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# 1 Introduction

**[Eloise to insert text]**

## 1.1 How to use this guidance

This guidance intends to:

* Provide general guidance about the issues a local authority housing officer or social work practitioner, including those working in Health and Social Care Partnerships, would need to consider when working with migrant individuals and families in Scotland
* Provide information for people working in all sectors, who need to establish a migrant’s support options and entitlement to services
* Supplement any statutory guidance that must be followed by social workers and other professionals, for example, when assessing a child’s needs
* Provide examples of good practice and guidance with regards to responding to the needs of destitute migrant individuals and families with no recourse to public funds (NRPF)

Social workers and others who are responsible for administering social services’ support may need to refer to several chapters in the guidance in order to establish how best to work with a person or family from the point of referral to finding a pathway out of dependency on the local authority for support. Please refer to the ‘at a glance index’ to find out which chapters are essential reading.

The guidance is not intended to constitute advice in relation to any specific case. Every attempt has been made to present up to date and accurate information, and the guidance will be updated periodically. However, local authority decision makers are advised to check the current legal position and seek advice from their legal team on individual cases.

## 1.2 Acknowledgements

**[Eloise to insert text]**

## 1.3 Disclaimer

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## 1.4 Terms of use

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# 2 Immigration status and eligibility for public funds

This chapter describes how a person’s immigration status will impact on their ability to claim public funds, specifically: social security benefits, homelessness assistance and social housing.

## 2.1 Common types of immigration status

The UK’s immigration laws are complex, and it can be difficult to establish whether or not a person has leave to remain, and if so, on what basis. It is the responsibility of the Home Office to decide what a person’s immigration status is, usually after the person has made an application, and only a properly regulated immigration adviser can advise an individual on their immigration matter. However, social workers and other local authority officers will need to be able to identify a person’s immigration status and understand how this impacts on their entitlements, in order to be able to determine what type of support and services may be available to migrants and their families. The information in this section intends to provide a basic summary of the different types of status people may have.

A person who holds **British nationality** has a right to enter the UK after any period of time away without meeting any entry requirements. British nationality law is complex, and some people or children may already hold British citizenship by descent or by birth, or may have the right to apply for citizenship through registration or naturalisation.

Some non-UK nationals may be able to obtain **settled status** in the UK, which means they can live and stay in the UK indefinitely, although this status can be lost if they live abroad for a period of more than two years. This can also sometimes be referred to as ‘**no time limit**’.

* **Indefinite Leave to Remain (ILR)** may be obtained by a non-EEA national, or in some instances by an EEA national who has lived in the UK for a long time. It can be lost if the person lives abroad for a period of more than two years.
* **Permanent Residence (PR)** may be obtained by an EEA national or a non-EEA national family member. It can be lost if they live abroad for a period of more than two years.
* **Settled status or Indefinite Leave to Remain** may be obtained by a European Union (EU) national or non-EU national family member under the EU Settlement Scheme, which will be open for applications after the UK has left the EU on 29 March 2019. It can be lost if they live abroad for a period of more than five years.
* **Right of abode** may be acquired by some Commonwealth citizens and is not lost following any period of absence from the UK.

**Limited Leave to Enter or Remain** can be granted for a limited period of time with specific conditions. The length of leave and conditions will vary depending on the specific purpose that is granted for. Examples include:

* People who come to visit, study or work in the UK.
* Family members who join a settled partner or parent will usually have limited leave on a route to settlement.
* People who are granted leave to prevent a human rights breach of their family or private life will usually have limited leave on a route to settlement.

The Home Office may award **Discretionary Leave (DL)** for a limited period in order to prevent a breach of human rights, for example:

* Destitution Domestic Violence Concession (for survivors of domestic violence who previously held leave to remain as a spouse or partner of a British citizen, person with settled status or member of HM forces)
* Survivors of trafficking or modern slavery who meet certain conditions

**Asylum Seekers** are people who have entered the UK seeking international protection, but whose claims for asylum have not yet been finally determined by the Home Office or appeal courts. During this period, they have permission to live in the UK, but this might be subject to conditions of residence or reporting requirements, and they do not have the right to work.

When their asylum claim is decided, an asylum seeker could be granted one of the following types of immigration status:

* **Refugee Status and Humanitarian Protection (HP)** are both forms of international protection granted for a period of five years, after which time, they may apply for ILR.
* **UASC Leave or Section 67 Leave or Calais Leave** may be grantedto unaccompanied asylum seeking children.

If a person does not hold any of the above forms of leave, they may be **unlawfully present** and may also be described as having **irregular immigration status** or as a **person without leave**.

This can include:

* **ARE (Appeal Rights Exhausted) Asylum Seekers** - asylum seekers whose claims for asylum who have been refused, and who have no further right of appeal against the refusal. The UK Government refers to them as ‘failed asylum seekers’ in its legislation and guidance.
* **Visa overstayers** - people who did not make an application to extend their leave before their previous leave expired, made an application which was unsuccessful after their previous leave expired, or had their leave curtailed so it expired early, for example, when the Home Office is informed that a person with leave to remain as a spouse is no longer in a relationship with their partner.

Note that a person’s immigration status may change, so an ARE asylum seeker could make further submissions to the Home Office raising new asylum grounds that are accepted as a fresh claim, and become an ‘asylum seeker’ again. If their claim is successful, they could be granted leave to remain in the UK.

**EEA Right of Residence** is a right to live and work in the UK that is acquired by Economic Area) nationals and their EEA and non-EEA family members who are exercising free movement rights under European Union (EU) law, rather than rights acquired under the UK Immigration Rules.

More terms are set out in the glossary and for more information, see:

* 6.4 Establishing immigration status
* 13.2 How to find a legal aid lawyer or OISC adviser
* 15 EEA nationals and family members
* 16 Asylum seekers

## 2.2 How immigration status affects access to services

The eligibility rules for many publically funded services often contain requirements that are dependent on a person’s nationality or immigration status. However, the term ‘public funds’ in an immigration context is very specific and only includes some benefits, homelessness assistance and an allocation of social housing through the local authority register. Local authority officers therefore need to be aware of the following:

* When a non-EEA national has a type of immigration status that allows recourse to public funds they will be eligible for benefits, homelessness assistance and a local authority allocation of social housing.
* When a non-EEA national has a type of immigration status that does not permit recourse to public funds – No Recourse to Public Funds (NRPF) - then generally they will not be able to access benefits, homelessness assistance and a local authority allocation of social housing. If they claim one of these benefits by mistake, then this could affect their immigration status, for example, if doing so causes them to breach an NRPF condition attached to their leave.
* EEA nationals and their family members can access benefits and housing but may not be eligible to claim income-based benefits if they do not meet the right to reside test or cannot evidence that they meet that test.
* For publicly funded services other than social security benefits, homelessness assistance and a local authority allocation of social housing, a person’s immigration status may be a factor in establishing whether they will be eligible for these rather than the fact that they have recourse or NRPF.

For more information, see:

* 2.3 Who has recourse to public funds
* 2.4 Who has NRPF
* 3 Public funds for immigration purposes
* 4 Eligibility for other publicly funded services
* 14 EEA nationals and family members

## 2.3 Who has recourse to public funds?

People with the types of immigration status listed in the table below **will** have recourse to public funds which means they will be able to claim benefits if they meet other eligibility requirements. It is important that local authority officers correctly identify a person’s immigration status, so they are not refused services that they are actually entitled to. When a person has recourse to public funds, their immigration documentation will not state this, as normally only restrictions are specified, so this should usually be adequate evidence that they have recourse. Despite having recourse to public funds, some migrant groups will experience problems accessing benefits, which are highlighted in the table below.

|  |  |
| --- | --- |
| Immigration status  | Consideration |
| Indefinite leave to remain (apart from adult dependent relative for first five years)No time limitRight of abode | It is possible for some people to have a form of settled status in the UK without the documents to prove this. A well-publicised example is the situation of undocumented Commonwealth citizens who arrived in the UK between the late 1940s and 1970s - ‘the Windrush generation’. People in this position should be signposted to immigration advice for help with documenting their status, which may involve making an application under the ‘Windrush Scheme’.[[1]](#footnote-1) Providers of benefits and housing services may wish to consider alternative evidence in the interim, for example, a letter from a legal representative. In May 2018, the DWP issued an urgent bulletin to housing benefit staff advising them to pause any action to terminate or refuse a claim made by an undocumented Commonwealth citizen from the Caribbean.[[2]](#footnote-2) |
| European Economic Area (EEA) nationals and their family members  | The rights of EEA nationals and their family members to enter and reside in the UK are governed by European Union (EU) law, and are commonly referred to as ‘EU treaty rights’ or ‘free movement rights’. EEA nationals and non-EEA national family members (who have a right to reside or derivative right to reside in the UK) are not excluded from claiming benefits. However, EEA nationals are not required to apply to the Home Office for any form of evidence to demonstrate their right to reside, and therefore they may not have proof of this right. EEA nationals may also not be eligible to receive income-based benefits if they fail the right to reside and/or habitual residence tests, or struggle to evidence that they meet these tests. In such instances they are often referred to (incorrectly) as having NRPF but may need to be treated as such for the purpose of determining alternative support options. However, that situation can change, for example, if they become economically active and establish that they are eligible for benefits.EEA nationals and their family members need to be made aware about the EU Settlement Scheme, what will apply after the UK leaves the EU on 29 March 2019. For more information, see:* 15 EEA nationals and family members
* 19.1 Rights of EU nationals after the UK leaves the EU
 |
| Refugee status Humanitarian protection  | When a person is recognised as a refugee, or given humanitarian protection, and granted leave to remain, they may still experience destitution if their Home Office asylum support is terminated before they receive benefits. As the Home Office currently provides a 28-day notice period, this is a common occurrence.  |
| Refugee family reunion  | Close family members of refugees and people with humanitarian protection can apply to join their relative in the UK under refugee family reunion rules. Although pre-flight immediate family members will usually be grated recourse to public funds, other family members and spouses who married the refugee after they fled from their country of origin might not be. Although the refugee in the UK will be entitled to benefits and housing, if any family members joining them are NRPF then this may have implications on the level of benefits they can receive. In such instances, a ‘mixed’ family should be referred for benefits and immigration advice, and social services may need to establish whether they need to provide any assistance under section 22 of the Children (Scotland) Act 1995 or section 12 of the Social Work (Scotland) Act 1968. For more information, see:* 8 Social services’ support – children within families
* 9 Social services’ support – adults
 |
| UASC leaveSection 67 ‘Dubs’ leaveCalais leave (Granted to an unaccompanied asylum seeking child who does not qualify for refugee status or humanitarian protection) | Local authorities may be required to assist children with leave to remain who have joined family members, who themselves might be asylum seekers or have some other form of limited leave to remain. Even though the child’s recourse to public funds is not in doubt, this can create complexity in accessing the right combination of benefits and local authority support to safeguard the welfare of the child. Local authorities may need to consider their obligations under other legislation, for example, Section 22 of the Children (Scotland) Act 1995. |
| Discretionary leave to remain, including:* Leave granted to a person who has received a conclusive grounds decision that they are a victim of trafficking or modern day slavery
* Destitution domestic violence concession
 | Prior to a person being awarded discretionary leave, they are unlikely to have had access to public funds and may not have a National Insurance number. This can result in delays in benefits being administered after they have been granted a form of discretionary leave which enables them to have recourse to public funds.  |
| Limited leave to remain granted under family and private life rules on a 10-year settlement route where the person is accepted by the Home Office as being destitute (otherwise the NRPF condition is imposed)  | When a person has leave to remain with recourse to public funds, it is possible that they may have the NRPF condition applied when they extend their leave. This can lead to any benefits being claimed suddenly stopping giving rise to homelessness and destitution. In such instances they may apply to have the NRPF condition removed by applying to the Home Office for a change of conditions which will vary their leave. [[3]](#footnote-3)  |
| Continuing leave (3C leave) when a person previously had limited leave with recourse to public funds | A person’s leave will be extended under section 3C of the Immigration Act 1971 when they submit an application for leave to remain before their previous leave expires and are still waiting for a decision from the Home Office after their leave has expired. When a person has 3C leave, any conditions attached to their previous leave will continue to apply until their application or appeal is concluded, for example, they may retain permission to work or recourse to public funds. If the leave to remain application is refused, 3C leave will only continue whilst the person is appealing this decision when:* the application is refused after the person’s leave to remain has expired; and
* the person has lodged their appeal within the given deadline.

3C leave will stop if a person lodges an appeal after the given deadline, even if the court later accepts it as being made ‘out of time’. When 3C leave ends and the person has not been granted another form of leave to remain then they will become an overstayer, at which point any entitlement to benefits and employment will end. |

## 2.4 Who has NRPF?

No recourse to public funds (NRPF) applies to people who are ‘subject to immigration control’ and applies to people with the immigration status types specified in the table below.[[4]](#footnote-4)

|  |  |
| --- | --- |
| A non-EEA national who..  | Examples |
| Requires leave to enter or remain in the UK but does not have it (is without leave) | * Visa overstayer
* Illegal entrant
* Asylum seeker
* ARE asylum seeker
 |
| Has leave to enter or remain in the UK which is subject to a condition that they have no recourse to public funds (NRPF)\* | * Spouse of a settled person
* Tier 4 student and their dependents
* Leave to remain under family or private life rules
 |
| Has leave to enter or remain in the UK that is subject to a maintenance undertaking | * Adult dependent relative of a British citizen or person with settled status for first five years they are in the UK[[5]](#footnote-5)
 |

\* When a person has leave to remain with NRPF, ‘no public funds’ will be written on their immigration document. If there is no such statement then it can be assumed that a person does have recourse to public funds, although they would need to seek satisfy the relevant benefit or housing eligibility requirements in order to access these.

# 3 Public funds for immigration purposes

This chapter provides details of what are classed as ‘public funds’ for immigration purposes.

## 3.1 Social security benefits

The definition of a ‘public fund’ is set out in the Immigration Rules, and does not include all services provided by or funded by public bodies, but only specific benefits and some local authority housing provision. These are also set out in the Home Office policy document, ‘Modernised Guidance on Public Funds’ and are outlined here.[[6]](#footnote-6)

The following benefits are classed as ‘public funds’ for immigration purposes:

* Attendance allowance
* Carer’s allowance
* Child benefit
* Child tax credit
* Council tax benefit
* Council tax reduction
* Disability living allowance
* Domestic rate relief (Northern Ireland)
* Housing benefit
* Income-based jobseeker’s allowance
* Income-related employment & support allowance
* Income support
* Personal independence payment
* Severe disablement allowance
* Social fund payment, including a: budgeting loan, sure start maternity grant, funeral payment, cold weather payment and winter fuel payment [[7]](#footnote-7)
* Scottish Welfare Fund [[8]](#footnote-8)
* State pension credit
* Universal credit
* Working tax credit[[9]](#footnote-9)

A person with NRPF will be excluded from claiming the above benefits unless an exception applies.

The following exceptions mean that a person may be able to claim some of the benefits that are classed as public funds when they have leave to remain with NRPF without this affecting their immigration status:

* They are a national of a country that has a reciprocal arrangement with the UK, as listed in the Home Office guidance.
* They have an EEA national family member, including a British citizen, for example, a parent with leave to remain with NRPF who has a British child can claim child benefit.
* They make a joint claim for tax credits with a partner who has recourse to public funds, for example, a British citizen.
* They have indefinite leave to enter/remain as an adult dependent relative during the first five years they are in the UK (in which time they can claim non-means tested benefits).

If a person is unsure about whether an exception applies when they have the NRPF condition, they should seek advice from a benefits adviser and an immigration adviser before making a claim.

A person who is lawfully present in the UK and has NRPF may be able to claim the following benefits if they have been in work or have paid National Insurance contributions:

* Bereavement benefit
* Contributory-based employment and support allowance
* Contributory- based jobseeker's allowance
* Guardian's allowance
* Incapacity benefit
* Maternity allowance
* Retirement pension
* Statutory maternity pay
* Statutory sickness pay
* Widows benefit

Over the next few years, a number of benefits are being devolved to Scotland: most disability and carer’s benefits, along with a small number of low income benefits. The Scottish Government has set up Social Security Scotland to administer these benefits. The Scottish Government is discussing with the Home Office how these benefits will be treated following devolution to Scotland. However, since immigration policy is reserved to the UK Government, the entitlement of people who are subject to immigration control may be unlikely to change.

For more information, see:

* 19.2 Social Security (Scotland) Act 2018

## 3.2 Social housing allocation

If a person requires leave to enter or remain in the UK they will not be eligible to make an application to the local authority’s mainstream housing list for a social housing tenancy, unless they are a:

* Refugee
* Person with humanitarian protection
* Person with leave to remain granted outside of the Immigration Rules (this could also be referred to as discretionary leave to remain) when they do not have NRPF as a condition of their leave
* Person who has indefinite leave to enter or remain who is habitually resident in the UK, Republic of Ireland, Isle of Man or Channel Islands (unless their indefinite leave to remain is subject to an undertaking that their sponsor will maintain and accommodate them, and they have been resident in the UK for less than five years or their sponsor has died).
* Full-time student when certain circumstances apply
* Person with leave to remain under section 67 of the Immigration Act 2016 (‘Dubs leave’)[[10]](#footnote-10)
* Asylum seeker in receipt of Home Office asylum support under sections 4, 95 or 98 of Immigration and Asylum Act 1999

A person with NRPF can be allocated a property by a housing association where they have housing need under the housing association’s allocation policy. They can apply for housing with a housing association either directly to the association or via a common housing register where this is in operation. If they obtain a tenancy in this way, then it will not be considered to be a public fund for immigration purposes.

However, where a person is allocated housing by a Housing Association where they have applied for housing to a Local Authority who then nominates them to a housing association under a nomination agreement, or to discharge homelessness duties, this would be a public fund for immigration purposes.

EEA nationals and their family members who are exercising a right to reside will also be eligible.

For more information, see:

* 14 EEA nationals and family members

## 3.3 Homelessness assistance

If a person requires leave to enter or remain in the UK they will not be eligible to make a homelessness application or receive temporary homeless accommodation under part II of the Housing (Scotland) Act 1987, unless they are a:

* Refugee
* Person with humanitarian protection
* Person with leave to remain granted outside of the Immigration Rules (this could be also referred to as discretionary leave to remain) when they do not have NRPF as a condition of their leave
* Person who has indefinite leave to enter or remain who is habitually resident in the UK, Republic of Ireland, Isle of Man or Channel Islands (unless their indefinite leave to remain is subject to an undertaking that their sponsor will maintain and accommodate them, and they have been resident in the UK for less than five years or their sponsor has died).
* Person with leave to remain under section 67 of the Immigration Act 2016 (leave given to unaccompanied children who enter the UK under the ‘Dubs amendment’)[[11]](#footnote-11)
* Asylum seeker in certain limited circumstances

EEA nationals and their family members who are exercising a right to reside will also be eligible.

The Housing (Scotland) Act 1987 does not require the local authority to decide whether a person is eligible for homelessness assistance, but enquiries regarding this need to be made in order to correctly apply the restrictions that are set out in immigration legislation (as above). A local authority should accept a homeless application if it believes that someone may be eligible and may be homeless. Temporary accommodation should be provided whilst the local authority investigates the application. The local authority will need to decide on (1) whether the person is homeless and (2) whether they are intentionally homeless. Whether or not someone is homeless is a question of law. The local authority may also, should it chose to do so, inquiry whether the person has a local connection to another local authority area in the UK.

People who were dispersed into asylum support accommodation are not considered to have a local connection to that area, as they had no choice as to where they may be accommodated.

A local authority can make charges for temporary accommodation. Such charges must be reasonable and may be subject to challenge by a homeless person.

Where a local authority decides to refer the person to another local authority area, they should provide accommodation until such time as the referral to the other local authority area has been finally decided between the two local authorities.

Normally, there is an ongoing duty to provide temporary accommodation whilst the local authority reviews their decision on a homeless application at the request of the person. However, some people can only be provided with temporary homeless accommodation whilst their review is being decided where this is necessary to prevent a breach of their human rights or EU treaty rights.

For more information, see:

* 7 Social services’ support - exclusion
* 15 EEA nationals and family members

# 4 Eligibility for other publicly funded services

This chapter describes how a person’s immigration status will impact on their ability to claim public services that are not considered to be ‘public funds’ for immigration purposes, but have their own eligibility criteria, which may include immigration or residence requirements.

## 4.1 Baby boxes

The Scottish Government provides a free baby box to every new baby that is born and living in Scotland. The box contains essential items for the baby and can be used for the baby to sleep in. The mother will receive the box in weeks 32 to 36 of her pregnancy and can apply for it through her midwife.[[12]](#footnote-12)

All babies will be eligible to receive the box, regardless of their or their parents’ nationality and immigration status. As the box can only be applied for through a midwife, only women engaged with health services will be able to receive it.

## 4.2 Child maintenance

A claim for child maintenance from a former partner through the UK Government’s Child Maintenance Service (formerly the Child Support Agency), regardless of the parent’s immigration status.[[13]](#footnote-13)

The parent caring for the child, non-resident parent and qualifying children must all be habitually resident in the UK; there is no requirement for them to have recourse to public funds or to be lawfully present. Applications can be progressed if the person does not have a National Insurance number, although the identity of all parties involved will need to be proved, preferably with birth certificates.

A parent can obtain independent advice from Child Maintenance Options and must contact this service before applying to the Child Maintenance Service. If they do not have a National Insurance number, they can ask Child Maintenance Options for their case to be managed via the Exceptional Case Handling Process.[[14]](#footnote-14)

## 4.3 Discretionary Housing Payment

A Discretionary Housing Payment may be paid by a local authority to people to top-up a Housing Benefit or Universal Credit shortfall, or to help with the costs of removal or a rent deposit. This is only available to migrants who have recourse to public funds and who are eligible for Housing Benefit or Universal Credit.[[15]](#footnote-15)

## 4.4 Education

All children, regardless of their immigration status, can receive state school education whilst they are of compulsory school age.[[16]](#footnote-16)

The only children who cannot receive a state school education are those who have leave to enter or remain with a condition that does not permit study, or study at a state school. This will apply to children who have been issued with leave to enter or remain as a Visitor, Tier 4 (Child) or Short-term student (Child). (Although an exception may apply to some child visitors).[[17]](#footnote-17)

When applying to undertake Further Education (age 16+), a person with NRPF will only be able to undertake a course for free if they meet the funding criteria; immigration status and length of residence in the UK will be relevant factors.

The same applies to Higher Education: the criteria for lower ‘home’ fee rates, and student finance to help with course and living costs, are based on immigration status and length of residence in the UK.

For more information about eligibility requirements higher education course funding, student support and bursaries see:

* The Student Awards Scotland (SAAS) – Higher Education[[18]](#footnote-18)

Enquiries about FE funding would need to be made directly to the relevant college.

## 4.5 Education Maintenance Allowance

Education Maintenance Allowance is available to a young person age 16 to 19 if they are living in a low income household and are undertaking full-time study at a school, full or part-time study at an FE college or education centre, or are taking part in an ‘activity agreement’.[[19]](#footnote-19)

They may apply to the local authority if they are attending school or otherwise to their college. The eligibility requirements for the allowance are based on the young person’s nationality, immigration status and residence in the UK, as well as the household income. A young person who has settled status (for example, indefinite leave to remain), refugee status, another form of leave following an asylum claim, or EEA nationality, may be eligible if they also meet the residence requirements. People without leave or who have limited leave to remain will not be eligible.

## 4.6 Free school meals

The table below sets out free school meal entitlement for children and young people studying at publicly funded schools. After primary 3, entitlement is generally linked to the parent being in receipt of qualifying benefits or asylum support so, for children in migrant families, the parent’s immigration status might affect whether they can receive free school meals. However local authorities have the discretion to provide free school meals in cases where the regular eligibility criteria is not met. [[20]](#footnote-20)

Where a child is eligible for free school meals, lunch is provided. Some local authorities may also provide breakfasts free of charge, or they may provide meals during weekends or school holiday times, to pupils who qualify for free school meals. Where extra provision, over and above free school meals has been made, local authorities have the flexibility to decide who should receive it.

|  |  |
| --- | --- |
| School year/ age | Eligibility for free school meals |
| Pre-school age children  | Children can get a free lunch in early learning and childcare if a parent is receiving an eligible benefit or section 95 Home Office asylum support.  |
| Primary 1, 2 and 3 | All children at publicly-funded schools in Scotland automatically get free school lunches at this stage, regardless of their or their parents’ immigration status. For example, a child in an NRPF household will be able to receive free school meals during these school years. |
| Primary 4 until statutory school leaving age | Children will continue to receive free school meals at this stage if their parents or carers are receiving an eligible qualifying benefit or section 95 Home Office asylum support.[[21]](#footnote-21) Local authorities also have the discretion to provide free school meals to children who are not eligible under the regular qualifying criteria, where their families are experiencing financial hardship. This includes providing them for families who have NRPF due to their immigration status.Where families are experiencing difficulty in meeting the cost of paying for school meals, for whatever reason, they should contact their local council directly in order to seek advice about what assistance may be available. |
| 16-18 year olds | Older pupils can also claim free school meals where they are receiving any of the eligible qualifying benefits in their own right.Where a pupil within this age bracket has NRPF due to their immigration status, they should contact their local authority directly in order to seek advice about what assistance may be available. |

|  |
| --- |
| Good practice exampleA council sets its eligibility criteria for school clothing grants, so that they will be paid to all families who are entitled to free school meals and, in addition, to any families in receipt of council tax reduction.Where the family has NRPF, the council also decides to make arrangements for children within these families to be provided with free school meals and a school clothing grant. |

## 4.7 Government funded childcare

The Scottish Government funds councils to offer up to 600 hours’ ‘early learning and childcare’ per year for eligible children. Local authorities have a duty to secure funded early learning and childcare (ELC) for each ‘eligible…child belonging to its area’. [[22]](#footnote-22)

An eligible child is defined in legislation, without reference to immigration status. [[23]](#footnote-23)

Eligible children are:

* All 3 and 4 year olds from the relevant start date [[24]](#footnote-24)
* Around a quarter of 2 year olds including children ‘looked after’ by the local council or if a parent is receiving certain benefits (including support under Part 6 of the Immigration and Asylum Act 1999). . These criteria are broadly in line with the eligibility requirements for free school meals. [[25]](#footnote-25)

Local authorities also have discretion to provide access to funded early learning and childcare to any other child, as they see fit.[[26]](#footnote-26)

The amount of funded hours is being increased gradually from now until August 2020, up to 1140 hours per year. This increase is managed by local councils and each will be taking their own approach.

The UK Government also has a tax-free childcare scheme which can be accessed by families in Scotland for children under 12 or disabled children under 17, when parents are working and meet income requirements. A parent can apply for this if they are British or an EEA national, have settled status, or have leave to remain with recourse to public funds, and would need to make the application if their partner has leave to remain with NRPF. Families where a single parent or both parents are working and have leave to remain with NRPF will not be able to apply for tax-free childcare. [[27]](#footnote-27)

## 4.8 Legal aid

The Scottish Legal Aid Board (SLAB) operates an advice and assistance scheme for civil legal matters in Scotland, which will fund legal advice for people who cannot afford to pay for it themselves, where an important civil right is at stake. On this basis, legal advice that a destitute person or family may require both on their immigration status and options, and also on their entitlement to accommodation and support, may be available from a legal aid lawyer free of charge.

There are no eligibility requirements for legal aid based on a person’s nationality or immigration status, so a person with NRPF can access this.

Legal aid lawyers must apply a two-stage test in order to determine whether to grant legal aid to assist an individual. The first part of the test looks at financial eligibility, and the second part of the test considers whether the person requires the assistance of a lawyer in order obtain or protect an important legal right. The financial eligibility test is deemed to have been met automatically where a person is already in receipt of asylum support or many forms of means-tested benefits, as long as they do not also have significant capital assets (such as significant savings, or ownership of a house, car, etc.)

The SLAB provides more information about eligibility tests for legal aid in Scotland.[[28]](#footnote-28)

For more information, see:

* 13.2 How to find a legal aid lawyer or OISC adviser

## 4.9 National Entitlement Card (concessionary travel)

Immigration status may be a relevant factor in determining whether someone can obtain a National Entitlement Card (NEC) for free or concessionary travel. If a person with a disability is not eligible for certain benefits (Personal Independence Payment, Disability Living Allowance, Attendance Allowance) they may still qualify under other eligibility criteria. [[29]](#footnote-29)

The card can be issued to people who are resident in Scotland when they are:

* Over 60 years’ old
* Age five and over and have a disability that they are able to evidence according to specific documentary requirements
* Age 16-18 (Young Scot NEC)
* Volunteering full time and under 26 years old (Young Scot NEC)

People can apply for the card through their local authority.

## 4.10 NHS treatment

Many NHS services are provided free of charge to people in Scotland regardless of their nationality or immigration status, but some people may be required to pay for certain types of treatment.

Free services include:

* Services delivered by a GP
* Prescriptions
* Dental and optical examinations\*
* Community services, such as mental health and drug and alcohol services
* Accident and emergency (A&E) services up until the point that the person is accepted as an in-patient
* Family planning services
* Diagnosis & treatment of contagious diseases (as specified in Schedule1)
* Diagnosis & treatment of sexually transmitted diseases
* Compulsory detention or admission due to a mental health condition (under the Mental Health (Care and Treatment) (Scotland) Act 2003
* Treatment of a mental health condition as a requirement of a community payback order

\* Most dental and ophthalmic treatment will also be free if the person meets one of the exemptions to these services or has obtained an HC2 certificate on the basis of having a low income, for example support from social services or a charity. NHS Scotland have produced a useful leaflet providing more information about these exemptions. [[30]](#footnote-30)

Any treatment provided in a hospital or by staff working under the direction of a hospital that is not listed above may be chargeable to some people.

A person may be charged for hospital treatment if they are an ‘overseas visitor’ and are not in a group that is exempt from paying the charges. A person will be an overseas visitor if they are not ordinarily resident in Great Britain or Northern Ireland.

The following people will be ordinarily resident if they are living lawfully in the UK for a settled purpose:

* British citizen
* EEA national
* Non-EEA national who has either:
	+ settled status, for example, indefinite leave to remain; or
	+ a right to reside under EU law, for example, the primary carer of a British child

Anyone else will be referred to as an ‘overseas visitor’ and will be required to pay for hospital treatment unless an exemption applies.

The exemptions are set out in the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989, and include a person who has:

* Made a formal application for asylum, whether pending or unsuccessful
* Refugee status
* Leave to enter or remain in order to work or to be self-employed
* Leave to enter or remain on a settlement route, for example, as a spouse of a British citizen, or as the parent of a British child/ child who has lived in the UK for seven years
* Lived lawfully in the UK on any other basis for one year or longer prior to receiving treatment
* Is studying full-time in the UK at a further or higher education institution
* Is a victim of trafficking or modern slavery who has either received a reasonable grounds decision and is still waiting for their conclusive grounds decision, or has received a positive conclusive grounds decision
* Is detained for a criminal matter or immigration matter
* Is the spouse, civil partner or child of a person in the above categories

**An asylum seeker will be entitled to NHS treatment on the same basis as a UK national who is ordinarily resident in Scotland, even if their claim is unsuccessful and they become Appeal Rights Exhausted. Asylum seekers who are granted Refugee Status or another form of leave to remain will continue to be exempt from NHS charges on the same basis as a person who is ordinarily resident in Scotland.**

People who apply for leave to enter or remain in the UK for a limited period will usually need to pay the Immigration Health Charge (IHC) as part of their application, in order to receive most chargeable NHS treatment for free. This has not yet been incorporated in to the Scottish charging regulations, but such people will have the same access to free NHS care as a person who is ordinarily resident in Scotland.

A person may need to pay for hospital treatment if they are:

* A visa overstayer or illegal entrant who has not claimed asylum
* On a short-term visit visa of less than six-months

Hospital staff will usually ask questions about a person’s nationality and immigration status and may contact the Home Office to confirm this. When a person accrues an NHS debt of £500 or more, then this could lead to an immigration application being refused.

Further information and resources:

* NHS Inform – Healthcare for asylum seekers, refugees and overseas visitors with helpline and webchat advice service [[31]](#footnote-31)
* Scottish Government – Overseas visitors [[32]](#footnote-32)
* Chief Executive Letter (CEL) 9 (2010) – Guidance on the charging regulations [[33]](#footnote-33)
* NHS Circular: PCA(M)(2018) 10 - Guidance on GP registration[[34]](#footnote-34)

## 4.11 School clothing grants

Local authorities will provide some families with financial help towards the cost of buying a school uniform through the payment of a school clothing grant. In May 2018, the Scottish Government reached an agreement with all local authorities to ensure that eligible families would be paid at least £100. This arrangement has now come into effect.

Eligibility criteria for school clothing grants are set locally by individual councils. However, this criteria varies across different local authority areas, although information on eligibility criteria is available on every local authority’s website. There is no legislation governing the eligibility for school clothing grants, therefore local authorities have the flexibility to waive their local criteria where they think it is appropriate to do so. Families with no recourse to public funds should contact their local authority directly to seek advice on what assistance may be available. [[35]](#footnote-35)

## 4.12 Social services’ assistance

**Assistance provided by social services to a child, family or adult is not a public fund for immigration purposes, and should not be refuse to a person with NRPF.**

Social services may be required to provide accommodation and financial support to migrants or families who are unable to access benefits or housing assistance because they have no recourse to public funds (NRPF). However, such assistance may be limited for some people depending on their nationality or immigration status, as certain groups of people with NRPF can only receive this support in order to prevent a breach of their human rights or EU treaty rights. This applies to assistance under the following legislation:

* Accommodation and financial support provided to a family to meet a child’s needs[[36]](#footnote-36)
* Aftercare support, including accommodation, provided to a young person leaving care from age 16 to 26, when they are age 18 or older[[37]](#footnote-37)
* Care and support, including accommodation, provided to an adult [[38]](#footnote-38)

A person’s nationality and immigration status will not prevent them from receiving other types of social services assistance, for example, a child with a disability in an asylum seeking family who are accommodated by the Home Office can be provided with services to meet their needs.

A looked after migrant child’s immigration status will be highly relevant to any care planning that takes place, as the child may need help accessing legal advice to secure a long-term form of immigration status or British citizenship, and it will impact on their entitlements when they need to access further or higher education and other services, including aftercare support, post-18 years old. This also applies to EEA children.

For more information, see:

* 5 Social services’ support – introduction
* 6 Social services’ support – referrals
* 7 Social services’ support – exclusion
* 8 Social services’ support – children within families
* 9 Social services’ support – adults
* 10 Young people leaving care

## 4.13 Eligibility summary table

The table below is intended to provide an indication as to whether a person may be able to access a public fund or other publicly funded service on the basis of the person’s immigration status only. It does not take into account other requirements, such as residence requirements or that discretion may be used.

For more information about additional eligibility requirements, see:

* 3 Public funds for immigration purposes
* 4 Eligibility for other publicly funded services

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Eligibility for public services based on the person or parent’s immigration status (not taking into account any additional residence requirements)  | Refugee  | Asylum seeker | ARE asylum seeker | ILR/ right of abode  | Leave to remain with NRPF  | Leave to remain with recourse  | EEA national/ family member  | Zambrano carer  | Without leave (e.g. visa overstayer) |
| Public funds for immigration purposes  |
| Social security benefits  | ✓ | × | × | ✓ | × | ✓ | ✓ | × | × |
| Homelessness assistance | ✓ | × | × | ✓ | × | ✓ | ✓ | ✓ | × |
| Allocation of social housing (via local authority) | ✓ | × | × | ✓ | × | ✓ | ✓ | ✓ | × |
| Other public services |
| Baby box | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Child maintenance | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Discretionary housing payment | ✓ | × | × | ✓ | × | ✓ | ✓ | × | × |
| Education – school age | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Education maintenance allowance | ✓ | × | × | ✓ | × | × | ✓ | × | × |
| Free school meals (P4+) | ✓ | ✓ | ✓ | ✓ | ? | ✓ | ✓ | ? | ? |
| FE & HE funding | ✓ | × | × | ✓ | ✓ | ✓ | ✓ | × | × |
| Government funded childcare  | ✓ | ? | ? | ✓ | ✓× | ✓ | ✓ | ✓ | × |
| Legal aid  | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| National Entitlement Card | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| NHS - GP services | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| NHS - free hospital treatment | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | × |
| School uniform grants | ✓ | ✓ | ✓ | ✓ | ? | ✓ | ✓ | ? | ? |
| Social services’ assistance | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Key | ✓ | Will meet immigration criteria or there are no immigration criteria. Must also meet any other criteria, e.g. residence requirements  | ✓× | May be eligible for some schemes  |
| × | Will not meet immigration criteria  | ? | Discretion may be used |

# 5 Social services’ support - introduction

This chapter sets out good practice points for a social worker or other practitioner to consider when a migrant adult or child is referred for social services’ assistance, which may include accommodation and financial support.

## 5.1 Policy context

Local authorities play an important role in promoting social integration and cohesion within their communities. The provision of accommodation and financial support by social services has been recognised by the UK and Scottish Governments, and the UK Supreme Court, as being an essential safety net to protect the most vulnerable migrants from destitution where their immigration status prevents them from accessing mainstream benefits and housing services.[[39]](#footnote-39)

Supporting migrants who are NRPF is a unique area of social services’ provision, as a child or adult’s needs will be met, not only through the delivery of standard social care services, but also by providing accommodation and financial support. This is an additional budgetary pressure faced by local government, which also gives rise to extra demands on social workers and other officers in terms of knowledge and skills. However, it is important to remember that key principles of social work ethics and practice will still apply. NRPF cases can be challenging, with problems arising from a person’s insecure immigration status compounding what may already be complex needs. Although often described as safety net support, UK data on NRPF service provision shows that the average time a person or family would spend in receipt of social services’ support is just under 2.5 years. Local authorities must therefore ensure that they are administering support correctly by establishing need in line with social care legislation, taking account of immigration legislation where this is applicable. Additionally, services need to be delivered as cost-effectively as possible.[[40]](#footnote-40)

Accommodation and financial support is typically provided to people with NRPF under the following legislation:

* Section 22 of the Children (Scotland) Act 1995 - to a family to meet a child’s needs
* Sections 29 & 30 of the Children (Scotland) Act 1995 - to a young person eligible for aftercare
* Sections 12 or 13A of the Social Work (Scotland) Act 1968 – to an adult in need
* Section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003

For more information, see:

* 8 Social services’ support – children within families
* 9 Social services’ support – adults
* 10 Young people leaving care
* 14 NRPF service delivery

## 5.2 Common misunderstandings

The UK immigration system is very complex as people can be given many different types of immigration status and documents. Misunderstandings can often arise about how the law applies to different migrant groups and what their entitlements are, for example, what assistance social services can provide to people with NRPF.

Some common misconceptions about entitlement to social services support and the actual legal position that the local authority must adhere to are set out in the table below.

|  |  |
| --- | --- |
| Misconception  | Actual legal position  |
| People cannot be assisted by social services when they have no recourse to public funds.  | The NRPF condition is only a restriction on access to mainstream benefits, homelessness assistance and an allocation of social housing. Social services’ support is not a public fund for immigration purposes and assistance should not be refused for this reason alone. For more information, see:* 2 Immigration status and eligibility for public funds
* 3 Public funds for immigration purposes
* 4 Eligibility for other publicly funded services
 |
| Social services only have a duty to assist a child in an NRPF family, so can only accommodate the child and not the parent. | Section 22 of the Children (Scotland) Act 1995 requires the local authority to promote the upbringing of the child with the parent, which it has the power to do by providing accommodation and financial support to the family as a whole. Offering to accommodate the child alone or taking the child into care is not an appropriate response in the absence of any safeguarding concerns additional to the risk to the child arising from the parent’s lack of housing and income, and is likely to give rise to a breach of Article 8 ECHR (the right to respect for a person’s family life). For more information, see:* 8 Social services’ support – children within families
 |
| Social services cannot help because the local authority does not get funding to provide support to people with NRPF. | Although the local authority is not under a duty to meet all formally assessed needs and may take into account its resources in determining which needs are to be met, it is under an obligation to ensure that an individual’s human rights are not breached by a failure to provide support, or the provision of inadequate support. A decision to meet some – but not all – assessed needs must therefore be reached rationally and the local authority must act reasonably in the circumstances.[[41]](#footnote-41) For more information, see:* 8 Social services’ support – children within families
* 9 Social services’ support – adults
 |
| Social services cannot help a person who is without leave because they have not made an application for leave to remain to the Home Office. | A local authority’s obligation to conduct a GIRFEC assessment, a carer’s assessment, or a community care assessment arises independently from any consideration of the form of immigration status a person or family may have.A person’s immigration status does not prevent a GIRFEC or community care assessment from being undertaken with respect to a child or young person, or adult, respectively.The absence of a pending immigration application should not prevent an assessment being carried out or interim support being provided when this is necessary. However, the adult or parent’s immigration status, and whether any applications have been made, will be relevant factors when determining whether the exclusions to social services’ support apply. For more information, see:* 8 Social services’ support – children within families
* 9 Social services’ support – adults
* 10 Assessments when the exclusion applies
 |
| A pregnant woman with NRPF who has no other children in her care cannot be provided with support until her child is born. | A local authority may need to consider whether a pregnant woman is in need of assistance and therefore can be provided with accommodation and support under section 12 of the Social Work (Scotland) Act 1968, until her child is born, at which point duties under the Children (Scotland) Act 1995 may be engaged. For more information, see:* 9 Social services’ support – adults
 |
| In families where the parent has leave to remain with NRPF, the local authority does not have to provide support because the parent can work.  | A local authority can only refuse to provide support when a child is not to be found to be in need following a GIRFEC assessment. Where a parent has NRPF and has permission to work, one aspect of the assessment will involve considering whether employment is a viable option for them, as a conclusion about whether a child is in need must be made by evaluating all the available information about the family’s circumstances. Parents with NRPF are often prevented from working due to unaffordable childcare and housing costs. For more information, see:* 8 Social services’ support – children within families
 |

## 5.3 Social work approach

The legal basis for providing accommodation and financial support to people with NRPF stems from children’s and social care legislation, so standard social work assessments will need to be carried out in line with the applicable statutory guidance in order to establish an adult’s or child’s needs, and therefore eligibility for support.

As well as following the statutory guidance, social workers and other officers will need to ensure that considerations are made within social care assessments that do not usually apply to other groups, for example:

* Establishing how a parent’s financial circumstances and lack of access to employment/ benefits impacts on the welfare of their child in a GIRFEC assessment (family cases)
* Whether the destitution exception applies in community care assessments (adult cases)
* Establishing how a carer’s financial circumstances (or that of the person being cared for) and lack of access to other forms of mainstream benefits might apply in a carer’s assessment
* Where a parent is in an excluded group, the impact of a child’s return to their country of origin, i.e. the effect to which protective factors in the UK might be retained or not, or affected by other factors.

Additionally, social workers and other officers will need to be alert to the different backgrounds and experiences of migrant children and adults and may draw on various elements of their practice experience to inform their approach to this group.

In households where an adult and child may be in need of assistance under different statutory provisions, the respective social services departments would need to work together and may need to undertake an integrated joint assessment.

## 5.4 Use of interpreters

Working with migrant children, families and adults often requires the use of interpreters in order to ensure full participation and understanding, especially during key appointments in which evidence is gathered for assessments, or where individuals are being provided with advice or the results of an assessment.

Interpretation should be provided to people that require this free of charge, and upon request, when engaging with statutory services. It is particularly important that a careful assessment be made of the need for an interpreter, which goes beyond a determination that an individual’s English proficiency might be ‘good enough’ for purposes of conducting a meeting.

It can be challenging, in Scotland, to source an interpreter who speaks an appropriate language and dialect, due to the relatively small pool of available interpreters. This can be frustrating for social workers, and for people requiring assistance, as it can lead to delays or the need to reschedule meetings when interpretation is necessary, but not available. Whilst the in-person attendance of an interpreter is best practice for face-to-face meetings, it is possible to use a telephone interpretation service via a speakerphone, in the alternative.

Using an interpreter effectively at work is a skill that requires practice, and conscious effort.

Best practice tips for using an interpreter:

* **Select an appropriate interpreter.** Ensure that you specify the appropriate language and dialect, aiming always to provide an interpreter in the person’s first language. Consider whether you require to specify the gender of the interpreter (for example, where there has been gender-based violence) and also whether the person has a preferred interpreter or interpreters they would rather not work with (evaluating whether or not this is for good reason). **It is not appropriate to allow a friend or family member of an individual being interviewed to interpret on their behalf.**
* **Introduce yourself to the interpreter.** If possible, arrange some time before the meeting to introduce yourself and discuss the subject matter of the meeting. Check the interpreter’s level of English proficiency and professional training and request that the interpreter interpret everything into the first person (to avoid ‘he said, she said’).
* **At the start of the interview, check the interpreter and person understand each other, and are happy to proceed.** There are many different dialects of some languages, and it may be the case that the person cannot understand the interpreter well enough to proceed. It may also be the case that the interpreter and the person know each other – and this has not been identified previously – which might be a legitimate reason not to proceed with the meeting.

* During the meeting, **speak directly to the individual,** not to the interpreter.
* **Speak more slowly** rather than more loudly.
* **Speak at an even pace in relatively short segments.** Pause so the interpreter can interpret.
* Assume, and insist, that **everything** you say, everything the individual says, **is interpreted.** If you are aware this is not happening, pause the meeting to discuss this directly with the individual and the interpreter.
* Be aware that many concepts you express **have no linguistic or conceptual equivalent in other languages**. The interpreter may have to paint word pictures of many terms you use. This may take longer than your original speech. Use simple direct English to help the interpreter in this task.
* Remember that the person may have been a victim of torture or trauma. This may also be true for the interpreter. If you need to ask questions that may be extremely **personal or sensitive,** explain that doing so is part of your evaluation and reiterate that the information will remain confidential.
* Ask the person to **repeat back** important information that you want to make sure is understood.
* **Check the quality of interpretation.** If possible, seek to speak to the person after the meeting, privately, to ask whether the interpretation was of a good standard and if they were otherwise satisfied with the service.

## 5.5 Data sharing

Personal information can only be collected, stored and shared with other organisations in compliance with the Data Protection Act 2018 and the EU General Data Protection Regulation (GDPR).[[42]](#footnote-42)

Normally an individual’s consent will be required to share personal information with another organisation and sensitive data, for example, information about ethnic origin, health needs and identity documents, may only be processed in very specific circumstances.

There are a number of requirements that a local authority must follow in order to protect the rights of the person whose data is being processed:

* The person must be informed of what data is being collected and for what purpose, including when their personal information may be shared with another organisation or council department.
* Any personal data that is held must be accurate and kept up to date.
* Personal data must be held safely and access to sensitive data must be limited to authorised personnel only.
* There must be a lawful basis for sharing data with external organisations, for example the Home Office.
* There should be a clear process or a policy for identifying whether consent is required in order to share data with an external organisation.

When the processing of personal data is based on the data subject providing consent, then consent must be freely given, i.e. the data subject has a genuine choice about their circumstances and the decision to refuse or withdraw consent will not interfere with how their case is managed.

If a local authority believes processing of data is necessary without explicit consent being provided, then careful consideration must be given as to whether such activity is justified in light of governing legislation and the administration of services being provided.

## 5.6 Data sharing when administering NRPF support

Local authorities need to ensure that statutory duties are correctly enacted in order to safeguard the welfare of vulnerable people and children with NRPF, and must ensure that resources are being correctly used to alleviate presenting need.

In many cases, the fulfilment of statutory duties will not require data sharing with the Home Office at all, for example, in order to meet urgent needs whilst assessments are being undertaken, protecting vulnerable children, conducting a needs assessment and establishing a support or care plan.

In some circumstances, however, the local authority may need to obtain data held by the Home Office or other central government departments, in order to fulfil its statutory duties, for example, when considering whether the Schedule 3 exclusion to social services support applies.

It may be counter-intuitive for a local authority not to share data with the Home Office, for example, where achieving a more expedient resolution to a person’s immigration status would be in the best interests of a child as well as being in the public interest by saving UK tax payers’ money.

Decisions about whether to share data or not are likely to face scrutiny, and such decisions have been the subject of two Local Government Ombudsman (LGO) investigations in England:

* A family complained that Hertfordshire County Council had failed to provide appropriate support to them under section 17 of the Children Act 1989 and had not provided sufficient information to the Home Office about the local authority’s involvement in the family’s care. The LGO found the Council to be at fault for failing to advise the Home Office of the subsistence allowance being paid to the family or that the family remained in hotel accommodation it was funding. The family also wanted the Home Office know that their child had special educational needs but the local authority failed to pass on this information. The LGO found that: *‘The family needs to know the Home Office has all the relevant information about them and their circumstances. The council’s failure to provide this has caused them distress.’[[43]](#footnote-43)*
* Thurrock Council was found to be at fault for sharing information about a family’s immigration status, without the parents’ consent, with the children’s schools.[[44]](#footnote-44)

For the above reasons, it is advisable that local authorities have clear policies on data sharing, which are regularly reviewed to take account of legislative developments, to ensure consistent practice across teams. Any policy would need to be established in conjunction with the local authority’s legal and information governance teams, and the policy would need to recommend that social workers and other officers consult with their legal team if there are any doubts about whether data can be shared in a particular instance.

Local authorities would need to ensure that people requesting a service are provided with information about how their data will be held and when it may be shared. Best practice is to take explicit consent from a person after explaining the circumstances in which data will be shared, with the aid of an interpreter, if necessary. Local authorities should also consider whether to ensure this information is also provided within consent forms, information leaflets and/or on the public website.

Social workers and other officers may refer to the Information Commissioner’s Office website for more information on data protection requirements.[[45]](#footnote-45)

For more information, see:

* 6.4 Establishing immigration status
* 7 Social services’ support – exclusion

# 6 Social services’ support – referrals

This chapter sets out the key information that the local authority will need to acquire as early as possible on receipt of a referral for support from an NRPF adult or family, in order to establish what action needs to be taken.

## 6.1 Initial information

To ensure practice is not discriminatory, these questions would need to be asked of everybody and it is a good idea to include them on referral forms or telephone screening scripts. The table below sets out what information is required and why the local authority will need to obtain this.

**A local authority may still be required to undertake social care assessments or intervene to provide temporary support to prevent homelessness and destitution, even when some of this information is not immediately available.**

|  |  |
| --- | --- |
| **Information required**  | **Reason**  |
| Language(s) spoken  | To find out whether an interpreter is required |
| Current address and recent address history  | To determine which local authority will be responsible for assessing and meeting need.For more information, see:* 8 Social services’ support – children within families
* 9 Social services’ support – adults
 |
| Nationality, immigration status (if known) and what identity or immigration documents they haveNationality and immigration status (if known) of any dependants in the household | The person or parent’s nationality and immigration status will determine whether they are:* Able to work, claim benefits, access homelessness assistance or Home Office asylum support.
* In an excluded group which means that a person or family may only receive support from social services if this is necessary to prevent a breach of their human rights or EU treaty rights, and therefore whether a human rights assessment will need to be completed in addition to social work assessments.
* Only able to receive support where their needs have arisen for reasons other than solely destitution (adults in need of community care).
* Prevented from being able to work or claim benefits, which may be relevant factors in the GIRFEC assessment when determining how a parent’s immigration status impacts on their ability to accommodate and support their child (family cases).

For more information, see:* 2 Immigration status and eligibility for public funds
* 7 Social services’ support – exclusion
* 8 Social services’ support – children within families
* 9.5 Destitution exception
 |
| Urgency of the potential homelessness/ destitution situation that the person or family are facing and whether they have any documentary evidence to confirm this | To establish whether emergency support needs to be provided whilst assessments are being carried out. For more information, see:* 6.2 Meeting urgent need – families
* 6.3 Meeting urgent need – adults
 |

## 6.2 Meeting urgent need – families

Local authorities will undertake a detailed investigation into the family’s financial and housing circumstances to establish whether the family will be eligible for support under 22 of the Children (Scotland) Act 1995.

Under section 22, the local authority has the power to provide emergency housing and/or financial support to a family when a child’s welfare is at risk whilst assessments or enquiries are being carried out. The statutory guidance followed by local authorities in England states:

 *‘Whatever the timescale for assessment, where particular needs are identified at any stage of the assessment, social workers should not wait until the assessment reaches a conclusion before commissioning services to support the child and their family. In some cases the needs of the child will mean that a quick assessment will be required.’* [[46]](#footnote-46)

Additionally, refusing to provide support to a family who would otherwise be homeless and destitute would be a breach of Article 3 of the European Convention on Human Rights (ECHR). To leave a family without accommodation or any financial support, when there is no alternative support available whilst assessments are being undertaken is likely to be unlawful. [[47]](#footnote-47)

For more information, see:

* 8 Social services’ support – children within families

## 6.3 Meeting urgent need – adults

Section 12A(5) of the Social Work (Scotland) Act 1968 allows for the local authority to provide community care services where such services are required as a matter of urgency. Although this is a discretionary power, where a person with NRPF would otherwise be homeless and destitute were they not provided with interim support by the local authority, then this could give rise to a breach of Article 3 of the European Convention on Human Rights (ECHR). The local authority may therefore need to consider providing accommodation whilst its assessments are carried out, if there appears to be no other housing options available to the person. [[48]](#footnote-48)

For more information, see:

* 9 Social services’ support – adults

## 6.4 Establishing immigration status

The local authority will need to establish the person or parent’s immigration status at an early stage in the referral process to find out what support options they may have and also whether the exclusion to social services’ support applies.

It may be possible to obtain information from the person or parent to confirm their immigration status, for example, if they have a Biometric Residence Permit (BRP) or another Home Office document.

However, there will be instances when a person will be unable to provide original documentation, for example, where they have submitted their passport and/or BRP to the Home Office with a pending application, or where the Home Office has retained documentation following a refusal of an application, or if they do not have evidence of their status. In such cases, the person’s legal representative may be able to provide confirmation and the local authority may also confirm the person’s status with the Home Office. European Union nationals who obtain indefinite leave to remain or limited leave to remain under the new EU Settlement Scheme will not be issued with a physical document to confirm their status, which will be recorded by the Home Office electronically.

As there are limitations on what information can be shared with the Home Office, the local authority must consider carefully how this is done to ensure the rights of people requesting support are upheld in accordance with the Data Protection Act 2018 and General Data Protection Regulation.

Methods of immigration status checking through the Home Office include:

* The NRPF Connect – exclusion database to obtain a status check and receive updates on immigration claims. Local authorities using the database will already have signed an access agreement that sets out the lawful basis for data sharing, with the system being designed to enable the local authority to share the minimum information necessary for the statutory purpose of administering NRPF support. Local authorities using the system can refer to the NRPF Network for further information and advice on data sharing. [[49]](#footnote-49)
* Home Office Status, Verification, Enquires and Checking services (chargeable services need to be arranged directly with the Home Office)
* Free email status checking service: ICESSVECWorkflow@homeoffice.gsi.gov.uk – the local authority will be required to explain the statutory basis for requesting information
* Telephone checking service (chargeable)
* On-Site Immigration Official (chargeable)

Local authorities should also be aware that using ad-hoc and insecure methods of data exchange with individuals at the Home Office may not be compliant with the Data Protection Act 2018 and related legislation.

For more information, see:

* 5.5 Data sharing
* 5.6 Data sharing when administering NRPF support

# 7 Social services’ support – exclusion

This chapter explains which families, adults or young people leaving care may only be able to receive accommodation and financial support from social services where this is necessary to prevent a breach of their human rights or rights under the EU treaties.

## 7.1 Schedule 3 exclusion

Assistance provided by social services is not a public fund for immigration purposes, and should not be refused on the basis that the person has NRPF.

However, Section 54 and Schedule 3 of the Nationality Immigration Asylum Act 2002 contains an exclusion that may limit whether accommodation and financial support can be provided by social services to certain people depending on their nationality and immigration status. Support or assistance may only be provided to a person who is in an excluded group when this is necessary to prevent a breach of their human rights or EU treaty rights.

The purpose of Schedule 3 is to restrict access to support when a person is in an excluded group and they are either without leave to remain in the UK or can no longer support themselves and their family, and instead can avoid a situation of destitution in the UK by returning to their country of origin, where they are not subject to restrictions on employment and services.

When a person is in an excluded group, the local authority has a legal obligation to consider return to country of origin as an alternative to spending scarce resources on supporting people whose future is not likely to be in the UK. The local authority will usually undertake a human rights assessment, considering whether return to country of origin is possible or whether there is a legal or practical barrier preventing this. This will involve having regard to decisions made by the Home Office or appeal courts, and the local authority will be required to provide support whilst any human rights applications remain outstanding.

The Schedule 3 exclusion applies to at least two-thirds of households supported by local authorities across the UK, a significant proportion of whom will go on to obtain leave to remain. This shows that many adults, young people and families receiving accommodation and financial support from social services have a legal or practical barrier preventing them from returning to their country of origin, and must be supported despite being in an excluded group. When the exclusion is applied correctly, the local authority will ensure that they are considering all options available to a person to avoid remaining in the UK in a situation of destitution. [[50]](#footnote-50)

**Assistance cannot automatically be refused when a person is in an excluded group because social services’ support can be provided when this is necessary to prevent a breach of human rights. The local authority will need to undertake a human rights assessment to establish whether or not support can be provided.**

## 7.2 Type of assistance subject to Schedule 3

The exclusion only applies to the types of social services’ assistance listed in the table below.

|  |  |
| --- | --- |
| Support or assistance | Legislation  |
| Accommodation and financial support provided to a family to meet a child’s needs | Section 22 of the Children (Scotland) Act 1995  |
| Aftercare, including accommodation, provided to a young person leaving care who is age 18 or older | Sections 29-30 of the Children (Scotland) Act 1995  |
| Care and support, including accommodation, provided to an adult in need | Sections 12 or 13A of the Social Work (Scotland) Act 1968  |

Additionally, temporary accommodation provided under Part II of the Housing (Scotland) Act 1987 to a person who has requested that the local authority reviews its decision on a homeless application is subject to the exclusion.

**The exclusion does not prevent the local authority from undertaking a needs assessment, meeting urgent needs whilst assessments are being carried out, or providing services that are administered under legislation that is not listed in the table above.**

For more information, see:

* 3.3 Homelessness assistance
* 8 Social services’ support – children within families
* 9 Social services’ support – adults
* 10 Young people leaving care

## 7.3 Excluded groups

A person will be in an excluded group when they are one of the following:

* A person who is without leave\*, for example:
* Visa overstayer,
* Illegal entrant
* ARE asylum seeker (who claimed asylum in-country)
* An EEA national (not a British citizen)
* A person granted refugee status by another EEA State
* An ARE asylum seeker who has not complied with removal directions set by the Home Office to leave the UK on a specific date
* A dependant of a person who falls under these groups, for example, the spouse or child of an EEA national

**\*This category does not apply if the person is a person without leave who has claimed asylum and is waiting for a final decision to be made on their asylum application to be made by the Home Office or appeal courts.**

The Schedule 3 exclusion will only apply to children under 18 within families who require accommodation and financial support because the local authority has general duty to promote the upbringing of children by their family, so local authorities are required to resolve the situation of the family as a whole, for example, by providing accommodation and financial support or considering return to the parent’s country of origin.[[51]](#footnote-51)

The Schedule 3 exclusion does not apply to looked after children under 18 and will only apply to a young person leaving care when they are age 18 or older.

## 7.4 Human rights assessment

Schedule 3 does not prevent the provision of support (whether under a power or duty) if this is necessary to avoid a breach of the person or family’s human rights or rights under EU treaties.[[52]](#footnote-52)

This exception means that support can only be withheld in instances where the person or family can avoid a breach of human rights, which may occur if they remain destitute in the UK, by returning to their country of origin where they may be able to access employment and receive services.

In practice this means that, along with establishing whether an adult or child is in need through its social care assessments, the local authority must undertake a human rights assessment in order to identify whether there are any legal or practical barriers preventing the person or family’s return to their country of origin. It will be up to each local authority to decide whether social workers or other officers will be responsible for undertaking these assessments and it will be important for staff that do so to be appropriately trained and supported.

For more information, see:

* 11 Assessments when the exclusion applies
* 14 NRPF service delivery

## 7.5 When the exclusion does not apply

The Schedule 3 exclusion will not apply to everyone that requests support from the local authority, so it is important that such people are correctly identified.

Schedule 3 does not apply to a person with one of the following types of immigration status:

* Leave to remain with NRPF
* Leave to remain in the UK that has been extended by section 3C
* Derivative right to reside under EU law, for example:
	+ Primary carer of a British (or other EEA national) child (Zambrano carer)
	+ Primary carer of a child (in education) of an EEA worker
	+ Primary carer of a self-sufficient EEA national child
* Asylum seeker (waiting for the Home Office or appeal courts to decide their asylum claim)
* ARE asylum seeker who claimed asylum at port of entry rather than in-country [[53]](#footnote-53)

**Such people and families are not excluded from social services’ support and would need to be provided with assistance if they are eligible following a GIRFEC or community care assessment. A human rights assessment is not required to determine whether support can be provided.**

This means that local authorities will often be required to provide support to families where the parent is lawfully present, for example, has limited leave to remain with NRPF, or a derivative right to reside under EU law as a Zambrano carer. These types of immigration status are commonly held by single parents who are caring for a British child, or child who has lived in the UK for seven years. When a parent can work but is unable to claim benefits to top up a low income, such as housing benefit and tax credits, and cannot access more affordable social housing, they will face difficulties funding childcare and sustaining employment that enables them to afford accommodation and provide for their family’s living needs. [[54]](#footnote-54)

For more information, see:

* 2 Immigration status and eligibility for public funds
* 15 EEA nationals and family members

## 7.6 Duty to inform the Home Office

Paragraph 14 of Schedule 3 requires a local authority to inform the Home Office when a person requesting support is, or may be, excluded from receiving support or assistance because one of the following excluded groups applies to them:

* A person who is without leave, for example:
* Visa overstayer,
* Illegal entrant
* ARE asylum seeker (who claimed asylum in-country)
* An ARE asylum seeker who has not complied with removal directions set by the Home Office to leave the UK on a specific date

This duty may, however, conflict with local authorities’ duties to comply with relevant data protection legislation, particularly in circumstances in which people require social work assistance but do not consent to sharing of their data with the Home Office. Depending on the situation, and the type of information that requires to be shared, a local authority may find itself at risk of breaching one form of legislation, in order to comply with another. It is advisable for social workers and other officers to consult their legal teams if there is any doubt about compliance with this duty, and for the local authority to set out its approach within data sharing policies.

For more information, see:

* 5.5 Data sharing
* 5.6 Data sharing when administering NRPF support
* 6.4 Establishing immigration status

# 8 Social services’ support – children within families

This chapter sets out how a local authority will determine whether it has a duty to provide accommodation and financial support to a family with NRPF.

|  |
| --- |
| Good practice points* Families should not be refused assistance solely because they have NRPF (because this in itself does not exclude them from social services assistance), or because the local authority does not receive government funding to provide support to NRPF families.
* The requirement to undertake a child wellbeing assessment is based on an appearance of need and is not dependent on the parent’s immigration status or whether the parent has a pending immigration application. The absence of a pending immigration application should not prevent an assessment being carried out or interim support being provided when this is necessary. The parent’s immigration status and whether any applications have been made will be relevant factors when determining whether the exclusions to support apply.
* Section 22 of the Children (Scotland) Act 1995 requires local authorities to assist the family as a whole; offering to accommodate the child alone or taking the child into care will rarely be an appropriate response in the absence of any safeguarding concerns in addition to the risk to the child arising from the parent’s lack of housing and income.
* When determining what support to provide to an NRPF family, the local authority should be mindful that the purpose of doing so is to safeguard and promote the child’s welfare, alleviating any risks that may arise due to the parent’s exclusion from mainstream benefits.
 |

## 8.1 Statutory framework

**General duty to promote child wellbeing**

A local authority’s duty to provide accommodation and financial assistance to NRPF families with children who would otherwise be homeless or destitute arises from general duties to safeguard the welfare of children in need, which are set out in the Children (Scotland) Act 1995.

This Act requires assistance to be provided to a family where there is a child in need and the local authority determines that it must use its power under the Act to provide accommodation and/or financial support to meet the child’s assessed needs.

Section 22(1) of the Children (Scotland) Act 1995 sets out the general duty of local authorities to:

 *‘(a) safeguard and promote the welfare of children in their area who are in need; and*

 *(b) so far as is consistent with that duty, promote the upbringing of such children by their families,*

 *by providing a range and level of services appropriate to the children’s needs.’*

Section 25(1) goes on to define a ‘child in need’ who the local authority requires to accommodate to include:

*‘..any child who, residing or having been found within their area, appears to them to require such provision because—*

 *(a) no-one has parental responsibility for him;*

 *(b) he is lost or abandoned; or*

*(c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.’*

Section 22 also requires local authorities in so doing, to promote the upbringing of children by their families, and gives powers to local authorities to provide financial support to both children and their families.

**This means that in fulfilling its duties arising under Section 25 to the children of an NRPF family, a local authority should seek to accommodate and financially support an intact family together, unless doing so would not safeguard the welfare of the children.**

**Children with disabilities or affected by disabilities**

In addition to a child being in need due to the family’s situation of destitution, there may be other needs that must also be properly addressed where a child has a disability.

A child is considered to have a disability of she has a mental or physical disability, or a chronic health problem. A child may also be affected by the disability of another family member.

Section 23 requires local authorities, in supporting a family with disability under Section 22, to design the provision of services so as to minimise the effect of disability on the lives of the children in that family, so as to give those children the opportunity to ’lead lives which are as normal as possible’. This applies to both minimising the effect of the disability of a child, or the disability of any other person in her family, if the child is adversely affected.

Therefore, when such a situation is identified in an NRPF family and the parent’s resources are not sufficient to minimise the effect of disability on a child within the family, then the local authority must consider how the child’s needs can be met through the provision of accommodation and/or financial support, as well as any physical adaptations to the premises and help accessing other services.

**Unborn children**

The local authority may need to consider whether a pregnant woman with NRPF is in need of assistance and therefore can be provided with accommodation and support under section 12 of the Social Work (Scotland) Act 1968, until her child is born, at which point duties under the Children (Scotland) Act 1995 may be engaged.

For more information, see:

* 9.13 Pregnant women with NRPF

## 8.2 Duty to undertake an assessment

Taken together, the legislative framework of the Children (Scotland) Act 1995, and the planning arrangements that the Children and Young People (Scotland) Act 2014 requires local authorities to have in place, means that local authorities may have a duty arising under their child welfare obligations, to provide accommodation and support to NRPF families in their area that are at risk of destitution and homelessness.

To assess whether that duty applies, with respect to a particular child, a local authority will require to undertake a child in need assessment (or child wellbeing assessment), where there is a concern that a child is aged under 18 and:

* needs local authority services to achieve or maintain a reasonable standard of health or development, or
* needs local authority services to prevent harm to their health or development, or
* is disabled, or
* is affected by the disability of another family member, or
* is 'at risk' of becoming a 'looked after' child either for the first time or perhaps a second or third time and so on because they are not in a settled situation.

If a child has a disability, or is affected by disability, the local authority must provide an assessment of the child, if their family asks for one. The local authority must also provide an assessment of the child’s carer and their ability to provide care for the child.

In England, local authorities also have a general duty to safeguard and promote the welfare of children who are in need in their area. The Courts have established that a child will be ‘in their area’ when they are physically present in the local authority’s area, even where they have only been resident there for a short time comparatively to their previous place of residence.[[55]](#footnote-55)

In instances where responsibility for undertaking an assessment or providing services is disputed, a child’s needs should be met whilst responsibility is determined. If a child is ‘ordinarily resident’ in another local authority, costs of providing services may be recovered under Section 86 of the Social Work (Scotland) Act 1968.

For more information, see:

* 9.1 Community care assessments

## 8.3 GIRFEC assessment

Getting it Right for Every Child (GIRFEC) is the national policy framework in Scotland aimed at improving outcomes and supporting the wellbeing of children and young people. The framework embeds the principles of the UN Convention on the Rights of the Child (UNCRC) into practice and promotes a rights-based approach. In particular, the GIRFEC approach is built around respect for the views of the child, a right guaranteed by Article 12 of the UNHCR, which embodies the right to be heard and listened to. [[56]](#footnote-56)

GIRFEC is central to all policies in Scotland which support children, young people and their families and is delivered through services and people who work with families.

To make sure everyone – children, young people, parents and the services that support them – has a common understanding of what wellbeing means, GIRFEC describes wellbeing in terms of eight indicators often referred to by their initial letters – SHANARRI:

* SAFE - Protected from abuse, neglect or harm at home, at school and in the community.
* HEALTHY - Having the highest attainable standards of physical and mental health, access to suitable healthcare and support in learning to make healthy, safe choices
* ACHIEVING - Being supported and guided in learning and in the development of skills, confidence and self-esteem, at home, in school and in the community.
* NURTURED - Having a nurturing place to live in a family setting, with additional help if needed, or, where possible, in a suitable care setting
* ACTIVE - Having opportunities to take part in activities such as play, recreation and sport, which contribute to healthy growth and development, at home, in school and in the community.
* RESPECTED - Having the opportunity, along with carers, to be heard and involved in decisions that affect them.
* RESPONSIBLE - Having opportunities and encouragement to play active and responsible roles at home, in school and in the community, and where necessary, having appropriate guidance and supervision, and being involved in decisions that affect them.
* INCLUDED - Having help to overcome social, educational, physical and economic inequalities, and being accepted as part of the community in which they live and learn.

People working in partnership with children and families can draw on these eight wellbeing factors (SHANARRI) and the Getting it right for every child National Practice Model (NPM) to help understand an individual’s strengths, needs and risks, what could be supported and how. They have been designed to apply to any issue facing a child or young person in Scotland and can be used by an organisation (such as the NHS or a local authority) or when services need to work together.

GIRFEC values and principles and the National Practice Model are the starting point, therefore, of any child wellbeing assessment conducted under section 22 of the Children (Scotland) Act 1995. The assessment must be undertaken within a ‘reasonable’ timeframe, having regard to the welfare of the child and the urgency of the matter.[[57]](#footnote-57)

Local authorities have developed their own best practice guidance in relation to the use of the GIRFEC values and principles and the National Practice Model in conducting assessments key aspects of which are noted below:

* Using the GIRFEC wellbeing indicators to guide an assessment
* Asking the five questions (set out in the National Practice Model)
* Using the My World Triangle (set out in the National Practice Model) to organise information and, when necessary, to gather more information about the strengths and pressures in the child’s world
* Analysing the information, using the Resilience Matrix (set out in the National Practice Model)
* Evaluating risks (for example, using the National Risk Framework)[[58]](#footnote-58)
* Summarising needs in relation to well-being (in the form of a GIRFEC Assessment or Child Plan)

There is no specific statutory guidance on assessing children in NRPF families, however, there are some challenges arising from a parent’s immigration status that are worth considering in the context of completing an assessment for an NRPF family, and these are set out below:

* The impact on the child of the parent’s lack of access to employment, benefits and social housing due to their immigration status.
* Limitations on the family’s ability to self-support. For example, a person with no current leave to remain is prohibited from opening a new current account, may have had their old bank accounts closed or frozen and will be committing a criminal offence if they undertake employment.
* Whether the family have experienced barriers due to the immigration status in accessing health services or meeting the cost of healthcare, including the cost of specific treatment, prescribed foods, and transport to and from healthcare appointments.
* The need to establish early on the role of the social worker in the assessment, and the purpose of assessment, and to address lack of familiarity with the operation of a social welfare system, or possibly underlying fear of authority for individuals who have been harmed or persecuted by their own governments or who are living in the UK with insecure immigration status.
* The need for further investigation with respect to physical and mental health, where addressing identification of trauma and untreated physical disability / mental health needs in the child / family may be due to a lack of records or access to medical treatment.
* Charitable support or assistance from local communities may be being provided in the absence of any statutory assistance, so a full investigation into the sustainability of such support and to what extent it meets a child’s needs must be undertaken.
* The impact of being a migrant, having a migrant parent or having uncertain immigration status on children’s integration – this may include the negative impact of multiple moves between short-term accommodation, language barriers in accessing education, exclusion from educational and social opportunities due to lack of financial support and experience of discrimination and/or bullying.

There is now a large body of case law in which the English courts have considered assessments of a child’s needs when they are living in an NRPF household with a view to determining eligibility for accommodation and financial support under section 17 of the Children Act 1989. The provision to safeguard and promote the welfare of a child in need is very similarly worded to the equivalent duty in section 22 of the Children (Scotland) Act 1995. Therefore, although the scope of section 22 has not been tested in the Scottish courts, local authorities in Scotland should bear in mind the English case law:

The English courts have found that:

* The local authority must undertake an assessment in line with the framework set out in the statutory guidance (English equivalent to GIRFEC) to determine whether support can be provided to an NRPF family.[[59]](#footnote-59)
* Section 17 empowers the local authority to rescue a child in need from destitution where no other state provision is available.[[60]](#footnote-60)
* Section 17 creates a target duty which provides a local authority with the discretion to decide how to meet a child’s assessed need. Local authorities may take scare resources and other support options available to the family into account and must decide what intervention is required on the facts and evidence of an individual case.[[61]](#footnote-61)
* A child without accommodation will be a child in need.[[62]](#footnote-62)
* Local authorities need to undertake thorough investigations and properly document their findings, ensuring that any judgments on the parent’s credibility are based on fact and not feel, and adverse inferences must not be made without first putting such concerns to the parent and providing them with an opportunity respond, for example, where there are information gaps.[[63]](#footnote-63)
* When a parent has leave to remain allowing them to work, their ability to do so will form one aspect of the assessment. A conclusion about whether a child is in need must be made by evaluating all the available information about the family’s circumstances.[[64]](#footnote-64)
* When considering the parent’s ability to self-support it is important to be aware of the restrictions that apply to people who do not have any current immigration permission, for example, the inability to open a bank account or work legally. (In England the impact of the right to rent provisions must be considered). [[65]](#footnote-65)
* Section 17 is an ongoing duty, so when a family’s circumstances change the local authority must decide whether this means that the child’s needs must be reassessed.[[66]](#footnote-66)

**Local authorities must be mindful not to inadvertently encourage or condone criminal activity when determining what alternative support options are available to a family, for example, by concluding that a parent can support their family through employment when they have no permission to do so legally.**

The case law referenced here is set out in the NRPF Network’s practice guidance: Assessing and supporting children and families with NRPF (England).[[67]](#footnote-67)

## 8.4 Considerations when parents are in an excluded group

When a parent can only receive support or assistance to prevent a breach of human rights because they are in one of the groups of people that are excluded by Schedule 3, then the local authority must undertake a human rights assessment, in addition to the child wellbeing assessment, to determine whether the family can be provided with accommodation and financial support under section 22, the human rights assessment will consider whether the family can return to the parent’s country of origin to avoid a human rights breach that may arise from them being destitute in the UK.

If return to country of origin is being considered, the child wellbeing assessment should also address the child’s needs within the country of origin and how they may or may not be met, as this information would be relevant to the human rights assessment.

For more information, see:

* 11 Assessments when the exclusion applies

## 8.5 Provision of accommodation and financial support

Local authorities have wide discretion in the type of support that can be provided to families under Section 22(3) of the Children (Scotland) Act 1995.

It specifies that services can be provided:

* for a particular child, and
* to any member of the child’s family, if doing so safeguards and promotes the welfare of the child.

Section 22(3) also sets out that services can include giving assistance in kind or, in exceptional circumstances, in cash. This means that local authorities can meet assessed needs by providing accommodation, as well as financial support in cash.

The local authority would need to provide assistance that is sufficient to reduce any risks to the child that may otherwise arise, in order to adequately safeguard the child’s welfare. For example, if a parent was previously relying on unsuitable caring arrangements for their child in order to undertake additional hours of employment, then the purpose of the local authority’s intervention would be to alleviate that risk to the child by providing accommodation and/or sufficient financial support to meet the family’s housing and living needs.

Cash support may be a more appropriate option to consider with NRPF families, as compared to other families who require Section 22 support, specifically because of the challenges they face in accessing other forms of cashless support and mainstream benefits, as well as the prohibition on many such families from access to current account banking facilities. The local authority may choose to use pre-payment cards as an efficient way to administer regular subsistence payments and to empower the individual to access their money as they need it.

As the Children (Scotland) Act 1995 does not proscribe the amount of financial support, or subsistence, that should be provided to meet the needs of a child in an NRPF household, the local authority must determine this.

It is good practice to have internal guidance that sets out basic rates and how additional needs may be met, in order to ensure consistent practice, the fair exercise of the local authority’s discretion and a minimal administrative burden on staffing resources.

When establishing internal guidance, the local authority must ensure that it clearly documents the process social workers must follow to decide how much to provide and how any basic rates have been reached. Some points to consider are set out below, including conclusions made by the courts in England and Local Government Ombudsman:

* The GIRFEC assessment must determine the needs of a particular child with proper consideration of the best interests of the child.
* A rational and consistent approach to decision making may involve cross-checking with internal guidance or other statutory support schemes so long as this does not constrain the local authority’s obligation to have regard to the impact of any decision on a child's welfare. This means that support should not be fixed to set rates or other forms of statutory support without any scope for flexibility to ensure the needs of an individual child are met.[[68]](#footnote-68)
* Child benefit is not designed to meet the subsistence needs of children so it would not be rational or lawful to set standard rates in line with these amounts.[[69]](#footnote-69)
* When it is in the child’s best interests for the family to remain together, payments for the parents should be made in addition to those considered appropriate to meet the needs of the children, but are not required to exceed what is necessary to avoid a breach of the parent’s human rights.
* The costs of free school meals and school uniform grants may need to be accounted for if they are not available to a child in an NRPF household.
* Home Office support for ARE asylum seekers provided under section 4 of the Immigration and Asylum Act 1999 is designed to cover food and toiletries only, therefore any policy aligning subsistence payments with these rates must allow for additional assistance to be provided in order to meet the child’s needs. The Court of Appeal has suggested that a level of support considered adequate simply to avoid destitution in the case of a failed asylum-seeker is unlikely to be sufficient to safeguard and promote the welfare of a child in need and by extension the essential needs of the parent on whom the child depends for care’[[70]](#footnote-70)
* Lack of complaint from a family does not mean that the local authority can be satisfied that it is making payments appropriate to meet the child’s needs.[[71]](#footnote-71)
* Any changes to subsistence rates must be administered immediately after they are implemented and policies need to be reviewed promptly following relevant case law developments [[72]](#footnote-72)

Due to housing demand, cost and supply, local authorities are presented with very significant challenges and costs in sourcing suitable temporary accommodation for NRPF families. Accommodation can therefore range from private tenancies, where the local authority may have made arrangements with specific providers, to Bed and Breakfast (B&B) or hotel rooms.

Examples of temporary accommodation used to house NRPF families:

* The local authority’s Homeless Allocations Team sources accommodation, which is funded through the local area team’s Section 22 budget. The family would not have a homeless tenancy agreement.
* Children’s Services fund a Women’s Aid refuge placement for a family where the mother is fleeing domestic violence, enabling the mother to obtain the specialist support provided by the refuge.
* A charity, Praxis, provides temporary accommodation with additional support, including immigration advice, to NRPF families supported by local authorities in London. The accommodation was purchased using funds from social investors and the local authority funds a family’s placement. [[73]](#footnote-73)

**It is essential that the local authority undertakes regular reviews and checks on the well-being of children in order to reduce the risk of any harm being experienced by children whilst the family remains reliant on social services for all material support.**

# 9 Social services’ support – adults

With homelessness increasing in Scotland and destitute adults with NRPF facing significant service gaps, local authorities play an essential role in alleviating destitution for the most vulnerable people, even though this may give rise to significant costs.

This chapter sets out how a local authority will determine whether it has a duty to provide support to adults who are vulnerable or have social care needs with NRPF, with a focus on when accommodation and financial support may need to be provided.

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| Good practice point* A person should not be refused assistance solely because they have NRPF (because this in itself does not exclude them from social services’ assistance), or because the local authority does not receive funding from central government to provide support to people with NRPF.
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## 9.1 Section12 of the Social Work (Scotland) Act 1968

A local authority has a duty and a power to support vulnerable adults (age 18 and over) arising under Section 12(1) of the Social Work (Scotland) Act 1968, and to assess the needs of any person who contacts them who appears to be in need of community care services:

'*It shall be the duty of every local authority to* ***promote social welfare*** *by making available advice, guidance and assistance on such a scale as may be appropriate for their area, and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate”*

A person will be in need of community care services if they:

* Suffer from an illness or mental disorder (a mental illness, personality disorder or learning disability), or are substantially handicapped by a deformity or disability - section 94(1)
* Are in need of care and attention arising out of infirmity, youth or age – section 94(1)
* Are in need of care and attention arising out of drug or alcohol dependence, release from prison or other form of detention – section 12(6)

Section 12A(1) of the Social Work (Scotland) Act 1968 goes on to set out the following duties:

*‘..where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority:*

1. *Shall make an assessment of the needs of that person for those services; and*
2. *Shall then decide…whether the needs of the person being assessed call for the provision of any such services.’*

The Social Work (Scotland) Act 1968 distinguishes between the duty to **provide** community care services to persons within their area who have been assessed as in need and the duty to **fund** them. The duty to **provide** the service arises from the physical presence of the person in the local authority area, however local authorities are only obliged to **fund** community care services for individuals who are ‘ordinarily resident’ in their area. A local authority that has provided services for someone who is not ‘ordinarily resident’ can therefore seek to cover the expenditure from another local authority. [[74]](#footnote-74)

9.2 Types of services that can be provided

A list of services that the local authority may be required to provide to meet the assessed needs of an individual who is chronically sick, disabled or has a mental disorder is set out in Section 2(1) of the Chronically Sick and Disabled Persons Act 1970. The Act specifies that assistance may include facilities, cash and residential accommodation.

The Community Care and Health (Scotland) Act 2002 clarifies what aspects of social care constitute ‘personal care’ and defines in greater detail the types of services that local authorities may charge for or not. Although local authorities are not legally obligated to provide any of the services listed, the Act clarifies that they may not charge if they choose to do so. When a person requires community care services, but does not need accommodation, for example, because they are living with family members, then the local authority would need to follow its standard practice with regards to assessing whether they would need to make a financial contribution. Additionally, if the services are being provided under section 12 of the Social Work (Scotland) Act 1968, and the person requiring care is in an excluded group, then assistance may only be provided to prevent a breach of human rights, so a human rights assessment may also be required.

An example of when care may need to be provided is where an elderly parent of an EEA national who is working in the UK lives in the family household and requires assistance with personal care that the EEA national is unable to provide. As the parent would have a right to reside under EU law as the family member of a worker, social services would be required to provide the care that they require, but would be entitled to undertake an assessment of the parent’s income and capital in the same way that any other person would be means assessed in order to establish whether they must contribute towards their care.

## 9.3 Providing accommodation and financial support

The Chronically Sick and Disabled Persons Act 1970 does not specify that ordinary accommodation can be provided to meet needs, however the case of *MacGregor v South Lanarkshire Council* [2001] established that where a need is assessed, and there will be a major or significant risk to a person’s independence, health or wellbeing if a service is not provided, then the local authority will have a duty to meet this need if it cannot be met any other way. This principle could therefore be interpreted that where a person requires accommodation in order to receive care or other services to meet their needs, this must also be provided.[[75]](#footnote-75)

When a person with NRPF does not have access to any financial support, the local authority may need to consider providing subsistence payments as part of the care plan in order to meet the person’s support needs. The type of accommodation that is provided to meet needs will impact on how much subsistence is also provided.

A publicly funded care home resident is allowed to retain a Personal Expenses Allowance from their income in order to cover the costs of personal items. The weekly rate for 2018/19 is £27.00. Local authorities may wish to refer to this when considering how much subsistence to provide to a person with NRPF who is living in a care home.[[76]](#footnote-76)

For people who are living in other types of accommodation, the local authority would need to be mindful of the broad scope it has to meet needs and should take a flexible approach to determine how much a person requires based on their individual needs. For example, where a weekly visit to a day centre that cannot easily be reached by public transport is linked to meeting a person’s identified need, then it would be appropriate to ensure that they are provided additional funds to do this, on top of a subsistence payment to meet their basic living needs.

The provision of subsistence support would also need to be sufficient to mitigate any identified safeguarding risks, for example, where a victim of domestic violence may be at risk of returning to a violent partner.

Social workers and other practitioners working with adults may have regard to the principles established regarding subsistence payments to meet a child’s needs when families with NRPF are supported under section 22 of the Children (Scotland) Act 1995.

For more information, see:

* 8.5 Provision of accommodation and financial support (children within families)

## 9.4 Community care assessments

Local authorities have a duty to assess the community care needs of individuals ordinarily resident within their area and provide services to those people who require them. This duty may be triggered by obligations under the Social Work (Scotland) Act 1968, the Mental Health (Care and Treatment) (Scotland) Act 2003, or the Carers (Scotland) Act 2016.

There is no statutory definition of ‘ordinary residence’ under the Social Work (Scotland) Act 1968. However, the Scottish Government has issued a Circular to local authorities which, as a starting point, proposes to follow English legislation as interpreted by the courts in the case of *Shah v London Borough of Barnet* [1983]:

*'unless … it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration*.' [[77]](#footnote-77)

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| Good practice point* The requirement to undertake a community care assessment, or carer’s assessment, is based on an appearance of need and is not dependent on the person’s immigration status, although this will be a relevant factor when establishing whether the local authority has a duty to meet community care needs and determining whether the exclusion to adult social care support applies.
 |

## 9.5 Conducting a community care assessment

A community care assessment will normally be conducted in two stages, the first of which is the requirement to conduct **an assessment of need**.

Local authorities will adopt different approaches to assessments, however the assessment must be tailored to the circumstances of the individual.

The Scottish Government has published guidance on conducting adult social care/ community care assessments in relation to the Social Care (Self-directed Support) (Scotland) Act 2013, which requires local authorities to ensure individuals:

* Have as much involvement as they wish to, and the opportunity to collaborate, in the assessment
* Are provided with any assistance reasonably required to express a view and make an informed choice about forms of support, including self-directed support
* Receive support in a form that facilitates respect for personal dignity and respect for the right to participate in the community [[78]](#footnote-78)

The second stage is that the local authority will consider **eligibility for services** to meet the assessed need. When doing so, local authorities must take into account the 2007 National Eligibility Framework, jointly developed by the Scottish Government and COSLA, but can also have regard to their own eligibility criteria.[[79]](#footnote-79)

The Framework states that, in determining eligibility, the local authority must have regard to the following points:

* Once a local authority determines a person’s needs fall within its eligibility criteria, it has a duty to meet those needs, always recognising that there are many and varied ways to ‘meet a need’. The act encourages creativity and collaboration to widen the scope of support received.
* Eligibility criteria should not shape the identification of ‘presenting needs’ but it may influence which needs can be met through local authority or partnership funding.
* It is important that assessments are focused on personal outcomes and that a strengths- based approach to assessment is adopted.
* A need should not automatically be seen as a deficit that requires funding or a service.
* In determining eligibility, social workers and other practitioners need to take full account of how a person’s needs and risks may change over time, the impact of failure to access support and whether this would lead to more support being required in the future.
* If, after assessment, it is determined that a person does not meet the eligibility for funded support or services they should – minimally – be provided with information and advice about alternative forms of possible assistance.
* There may be a requirement for limited or ongoing involvement with some people even if their needs fall below eligibility criteria thresholds.

The authority can take into account its overall resources when determining eligibility criteria. However, once it has decided that the person's needs are such that they require provision of services (i.e. they are 'eligible needs'), the authority cannot then refuse to meet those needs because of budgetary constraints.

There is no specific statutory guidance on assessing NRPF individuals, however, there are some challenges that are worth considering in the context of completing an assessment for an NRPF individual:

* Has the person’s immigration status impacted their ability to access health services or meet the cost of healthcare (including the cost of specific treatment, prescribed foods, and transport to and from healthcare appointments) which may have exacerbated physical or mental health conditions?
* Has the purpose of the assessment and the identity of the lead assessor been made clear to them?
* Is there a need to address a lack of familiarity with the operation of a social welfare system, or possibly underlying fear of authority for individuals who have been harmed or persecuted by their own governments?
* