



JRS Briefing for the Equality and Social Justice Committee, Senedd

Violence against Women, Domestic Abuse and Sexual Violence: Migrant Women

6 June 2022

About JustRight Scotland

JustRight Scotland is a registered charity established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality.

We work across a number of policy areas, including: women's legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice. Whilst our work is specific to Scotland, we appreciate that our areas of focus cover both devolved and reserved legislation and as such we endeavour to work across both the Scottish and UK Parliament where appropriate.

We work with clients directly providing legal advice and representation. We also run outreach legal surgeries and helplines, deliver rights information, training, and legal education, and contribute to research, policy and influencing work.

Scottish Context/Background

The Scottish Government has made a commitment to the protection and advancement of human rights in Scotland and has set out an ambition to be a world leader in using its devolved powers to protect human rights and to implement core international human rights treaties by 2026 including the Committee on the Elimination of Discrimination against Women (CEDAW).¹

¹ <https://www.gov.scot/news/next-step-towards-scottish-human-rights-bill/>

The Scottish Government underpins its commitment to the promotion and advancement of human rights through cornerstone national strategies such as the **Equally Safe** strategy, originally published in 2014, to tackle and prevent all forms of violence against women and girls which was produced in partnership with government, local authorities, police, health, and key violence against women sector organisations². A further key national strategy is **New Scots Refugee Integration** strategy which has also been in place since 2014 and commits to welcoming, supporting and integrating refugees and asylum seekers within our communities from day one³. The Scottish Government also has an action plan in relation to **Ending Homelessness**⁴.

There are furthermore frameworks and strategies in place around **Mental Health**⁵, the best interests of the child through **Getting it Right for Every Child (GIRFEC)**⁶ and a **Trauma Informed Practice Toolkit**⁷ to support the implementation of good practice when working with migrant survivors of gender based violence.

Constitutional Framework

The ability to fully implement the afore-mentioned commitments, however, in relation to individuals subject to immigration control can be constrained by the operation of our constitutional framework which is a “reserved powers” model of devolution rather than a federal model.

JustRight Scotland and the Scottish Refugee Council recently obtained a legal opinion in relation to the operation of the Nationality and Borders Act in Scotland. As part of this opinion, a cover note was prepared explaining the system of devolution⁸.

In summary, immigration policy is reserved to the UK Government and thus the immigration framework and policies apply in Scotland as they do in the rest of the UK.

All other areas in relation to the protection and integration needs of a forced migrant who has survived gender based violence in Scotland are devolved. This includes policing and justice, victim support and protection, local authority support, health, housing, education, and access to legal assistance.

The operation of immigration law and devolved areas of policy has become increasingly blurred and complex with the advent of the UK Government policy around a hostile immigration climate. This is because, measures in pursuance of this

² <https://www.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

³ <https://www.gov.scot/policies/refugees-and-asylum-seekers/new-scots/>

⁴ <https://www.gov.scot/publications/ending-homelessness-together-updated-action-plan-october-2020/pages/1/>

⁵ <https://www.gov.scot/publications/mental-health-strategy-2017-2027/pages/5/>

⁶ <https://www.gov.scot/policies/girfec/>

⁷ <https://www.gov.scot/publications/trauma-informed-practice-toolkit-scotland/pages/1/>

⁸ <https://www.justrightscotland.org.uk/wp-content/uploads/2021/11/Legal-Opinion-Cover-Note-FINAL.pdf>

aim reach into devolved areas around policing and access to support and limit the implementation of the Scottish Government's commitments in this area.

This is resulting in increasing tensions and uncertainty around the parameters in which the Scottish Government, public authorities and civil society can operate in order to mitigate the impacts and meet objectives under our national strategies.

No Recourse to Public Funds

A key example of where this tension manifests itself is in the area of No Recourse to Public Funds (NRPF).

