in the UK irregularly as liable to this offence; and (e) access to justice, legal aid and the Scottish courts. We strongly recommend that Members read first, the Scottish Refugee Council & JustRight Scotland joint advocacy briefing that draws upon the legal Opinion, and then consider the Opinion itself with its Cover note. You can find these three documents [here](#), and they are also attached for ease of reference. In the joint advocacy briefing, which to reiterate draws upon but is distinct from the legal Opinion, Scottish Refugee Council & JustRight Scotland set out ten recommendations for Scotland to take to prevent and mitigate the worst effects of this Bill. These ten recommendations included ...

1. For Scottish parliament to expect that Scottish ministers will furnish it with a critical and expansive Legislative Consent Memorandum, and for the Scottish parliament to then withhold consent to relevant provisions in the Legislative Consent Motion;

2. For Scottish ministers to maximise protections for victims of trafficking who will be adversely affected by the Bill by working with the anti-trafficking and human rights sector to use their powers under section 9(8)&(9) of the Human Trafficking and Exploitation (Scotland) Act 2015. In particular, we urge Scottish ministers to use these regulation powers to institute an independent Scottish identification responsibility, so all presumed or confirmed trafficked exploitation survivors in Scotland are identified, supported and assisted here, for the purpose of recovery from their abuses. That is an end-to-end Scottish anti-trafficking system, from identification to support and decisions on survivor status. This is all within devolved competence;
  3. For Scottish ministers to undertake a full review of flagship Scottish government strategies and relevant Scottish legislation, including in particular: New Scots refugee integration, the Ending destitution together and the Ending homelessness together policies as well as the national plans on Violence against women and girls and Mental health. This is all with a view to act within devolved areas of competence to prevent and mitigate the harmful impacts of the Bill, and the review should also consider the adequacy of resourcing of these policies and strategies;
  4. For Scottish ministers to commit to ensuring that the planned Scottish human rights legislation provides an explicit commitment to upholding the rights of refugees and migrants in Scotland, alongside other commitments to create specific human rights provisions where no international treaty exists; and
  5. For the Lord advocate to provide clear, human rights-compliant Instructions to police and prosecutors on interpreting the public interest with regard to criminal offence provisions in the Bill, especially that relating to “unlawful arrival”. These instructions should convey a clear understanding of patterns of need and vulnerabilities within those who necessarily arrive by irregular means to the UK. These recommended Lord advocate Instructions should draw upon the existing Policy guidance on non-prosecution of refugees for entry-related offences, as well as connect with and be mutually complementary to the Lord advocate’s Instructions on human trafficking.
2. *Real crisis in asylum system of (a) chronic slowness and bulging backlog of asylum decisions, leaving people in limbo, exacerbated by inadmissibility procedure and (b) unaccountable, harmful and expensive shift to institutional asylum accommodation*

In November 2021, the Chief Inspector of Borders and Immigration, published its [report](#) into Home Office asylum casework. Our response is [here](#). At a time of dangerous and impracticable ideas and policies, such as pushbacks at sea or offshore processing of claims, being mooted by the Home Secretary and those around her, this inspection report laid out in understated language where the actual asylum crisis is. The inspection report detailed (a) a decisions system riven by delays; (b) with staff morale low, attrition high and incompetent, and insensitive interviews too frequent; and (c) with limbo for refugees waiting, unable to move on.

Aside from being an undervalued and traumatic system, for both asylum applicants and workers, this dysfunction in asylum decisions costs money that would be better invested in early intervention and swifter and cogent decisions. The Home Office know this but its action at Ministerial level is persistently insufficient, albeit officials do better understand the issues. The present backlog of 83,733 people waiting for an initial decision is the highest since 2000, when it was 94,500. And, the 56,520 individuals waiting 6 months or more for an initial decision, as at end of September 2021, is the largest number since the current asylum support and dispersal system took effect, also in 2000. These delays have worsened throughout the last decade: in September 2011 there were 3,255 people waiting at least 6 months for an initial decision, and then at two-yearly intervals this 6 month delay cohort were 7,570 (2013) and 4,903 (2015), but then 14,399 (2017) to 26,155 (2019) and up again to 56,520 (2021). This trend of delays is not explicable by asylum applications. In the same years, the number of asylum applications were 25,898 (2011), 29,875 (2013), 39,968 (2015), 34,435 (2017), 45,537 (2019) and 34,534 (Q1-Q3, 2021). Furthermore, the number of initial asylum decisions being made by the Home Office each year has dropped by more than 40% over the last five years, and as British Red Cross rightly state [here](#): these increases are “not only due to the impact of Covid-19, as between March 2018 and March 2020 there had already been a 134% increase in people waiting more than six months for an initial decision”. Please find more detail [here](#).

The need for the Home Office to start to seriously address the chronic slowness in its protection decisions is especially vital, in advance of a Nationality and Borders Bill that when brought into effect will, we fear, further increase not reduce the backlog of pending cases. Indeed, through its inadmissibility procedure, this is already happening. That wider picture is that (a) senselessly in terms of policy; (b) cruelly in its impact on people seeking protection and certainty to rebuild their lives; and (c) at needless additional expense to the Exchequer, the Home Secretary is ploughing on not only with the “New Plan” and the Nationality and Borders Bill as critiqued above, through inadmissibility procedure some of which is already being implemented and the Bill will merely cement such practice. Notably, from January 2021 increasing numbers of asylum applicants are being routed into the Home office’s inadmissibility procedure. That is worsening not remedying the endemic problems in asylum decisions. In particular, via application of these rules to consider such applications as potentially inadmissible to the UK system. In the absence of – thankfully – readmission agreements or offshore processing to remove applicants, the Home Secretary is issuing Inadmissibility notices of intent, which “park” that application for at least 6 months, at the end of which it simply moves into a bulging decisions backlog. As at end of September, 6,598 notices had been issued since January 2021, only 10 led to removals, with 2,126 since admitted to the asylum procedure. The Nationality and Borders Bill will cement use of this senseless, cruel and expensive inadmissibility procedure, adding not reducing the delays in asylum decisions. This malaise in decisions is the actual crisis in the system.

Another aspect of the real crisis in the asylum system is the exponential growth and, plainly wilful policy shift by the Home office to stop accommodating people seeking asylum within communities, and instead place them into so-called “contingency” asylum accommodation. Unpublished Home office data as at end of 2021, reported that over 25,000 people were in institutional “contingency” accommodation, which is

typically ex-hotels or ex-military barracks like Napier institutional accommodation in Kent. We estimate that there are at least 230 such institutional accommodation sites in the UK. In July 2020, the [National audit office](#) showed that in autumn 2019 around 1,000-1,500 people were routed into such “contingency” accommodation, so it has increased exponentially. As noted above, accommodation centres are to become the norm of where people seeking asylum are to be housed, via provisions in the Nationality and Borders Bill. Our clear view is that the Home office are already implementing this policy and as with the inadmissibility procedure, the new legislation will cement what is already being laid out across the UK by its accommodation contractors. Additionally, there is growing evidence that the Home office are implementing, in conjunction with their accommodation contractors, a “fait accompli” practice, whereby they reach agreement with private hoteliers, and only then tell the local authority and health services they have done such, putting the council and local communities unfairly and needlessly on the back-foot. This is irresponsible. A proper way to act would be to consult and liaise with the local authority and to respect their views and knowledge, towards a genuine partnership to support new arrivals in appropriate accommodation in communities (not these institutional accommodation sites). And, thereby respect local communities and impacts on services also.

It is our understanding that such pre-procurement consultation is not happening across the UK including in Scotland. Since October 2021, and despite the tragedies in Glasgow in 2020 where some people lost their lives in institutional asylum accommodation that related in part to Mears Group’ “en masse” moves of over 300 people who were in settled community based housing, into ex-hotels in the city, and all in the first three weeks of the original Covid-19 lockdown, when there were strict rules against non-essential travel. Despite that, the Home office would appear not to have learnt lessons as they have now apparently applied this “fait accompli” practice in Falkirk, South Lanarkshire, Aberdeen City, Perth and Kinross and Edinburgh (and potentially Dundee also), with the result that approximately 500 people have been moved into institutional “ex-hotel” asylum accommodation, with no consent sought or got from the local authority nor any direct funding either. This is wrong. We urge Members and Scottish Ministers to explore all possible options to force the Home office to take the responsible approach in terms of housing, in Scotland, people in communities not institutions, and to do that on the basis of partnership and agreement, not this unfair “fait accompli” practice. We are also concerned that greater use of such institutional accommodation may entail undue commercial [profits](#). Further detail of our wider policy positions and evidence against institutional “contingency” accommodation is [here](#).

Finally, please find attach a recent briefing on issues around the tragic and traumatic situation in Afghanistan, and we would welcome speaking on this issue at Committee evidence, plus on issues around unaccompanied refugee children & young people.

I hope this is all helpful.  
Graham

Graham O’Neill  
Policy Manager  
Scottish Refugee Council

**Note on need to focus on real crisis in asylum system: (a) chronic systemic delays in decisions and inadmissibility procedure, resulting in (b) limbo for refugees and (c) preventable asylum support costs, with possible start of solution as (d) a simplified refugee status determination procedure (retaining safeguards) for swifter refugee status grants for manifestly well-founded claims from high recognition nationalities**

1. The Chief Inspector of Borders and Immigration, recently published its report into Home Office asylum casework. Our response is here. At a time of dangerous and impracticable ideas and policies, such as pushbacks at sea or offshore processing of claims, being mooted by the Home Secretary and those around her, this inspection report laid out in understated language where the actual asylum crisis is. Including (i) a decisions system riven by delays; (ii) with staff morale low, attrition high and incompetent, and insensitive interviews too frequent; and (iii) with limbo for refugees waiting, unable to move on. This dysfunction costs money, better invested in swifter and cogent decisions. The Home Office know this but its action at Ministerial level is insufficient, albeit officials may better understand the issues. The need for the Home Office to start to seriously address the chronic slowness in its protection decisions is especially vital, in advance of a Nationality and Borders Bill that when brought into effect will, we fear, increase not reduce the backlog of pending cases.
2. Senselessly in terms of policy; cruelly in its impact on people seeking protection and certainty to rebuild their lives; and at needless expense to the Exchequer, the Home Secretary is ploughing on with a New Plan for Immigration and a Nationality and Borders Bill, some of which is *already being implemented*. It is worsening not remedying the endemic problems in asylum decisions. In particular, via application of rules to consider or deem new asylum applications inadmissible to the UK system. In the absence of any removal agreements or offshore processing, the Home Secretary is issuing Inadmissibility notices of intent, which “park” that application for at least 6months, at the end of which it simply moves into a bulging decisions backlog. As at end of September, 6,598 notices had been issued since January 2021, only 10 led to removals, with 2,126 since admitted to the asylum procedure.
3. This rest of this note points to **two** aspects of a dysfunctional asylum decisions system. The Home Secretary should be made more accountable to deal with these, especially in scrutinising the Nationality and Borders Bill that will, in our estimation, add to not reduce the delays in asylum decisions. The **first** part is this *system-wide chronic slowness in asylum decisions*. The present backlog of 83,733 people waiting for an initial decision is the *highest* since 2000, when it was 94,500. And, the 56,520 individuals waiting 6months or more for an initial decision, as at end of September 2021, is the *largest* number since the current asylum support and dispersal system took effect, also in 2000. These delays have worsened throughout the last decade: in September 2011 there were 3,255 people waiting at least 6months for an initial decision, and then at two-yearly intervals this 6month delay cohort were 7,570 (2013) and 4,903 (2015), but then 14,399 (2017) to 26,155 (2019) and up again to 56,520 (2021). This trend of delays *is not explicable* by asylum applications. In the same years, the number of asylum applications were 25,898 (2011), 29,875 (2013), 39,968 (2015), 34,435 (2017), 45,537 (2019) and 34,534 (Q1-Q3, 2021).
4. The table immediately below sets out the *breadth* of the chronic slowness in the asylum decision system. These delays appear systemic, in the sense they affect people apparently irrespective of refugee recognition rates. For example, there are relatively high numbers of individuals waiting 18months or more for just an initial asylum decision across *high* (Iran, Vietnam, Afghanistan); *medium* (Iraq, Pakistan) and *low* (Nigeria, Sri Lanka) recognition nationalities. Significant numbers of those caught in the 6months or more group of 56,520, are from high to medium refugee recognition countries, as measured by Home Office refugee grant rates in 2019 (“high to medium” here ranges from 95% {Libya} to 61% {Malaysia} positive grant rates). For instance, the five highest refugee recognition nationalities account for 9% (5,111) in this 6months-plus group, rising to 23% (13,236) for the top ten recognition nationalities, and up to 37% (21,172) for the top 18 nationalities, which encompasses all the countries in the “high to medium” positive grant rate spectrum below.

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Nationality	Grant rate (2019)	Nos., wait 6m-plus at Sep.18	% change	Nos., wait 6m-plus at Sep.19	% change	Nos., wait 6m-plus at Sep.20	% change	Nos., wait 6m-plus at Sep.21	Inadmissible notice of intent	Nos., wait 6-12m <sup>1</sup> for initial dec.	Nos., wait 12-18m <sup>2</sup> for initial dec.	Nos., wait 18m <sup>3</sup> for initial dec.
1.Libya	95%	271	116%	587	-1%	583	5%	613	53	107	67	120
2.Saudi Arabia	93%	13	200%	39	226%	127	-11%	113	0	14	9	58
3.Syria	92%	151	194%	444	144%	1,086	54%	1,682	513	663	395	279
4.Yemen	91%	31	170%	84	253%	297	53%	457	60	118	149	86
5.Eritrea	90%	455	93%	882	61%	1,424	57%	2,246	1,110	873	782	446
6.Sudan	89%	722	12%	812	36%	1,111	47%	1,636	589	510	665	363
7.Turkey	87%	289	55%	450	118%	985	27%	1,257	41	201	144	438
8.Russia	86%	74	106%	153	133%	358	37%	490	14	78	51	121
9.Uganda*	77%	63	146%	155	47%	228	-5%	217	0	44	36	119
10.Iran	74%	584	171%	1,587	147%	3,932	15%	4,525	867	1,470	1,025	1,589
11.Somalia	73%	193	36%	264	68%	445	9%	485	54	106	71	237
12.El Salvador	72%	17	788%	151	536%	961	26%	1,213	307	312	7	302
13.Occ.Pal.Ter.*	71%	103	64%	169	29%	218	47%	320	45	67	69	119
14.Vietnam	70%	843	59%	1,342	79%	2,401	5%	2,520	591	493	297	1,573
15.Kuwait	70%	137	23%	169	46%	246	35%	331	62	84	48	55
16.Afghanistan	69%	1,204	15%	1,387	51%	2,098	18%	2,470	278	561	482	1,051
17.Cameroon	67%	61	202%	184	57%	289	0.7%	291	0	61	40	165
18.Malaysia	61%	50	292%	196	57%	308	-0.6%	306	0	47	28	189
19.Egypt	54%	118	72%	203	81%	368	36%	500	65	134	88	155
20.DRC*	51%	113	7%	121	27%	154	3%	158	0	20	9	97
21.Ethiopia	49%	216	45%	314	18%	371	35%	501	105	110	128	212
22.Iraq	47%	1,191	92%	2,292	59%	3,637	26%	4,585	627	794	725	1,646
23.Pakistan	46%	1,164	73%	2,019	58%	3,187	10%	3,493	42	556	379	1,728
24.Morocco*	43%	49	96%	96	110%	202	27%	257	9	52	46	117
25.Kenya*	41%	77	75%	135	68%	227	28%	291	0	36	65	151
26.The Gambia°	35%	60	17%	70	81%	127	61%	204	5	50	32	181
27.Nigeria	32%	986	13%	1,119	45%	1,618	29%	2,085	0	301	199	715
28.Sri Lanka	32%	600	26%	755	60%	1,210	2%	1,234	17	128	107	734
29.Zimbabwe	28%	96	90%	182	62%	294	10%	324	0	38	38	195
30.Namibia	27%	53	243%	182	198%	543	13%	613	0	99	46	326

<sup>1</sup> Main applicants only, Home Office FOI data 67183, as at September 2021

<sup>2</sup> Ibid

<sup>3</sup> Ibid

**Note on need to focus on real crisis in asylum system: (a) chronic systemic delays in decisions and inadmissibility procedure, resulting in (b) limbo for refugees and (c) preventable asylum support costs, with possible start of solution as (d) a simplified refugee status determination procedure (retaining safeguards) for swifter refugee status grants for manifestly well-founded claims from high recognition nationalities**

5. The **second** part of this chronic slowness in asylum decisions is the *lack of priority given by Ministers to practical solutions*, such as consideration for a simplified procedure that is *within not outside* the asylum procedure, for protection applicants from countries that the Home Office commonly recognise anyway as refugees; albeit too often it takes years not months. Instituting a simplified procedure, but only if there is no loss of substantive or procedural safeguards, alongside scrapping the use of Inadmissibility notices of intent, can start to make overdue and sustained inroads into the bulging backlog. For people desperate to get on and rebuild their lives in the UK. For the Exchequer, in not passing millions of pounds to private companies. For the public to help restore credibility to asylum decisions, via swifter grants of leave. *Such practical solutions can be effective where the proposed legislation will not.*

6. A simplified, swifter decision procedure for manifestly well-founded applications is not a substitute for each person having their claim considered on its own basis. But, it may help to triage, streamline and reduce delays. So long as key safeguards are not removed, it starts to enable progress, *via refugee leave grants*, into this backlog in a manner that maintains the integrity of decisions whilst recognising patterns of persecution in certain countries. To be clear, for us, the chronic slowness in Home Office decisions *is the real-world crisis* in the asylum system. The numbers of new asylum applications year-on-year are relatively low, in UK terms and with comparable European nations. They are manageable if the political will was there. There is no credible reason why the Home Office have let matters slip so badly, especially since 2014, such that the latest figures are of 83,733<sup>4</sup> waiting for an initial decision, 56,520<sup>5</sup> of which are stuck for 6months or more. Many are from UK-high recognition countries e.g. 3,796 Afghans, and rising, are awaiting even just an initial decision.

7. The next table is to further pinpoint the malaise in the Home Office asylum decision system. It does so through reference to the *volume and trend* of UK-high refugee recognition nationalities being affected by these delays, *in not getting even just an initial decision*. No one should have to suffer *such chronic and worsening delays* that long pre-date Covid-19, and have been aggravated by it. *It seems absurd and expensive that people from high refugee countries are suffering in this malaise too.* The table is structured by the sixteen nationalities in the UK with the highest UK refugee recognition rates. I used the estimated final grant rate official figures for 2019, to arrive at these nationalities. This was to strike a balance between a sufficiently recent but still decent-sized dataset on final decisions. I opted for those nationalities at around 70% or more positive grant rates, so starting with Afghanistan at 69% up to Libya at 95%. The rest of the figures are either from (a) the latest official statistics for year ending September 2021 and (b) from the attached Home Office FOI data that sets out the timeline of main applicants awaiting an initial decision, disaggregated by nationality. The numbers in the table below refer to main applicants plus dependents unless otherwise specified, in which case it will be referenced as main applicants. The figures reflect chronic delays in decisions.

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<sup>4</sup> Main applicants and dependents

<sup>5</sup> Ibid

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6.Sudan	89%	722	12%	812	36%	1,111	47%	1,636	589	510	665	363
7.Turkey	87%	289	55%	450	118%	985	27%	1,257	41	201	144	438
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16.Afghanistan	69%	1,204	15%	1,387	51%	2,098	18%	2,470	278	561	482	1,051
								<b>Total =20,575</b>		<b>=5,701</b>	<b>=4,297</b>	<b>=6,956</b>
										<b>Total =16,954</b>		

8. Applications for refugee protection from nationals (including dependents), from these sixteen countries account for 37,133 (44%) of the total 83,733 awaiting an initial decision. 20,575 of this 37,133 have been waiting for at least 6months, which is 25% of all outstanding applications and 36% of the 56,520 awaiting an decision for 6months or more. Those 20,575 from these sixteen high recognition countries waiting 6months or more, comprise 16,954 main applicants and 3,621 dependents. Substantial numbers of which are waiting at least 12months (4,297) or 18months (6,956) for just an initial decision, despite applying from UK-high refugee recognition countries. *Swifter grants of Refugee leave for these persons can start to reduce the bulging backlog.*

9. Earlier when detailing the actual crisis in asylum, namely the Home office's chronic slowness in making initial decisions, we noted "the Home Secretary ploughs on with a New Plan for Immigration and a Nationality and Borders Bill, some of which is *already being implemented*. It is worsening not remedying the endemic problems in asylum decisions ... via application of rules to consider or deem new asylum applications inadmissible to the UK system ... [with]

<sup>6</sup> Main applicants only, Home Office FOI data 67183, as at September 2021

<sup>7</sup> Ibid

<sup>8</sup> Ibid

**Note on need to focus on real crisis in asylum system: (a) chronic systemic delays in decisions and inadmissibility procedure, resulting in (b) limbo for refugees and (c) preventable asylum support costs, with possible start of solution as (d) a simplified refugee status determination procedure (retaining safeguards) for swifter refugee status grants for manifestly well-founded claims from high recognition nationalities**

the Home Secretary issuing Inadmissibility notices of intent, which “park” that application for at least 6months, at the end of which it simply moves into a bulging decisions backlog”.

10. This table is again structured by the sixteen UK-highest refugee recognition nationalities, as at 2019 grant rates. It covers the Inadmissibility procedure from January to September 2021. There are four phases: (a) consideration for Inadmissibility; (b) potential issuing of a Notice of intent; (c) possible service with a Decision; and (d) either (i) if served with such a Decision, possible removal or (ii) moved onto the asylum procedure. This analysis draws on Home office FOIs. That data disaggregates published statistics on Inadmissibility, by nationality, sex, and age, for main applicants plus dependents. It reflects an unworkable procedure, as prior evidenced here and here. Far from helping deal with the chronic slowness in asylum decisions, this regime adds more delay.

Nationality	Grant rate (2019)	1. Considered for Inadmissibility	2. Notice of intent to investigate	3. Inadmissibility decision <sup>9</sup>	4a. Removed <sup>10</sup>	4b. Moved onto asylum procedure	Already waiting for an initial asylum decision	Have been waiting 6months or more for an initial decision
1. Libya	95%	53 <i>of which</i>	52	None	None	26	844 <i>of which</i>	613
2. Saudi Arabia	93%	0	N/A	N/A	N/A	N/A	175 “	113
3. Syria	92%	528 “	513	None	None	199	3,362 “	1,682
4. Yemen	91%	60 “	59	None	None	13	677 “	457
5. Eritrea	90%	1,087 “	1,110	27	None	246	5,777 “	2,246
6. Sudan	89%	610 “	589	None	None	110	3,060 “	1,636
7. Turkey	87%	41 “	23	None	None	8	1,660 “	1,257
8. Russia	86%	14 “	12	None	None	6	629 “	490
9. Uganda*	77%	0	N/A	N/A	N/A	N/A	240 “	217
10. Iran	74%	960 “	867	None	None	388	9,111 “	4,525
11. Somalia	73%	54 “	51	None	None	9	828 “	485
12. El Salvador	72%	336 “	307	None	None	59	1,727 “	1,213
13. Occ.Pal.Ter.*	71%	47 “	45	None	None	8	458 “	320
14. Vietnam	70%	609 “	591	None	None	164	3,765 “	2,520
15. Kuwait	70%	64	62	None	None	10	844 “	331
16. Afghanistan	69%	301 “ = 4,764 (68% of 7,006)	278 = 4,559 (65% of 6,598)	None	None	104 = 1,350 (63% of 2,126)	3,976 “	2,470

\* Grant rate (2018) and ° Grant rate (2017) – as equivalent % figures not available for these countries for 2019

**Graham O’Neill, Policy Manager, Scottish Refugee Council, 4 January 2022**

<sup>9</sup> There have been only 46 decisions to render persons inadmissible to the UK asylum procedure, 27 of which were served on Eritrean nationals, the rest being across approximately ten states

<sup>10</sup> There have been only 10 removals through this Inadmissibility procedure, affecting nationals from approximately six countries – all from Home Office FOI data 67180, as at September 2021

## **Debate in Scottish Parliament on Supporting the People of Afghanistan – 2 September 2021**

### **Key messages**

- The UK Government must institute and frontload a cross-government comprehensive Afghan refugee safety plan, comprising relocation, resettlement and asylum routes to safety. This must include partnership with devolved and local government and charities and communities. It must be person-centred, properly funded and with integration for Afghans.
- The UK Government must institute an expedited process to fast-track existing Afghan asylum applications in the UK, in order to swiftly grant Refugee leave, and trigger family reunion rights, which should be extended beyond spouses and children under 18. There should be no immigration returns to Afghanistan, nor asylum support cessations or evictions of Afghans.
- The UK Government must scrap its Nationality and Borders Bill in terms of its asylum and criminalisation provisions, in particular. This Bill severs, after 70 years, the UK's relationship with the Refugee Convention, instituting a refugee punishment regime in its place. This will close off the asylum route to safety for refugees, including to Afghans fleeing the Taliban.

### **Background**

1. Afghanistan is in a humanitarian, displacement and refugee crisis. The human rights situation is grave, as is security as the terrorist attack at Kabul Airport reconfirmed. After withdrawal of international troops, any socio-economic stability and human rights have rapidly deteriorated. The Taliban has taken control of an increasing number of districts, provincial capitals and now Kabul. The desperation of so many people across the country, and the chaos evident at Kabul Airport in particular, convey the searing reality of refugee flight. People have to make survival decisions, often life or death ones. Irregular routes are often the only way out of immediate danger. Unauthorised arrival is frequently the only way into countries of refuge, especially those with few or no safe routes in. The Refugee Convention treats such unofficial routes into countries of asylum, often via irregular means, with equanimity to official channels.

2. The UK Government has been in Afghanistan for at least 20 years. As the Prime Minister said, it owes a debt of gratitude to many Afghans. However, gratitude is not commensurate with the severity of threat facing people in Afghanistan now: death, terrorism, systemic human rights violation, especially sexual violence and gender discrimination. Widespread, severe poverty aggravated by this crisis. People in Afghanistan today - especially women, girls and religious minorities systemically targeted in the past by the Taliban as well as those who worked or have connections with the US-led coalition military forces – they all desperately need safety and quickly.

## Debate in Scottish Parliament on Supporting the People of Afghanistan

### First phase of protection: emergency evacuation – “Operation Pitting”

3. Evacuations out of Kabul Airport became a priority for the UK government, since 13 August. By its conclusion on 29 August, Operation Pitting had successfully evacuated approximately 14,543 people including around 4,000 British citizens, and 8,000 Afghans via the Afghan Relocations and Assistance Policy (ARAP), and emergency evacuation of Afghans who are at particular risk and who are to be classed under the Afghan Citizens’ Resettlement Scheme. This Operation has saved many lives with inspiring courage by Afghans and the US and UK armed forces, 13 of whom tragically died in the terrorist attack at Kabul Airport. They were part of the at least 175 people who lost their lives in the attack, mainly Afghans civilians and three British nationals. Our thoughts and sympathies are with each one of them, and their families and friends.

4. Now this first phase of protection, the evacuation, has ended, it is imperative that the UK Government with neighbouring countries, UN agencies and humanitarian NGOs, starts its second phase. This must comprise life-saving humanitarian aid to Afghan refugees and the internally displaced. It should also mean the UK Government puts its full weight, as it has promised, to reach and protect all Afghans eligible for its relocation or, in the future, resettlement programmes, who have been left behind or are the most vulnerable. In addition, the UK Government must ensure its asylum procedure remains open to all persons, including Afghans fleeing the Taliban and groups like Islamic State in Khorasan Province (ISIS-K). That requires the Home Office to grant refugee protection to Afghans seeking asylum in the UK and who arrive, often necessarily, through irregular or unofficial routes. That in turn means scrapping the asylum and criminalisation provisions in the Nationality & Borders Bill (the N&B Bill). Otherwise, the asylum route to safety closes down, including to Afghans.

### Second phase of protection? UK Government promises to Afghans must be honoured

5. The Defence Secretary, Ben Wallace MP, expressed “deep regret” at not being able to get all British citizens or Afghans eligible under ARAP out of Kabul. The UK Government estimates those left behind may be up-to 1,250 persons. This estimate is contested and there may be many more left behind. Mr Wallace added: “We will continue to honour our debt to all those who have not yet been able to leave Afghanistan. We will do all that we can to ensure they reach safety.” Prime Minister, Boris Johnson MP, also promised: “As we come down to the final hours of the operation [Pitting], there will also be people who haven't got through, people who might qualify (for resettlement). What I say to them is that we will shift heaven and earth to help them, we will do whatever we can.” These promises must be honoured. The stakes are so high for those in or fleeing Afghanistan. We hope the Prime Minister and UK Government including the Home Secretary, do not let them down.

### Responsibility-sharing must be fulfilled by the UK, given scale of crises in and around Afghanistan

6. UNHCR estimates that, presently, there are 3.5m people internally displaced in Afghanistan, with 550,000 since the start of 2021 alone. 80% of those displaced are women and children. At the end of 2020, there were 2.6m Afghan refugees globally: 85% or 2.21m of which are in the neighbouring countries, Iran and Pakistan. These numbers are likely to increase rapidly. On 27 August, UNHCR published its Regional Refugee Preparedness and Response Plan. Its worst-case scenario was of 500,000 Afghan refugees arriving in neighbouring countries by the end of 2021. On the same day, there were reports of “unprecedented” refugee flows from Afghanistan to Pakistan. At one border crossing, Spin Boldak / Chaman, 20,000 refugees are crossing every day, a threefold increase from the normal 6,000 that go through this border crossing, and that is generally for work and trade purposes.

## Debate in Scottish Parliament on Supporting the People of Afghanistan

7. At the end of 2020, UNHCR also estimated the UK had 9,000 Afghan refugees. In June 2021, there were 3,213 asylum applications pending decision or further review in the UK, from Afghan nationals<sup>1</sup>. The UK Government's first Afghan relocation scheme, eligible to certain locally employed staff (with immediate family) who worked with the UK and its armed forces in Afghanistan, had from 2010 to 12 August 2021 – the day before Operation Pitting started - relocated only 3,100 persons. It is noteworthy that 8,000 were relocated and evacuated by the UK military in 2 weeks, whereas the Home Office managed only a third of that in a whole decade. In total, there are around 23,100 Afghans either granted or seeking refugee protection in the UK, or relocated here. That means the UK have only 0.89% of the world's 2.6m Afghan refugees. In that context, the UK Government must be far more ambitious in its targets for the Afghan citizens' resettlement scheme, as 5,000 in the first year and, 15,000, perhaps, in the "long-term" is not commensurate with the scale of this crisis nor with the resources and responsibilities of the UK.

### Clear and present danger to all refugees, including Afghans, of the Nationality and Borders Bill

8. The humanitarian, displacement and refugee crisis in Afghanistan also carries a wider message of the implications and, frankly, the cruelty and wrong-headedness of the UK Government ploughing on with the N&B Bill. That draft legislation, if passed at Westminster: (a) severs the UK from the Refugee Convention itself; (b) renders the right to asylum of those who necessarily arrive irregularly, inadmissible<sup>2</sup> leaving those affected in limbo, existing with a constant fear of being removed and no consideration by the Home Secretary of their substantive protection needs; and c) the N&B Bill institutes a refugee punishment regime that effectively separates out people from mainstream society including placement in an accommodation centre or camp and also criminalisation.

9. That means that all those arriving via unofficial routes, including Afghan women fleeing the Taliban, will find themselves liable to arrest and criminal prosecution and imprisonment, including via the Scottish criminal justice system. The Bill systemically denies safety to refugees, including Afghans fleeing the Taliban if entering irregularly, with the UK then penalising them for that mode of travel. The N&B Bill will deny thousands upon thousands of people seeking safety, from refugee status and the chance to build a new and peaceful life. That includes therefore people from countries regarded in the UK asylum system now, as meriting high levels of refugee recognition<sup>3</sup> decisions. The list of such countries includes Libya, Yemen, Syria, Eritrea and Afghanistan; albeit the asylum grant rate in the latter was a dreadfully low of 26% in 2020, despite this being when the Taliban were consolidating and advancing. If the N&B Bill passes, then refugee protection through the UK asylum system ends, to be replaced quite egregiously, by segregation and criminalisation.

10. So, therefore, Afghan citizens are now left in a dreadful humanitarian predicament: at home, in neighbouring countries as well as if they were to seek asylum in the UK. The N&B Bill, in effectively closing off the life-saving route of refugee protection that has been open since a Conservative UK Government ratified it in 1954, means that literally tens of thousands of people seeking safety will, instead, be criminalised and punished, with no regard to their fear of oppressive regimes, like the Taliban and others across the world, who are threatening, persecuting or torturing and trying to kill them or their families or colleagues.

11. In the remainder of this briefing, we confine our recommendations to the refugee protection measures, principally relocation and resettlement, and asylum policy that it is in the responsibility and gift of the UK Government to take urgent action in. We do so, as the focus should be on what the UK Government can practically do, now, to help. We also make recommendations on steps the Scottish Ministers and public authorities and charities and communities may take to help Afghans and refugees generally to be safe and rebuild their lives here.

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<sup>1</sup> Pivot table – Afghanistan, [ASY\\_D03](#)

<sup>2</sup> 4,561 individuals have been issued with an (Inadmissibility) "Notice of Intent" from 1 January to 30 June 2021 ([here](#))

<sup>3</sup> Pivot table - [ASY\\_D04](#)

## Debate in Scottish Parliament on Supporting the People of Afghanistan

### We need a comprehensive refugee policy, inclusive of but not limited to Afghan refugee safety

12. The UK Government must safeguard protection for refugees, including Afghans fleeing the Taliban. It must do so with a *comprehensive refugee protection policy*, given the scale of the global displacement and refugee crisis that necessarily has some focus at the moment on Afghanistan but also is not at all limited to there. Any refugee protection policy must be wider than one country. It must encompass those who need protection, whether they arrived irregularly or not, from troubled regions and nations across the globe. A comprehensive refugee protection policy needs to have at least three parts: relocation, resettlement and asylum. Family reunion, albeit with its limitations in its UK Government form, is still a crucial right, particularly for women and children, to use for those resettled or given refugee status via the UK asylum system.

#### Relocation

##### *Afghan Relocation Assistance Policy (ARAP)*

13. The UK Government can do a lot to help Afghan refugees. The test is do they have the political will to do so. We urge them to take responsibility and act swiftly to protect refugees, Afghan and others. The intense and rapid acceleration in the Afghan relocation scheme - ARAP - was a direct result of the military-led Operation Pitting. It was not due to the Home Office anticipating and giving the priority needed to Afghans at risk or suffering reprisals from the resurgent Taliban. This Operation has brought a high volume of Afghans from risk to safety, in a matter of 2 weeks. The challenge now is to ensure that there is a person-centred package of integration support, based on suitable accommodation, provided to new arrivals who will be traumatised, but keen to start to build and contribute in their new life in the UK. There are now at least 8,000 new Afghan arrivals in the UK. The Scottish Government has already expressed its desire to help. The UK Government must accept this offer, hold the promised 4 nations summit on Afghan relocation and resettlement as a matter of urgency, and provide sufficient funding - we think at least 2 years of full central government support - to devolved governments and local authorities to organise, provide and commission local authorities and partners to deliver integration support with new Afghan arrivals. Whilst short term (up to 1month) hotel use for quarantine and basic welcome and orientation purposes may be understandable given the volume of new Afghans relocated, as a general rule people should be moved swiftly into longer term residential accommodation. That is crucial for their mental wellbeing and recovery.

#### Resettlement

##### *Afghan Citizens' Resettlement Scheme*

14. The announcement of the new Afghan citizens' resettlement scheme is welcome. It should be a life-saving route to safety. It can prevent the suffering of vulnerable Afghan refugees in temporary camps or in destitution in neighbouring countries. Afghans need this scheme to be adequate to the scale of need. 5,000 in the first year and a promise to resettle 15,000 in the "long-term" is not good enough. For those now in flight from the Taliban, and entering Pakistan to the East, Iran to the West or the central Asian states to the North, those Afghan refugees need help now. Otherwise it may be too late. In line with UNHCR methodology concluding that 10,000 per year is a reasonable target in a UK resettlement scheme, this "bespoke" Afghan programme should aim for around 50,000 Afghan refugees in 5 years, with an effort to front-load arrivals, similar to the Operation Pitting-booster for ARAP relocations, much needed after a decade of Home Office neglect. It would also be sensible for the UK government to integrate planning, coordination with devolved and local governments and charities, and funding for ARAP – together with its global and "bespoke" Afghan resettlement programmes. That will minimise duplication, confusion and prevent wasting resources that are precious and needed most by new Afghan arrivals and the communities

## Debate in Scottish Parliament on Supporting the People of Afghanistan

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where they are to live and, hopefully, rebuild their lives in and contribute to. The same principles of person-centred integration support and suitable long-term residential accommodation apply here, as they do with ARAP.

### *UK global resettlement scheme*

15. The UK must also activate its latent *global resettlement scheme* that focuses on the protection needs of some of the most vulnerable refugees in the world. This scheme should be a standing and fully operational part of UK refugee protection policy. It is a failure that the Home Office has left dormant this [UK Resettlement Scheme](#), after the Syrian programme closed in 2020. Such a programme must include but not be confined to Afghans fleeing from the Taliban regime. It must have an annual target, to prevent commitments made today from withering away tomorrow, when events have moved on. This target must reflect the resources in a prosperous country like the UK. [UNHCR estimate at least 10,000 a year is an appropriate resettlement target](#) for such countries. If the Home Office had a functioning global resettlement system, there would have been less need for separate and rushed “bespoke” programmes. Afghan refugees, in coordination with UNHCR, IOM and the UK government could have been more swiftly resettled than is otherwise the case now.

### Asylum

#### *Expedite Afghan asylum claims, swiftly grant Refugee leave, and retain the right to asylum in the UK*

16. The UK Government has the power to institute an expedited process to swiftly provide all Afghan asylum seekers in or arriving in the UK, with Refugee leave. Circumstances have clearly changed and adversely so, with the Taliban taking widespread control of Afghanistan. Therefore, any expedited process should also encompass those who have been refused asylum, including those on asylum support or who are in detention. Based on the latest available official figures<sup>4</sup>, we estimate such a comprehensive expedited process could provide 3,453 Afghan nationals with Refugee leave. That status would in turn enable Afghan new refugees to exercise family reunion rights and bring over, if applicable, their partner or children, safe from the Taliban. This expedited process may also be open to Afghans who are undocumented who had, historically, been refused protection. The expedited process should be underpinned by bans on enforced returns and, for those in asylum accommodation, evictions. All this must be supported by the urgently needed [Afghanistan: country policy and information notes](#). Recent [media reports](#) indicate that the Home Office are pausing asylum decisions and appeals in Afghan cases. This is gravely concerning as the situation in Afghanistan is clearly unsafe, especially for human rights, and that is unlikely to improve for a considerable time, if at all. People need quick, positive refugee status decisions; not a pause, which prolongs uncertainty.

17. The N&B Bill is a clear and imminent danger to Afghans and, indeed, all refugees. There is visible, determined and united [opposition](#) from Scotland, and many parts of the UK to this. The UK Government’s policy framework for the N&B Bill is its [New Plan for Immigration](#). That was published for consultation on 24 March, ending on 6 May, precisely concurrent with the pre-election “purdah” period for the Scottish Parliament and other devolved and local government elections in the UK. This [shut out](#) a swathe of UK governance from influencing policies and draft legislation that fundamentally change, regressively, the UK’s relationship with refugee protection and asylum responsibilities in particular. The Bill exerts significant and negative impacts on devolved competences and policy. This is notably in refugee integration, anti-destitution, criminal justice and courts, human trafficking, age assessment and access to local authority safeguarding provisions. Scottish Refugee Council have coordinated a coalition against the N&B Bill, since April. This included supporting legal challenges against the public consultation on the New Plan, [responding](#) to the New Plan, as well as [briefing](#) MPs at the N&B Bill’s Second Reading. With [JustRight Scotland](#) we

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<sup>4</sup> [Pivot tables - Afghanistan - ASY D03 and ASY D09](#) and [Pivot table - Afghanistan - DET D02](#)

## Debate in Scottish Parliament on Supporting the People of Afghanistan

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are instructing expert legal Opinion on the legality and policy implications of the N&B Bill in Scotland. There may be a need for Scottish Government to consider policy to mitigate the worst effects of this N&B Bill. And, to legislate in areas affected by the Bill that may well be in devolved competences anyway, such as responsibility to identify and decide on human trafficking status, for the purpose of providing support and assistance. We urge this Parliament to adopt proactive and detailed scrutiny of the Scottish Government's legislative consent memorandum process vis-a-vis the N&B Bill.

18. Finally, as noted there is an underlying connection between the plights of many fleeing Afghanistan and the N&B Bill. That draft legislation is in its regressive anti-refugee protection clauses, would effectively close off the UK's asylum procedure, to the vast majority of refugees who seek safety in the UK. That will include Afghans, who often, like many refugees from other nations, have necessarily to arrive in the UK via irregular channels. This is not least as the UK has few safe and legal routes open for refugees. Also, as noted, the Refugee Convention regards irregular routes with equanimity to official entry to a territory. That is for the real-world reason that refugee flight is often in an emergency when people are desperate to be safe. The chaos at Kabul Airport has viscerally reminded the world, of that fact. It has reinforced why the Refugee Convention has endured, precisely as it reflects an acute understanding of why people have to leave danger *and* then seek to build new and safer lives. The N&B Bill, in severing the UK from the Refugee Convention, then institutes in its place a *refugee punishment regime* on irregular arrivals seeking safety, including criminalising them, in effect for being refugees. If the Bill passes, refugees including Afghans fleeing the Taliban will be punished too, but this time by the UK Government. Together, we must stop this.

### Further information, please contact:

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**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

CO/ /2021

**BETWEEN:**

**The Queen on the application of**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Claimants**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendant**

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**WITNESS STATEMENT OF GRAHAM O'NEILL**

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I, Graham O'Neill of the Scottish Refugee Council ("SRC") whose address is 17 Renfield Street, Glasgow, G2 5AH (Registered charity no: SC008639), will say as follows:

1. I am authorised to make this statement on behalf of SRC. I do so in support of the Claimants' case. I am SRC's Policy Manager. I have worked with SRC since September 2013.
2. I enclose with this statement a set of documents [**Exhibit GON/#**]. References to these documents include both the exhibit page number and the claim bundle page number (i.e. **GON/#; CB/[#]**). A list of these documents can be found at [**CB/189**], along with page references to where they can be found in the Claimants' bundle

**Scottish Refugee Council**

3. SRC is an independent charity established in 1985 dedicated to supporting people in need of refugee protection. SRC has a staff of approximately 70 members of staff as well as volunteers and ambassadors.

### Consultation on the new plan for immigration

4. SRC provided a written response to the UK Government’s public consultation on its New Plan for Immigration, which was open from 12.15am, 24 March 2021 to 11.45pm, 6 May 2021. [Exhibit GON/1; CB/287]. Our response was limited to certain areas, in part due to the short timescale to fully digest and develop considered responses to all proposals. The lack of any attempt in the Policy Statement to delineate the intended territorial extent of the proposals made it challenging to prepare properly considered and expert responses on the implications of the Home Office’s proposals for devolved legislation and policy.
  
5. We decided to submit a written response by email as our considered view was that the online consultation format was not designed for ease of providing meaningful responses - particularly if a respondent were unsupportive of elements in the proposals.
  
6. I would like to highlight here elements of our response: Paragraph 4(f) – “*Consultation for the New Plan [for Immigration] has been planned and conducted in bad faith*” and Paragraph 5(g) – “*The New Plan [for Immigration] ignores devolution*” and its footnote 6 [Exhibit GON/1; CB/70]. That footnote noted our concern that the UK Government, in consulting on this New Plan for Immigration in the manner it had, did not seem to have adhered to either the letter or the spirit of the final report of the Lord Dunlop *Review of UK Government Union Capability (the Dunlop Review)*, (November 2019)[Exhibit GON/2; CB/819] and in particular the “write-round” process referred to therein, supposed to be operational now. The Dunlop Review described measures to support this “write-round” process as: “*An enhanced process has been introduced to support the write-round process within the UK Government to record the devolution or UK-wide implications of policy proposals being submitted for collective agreement. This seeks to ensure that all officials are conscious of the implications of their policy and helps avoid the three Secretaries of State offices [for Northern Ireland, Scotland and Wales, respectively] or Cabinet Office having to ‘catch’ issues in the write-round process.*” (p15 Dunlop Review) [CB/833].

7. Our response referred to a public joint letter to the Prime Minister, sent on 26 April 2021, by Scottish Refugee Council on behalf of 75 other Scottish charities, community organisations, faith or belief groups [**Exhibit GON/3; CB/706**]. To date, we have not received a response to that letter.

### **“Deep dive” sessions**

8. We received invitations from Britain Thinks to six ‘deep dive’ engagement sessions as part of the public consultation. These invitations came by email at 4.13pm 12 April 2021 to our Chief Executive, Mr Sabir Zazai. There was no additional information attached to that email with policy detail relevant to each roundtable. Given the number of invitations and the short notice provided, we held an internal coordination meeting on 16 April 2021, and agreed which roundtables we were in a position to attend, and who would be able to represent us at the events we could attend.
9. We had very little time to prepare for these roundtables. We did not receive information particular to each session until one or two days before the event. This short timeframe prevented us from consulting effectively with colleagues or those with lived experience.
10. These sessions were facilitated by people from Britain Thinks who presented information mainly from the policy document. They were not able to answer any questions to provide clarity or further details on proposals. This was concerning given the lack of detail in the written document. For example, on page 28 the Policy Statement proposes that:

*‘A new ‘one-stop’ process will require people to raise all protection-related issues upfront and have these considered together and ahead of an appeal hearing where applicable. This includes grounds for asylum, human rights or referral as a potential victim of modern slavery. People who claim for any form of protection will be issued with a ‘one-stop’ notice, requiring them to bring*

*forward all relevant matters in one go at the start of the process. We will introduce new powers that will mean decision makers, including judges, should give minimal weight to evidence that a person brings after they have been through the ‘one-stop’ process, unless there is good reason.’ [Exhibit GON/4; CB/220]*

11. I attended the deep dive session on 27 April 2021 on the proposal in the New Plan for Immigration for a One-Stop Process. I raised my concerns about the policy proposal with the facilitator. I expressed concern about how a One-Stop Notice requirement that protection applicants bring all relevant matters and evidence in one go, at the start of the process, was particularly ill-suited for those experiencing serious trauma, for example survivors of sexual violence or trafficked exploitation. The facilitator noted my points and then checked that he had understood them. But, that was the extent of it. There was no explanation of the rationale or of wider thinking behind this proposal, or how it might operate in practice. That meant it was very difficult to have any further meaningful discussions about the proposal and the deep dive session did not advance my understanding of what exactly was being proposed.
12. In addition, we received invitations to four additional ‘Technical engagement’ events organised directly by Home Office civil servants. No clarity was given why some sessions were organised directly by Britain Thinks and some sessions by the Home Office.

### **Consultation period and Scottish Pre-election period**

13. My overall impression was that the consultation period was, from any reasonable perspective, inexplicably short.
14. The Cabinet Office Consultation Principles 2018 at Section E say that ‘*consultations should last for a proportionate time in relation to their nature and impact*’ [Exhibit GON/5; CB/817]. In the words of the Home Secretary, the 40 or more proposals of the New Plan for Immigration are the: “*most significant overhaul of our asylum system in*

*decades.*”<sup>1</sup> As such, our view is that the 6-week period is neither adequate nor proportionate.

15. Cabinet Office principles also say that consultations should not ordinarily be run during election periods (section F) [**Exhibit GON/5; CB/817**]. This requirement is further detailed in Civil Service Guidance for devolved administration elections [**Exhibit GON/6; CB/983**] which states that:

*“Public consultations with a particular emphasis on devolved, local or PCC issues, or impact on areas where elections are being held, should generally not be launched during the relevant pre-election periods.”*

16. The New Plan for Immigration does not state or delineate the territorial extent of its proposals. However, the Civil Service Guidance further states that [**Exhibit GON/6; CB/983**]:

*“Departments should also consider extending consultation periods after the election to allow all parties sufficient time to respond. This is particularly important where a consultation will require the participation of the Devolved Administrations or Local Authorities, which are under their own pre-election restrictions during this period.”*

17. It should be noted that these were the first Scottish Parliamentary elections following the Scottish Elections (Franchise and Representation) Act 2020 which extended the franchise to include, amongst others, those recognised by the UK Government as refugees: a population that will be significantly affected by the proposal in the New Plan for Immigration.

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<sup>1</sup> Exhibit GON/4; CB/190

18. The restrictions on the Scottish Government are clearly set out in Scottish Parliament Election: 6 May 2021 Guidance for the Scottish Government, its Agencies and National Devolved Public Bodies [**Exhibit GON/7; CB/916**] and include the requirement that:

*“Decisions on matters of policy on which the next administration might wish to take a different view from the current administration are expected to be postponed until after the election, provided that such postponement would not be detrimental to Scotland's interest or wasteful of public resources.”*

19. With the exception of a few hours on 24 March 2021, this consultation ran almost concurrently to the pre-election period for the Scottish Parliament elections: 25 March to 6 May 2021 (inclusive). This effectively prevented the Scottish Government from responding to the consultation.

20. We note that the Scottish Government had been cited as invited stakeholders to three Home Office-led ‘Technical engagements’ during the consultation period. SRC attended these sessions. No Scottish Government officials attended these sessions. We understand this was because of the pre-election period of sensitivity. It is our understanding that Scottish Government officials are required to exercise particular care during such a pre-election period, including by avoiding providing information or views to UK government officials on matters of policy that the next administration may wish to take a different view or position on, from the current one. We further understand that the appropriate decision for Scottish Government officials to take in respect of these “Technical engagements” events was to not attend. The effect of the consultation’s timing was to prevent the Scottish Government from putting forward its position, evidence and insight about the Home Office’s proposals.

21. Many of the proposals in the New Plan for Immigration appear to impinge or impact on matters devolved to the legislative competence of the Scottish Parliament and executive competence of Scottish Ministers. Issues of competence affected by these proposals include, but are not limited to:

- a. identification, assistance and support in Scotland of potential or confirmed survivors of trafficked exploitation;
  - b. entitlements and care available to (i) unaccompanied children seeking refugee protection as Looked after Children (“LaC”) in Scotland for which the Scottish local authority is the Corporate Parent, as well as (ii) families and children with insecure immigration status in need of statutory support for wellbeing including if at risk of destitution;
  - c. arrangements and decision making around age assessments affecting children, which is the responsibility for social workers within the LaC system;
  - d. access to justice and legal processes in Scotland especially to judicial review of Home Secretary decisions, which is in the jurisdiction in Scotland, of the Court of Session; and
  - e. changes in the severity of criminal offences and penalties for entering the UK illegally, carries implications for potential trafficking survivors and refugees in Scotland, who often for good reason, do not have the requisite legal and travel papers nor access to safe and legal routes; and it may often be Scottish agencies working to Acts of the Scottish Parliament, that encounter them.
22. Moreover, there are overarching Scottish policy frameworks that are seriously, and potentially adversely, impacted upon by many of the proposals in the New Plan for Immigration. These include:
- a. “New Scots: Refugee Integration Strategy 2018 to 2022”<sup>2</sup>;
  - b. “Trafficking and Exploitation Strategy: third annual progress report 2020”<sup>3</sup> and
  - c. “Ending Destitution Strategy 2021-2024”<sup>4</sup>
23. The Scottish Government either leads or co-leads each of these strategies and is accountable to the Scottish Parliament, in varying ways, for effective delivery of them.

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<sup>2</sup> New Scots: Refugee Integration Strategy 2018 to 2022

<sup>3</sup> Trafficking and Exploitation Strategy: third annual progress report 2020

<sup>4</sup> Ending Destitution Strategy 2021-2024

24. I think it is unfortunate that the Scottish Government would appear not to have been afforded an effective opportunity, during the consultation period, and prior to the laying of legislation in the UK Parliament, to publicly address the New Plan for Immigration, to provide important insights and evidence on what the New Plan for Immigration may mean for the above strategies and the matters of Scottish devolved competences, including implications for future legislative consent.

**STATEMENT OF TRUTH**

25. I, Graham O'Neill, believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against any who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

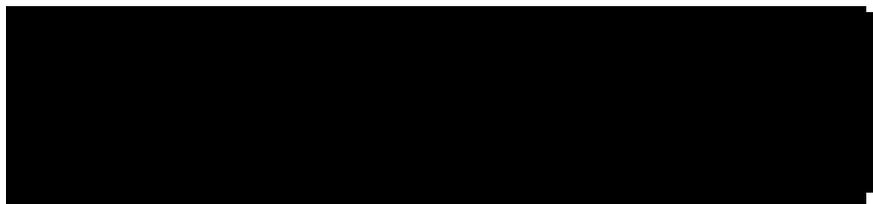
Graham O'Neill

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Date: 28 May 2021

**BETWEEN:**

**The Queen on the application of**



**Claimants**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendant**

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**LIST OF EXHIBITS TO GRAHAM O'NEILL'S WITNESS STATEMENT**

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<b>Exhibit</b>	<b>Description</b>	<b>Date</b>	<b>Tab</b>	<b>Doc</b>	<b>Page</b>
1.	SRC response to consultation	06.05.2021	C	30	287 – 367
2.	Dunlop Review	11.2019	E	72	819 – 870
3.	SRC open letter to PM	26.04.2021	C	49	706 – 710
4.	The New Plan for Immigration Policy Statement	24.03.2021	C	23	190 – 238
5.	HMG Consultation Principles 2018	2018	E	71	817 – 818
6.	Cabinet Office Guidance on conduct, May 2021 elections	03.2021	E	78	980 – 989
7.	Scottish Government, Scottish Parliament Election: 6 May 2021, Guidance for the Scottish Government, its agencies and national devolved public bodies	02.2021	E	76	916 - 951

**Note on acutely vulnerable group of survivors of trafficked exploitation *and* refugee persecution, and inform Legislative Consent Memorandum process**

1. Scottish Refugee Council, with others inside and outside parliaments and across the UK, have deep concerns about the Nationality and Borders Bill (the Bill). It severs the UK state's relationship with the Refugee Convention. It substitutes a [refugee punishment regime](#) in its place. It contorts the UK's other key protection system, trafficking and modern slavery, by reinserting immigration policy where it has no place. That is into legislation across these Isles that for a decade has moved closer to human rights with complementary aims of survivor care and prosecuting those perpetrating and orchestrating exploitation.
2. We fear that this Bill could not have been better drafted by traffickers and those who persecute. Such is the irresponsibility in effectively closing off refugee protection for those seeking, necessarily through irregular means, safety in the UK or for those who are trafficked here or suffer exploitation after arrival. We have frequently set these out these concerns since the policy framework for the Bill was introduced last March - the New Plan for Immigration ([here](#) and [here](#)). And, when the Bill itself entered the UK Parliament in June last year ([here](#) with 80+ charities as well as with JustRight Scotland, [here](#)).
3. Thankfully, Scottish Ministers have published a Legislative Consent Memorandum, [here](#), in relation to the Bill. We welcome this memorandum, which alongside JustRight Scotland, we have called for since last year, [here](#). The memorandum sets out that Scottish Ministers regard, correctly, that the Bill's provisions interfere directly and inappropriately with devolved competences, impinging on devolved age assessment (Clause 49) and trafficking survivor processes (Clause 58); designed to ascertain what duties of care and support are engaged and how these should be discharged. Both these are devolved matters, in the ambit of local authorities (age assessment) and Ministers (trafficking support). *Children, and persons suffering overlapping persecution and exploitation* are vulnerable. They are at acute risk generally through this Bill, including via its [Home Office age assessment regime](#) and "[trauma notices](#)".
4. We hope this memorandum is backed by the Scottish Parliament in the coming weeks and consent is withheld to these deeply inappropriate provisions on a Home office-age assessment arrangement and "trauma notices", ever being brought into effect in Scotland. Following that, we urge Scottish Ministers, to build momentum consistent with the positions [here](#) and [here](#), and take more practical steps to mitigate and prevent the worst of this Bill in Scotland.
  - (a) One such measure is to strengthen policy and services for refugees and trafficking survivors, including on refugee integration, anti-destitution, on violence against women and girls, and mental health and human trafficking and exploitation strategies respectively.
  - (b) A second measure is where Scottish legislation can be instituted to protect people in the sights of this Bill, then it should be. Here we are thinking particularly, regulations for a Scottish anti-trafficking "competent authority" to wrap around the current support and assistance entitlements for survivors, by ensuring decisions on initial identification and final trafficking survivor status are taken in Scotland, and not by a distant Home Office "National Referral Mechanism" (NRM). That "competent authority" can then request to the Home Office for leave to remain to enable recovery.
  - (c) Finally, a third measure is that the Lord Advocate produces human rights-based Instructions to police and prosecutors on interpreting the public interest on criminal offences in the Bill, especially that relating to "unlawful arrival". These should convey an understanding of patterns of need and

vulnerabilities of those - refugees - who necessarily arrive by irregular means to the UK and complement existing guidance on the non-prosecution of refugees for entry-related offences, as well as the Lord Advocate’s Instructions on human trafficking offences.

5. The rest of this note returns to this most vulnerable of groups in society, namely those *that have fled overlapping persecution and exploitation*, and who hence seek safety in the asylum *and* trafficking protection systems. We particularly welcome therefore that Scottish Ministers have the Bill’s “trauma notices” in their sights. Precisely as left unchallenged, these notices will re-traumatise an acutely vulnerable group. Drawing on unpublished Home office FOI data, this note first details the extent of this deeply vulnerable group. Second, it notes the patterns on [refugee](#) and trafficking survivor recognition rates with, delayed decisions increasing in recent years rendering higher volumes of deeply vulnerable people in “limbo” predicaments including even when their trafficking survivor status had been confirmed. As the High Court in [KTT](#) set out, such persons with asylum applications outstanding which included risk of re-trafficking should have been granted leave to remain. Third, it notes that in narrowing these two protection routes, the Bill leaves thousands at risk.

6. The table below is structured on the unpublished FOI data, that is to say over three time periods spanning 6years3months (appendices1-4). The period is 1 January 2015 to 31 March 2021. It covers a significant length of time and, hopefully *gives a sense of the extent of this acutely vulnerable group, who stand to be so adversely affected by the restrictions in asylum and trafficking protection routes, as a result of the Bill*. It also breakdowns how many of those referred into the Home Office NRM were confirmed as trafficking survivors and separately how many were recognised as refugees, by UK and Scotland.

Period = 6years3months	NRM + asylum (UK)	Confirmed survivors	%	Recognised as refugees	%	NRM + asylum (Scotland) <i>(as part of UK totals)</i>	Confirmed survivors	%	Recognised as refugees	%
1/1/2015 to 31/12/2017	7,524	3,281	44%	3,237	43%	295	130	44%	130	44%
1/1/2018 to 30/6/2020	11,187	1,266	11%	2,220	20%	585	110	19%	112	19%
1/7/2020 to 31/3/2021	3,386	32	1%	1,185	35%	174	5	3%	32	18%
<b>Totals</b>	= 22,097	= 4,579	21%	= 6,642	30%	= 1,054	= 245	23%	= 274	26%

7. These figures confirm that a significant number of people will, as a result of this Bill, not only have to encounter “trauma notices” with their credibility being seriously damaged solely because they were unable to meet arbitrary information deadlines. Aside from the inherent unfairness in such requirements, it is the opposite of trauma-skilled practice. It is also notable that a significant number of people were recognised as refugees or confirmed as exploitation survivors. Many of them will be less likely to get any protection also, as a result of this Bill, precisely as it closes or narrows protection routes. Furthermore, there has been a distinct slowing in refugee and, in particular trafficking decisions, reflecting the chronic slowness in both procedures. Given all that, it is essential to resist and challenge these unfair and traumatising information deadlines and credibility penalties specifically, and the Bill generally.

**Graham O’Neill, Policy Manager, Scottish Refugee Council, 2 February 2022**



## JustRight Scotland's Written Briefing to the Social Justice & Social Security Committee Session on Refugees and Asylum February 2022

**JustRight Scotland (JRS)** is Scotland's legal centre for justice and human rights. We use the law to defend and extend people's rights. We operate 4 national centres of legal excellence providing direct legal representation, legal outreach, and legal education: (i) the Scottish Refugee & Migrant Centre; (ii) the Scottish Women's Rights Centre; (iii) the Scottish Anti-Trafficking & Exploitation Centre; and (iv) the Scottish Just Law Centre. You can find out more about us here: [www.justrightscotland.org.uk](http://www.justrightscotland.org.uk).

### Introduction

1. We are providing this briefing and evidence before the Committee by drawing on our lawyers' longstanding practical experience and expertise in providing legal information, advice and representation to refugees, asylum seekers, and survivors of trafficking and exploitation. Within this area, we specialise in working with children and young people, women affected by violence, those at risk of destitution, and refugee family reunion. The below is informed by our direct legal casework, our provision of second-tier advice to statutory and non-statutory agencies in the sector, and the lived experience of those who have engaged with the immigration system.
2. We have been asked to provide evidence on (i) the Nationality and Borders Bill; (ii) the Afghan Citizens Resettlement Scheme; and (iii) No Recourse to Public Funds.

### Potential implications of the UK Nationality and Borders Bill in Scotland

3. We are deeply concerned about the impact of the Nationality and Borders Bill ("NABB") in Scotland and the UK. People seeking refugee protection in the UK already find themselves in a harmful asylum system. However, this Bill represents a new low in UK refugee policy and law and it imperils the UK's relationship with the UN Refugee Convention. Indeed, the United Nations High Commissioner for Refugees ("UNHCR") itself has condemned many elements

of the Bill<sup>1</sup>, and four Special Rapporteurs of the United Nations felt compelled to issue a joint statement of concern.<sup>2</sup>

4. We have undertaken a great deal of work in relation to the Bill and its negative impact in Scotland. This briefing is intended to simply summarise the key points, but we would refer the Committee to:
  - a. The Opinion of Christine O’Neill QC (“the Opinion”), which we instructed alongside the Scottish Refugee Council (“SRC”);<sup>3</sup>
  - b. The Cover Note to the Opinion;<sup>4</sup> and
  - c. JRS and SRC joint advocacy briefing to the Opinion on the devolved impacts of the NABB.<sup>5</sup>
5. The two key aspects we wish to convey to the Committee are:
  - a. *International law*: It is clear to us that elements of the Bill may contravene the European Convention against Trafficking, the European Convention on Human Rights, the UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention on the Rights of the Child. In turn, the provisions of the Bill will be detrimental to vulnerable people living in Scotland, including refugees, survivors of human trafficking and exploitation and those in statelessness. Within these groups, the Bill will exert severe harm on children, women surviving male violence, disabled people, and those with LGBTI+ identity.
  - b. *Devolved competencies*: This Bill is not just about immigration law. It is about how we identify and protect the most vulnerable within our society, or not, as the Bill’s provisions reflect. It encroaches on key elements of law and practice devolved to the Scottish Parliament. This is reflected in the fact that the Scottish Ministers have lodged a Legislative Consent

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<sup>1</sup>UNHCR Observations on the Nationality and Borders Bill, October 2021, <https://www.unhcr.org/uk/615ff04d4.pdf>

<sup>2</sup> Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 5 November 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26788>

<sup>3</sup> Opinion for JustRight Scotland and Scottish Refugee Council concerning the NABB, 9 November 2021, <https://www.justrightscotland.org.uk/wp-content/uploads/2021/11/Legal-Opinion-FINAL.pdf>

<sup>4</sup> Cover Note To The Opinion Concerning The Nationality And Borders Bill, <https://www.justrightscotland.org.uk/wp-content/uploads/2021/11/Legal-Opinion-Cover-Note-FINAL.pdf>

<sup>5</sup> JRS and SRC joint advocacy briefing to Legal Opinion and Cover Note, on the devolved impacts of the Nationality and Borders Bill, <https://www.justrightscotland.org.uk/wp-content/uploads/2021/11/Joint-advocacy-briefing-to-Legal-opinion-and-Cover-note-on-the-devolved-impacts-of-the-Nationality-and-Borders-Bill-Final-18-1.pdf>

Memorandum before the Scottish Parliament, relating to two areas of the Bill.

*Broad features of the Bill causing harm*

6. We refer to the aforementioned response by the UNHCR relating to the Bill's provisions, as well the legal Opinion on the Bill's compatibility with international law which was instructed by Freedom from Torture.<sup>6</sup>
7. Some of the most concerning areas of the Bill:
  - a. Providing for **differential treatment** of people based on their route of arrival, with the Bill's currently framed "Group 2" refugees most at risk of wide-ranging penalties and restrictions, including making such refugees who necessarily arrive by irregular means, immediately liable to a criminal offence of unlawful arrival, or delaying any consideration of their protection claim, and even if that claim is ultimately granted, subjecting them to the No Recourse to Public Funds ("NRPF") restriction. This "differential treatment" clause threatens conditions even more abject than the current asylum system, and raises very serious and wide-ranging human rights concerns for duty bearers in Scottish public authorities. The provision may also strengthen the ability of the Home Secretary to change the Immigration Rules, without further scrutiny by either the UK or devolved parliaments. For those it affects, it reduces the impact of protection and security, increases the prospects of destitution and homelessness, and represents a barrier to New Scots integrating and leading fulsome, healthy lives.
  - b. Proposals to "**offshore**" **claimants** raise concerns about our obligations to provide legal advice and support to people claiming international protection who have arrived in Scotland and are then taken offshore to process their claims for asylum. There are important questions about the availability of funded legal advice for these individuals. The Opinion recommends reviewing Scottish legislation around the provision of legal aid to make express provision for appropriate funded advice if the offshoring provisions come to pass.
  - c. Proposals on **British citizenship**, which make it more difficult for children who are stateless, or at risk of statelessness, to access British nationality. This proposal is unnecessary, damaging for children residing in Scotland, and appears to be evidence-free in terms of the justification for the change to the law.

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<sup>6</sup> <https://www.freedomfromtorture.org/sites/default/files/2021-10/Joint%20Opinion%2C%20Nationality%20and%20Borders%20Bill%2C%20October%202021.pdf>

- d. **Age assessment** provisions reach into Scottish child protection systems. The Bill compels Scottish local authorities to undertake age assessments at the direction of the Home Office, or else refer children to new National Age Assessment Boards (“NAABs”). It allows the Home Office to set new standards against which age assessments are to be conducted and it introduces the use of deeply invasive, unethical, and inaccurate medical age assessments.
  - e. Provisions relating to **human trafficking and exploitation**, an area of law devolved to the Scottish Parliament. The Bill impacts on who we recognise as a survivor of human trafficking and how we protect them, as well as our ability to prosecute the perpetrators. The Bill risks contravening key international legal instruments and obligations. The support system for survivors as well as how we identify and prosecute victims are provided for in the Human Trafficking and Exploitation (Scotland) Act 2015, meaning that the provisions of the Bill have implications for this landmark piece of legislation.
8. The provisions set forth at (a), (b) and (c) above may speak to reserved issues but we would encourage the Committee to pro-actively engage with the impact this will have on vulnerable and marginalised people living in Scotland, and therefore how Scottish public authorities and key services react.
  9. The Bill’s regressive provisions will impact services around housing and homelessness, social care for children and adults, and domestic violence, to name but a few. By way of example, we would refer the Committee to the statement issued by Rape Crisis Scotland on 2 February 2022, standing in opposition to the Bill.<sup>7</sup>

#### Impact on devolved areas of law

10. As made clear above, the proposals at (d) and (e) reach an arm into areas of law which are devolved to the competence of the Scottish Parliament.
11. The provisions on **age assessment** are highly damaging to unaccompanied asylum-seeking children in Scotland. Age assessments are usually conducted by Scottish local authorities to determine eligibility for child services under the Children (Scotland) Act 1995. The Bill currently compels Scottish local authorities to undertake age assessments at the direction of the Home Office, or else refer children to National Age Assessment Boards (“NAABs”). It allows the Home Office to set new standards against which age assessments are to be conducted, which seems likely to overwrite the common law standards

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<sup>7</sup> <https://www.rapecrisisscotland.org.uk/news/news/the-rape-crisis-movement-in-scotland-stands-in-opposition-to-the-nationality-and-borders-b/>

applicable in Scotland, supported by Scottish government Practice Guidance.<sup>8</sup> It also introduces the use of deeply invasive, unethical and inaccurate medical age assessments.

12. It cannot be overstated how damaging an age assessment can be for a young person. It is a questioning of their very identity. The common law standards and the Scottish Government's practice guidance have carefully established principles and practice borne out of 20 years of case-law. Based on our experience, we believe that these changes in the Bill will increase the use of age assessments for purely immigration purposes. Indeed, the use of scientific methods for age assessment may be in violation of children and young people's rights under the UNCRC<sup>9</sup> and the ECHR. We would suggest that the Committee considers the consequences of this, particularly with the imminent incorporation of the UNCRC into Scots law.
13. The provisions relating to **human trafficking and exploitation** require serious consideration by the Committee. As set out above, the Bill impacts on who is a survivor of human trafficking and how we protect them, as well as how or whether we prosecute the perpetrators. The provisions are serious enough to have provoked an intervention from four United Nations Special Rapporteurs ("SRs") in the form of a joint statement of concern.<sup>10</sup> Their concerns overlap with those set out in the Opinion. The SRs noted that the provisions in the Bill place the effectiveness of ongoing anti-slavery efforts at risk particularly for vulnerable groups such as women, children, disabled people, those with LGBTI+ identity, and other migrants. The Bill risks contravening key international legal instruments and obligations.
14. This is even more concerning for Scotland, where the support and assistance system for survivors, as well as how we identify and prosecute victims, are expressed and contained within the Human Trafficking and Exploitation (Scotland) Act 2015. These provisions are further implemented within our distinct criminal justice system and following specific Scottish procedures around safeguarding and protection. This is why the legal Opinion notes that our Scottish ministers and the Crown Office and Procurator Fiscal Service should be concerned about such provisions, to the extent that consideration should be given to the establishment of a separate system to identify and protect victims of exploitation and human trafficking within Scotland.

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<sup>8</sup> <https://www.gov.scot/publications/age-assessment-practice-guidance-scotland-good-practice-guidance-support-social/>

<sup>9</sup> A.L. (CRC/C/81/D/16/2017) and J.A.B. (CRC/C/81/D/22/2017), at <https://www.asylumlawdatabase.eu/en/content/committee-rights-child-spain%E2%80%99s-age-assessments-unaccompanied-minors-violation-convention>

<sup>10</sup> See footnote 2

What can the Committee do?

15. The Opinion and its cover note provide a clear-eyed assessment of how the constitutional set up works in the UK, and the powers of the Westminster Parliament in doing this. It also provides a summary of the so called “Sewell Convention” and Legislative Consent Memoranda (“LCM”). However, as Scotland seeks to implement core international human rights treaties by 2026 in its ambition to be a world leader in how we use devolved powers to protect human rights, this Bill directly threatens that commitment, especially if not challenged or mitigated. We note that an LCM has been lodged by the Scottish Ministers for the Scottish Parliament to consider, following the Welsh Senedd’s similar move in December 2021.<sup>11</sup> We welcome this step.
16. In our joint briefing with the SRC, we made the following calls and we would ask the Committee to recommend them:
- a. For full consideration to be given to the LCM lodged by Scottish Ministers, to recommend that the Scottish Parliament withhold consent to the Bill in those devolved areas set out.
  - b. To encourage the Scottish Ministers to maximise protections for victims of trafficking and exploitation who will be negatively affected by the Bill, by working with the Scottish anti-trafficking sector to make best use of their powers under section 9 (8) & (9) of the Human Trafficking and Exploitation (Scotland) Act 2015. As part of this, we urge for the most serious consideration to be given to instituting an independent Scottish identification responsibility, via regulations, so all presumed or confirmed trafficking and exploitation survivors in Scotland are identified, supported and assisted here, for the clear purpose of recovery from their abuses and ordeal.
  - c. To undertake a full review of flagship Scottish government strategies – including on New Scots Refugee Integration, the Ending Destitution Together and the Ending Homelessness Together policies, the Mental Health framework, and the Promise – with a view to taking action within devolved areas of competence to prevent and mitigate the harmful impacts of the Bill.
  - d. To work with Scottish public authorities to appreciate the impacts of the Bill on people in Scotland and to understand the impacts on rights duty bearers.
  - e. To ensure that future human rights legislation provides a clear commitment to upholding the rights of refugees and migrants in Scotland – together with other commitments to create specific Human Rights

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<sup>11</sup> <https://senedd.wales/media/pbvlwjy5/lcm-ld14719-e.pdf>

Provisions where no international treaty exists, such as, a right to a healthy environment and the rights of LGBTI+ people.

- f. To encourage parliamentarians to take a proactive interest in this Bill and its implications for their constituents and regions.

### Potential issues around the Afghan Citizen Resettlement Scheme

17. Our experience of the establishment and roll out of the Afghan Citizens Resettlement Scheme (ACRS) is limited, on the basis that it has been a fairly opaque and delayed process. However, we have significant and long-standing experience of working with Afghan citizens seeking international protection in the UK, and Afghan families seeking reunification both before and after the Taliban took power in August 2021.
18. ACRS launched on 6 January 2022, some five months after Afghanistan fell to the Taliban. It seeks to resettle more than 5,000 people in the first year and up to 20,000 “over the coming years”. The Home Office states that it will work with the United Nations High Commissioner for Refugees (UNHCR) to identify those they should help.<sup>12</sup>
19. There is no application process for the ACRS. We see this as a difficulty, but it is in common with the previous Vulnerable Persons Resettlement Scheme (VPRS) which operated in response to the Syrian civil war. In our view, if there is to be no application process, then there requires to be clear, accessible communication from the UK government which sets out how to access the ACRS in practice. Our legal service has already received significant numbers of enquiries from Afghan families, both in the UK, in Afghanistan and the broader region, about how to access the scheme and other routes to safety in the UK. As regards the scheme, at present, the best we can do is refer them to a Member of Parliament, a local UNHCR field office, or the Home Office helpline to call.<sup>13</sup> The Home Office advises that it will prioritise those who were evacuated to the UK in August and September 2021, those who are identified by the UNHCR as being suitable, and a referral pathway through NGOs and agencies on the ground for highly vulnerable individuals.
20. We have been advised anecdotally by Afghan nationals in the UK and their families inside Afghanistan and neighbouring Pakistan, that it is still not clear how these referral pathways are accessed in practice.

<sup>12</sup> <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>, last accessed 3 February 2022

<sup>13</sup> <https://www.gov.uk/guidance/support-for-british-and-non-british-nationals-in-afghanistan>

21. The ACRS grants Indefinite Leave to Remain (ILR) to those considered suitable for the scheme. This means that when they arrive, they are not subject to time-limited immigration control and they have access to employment, healthcare and public funds. This is a positive step, and we welcome it. Indeed, it is our wish that all those granted Refugee Status, regardless of how they came to be in the UK, are provided with ILR.
22. It is difficult to speculate on potential issues once the ACRS arrivals have been resettled in Scotland. Based on our experience with the Afghan crisis thus far, as well as the Syrian VPRS, we would stress that accurate and accessible information regarding rights and entitlements, including refugee family reunion under the UK Immigration Rules, is essential. During 2017-2020, our Scottish Family Reunion Service<sup>14</sup> worked closely with the British Red Cross and Scottish local authorities to deliver outreach sessions and legal surgeries on refugee family reunion. Learning from those sessions and surgeries made clear two things:
- a. There was a substantial amount of misinformation in the communities regarding the likelihood and process of reuniting with family members still in conflict zones. Many families had been told that simply completing a UNHCR 'Family Links Information Sharing' form would allow reunification. This was not correct. When they discovered that this was not the case, they were understandably highly distressed. The UNHCR subsequently withdrew the form in October 2020 because of the high level of misinformation.<sup>15</sup>
  - b. That the Immigration Rules on refugee family reunion are complex and, sadly, limited. However, if they are distilled and clearly explained then families were at least able to gain a degree of certainty and they could manage their expectations. Many described a sense of relief at knowing whether they could assist family members or not; it was clear that ambiguity amplified existing trauma and was a barrier to integration and improved health and wellbeing.
23. It is logical to say that trauma-informed support and appropriate services are required for the resettled families in Scotland. Appropriate services, including mental health services, should be available to the broader community of New Scots from Afghanistan (indeed, all New Scots), whether still in the asylum process or not. As we have articulated above, it is foreseeable that soon those arriving in Scotland to seek international protection will face many barriers to safety by reason of the NABB.

<sup>14</sup> <https://www.justrightscotland.org.uk/what-we-do/migrant-refugee-rights/family-reunion/>

<sup>15</sup> <https://help.unhcr.org/uk/family-reunion/family-links-information-sharing-flis-form/>

## No Recourse to Public Funds

24. We provided evidence on No Recourse to Public Funds (“NRPF”) to the Scottish Parliament’s Local Government and Communities Committee on 9 October 2020.<sup>16</sup> Furthermore, both ourselves and our JustCitizens panel of individuals with lived experience of the immigration system, provided evidence to the Equalities and Human Rights Committee in December 2020 on the impact of COVID-19.<sup>17</sup> This briefing is therefore merely an update on the evidence previously provided.
25. We continue to firmly believe that NRPF is a harmful policy that is putting the lives of migrants across Scotland at risk. We understand that the ability of local government to deliver the support, justice and safety desperately needed by migrants subject to NRPF is a challenge. However, significant positive change can be made through the Scottish Government and Scottish public authorities pursuing every avenue possible to mitigate the impact of NRPF, and enabling local authorities to take action to protect some of their most isolated and marginalised residents.
26. **Barriers to accessing accommodation and financial support:** The most obvious direct impact of the NRPF condition is to restrict access to most mainstream forms of accommodation and financial support. For NRPF individuals and families who are not permitted to work (because they do not have lawful status) or who are not able to work (because of disability, health, caring responsibilities or for some other reason), the combination of an inability to work and a prohibition on accessing public benefits will likely result in destitution and homelessness, at a level of severity and for periods that will exceed the average experience of a non-migrant in similar circumstances living in Scotland.
27. **Increased risk of exploitation and harm for women with NRPF:** Destitution and homelessness, or the risk of destitution and homelessness, also increases the risk of exploitation and harm for women with NRPF. The NRPF condition can prevent women from leaving their abusers, particularly where they, and any children, depend on perpetrators of abuse and are unable to flee because of the lack of accessible options, including safe refuge spaces and finance. If a

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<sup>16</sup> JRS and Scottish Women’s Rights Centre (SWRC), Written Evidence: Supporting Individuals who have No Recourse to Public Funds, October 2020, <https://www.justrightscotland.org.uk/wp-content/uploads/2021/03/2020.10.09-JRS-SWRC-NRPF-Covid-Evidence-FINAL.pdf>

<sup>17</sup> JRS and SWRC, The Impact of the Covid-19 Pandemic on Equalities and Human Rights in Scotland, December 2020, <https://www.justrightscotland.org.uk/wp-content/uploads/2021/03/2020.12.24-Covid19-Equalities-JRS-Written-Evidence-FINAL.pdf> and JustCitizens, <https://www.justrightscotland.org.uk/wp-content/uploads/2021/03/2020.12.23-JustCitizens-Covid-19-and-Equalities.pdf>

woman who is NRPf is fleeing an abuser and she has children, they ought to be provided support by the local authority under Section 22 of the Children (Scotland) Act 1995. However, where a woman with NRPf is fleeing an abuser and she does not have children, then in practice there is little to no practical support she can be provided by statutory authorities. This is a clear gap in our experience. The use of Section 12 of the Social Work (Scotland) Act 1968 is very limited in this regard.

**28. Barriers to accessing legal advice:** Destitution and homelessness also constitute barriers to people accessing the legal advice people with NRPf require to change their situation. They may not have the time needed, or the help required, to research where to access advice or information when they are working to simply keep themselves alive and safe, day to day. Poor physical or mental health, exacerbated by destitution and homelessness, also represents a barrier in this regard. The cost of access to technology (including access to mobile data) can be prohibitive – a factor that has become more important as legal advice during Covid-19 has been increasingly offered primarily, or solely, digitally. Finally, some migrants may face a language barrier that either prevents them from accessing services or creates additional challenges if they (or an advising agency) require paying for interpretation/translation services.

**29. Knowledge and understanding around NRPf:** One of the most frequent issues upon which we are asked to advise through our second-tier advice work is whether a person is entitled to access to public funds. This question is not straight forward, particularly with our EEA national population post-Brexit, and with individuals experiencing exploitation or domestic abuse. There are two key themes we see in our work here:

a. It is not widely understood that “public funds” in this context has a designated, exhaustive meaning. “Public funds” is a list of benefits set out in section 115 of the Immigration and Asylum Act 1999 and at paragraph 6 of the Immigration Rules. If it is not on this list, then it is not a “public fund”. Therefore, individuals subject to NRPf – whether by a condition of their leave or because they are undocumented – can access funds and benefits not included on that list. In our experience, this is not widely understood by statutory and non-statutory professionals. We have seen individuals who have been wrongly advised that they cannot access legal aid, or educational funding, because they are NRPf. This is concerning and can lead to ‘gatekeeping’ by services based upon erroneous assumptions.

b. The question of whether someone is NRPf can be difficult to determine for some services due to the complexity of immigration law. For example,

whether an EEA national with pre-settled status can access public funds is still based upon them exercising 'Treaty Rights', despite the UK having left the European Union. Professionals have advised us they find this confusing. Delays in the Home Office issuing a 'Certificate of Application' to those who have made an application to the EUSS also causes disruption in this regard. Other examples we have seen relate to women who were dependent on the visa of an abuser, and they had recourse to public funds, but the act of leaving their abuser in fact breaks the terms of their visa and they can, technically, be deemed to be undocumented at that point despite carrying a valid Biometric Residence Permit (BRP). Where professionals find it challenging to navigate these systems, or know when to refer for specialise advice, then those they seek to help cannot access justice or safety.

30. **Covid-19:** The impact of Covid-19 has been felt significantly by migrant communities and in particular those with NRPF. Covid-19 has also exacerbated existing inequalities. For migrants, the impact of Covid-19 has been deeply felt through financial insecurity and loss of income, the unsafe housing of asylum seekers in hotels, food insecurity and the reality that migrants are significantly more likely to be in low-paid, frontline and key work (e.g., retail and healthcare) where there is a higher chance of Covid-19 exposure. It is also important to note, that these inequalities do not exist in isolation from one another and many in Scotland experience multiple and compound inequalities. The easing of Covid-19 restrictions has, based on our experience with our clients, not resulted in a significant improvement of the lives of those with NRPF. Indeed, for those asylum seekers who are currently appeal rights exhausted (ARE), we understand that they are to be evicted by the Home Office from their asylum accommodation in Glasgow, meaning that they will become destitute and street homeless.
31. COSLA have of course produced guidance on these points,<sup>18</sup> which we commend and welcome, but our experience continues to tell us that public authorities find this aspect of immigration law challenging.
32. There must be an overdue, urgent review of the NRPF condition, particularly after repeated evidence before the UK Parliament and the courts of the negative human rights impacts of the policy. We call for the NRPF policy to be repealed at the UK level.
33. Here in Scotland, the Committee can make recommendations to the Scottish Government to pursue every route possible within devolved powers to mitigate the impact of NRPF on migrants in Scotland. For example:

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<sup>18</sup> <http://www.migrationscotland.org.uk/migrants-rights-entitlements/introduction/1-1-how-use-guidance>

- a. Exploring avenues to create access to funding (potentially through devolved social security measures) for migrants who are at risk of destitution because of their NRPF status.
- b. Co-ordinate a cross-government response to identify and redress the harmful impact of NRPF on individuals and families and to rethink structural biases in our current processes to ensure better outcomes in future. A longer-term plan to support NRPF migrants is required which takes into consideration the longer term economic, social and health consequences that are likely to exist beyond the duration of the immediate Covid-19 crisis.
- c. Ensure early access to free, confidential legal advice for people with NRPF as an effective means of identifying routes out of destitution and homelessness, and of improving outcomes by reducing vulnerability to exploitation and abuse.
- d. Explore the effectiveness of using statutory guidance or primary legislation to achieve greater protection against harm and ensure access to a minimum standard of accommodation and support for people and families with NRPF.
- e. Provide long-term and sustainable funding to organisations, which are on the ground and provide frontline and potentially lifesaving services for migrants. It should also create clear and more formal routes for people with lived experience of NRPF in Scotland to have input to policy, decision making and accountability.

**END**

## Written briefing for Social Justice and Social Security Committee – February 2022

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### Background

- The British Red Cross welcomes the opportunity to give evidence to the committee in considering its workload for the coming year, verbally on 10 February and in this supplementary advance briefing.
- The British Red Cross has been a lifeline for people in crisis for over 150 years. More than 21,500 volunteers and 4,100 staff at the British Red Cross work together to help individuals and communities prepare for, cope with and recover from crisis. We operate in all four nations of the UK and across the world as part of the world's largest humanitarian network.
- In Scotland the Red Cross operates a range of services to help people in crisis: through refugee and asylum support, independent living services to help people home and recover from hospital, loneliness support and crisis response, helping people in the aftermath of emergencies.
- We are the largest independent provider of refugee and asylum support in the UK and in Scotland typically help over 4,000 people per year. Our support ranges from helping people to navigate the asylum support system, providing cash support and other essentials to people facing destitution, and ensuring that refugees can be reunited with their family members.

### Our work supporting refugees and people seeking asylum

We operate a range of services in Scotland, delivered through referrals and partnerships with the wider sector and statutory partners.

- Primarily located in Glasgow, we operate an **emergency casework** service including a front desk for people to access in emergencies (this has been suspended during the pandemic in line with public health guidelines). Support can range from small scale signposting to longer term casework support.
- Our **adult casework** team offers practical and emotional support, including accompanying, to enable people to access and engage with services including mental health, trauma and sexual violence support, as well as destitution legal and social work, supporting people through complex systems and processes.
- The **Family Reunion Integration Service (FRIS)** operates across the UK and provides crisis intervention and wider integration support to families arriving through family reunion; it is the only support of its kind available to people arriving through this process.
- In partnership with the Scottish Government, we are delivering a trial first year of a **Scottish Crisis Fund**, providing cash grants to vulnerable people at risk of destitution, including those who have no recourse to public funds (NRPF).
- We deliver a project targeted at mums, including support in registering births and accessing specialist services.
- Our youth groupwork programme delivers life skills workshops, orientation and ESOL to vulnerable people 16-25, including supporting them through age assessment processes.
- The short-term asylum response project prepares applicants for financial support and accommodation from the Home Office and appeals to tribunal if refused.

- Our International Family Tracing Service helps to put family members back in touch with each other and maintain family links across the world, for people who may have lost contact though fleeing from conflict and disaster.
- We provide a means tested support to assist refugee families travel to Scotland and access their family reunion rights.

#### **Our recommendations for the Committee's work programme:**

- Impacts of the UK Nationality and Borders Bill.
- The age assessment process in Scotland.
- Delivery of the Scottish Government's anti-destitution strategy and wider work to tackle destitution amongst refugees and people seeking asylum, including those with NRPF.
- Challenges presented from the dispersal of people seeking asylum into Scotland and the use of institutional accommodation, including follow up from the Glasgow hotel stabbing in 2020; the experience of women in the asylum system, including the mother and baby unit in Glasgow; and opportunities to expand dispersal, support and integration.
- Afghan resettlement programmes.
- The unique experiences of families reuniting in Scotland.

#### **Potential implications of the UK Nationality and Borders Bill (NBB)**

- The bill contains substantial changes to the UK's asylum system, from end-to-end. If the bill becomes law in its current form then it will reduce access to the UK's asylum system, incentivise increasingly dangerous journeys, further add to delays within the asylum system, and reduce the support that people seeking asylum receive.
- Potential criminalisation of those crossing the channel in small boats and the strengthening of rules that can deem asylum claims inadmissible to the asylum process increase the barriers that people seeking asylum will face even having their claim heard.
- The introduction of asylum accommodation centres, potentially based on the model use at Napier Barracks, is a move away from accommodating people in communities. The ongoing use of military sites is completely inappropriate for meeting the needs of people seeking asylum.
- The "one-stop-shop" approach being introduced, requiring people to provide evidence to support their asylum claim at the earliest opportunity, and any delays damaging credibility, will make the need for good quality and early legal advice even more important.
- The bill introduces powers for people with outstanding asylum claims to be removed from the UK, creating the ability for the UK Government to "offshore" the asylum process.
- For the first time, the rights and entitlements for people with positive asylum decisions will depend on how they entered the UK. Those who entered the UK irregularly, or who did not claim asylum at the earlier opportunity, risk being categorised as "group 2" refugees. Group 2 refugees will have restricted access to family reunion, have No Recourse to Public Funds, only get temporary leave for 2.5 years that has to be renewed, and have no automatic route to settlement. This

will have a significant negative impact on the integration prospects for group 2 refugees and will likely increase the demand on statutory and charity support systems.

- The New Plan for Immigration also proposed to use the powers in the Immigration Act 2016 to change the asylum support system. If used, these powers would remove the entitlement to asylum support from families with children who have been refused asylum, potentially leaving them destitute.
- **We recognise concerns in Scotland, particularly around impacts on age assessments and modern slavery and note the recent legislative consent memorandum from the Scottish Government, which the Committee may wish to consider, in line with our above concerns.**

### Age assessments

- The Red Cross supported the establishment of the Scottish guardianship service and our current youth project supports young people going through age dispute processes.
- The Nationality and Borders Bill makes significant changes to the age assessment process. It contains a power for the Home Office to compel local authorities to undertake an age assessment if it doubts the claimed age of the applicant. It also introduces a power for scientific processes, such as x-rays, to be used for the first time in the age assessment process. If a child does not consent to any scientific process being used to assess their age, this may be taken as negatively affecting the credibility of their asylum claim.
- **The Committee may wish to consider the process of age assessments in Scotland, guardianship and the consequence of changes to dispersal and the NBB on young people in the asylum system.**

### Destitution and No Recourse to Public Funds

- Working with the Destitute Asylum Seeker Service and the Refugee Survival Trust, we published a report – [How Will We Survive?](#) – into destitution in the asylum system, written by peer researchers with lived experience of the asylum system. It makes a series of recommendations on steps both the Scottish and UK governments can take to reduce the risk of destitution facing those in the asylum system.
- As mentioned, we currently deliver the Scottish Crisis Fund in partnership with the Scottish Government, reaching 600 people to provide cash grants to people who are at risk of destitution, including those with NRPF. Part of this project is to better capture data around those at risk of destitution including long term causes, barriers to services and the opportunity to develop preventative practice, and we believe there is the opportunity for a longer-term programme to create a stronger safety net in Scotland, linked to the forthcoming review of the Scottish Welfare Fund.
- **The Committee may wish to consider the findings from this report and take evidence from the peer researchers with lived experience of the asylum system.**
- **The Committee may wish to take evidence from the Red Cross and our partners on destitution support and the findings from the initial Scottish Crisis Fund, as well as insights from our casework supporting destitute people.**

### Housing, mental health and exacerbated vulnerabilities impact

- We recognise the impact of asylum accommodation, use of hotels, delays in asylum decisions in exacerbating pressure on people's mental health.
- Crucially, we have seen no learning from the Glasgow hotel stabbing in 2020 and continue to see significant suicide concerns in our caseload, as well as wider trends including age disputed young people living as adults within these situations.
- Our recent report [Far From A Home](#) is based on the experiences of over 100 people living in asylum accommodation, including military barracks in England, details the negative impact that living in full-board hostel or hotel accommodation for long periods can have on the health and wellbeing of people fleeing from conflict, violence or persecution. We have supported women in the mother and baby unit in Glasgow and note the trend towards institutional accommodation settings which fail to meet people's basic needs or standards, undermining people's resilience.
- In 2020, three in 10 people who applied for asylum in the UK were women and girls. At a time where the UK government is pursuing significant reform to the asylum system, British Red Cross and the VOICES Network – a collective of refugees and people seeking asylum – published research based on women's first-hand experiences of seeking asylum. In [We Want to Be Strong](#), women describe having to disclose rape and sexual assault in interviews conducted by men and experiences where they were interrogated and disbelieved by interviewers, despite policy guidance on gender-sensitive interview processes. Women in the report also detailed significant challenges in accessing safe and appropriate accommodation, financial support and healthcare. Often these issues were connected, for example having a temporary address and moving frequently affected women's ability to register with a GP and maintain any continuity of care. In some instances, women were left facing street homelessness, with one woman describing being forced to sleep in a bus shelter with her young children.
- We also recognise the pressure on local authorities from asylum dispersal and the decision by Glasgow City Council to suspend its involvement in the dispersal scheme. We recognise the additional demand for institutional accommodation in lieu of effective dispersal within the UK.
- Recently, people have been dispersed to new local authorities in Scotland with varying coordination between local authorities and the agencies supporting people in the asylum system.
- **The Committee may wish to consider the impact of institutional accommodation and what steps can be taken to minimise and regulate these settings in Scotland.**
- **It may also wish to consider an inquiry into the lessons learnt from the Glasgow hotel stabbing, the lack of specialist mental health support and how trauma informed approaches can be better implemented in Scotland.**
- **It may wish to look at the unique experiences of women in the asylum system in line with the findings from our report We Want to Be Strong and the mother and baby unit in Glasgow.**
- **It may wish to consider opportunities to reengage and improve asylum dispersal within Scotland and how local authorities can be supported in this process, as well as the implications of new hotels being stood up.**

### Potential issues around the proposed Afghan Citizen Resettlement Scheme

- The Red Cross's role in Afghan resettlement in Scotland is limited. There is a lot of uncertainty about the status people on the ACRS will receive, and the rights and entitlements that come with that. Unlike the Syrian resettlement scheme, the majority of people on the scheme will not be recognised as refugees. This includes the estimated 6,500 people who will be transferred onto the scheme having been evacuated from Afghanistan in August 2021. This means that people won't have access to refugee family reunion or travel documentation that a refugee would. It is welcome that people on the scheme will have indefinite leave to remain.
- **In considering the ACRS, the Committee may wish to look more broadly at the experience of Afghans in the asylum system, the impact on Afghans in the family reunion process and resettlement as part of wider wrap-around support in practice.**

### Family reunion

- Family reunion is a vital way to bring families separated by war and violence back together again. But British Red Cross' report [The Long Road to Reunion](#) shows that there are many risks people have to take during the Refugee Family Reunion application process.
- Once people arrive in the UK, there is no statutory support to help the unique group of reunited refugee families access basic services and integrate; those arriving in the UK on family reunion visas.
- Since 2019, the British Red Cross has run a service operating as part of a UK programme, based in Glasgow and in Scotland has helped 1,100 people over the past three years on family reunion visas – from 325 families – with integration, access to housing, education and health and accessing social security including the Scottish Welfare Fund.
- We will be publishing an insights report from the FRIS service in the coming weeks.
- **The Committee may wish to consider examining the role of the New Scots strategy and wider integration efforts in Scotland, particularly on the experience of reunited families who have settled in Scotland.**

For further information, please contact Kenneth Watt, Policy and Public Affairs Manager (Devolved Nations): [kennethwatt@redcross.org.uk](mailto:kennethwatt@redcross.org.uk).



Briefing for Social Justice and Social Security Committee, Scottish Parliament, Feb 2022

## About this briefing

*In addition to the specific questions and issues to be addressed by the Committee I felt it would be beneficial, given the Scottish Government's commitment to Human Rights to understand some of the ongoing issues regarding Human Rights faced by forced migrants (and to note where applicable where they also effect voluntary migrants) Most of the issues raised lie within the competency of the Scottish Government and current constitutional arrangements. Where they don't, this is made clear.*

*While Scotland's commitment and leadership in Human Rights is commendable there are still areas that warrant concern. For the purposes of this briefing I have concerned myself with issues which impact on asylum seekers and refugees and also those that at times impact on wider BAME community. They are broken down into several themed areas and start with one which looks at Human Rights issues raised by the pandemic and Government's response. These points are ones identified By Bridges Programmes and other actors in the Third Sector and Civil society who work with asylum seekers and Refugees, as we have been considering Human Rights as part of a response to the upcoming UNs Human Rights "Report Card" on the UK. This shouldn't be considered as a comprehensive or final list.*

## General

It is clear that many of the barriers to rights facing asylum seekers and refugees in the immigration system are due to the system itself being deeply flawed, and infringing upon people's dignity in the way that it operates. This will be made much worse by the proposals in the new Immigration and Nationality Bill which is of course a reserved matter. However, there is frustration that too often the Scottish Government use devolved competence as an excuse and do not do enough to mitigate the hostile immigration system. The Scottish Government need to use all of its powers to the fullest extent to protect the human rights of people in the immigration system. For example:

- No Recourse to Public Funds is a significant barrier to protecting the economic and social rights of many people. The Scottish Government must systematically find ways of providing the support and services that people need in a way that protects someone's dignity despite this restriction. Several Scottish social security benefits including possibly the Scottish Child Payment, are not available for people with No Recourse to Public Funds.
- Asylum seekers are excluded from free travel for under 22-year olds – this should be addressed.



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- Devolved services should not ask for proof of immigration status before you get access to the service, because this should not be a barrier to services. Even the fear that services may share details with the immigration system puts people off from accessing services that are vital to their health. This has recently been an issue identified in relation to low uptake of vaccines and boosters amongst the Asylum and Refugee communities.
- There is a significant lack of immigration legal advice in Scotland, particularly in rural areas and for complex or specialist cases.
- There needs to be greater accountability around the New Scots Strategy and sustained and proper resourcing of this and ensuring its impact is understood across Departments and not siloed.
- Glasgow City Council has withdrawn from being a dispersal city for refugees - this means that refugees are now being placed across different towns in Scotland with little access to the support and services that they need. This situation will continue as wider dispersal of Asylum seekers and Re-settled people continues. While we welcome the fact that all 32 Local Authorities wish to be involved the resourcing and assessment of appropriate services needs to be looked at.
- People in the asylum system are entitled to a certain number of hours of English as a Second Language (ESOL) lessons each week - English is essential for integration, citizenship and for work. The hours available are simply not enough -the Scottish Government could provide far more. Asylum seekers who use sign language do not have the same entitlement to hours of BSL lessons each week -this gap affects a small minority very significantly and should be addressed. The recent incorporation of the formally stand alone National ESOL strategy into Adult Learning means ESOL is not being given enough attention or importance in policy areas.
- Newly recognised refugees are at high risk of homelessness as asylum accommodation is withdrawn after a 28 day 'move on' period following granting of their status, despite significant hurdles such as finding employment and accessing any support they need within this time. Local authorities could do more to make sure their basic rights are protected after this time.
- The Scottish Government could do more to address the poor mental health of refugees especially LGBTi refugees. LGBTi refugees are often quite isolated within asylum accommodation and the system, and need particular support for their mental health.



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## **Human Rights shortfalls in specific areas as viewed from asylum seeker/refugee migrant perspectives:**

### **Human rights and COVID-19**

- Rules, service and policy changes during COVID-19 often did not fully consider minority or particular group needs.
- Lack of consultation with people with different cultural backgrounds, and with a lack of Halal and Kosher food for example being made available in food parcel deliveries;
- Lack of digital access was widely reported amongst the asylum and refugee population and data poverty impacting on how people could access services including education or to keep in touch with remote family. Lack of digital access during COVID-19 was a major barrier to healthcare, information, participation and social contact for many, particularly people living in poverty, particularly asylum seekers, often did not have access to Wi-Fi, particularly during the closure of local libraries.
- The Scottish Government's provision of digital devices during COVID-19 was welcomed by many – however, there was concern that people also needed training and support to use the devices which often fell to community organisations to do who struggled to cope with demand. In particular these community organisations then also need core costs built in and resourced to be sustainable over the longer-term
- Lack of COVID information accessible to those who are illiterate in English or another language;
- Higher percentage of Refugees on zero-hour contracts, who were not able to be part of the Government furlough scheme and so whole families became entirely dependent on charity support;
- Relying on accessing your GP through phone or digital, and you have to phone within certain times, is a barrier to healthcare for groups such as people from minority ethnic groups or those for whom English is not their first language;
- There should be an equality impacted approach to pandemic preparedness in the future. There is a concern that these COVID-era practices have not returned to pre-pandemic levels and may continue. There must be review of measures and service changes which have been put in place during COVID and justification for any that remain. There is also considerable concern about many services remaining digital by default, or primarily digital with offline options being harder to access and a second-rate option. Digital access to services works really well for some people – but for others, including many in



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marginalised groups, digital access is a barrier to the realisation of their human rights.

- Digital exclusion is symptomatic rather than causal – it stems from lack of digital literacy, language literacy, poverty, competencies around usage of technology and other barriers. Participants spoke about the need for a more systemic review of the digital capacity gap amongst minority ethnic communities and women within these communities in particular
- COVID has led to more social isolation, mental health issues, delayed treatment for physical health issues, educational delays, amongst many other impacts – across the whole society but these have been particularly keenly felt by the asylum and refugee communities, already vulnerable and isolated without family or wide social networks to draw on.
- During COVID-19, asylum seekers were moved from flats into hotels, often with very little notice. This increased their risk to COVID because they were housed alongside many others. It also impacted their physical and mental health, their participation in communities and their wellbeing and is widely recognised as a major contributing factor to the city centre attack in a hotel by an asylum seeker on others living there resulting in the loss of life. Those living in these hotels they had nowhere to cook and were required to eat the food provided with no choice, and given little money to cover other costs.

## Human Rights and Housing

- Accommodation provided on behalf of the UK Government to those seeking asylum is often poor standard and does not meet the specific needs of disabled people; pregnant women; families; victims of trafficking, rape or torture; or people with mental health conditions. People are often moved to new asylum accommodation with little notice and far from their communities, including children who then have to move schools.
- People from minority ethnic groups including forced migrants are more likely to live in multigenerational, overcrowded housing – Scotland needs to build more larger houses that work for these extended families.

## Human Rights and Education

- Migrants forced and voluntary have a lack of access to information on entitlement and support for further and higher education.



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- The residency requirements for college & university exclude many migrant young people, including for many migrant young people who have grown up in Scotland and yet find they cannot access education.
- There is a lack of support for pupils with low English language skills in school, leaving many children struggling to access learning.

## Human Rights and Religion and belief

- There needs to be consideration that children and young people should have the right to opt out of religious observance in Scottish schools rather than rely on parental consent - The Government needs to talk with faith groups when creating any guidance for schools related to faith.
- Lack of clarity around freedom to practise religious beliefs publicly or in workplace
- People experience difficulties accessing culturally appropriate food such as kosher and halal food in schools, hospitals and care homes, where it is often not available or understood to be important.

## Human Rights and Mental Health

- Experience of the immigration system, as well as experience of torture and trauma for some refugees, can severely impact their mental health. Mental health services need to meet migrants' needs, including providing rehabilitation services.
- Mental health detention is higher for people from ethnic minorities and people from deprived communities
- Lack of disaggregated data on people from ethnic minorities in mental health detention

## Human Rights and Healthcare

- The Immigration Health Surcharge is a barrier to many people's access to healthcare services, including many EU citizens who were forced into the immigration system after UK's withdrawal from the EU, even though they have lived here for many years.
- There is a lack of clarity and information around rights to healthcare for migrants that is leading to exclusion from GP registration.
- There is a lack of provision of translators in health services, which is driving people to call Out-Of-Hours or A&E to access translators.



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## Human Rights impacted by Racism

- It's time to accept that the rhetoric that Scotland is not as racist as England is not good enough and is not true. Scotland is seen as very friendly but we hide behind that and there is a lack of recognition of systemic racism in Scotland and by public authorities. In particular, we need to acknowledge racism faced by People of Colour, and recognise white privilege. We need far greater accountability on sustained action to address racism within Scotland.
- Racism in schools: We welcome the Scottish Government work group on race in the curriculum but the remit of that group is quite narrow. There is rhetoric and chat but not actual action to address the severity of the issue. Young people are being turned off of education because of racism. Councils in Scotland often don't recognise racism in schools, it is called bullying -they need to recognise there is an issue of racism, they need to record racist incidents, and embed steps to be anti-racist. Antiracism needs to also be built into school curriculum and school policies from Day One of a student/pupil's experience.
- Racial prejudice with over 35% people believing that Scotland will lose its identity if more Black, Asian and East European people come to live here.
- The police provide data on hate crime to minority ethnic and religious community organisations far too late for them to be able to respond effectively - this data needs to be better, and shared much more quickly to better protect people.
- Hate crime against People of Colour and minority ethnic people is persistent and has recently particularly increased against Asian population
- There is a significant lack of reliable, published and disaggregated national and services data on the needs, numbers and experiences of people from different groups across a variety of public services. There needs to be data collected in Scotland that properly reflects small minorities and communities of interest within public service areas/local authorities, and not only counts the majority, larger minorities or communities of place. In particular there is a significant lack of data around the experiences of People of Colour and people from minority ethnic communities in Scotland – there is a lack of cultural competency when it comes to research and data gathering on ethnic minorities in Scotland and some groups not even recognised in data at all. This data-gap only feeds into systemic inequalities and the lack of visibility of some ethnic minority groups, including from Asia and South East Asia. For example, hospitalisations during COVID were not disaggregated by minority ethnic groups at all. How can you make public policy if you don't know this? One of the implications of the lack of data is the tendency to perceive that racism in Scotland is not as bad as elsewhere, but without the data we have no way of knowing if this is true.



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- If census 2022 is mainly online, then there will be less data on marginalised and digitally excluded groups, particularly people for whom English is not their first language.

## **Human Rights and Justice and policing**

- Victims of trafficking and criminal exploitation, including of children, and particularly experienced by many asylum seekers are far too often dealt with within criminal justice system and detained and prosecuted for crimes, rather than given the support that they need.

## **Human Rights and Work**

- Asylum seekers are denied the right to work – this is an affront to their dignity, impacts their health, wellbeing and integration, and is a loss of potential skills and workforce to the UK.
- Too many migrants forced and voluntary, are in low paid, insecure jobs with poor conditions.
- People from minority ethnic groups experience discrimination in recruitment as well as occupational segregation and disproportionately unfavourable working conditions. Muslims are paid less than other groups, for example the pay gap between Muslims and those of no religion is as high as 19.3%. People from minority ethnic groups are under-represented in Modern Apprenticeships - Children from minority ethnic backgrounds are not selected so the opportunities are there, and students put the work in but they are not selected.
- Historically minority ethnic students always perform better than white students but when it comes to employment then is the reverse.
- Race needs to be part of public sector recruitment policies.

## **Media – Harassment, Abuse, Racism**

- Media reporting is very bias against Muslims and this needs to be addressed because it increases hate crime, discrimination and harassment. This reporting also impacts beyond Muslims to others such as the Sikh community.
- The public do not understand migration and migrant rights, and the restrictions and reality of their lives and their stories – if they did, then perception of migrants could be changed and improved. Government and politicians need to take responsibility for educating and raising awareness of



Briefing for Social Justice and Social Security Committee, Scottish Parliament, Feb 2022

people about migrants and all of the benefits that they bring to the UK and the importance of providing safety to refugees.

### **The following issues while of huge concern are reserved matters:**

- There should be a time limit on immigration detention
- The Nationality and Borders Bill is in direct contravention to the Refugees Convention and will result in significant infringements of people's human rights.
- There should be a right to family reunion, so that families can live together.
- In 2018, some children were still being held in Dungavel Detention Centre near Glasgow – has this been addressed and who has final say Edinburgh or Westminster?
- The level of asylum support is far too low, with people expected to live below the poverty line.
- Difficulties for LGBT+ people getting refugee status because of the types of evidence required by the UK immigration system.
- Asylum seekers should be given right to work

### **Additional issues which if addressed would mean improvements across protected groups including asylum seekers and refugees**

- Funding in Scotland does not follow human rights priorities - human rights-based budgeting not just EIA budgeting needs to be adopted by the Scottish Government and other public authorities.
- UK Government watering down of rights accountability through the Judicial Review & Courts Bill
- There is concern about the planned reform of the Human Rights Act and the need to maintain avenues and strength of government accountability on rights, and raise awareness of how the HRA protects our fundamental rights. There is increasing divergence around approaches to human rights at UK and Scottish levels – there must not be any regression on rights protections in law, but only strengthening.
- ICESCR incorporation – participants spoke about the need to benchmark and identify the minimum core of economic and social rights entitlements for survival, including housing, food, health, education, basic income.



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- Public services in Scotland are not informed by an intersectional approach that recognises that where people face multiple barriers to their rights, there needs to be particular attention to addressing these barriers in service and policy design.
- All Scottish public authorities need to adopt an inclusive communications approach to all of their services. The lack of support for communication needs excludes people from vital services and from participation and public life. Too many public bodies and organisations do not have the resource to make what they do completely accessible. Inclusive communications are really important for people to understand their rights and know how to access their rights and therefore should be an integral part of development of the enhanced human rights framework in Scotland.
- Resourcing for civil society and community organisations is important for human rights protection – their crucial role was recognised during COVID-19 but resourcing is too often short-term, patchy, based on damaging competitive tendering and without core costs being met. There is a postcode lottery of some areas being eligible for more resources than others, and sometimes specialist or community groups for particular minority groups miss out on funding to larger mainstream services. There is considerable emotional/financial fatigue in the 3rd sector due to COVID-19 and there having to step in and cover gaps in public services.
- Sustainable and adequate resourcing for Scotland's National Action Plan on Human Rights (SNA) including support for an independent Secretariat, SNAP Actions, and an independent SNAP Leadership Panel. SNAP can be used to ensure that the rights incorporated with a Human Rights Bill are implemented in practice and make a real difference in people's lives.

## What is welcomed

- Right to vote in Scottish Parliament and local elections extended to all those with 'leave to remain' in the UK and to short-term prisoners
- Open access to HIV treatment and care regardless of immigration status

**Maggie Lennon**  
 Director  
 Bridges Programmes  
 January 2022

## **People seeking asylum and refuge: social connections and current challenges faced by the community, [Maryhill Integration Network](#)**

### **Social Justice and Social Security Committee**

#### **Summary**

Maryhill Integration Network recognises the need for urgent changes that should be carried out by both the Scottish Government and the UK Government. We recognise the contribution of the people who are seeking asylum and refuge within our communities. We encourage the Social Justice and Social Security Committee to recognise the highlighted challenges faced by the asylum-seeking and refugee community. We ask the committee to recognise our recommendations, and the need for a system in Scotland based on human rights, fairness and justice.

#### **Introduction and recent development**

[Maryhill Integration Network](#) (MIN) was established to bring asylum seekers, refugees, migrants and the settled inhabitants of Glasgow together. Since 2001, we have been developing projects which support positive social change by investing in communities and providing a welcoming - and much-needed - safe and inclusive space with opportunities for collaboration and connection.

Our main services include a user-led weekly programme of activities which runs alongside regular advice clinics, learning opportunities, community events and outreach partnership projects coordinated across the city. MIN supports more than 600 individuals throughout the years alongside the mentioned programme of activities.

We are currently running online and in-person group and outreach activities, including our popular Joyous Choir, our influential MIN Voices asylum advocacy group and our Family Nest group (which was initially started to integrate resettled Syrians in the area). We continue to develop activities and support mechanisms as needed by our service users. After playing a significant role in successfully campaigning for the right to vote for refugees in 2020, our MIN Voices group have in 2021 and 2022 continued to lead the campaign for the right to work for asylum seekers - having also helped establish the Cross Party Group on Migration in Scottish Parliament, of which it sits as group secretariat.

#### **Key challenges for asylum seekers and refugees**

Life for people who are in the asylum process and people who are refugees is not easy. The pandemic highlighted and compounded challenges. These include:

## 1. Inhumane hotel accommodation

**Many people** were evicted from their accommodation at the start of the pandemic and were moved into hotel accommodation. Some of our members were moved into the Glasgow Mother and Baby Unit. Asylum support was stopped for these individuals and they were made to rely on third sector organisations further, this included digital, social and information support as well as provision of essentials such as appropriate food and toiletries. Three members of the asylum seeking community were lost at this time, while much wider physical and mental suffering was caused by these policies. .

## 2. Right to Work

Not being able to work has been identified as a key barrier for social inclusion, independence for asylum seekers and for integration by MIN service users. People who are ready to contribute to society and to the economy are currently banned from working. You can hear directly from our experts-by-experience MIN Voices members on this issue via their recently produced [Right to Work - Voices of the People animation](#)

## 3. Food Insecurity and Asylum Support

We have been providing food parcels and vouchers for the vulnerable during the pandemic. However, it has become clear that support is needed on an ongoing basis. Limited asylum support and other relevant issues such as restricted access to bank accounts mean that people seeking asylum are made to rely heavily on under-resourced charities to survive.

## 4. Digital Inclusion

Many of our service users rely on wifi from community centres, libraries and educational places for essential social wellbeing as well as for applicable volunteering and skills development opportunities. Closure of public facilities, many of which have not reopened since the pandemic has amplified this issue of isolation for individuals. MIN and other charities helped to plug this gap at the start of the pandemic by providing SIM cards and devices when donations were made available.

## 5. Nationality and Borders Bill

We are greatly concerned by the implications of the new Nationality and Borders Bill and - alongside with many other civil society organisations and campaigners - see it as undermining the seventy years in which the refugee convention has helped to support and protect people fleeing dangerous situations across the world. Our main concern relates to access to safe routes for asylum seekers, criminalisation of movement and offshore process centres. The bill will push more and more people into unsafe situations

at sea and lead to more loss of innocent lives. Generally speaking, the Bill will compound issues already highlighted with regards to integration of refugees into our community, and undermine the New Scots integration-from-day-one principle spearheaded by the Scottish Government.

## **6. Glasgow as a dispersal city**

We are very concerned to hear about Glasgow City Council withdrawing from the UK government's dispersal scheme. This will have a huge impact on the overall support mechanism for asylum seekers and may result in people being accommodated ad-hoc in unsuitable spaces in other regions, with poor access to community support.

### **Recommendations**

We propose the following recommendations to the Social Justice and Social Security Committee:

#### **1. Immediate end to hotel accommodation**

We recognise the importance of people being housed in local communities and we recommend immediate end to hotel accommodation across Scotland and the UK more widely. For social inclusion and integration, we value the importance of social connection and housing people in a safe and dignified way. We ask for immediate clarification with the use of hotel accommodation across Scotland.

We recommend using community housing and making connections with housing associations and community groups in order to ensure people receive information about their new communities when they are housed. Housing officers should also receive training and guidance on equalities and understanding the needs and experiences of people seeking asylum.

#### **2. Asylum Support and Food Insecurity**

Provision of £5.66p per day is not enough for people living in a city the size of Glasgow, where a bus ticket can be up to £4.70. Asylum support leads people to live in poverty, impacts on mental as well as physical health and often leads to food insecurity and reliance on food banks. Food banks impact on people's dignity and often do not provide culturally appropriate or generally nutritious foods. We do not see food banks as a long-term solution to the issue of poverty and food insecurity, and would recommend increasing asylum support payments, especially for families.

#### **3. Digital Inclusion**

The Connecting Scotland initiative has helped us connect 70 service users to the internet. The two year data package has been great and we hope that it may be extended after the two years have ended. Some feedback we have received regarding the chromebooks supplied is that they are not very suitable for studying as they have limited functionality and storage space too. In order to assist asylum seekers to progress in college and education we would recommend providing devices which can be better equipped for use in an academic setting.

4. **Right to Work** asylum seekers are banned from working which causes stress and hardship for individuals and families by having to rely on asylum support, sometimes for years on end. By lifting the ban, asylum seekers would be able to support themselves and contribute to the economy. Feedback from our service users shows that they do not want to live on handouts. Many of our service users have diverse professional backgrounds that would support in plugging critical skills gaps in the labour market - for example, by working as teachers, IT engineers, social workers, healthcare professionals, designers or architects.

#### 5. **No Recourse to Public Fund**

We encourage the committee to consider the '[Ending Destitution Together](#)' strategy and the '[How Will I Survive](#)' publications.

#### 6. **Nationality and Borders bill**

We would recommend the UK's contribution to global refugee resettlement be improved by prioritising human rights, dignity and fairness, especially in relation to family reunion. More consideration should also be given to resettlement schemes and placing people within communities who have the resources and connections to ensure that people can integrate and become part of their new communities more easily. Funders should seek to support organisations already doing good work in the area of refugee resettlement, share good practice, and fund them to support other new organisations wishing to grow their own localised responses to welcoming new communities

#### 7. **Education**

Currently, people who are seeking asylum cannot go to university and are limited to access to a restrictive group of part-time college courses. We have many members whose children are in fifth and sixth year of high school who cannot pursue higher or further education despite being suitable or quality candidates.

We urgently recommend the committee further discusses this issue so that asylum seekers can access higher education without being considered as international

students. We also recommend the committee urgently considers increasing funding to organisations to provide more ESOL classes.

### **8. Well-being**

We are deeply concerned for the lack of funding and support for asylum seekers and refugees who are struggling with isolation and mental health.

#### **References:**

[‘How Will I Survive’](#) publication

[MIN 20 Year Anniversary Report](#) via MIN website

<https://www.bbc.co.uk/news/uk-scotland-glasgow-west-57448267>

## Response from COSLA

### **Do you support the Scottish Government's LCM, to withhold consent on two clauses of the Nationality and Borders Bill that it considers are devolved?**

COSLA has not taken a view on the Scottish Government's LCM or on whether consent should be withheld, and our assessment of the potential impact of the clauses is not in relation to the source of the legislation. We do, however, have concerns relating to the particular clauses referred to in the Scottish Government's LCM, which we have conveyed to the Home Office in its consultations and to UK Parliamentarians directly.

Our broad concern is that decisions that should rightfully be made by professionals at a local level will be taken out of their hands. We are also concerned that council staff will be put in a position where they have to consider someone's immigration status in deciding whether to offer support, or be compelled to provide evidence that results in immigration enforcement action being taken. Council staff should not be involved in that, and should not be forced to weigh enforcement as a potential outcome of their actions. That will damage the relationship with the individuals and communities that they serve, disturb professional decision-making processes, and could lead to vulnerable groups not engaging with councils and not accessing the support that they require.

### **What is your experience of undertaking age assessments, how might this clause impact on young asylum seekers in Scotland, and do you agree with the Scottish Government that consent should be withheld on this clause?**

COSLA has not taken a view on the Scottish Government's LCM or on whether consent should be withheld.

COSLA is not directly involved in age assessment processes. However, we have concerns about the impact changes to the age assessment process could have on the young people and local authorities involved. Age assessments can be difficult processes for all involved and must be done in a child-centred and trauma-informed way. Any changes must be developed in partnership with local authorities and devolved governments to ensure that they improve experiences and processes and do not conflict with devolved child protection legislation. The provisions outlined in the Bill have not been developed in this manner.

The provisions in this Bill would also remove the discretion of local authority professionals on when to undertake an age assessment. Those decisions should remain with the professional officers who are best placed to make informed decisions about whether an age assessment is required. Furthermore, the Bill mandates that the outcome of age assessments be shared with the Home Office. It is not appropriate to mandate child protection officials to provide evidence that may be used in immigration enforcement action; that decision should remain discretionary. Child protection decisions should be undertaken purely with the child's welfare in mind, without officers having to consider how they may influence Home Office practice.

In addition, we are concerned that the use of medical methods to determine age is being introduced without the required level of discussion and debate. We note objections that have been raised regarding the use of invasive and inaccurate medical age assessments, and would argue that much more detailed consideration of age assessment processes and practice is required, involving expert input from a variety of stakeholders, including Local Government, before legislation is brought forward.

**What is your experience of assessing and providing support to victims of human trafficking, how might this Clause impact on potential victims of trafficking, and do you agree with the Scottish Government that consent should be withheld on this clause?**

COSLA has not taken a view on the Scottish Government's LCM or on whether consent should be withheld.

COSLA is not directly involved in assessing or providing support to victims of human trafficking. However, our broad view is that councils should be properly resourced to support trafficking victims, that decisions on support should be taken at the local level, and that legislation (regardless of where it is passed) should reflect this. Councils take their duties towards trafficking victims incredibly seriously. Nevertheless, despite significantly increasing their activity in this area, being key partners in implementing the Scottish Government's Trafficking Strategy, and undertaking new duties, such as the Duty to Notify, councils have not received adequate funding to support the crucial role that they play in this regard.

We are also of the view that the National Referral Mechanism (NRM) has flaws which need to be addressed, not least the long delays in decision making, and believe that decisions taken through the NRM are better, more efficient and more effective if they are taken at a local level. As such, we fully support the pilot currently taking place in Glasgow City Council, facilitated by the Home Office, Scottish Government and COSLA, looking at the devolution of NRM decisions in child trafficking cases to the local level. We believe that such initiatives should be the focus of our efforts, rather than legislation which takes decision making out of the hands of those who are best placed to support trafficking victims.

Aside from the specific focus of the questions above, COSLA continues to follow the Nationality and Borders Bill's passage through the Lords closely. The Bill is highly complex with a range of concerning implications for vulnerable migrants. On Thursday 3 February, COSLA hosted a roundtable event, chaired by our Community Wellbeing Spokesperson, which sought to discuss the particular impacts of the Bill for women, children and young people, and identify means of mitigating its impact and ensuring the support needs of vulnerable women, children and young people affected by gender-based violence continue to be met going forward. We would be happy to keep the committee informed as to our ongoing work in this area, as we continue to explore the implications of the Bill for Scotland's councils and their community planning partners.

## **Response from Glasgow Health and Social Care Partnership**

### **Do you support the Scottish Government's LCM, to withhold consent on two clauses of the Nationality and Borders Bill that it considers are devolved?**

Clause 49 allows local authorities to refer an age assessment to person designated by the Secretary of State (this will be to the new National Age Assessment Board) but the resulting age assessment would be binding on the local authorities when exercising their devolved functions. The Scottish Government's view is that the Bill would allow the Home Office to choose to deploy the NAAB in a more interventionist manner which would significantly alter age assessment processes (and likely outcomes) in Scotland.

- We would support the Scottish Government's position to withhold consent on two clauses. The current position is that the decision is made by the LA, and the professional who may know the young person best, and that this decision is made on the balance of probability, with a trauma informed approach to the assessment. The NABB could remove the decision making from the LA, with no right of appeal or dissent, and the regulations and governance as to how the age assessment is undertaken is unclear and does not take into account the expertise and robust processes that we currently have and follow in Glasgow/ Scotland. This also raises potential implications regarding information sharing as the NNAB may be able to instruct a LA to share information that we may have gathered for other reasons. It would be a much preferable situation for the HO to directly provide additional funding to LA to deliver the age assessments give the current demand this places on the LA.

### **What is your experience of undertaking age assessments, how might this clause impact on young asylum seekers in Scotland, and do you agree with the Scottish Government that consent should be withheld on this clause?**

Clause 58 sets out that where a potential victim of human trafficking provides the information required by clause 57 after a specified date, this late provision of the information is to be considered as damaging the credibility of that person, unless there are good reasons. The Scottish Government sets out that the making of decisions as to who is a victim of human trafficking/modern slavery for the "purposes of providing support" is considered to be a devolved matter. It states that the clause is drafted in a manner that suggests the requirements set out would have to be followed for decisions about victim status and support.

- S58 2 and 3 says "In determining whether to believe a statement made by or on behalf of the person, the competent authority must take account, as damaging the person's credibility, of the late provision of the relevant status information, unless there are good reasons why the information was provided late. (3) For the purposes of this section, relevant status information is provided "late" by the person if it is provided on or after the date specified in the slavery or trafficking information notice." The LA would agree that from a trauma informed perspective on trafficking this is wholly unacceptable.

**What is your experience of assessing and providing support to victims of human trafficking, how might this Clause impact on potential victims of trafficking, and do you agree with the Scottish Government that consent should be withheld on this clause?**

- Glasgow is currently the only site for the Home Office's Devolved Decision Making pilot, which seeks to identify children and young people at risk of CSE and trafficking. The LA also have significant expertise in the broader social assessment to try to offer a relatively reliable age assessment but this is a complex area
- Our experience in working with children and young people exposed to trauma and abuse, disclosures often are only made within an established relationship of trust and sense of safety, and may come later once a place of physical safety and stability is established
- There is a real risk of further victimising and re-traumatising trafficking victims by this exclusion to support and disclosing their abuse and trauma with the necessary trauma informed practice and subsequent therapeutic support.
- Given the greater percentage of women in this category, this may be considered as a discriminatory policy on gender as well as other aspects.