NRPF is a condition which restricts access to most mainstream benefits, local authority housing or homelessness services and is affecting greater numbers of migrants due to leaving the EU and other changes to immigration law. This condition is applicable in Scotland and has limited the Scottish Government and local governments from responding in the way they would like to situations of destitution and homelessness amongst migrants and preventing the clear risks of gender-based violence which exist in such situations.

An opinion was secured from a senior advocate, Janys Scott QC by the British Red Cross in November 2016 in the area of NRPF and pregnant migrant women⁹. This highlighted the lack of awareness regarding the implementation of the rules in a national and local context and particularly where accommodation and/or support must be provided regardless of any NRPF condition due to existing duties under national legislation around the protection of children and vulnerable adults and the need to undertake human rights assessments.

Following this opinion and other research and policy reports raising concerns in this area, the Equalities and Human Rights Committee of the Scottish Parliament took evidence in this area and published a report in 2017 called "*Hidden Lives – New Beginnings: Destitution, asylum and insecure immigration status in Scotland*"¹⁰.

Following this report, we worked with COSLA Strategic Migration Partnership and the NRPF network on local authority and national guidance and awareness raising on the rights and entitlements of migrants in Scotland. This work is hosted on the Migration Scotland website¹¹ and we will work on updating this guidance later this year.

We also worked with COSLA and the Scottish Government to develop guidance around a COVID-19 response to migrants with NRPF¹². A COVID-19 recovery

⁹ https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/red_cross_.pdf

¹⁰ <https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2017/5/22/Hidden-Lives---New-Beginnings--Destitution--asylum-and-insecure-immigration-status-in-Scotland>

¹¹ <https://www.migrationscotland.org.uk/our-priorities/current-work/rights-and-entitlements>

¹² https://www.migrationscotland.org.uk/uploads/Guidance%20Covid%2019%20Supporting%20People%20with%20NRPF%20200420%20%28002%29_0.pdf

framework is being published this week by COSLA and we can forward this to the committee when we have this.

Furthermore, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) came together in 2021 to make a clear commitment to mitigating these risks to the extent they are able to do so. In March 2021, they published a new strategy **Ending Destitution Together**¹³. This is the first strategy of its kind and sets out an ambitious work plan over three years to assist people with NRPF centring around three action areas; i) access to essential needs (food, shelter, healthcare), ii) specialist information, advice and advocacy (to navigate systems to access rights); and iii) inclusion to enable people to find pathways out of destitution, wherever they are in Scotland.

In addition to the COSLA role of providing guidance and training in this area, they have been working with Women's Aid in Scotland on developing proposals with a focus on housing outcomes for women and children experiencing domestic abuse in this area.

Sharing of Information/Firewalls

We also know that a further barrier in seeking assistance is the fear of information being shared with immigration officials. Immigration legislation and practice can impose requirements in this area. However, these requirements may conflict with protections contained within our human rights and GDPR legislation. Individualised assessments are required and in some cases, it is never the right move to share data. There is benefit in raising awareness around the requirements in this area and for organisations and public authorities to make clear statements in this regard. A good example from the Scottish context comes from NHS Scotland which makes it clear that NHS Scotland does not pass patient details to the Home Office for the purpose of immigration enforcement.¹⁴

Nationality and Borders Act 2022

The Nationality and Borders Act 2022¹⁵ is another example of where the tension between immigration law and devolved areas of competence in Scotland can be evidenced. The provisions of this legislation have been widely condemned at an international and national level as being against international and national legal standards in human rights and humanitarian law. The UNHCR has called the provisions a "*recipe for mental and physical ill health, social and economic marginalisation and exploitation*". Furthermore, as forced migrants are pushed further to the margins of our society, the risks of gender based violence increase and the legislation creates further categories of migrants that will have no recourse to public funds. As the UNHRC has said, the "*economic and social costs of their immiseration will ultimately be borne by local authorities, communities, and the*

¹³ <https://www.gov.scot/publications/ending-destitution-together/>

¹⁴ <https://www.nhsinform.scot/care-support-and-rights/health-rights/access/healthcare-for-refugees-and-asylum-seekers>

¹⁵ <https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted>

National Health Service”¹⁶ and thus on areas of devolved competency within Scotland.

In response, Scottish and local government actors alongside civil society mobilised to increase awareness of this impact and to ensure a co-ordinated response. As stated above, a legal opinion was obtained by JustRight Scotland and Scottish Refugee Council around the impacts of this legislation in Scotland and steps that can be taken to mitigate its harms¹⁷ together with a joint briefing calling on various actors within Scotland to take concrete action in response¹⁸. Civil society put out a statement noting that the provisions of the bill are not being implemented “*in our name*” and calling on Scotland to act to the maximum extent of our devolved powers to counteract the impact of its provisions¹⁹.

On 22 February 2022, the Scottish Parliament opposed the Nationality and Borders bill as a whole and refused to give legislative consent²⁰. The Welsh Government similarly refused legislative consent²¹. The UK Government, has, however stated that legislative consent was not required underscoring the limitations of the devolved system and strains on the constitutional settlement.

Mitigating the Impacts in Scotland

As can be seen by these examples, the Scottish response is increasingly about raising awareness and understanding of the parameters government and civil society can operate within in order to mitigate the worst impacts of the UK immigration system.

A particular example is the Women, Asylum, Immigrants & Refugee (WAIR) Working Group of the Glasgow Violence Against Women Partnership (GVAWP). This working group has a strategic focus and brings together representatives from local authorities and civil society to ensure that the needs of women, who were subject to immigration barriers and experienced any form of male violence (against women and girls), were included in recovery and strategic planning in Glasgow City Council.

As part of its work in 2022, it has worked with local authorities to input to frameworks for the provision of support to women who may have no recourse to public funds. It has developed a **Women, Destitution & No Recourse to Public Funds Project**. The project is a joint initiative between the GVAWP, Glasgow Women’s Aid and British Red Cross.

¹⁶ UNHCR Updated Observations on the Nationality and Borders Bill, as amended and updated at January 2022 <https://www.refworld.org/pdfid/61e529af4.pdf>

¹⁷ <https://www.justrightscotland.org.uk/wp-content/uploads/2021/11/Legal-Opinion-FINAL.pdf>

¹⁸ <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>

¹⁹ <https://www.rapecrisisscotland.org.uk/news/news/not-in-our-name---joint-statement/>

²⁰ https://publications.parliament.uk/pa/bills/cbill/58-02/0187/Nationality_and_Borders_Legislative_Consent_Motion_220222.pdf

²¹ <https://bills.parliament.uk/publications/45262/documents/1422>

The Project was developed based on the shared concerns about the increasing numbers of women subject to 'No Recourse to Public Funds' (NRPF) condition because of their immigration status.

Organisations or services, including lawyers, can apply on behalf of women for funding:

- To provide a basic safety net and prevent crisis
- To inform and develop inclusive and trauma informed responses to women with NRPF who are experiencing/fleeing/affected by any form of male violence (against women & girls)
- To access safe housing for up to 14 days
- To facilitate access to healthcare
- To access cash-based living allowance for food and other essential needs
- Access essential specialist immigration advice and benefits information to allow women to safely enter mainstream services

It is hoped this project will:

- Raise awareness of the challenges experienced by women subject to immigration controls
- Identify pathways which prevent destitution, highlight and inform the development of good practice
- Inform Glasgow Violence against Women Partnership, COSLA and Scottish Government of the needs of this vulnerable group of women

There is also in operation an organisation called Ubuntu. This organisation is based in Glasgow and provides unconditional practical support for destitute women and people of other marginalised genders who have no recourse to public funds and insecure immigration status in Scotland.

We are also seeking a legal opinion on the issue of No Recourse to Public Funds similar to the one we commissioned on the Nationality and Borders Act. This will again be used as an aid to understand clearly the parameters we can operate within a devolved context within this area.

We look forward to providing further evidence on this issue on 6 June 2022.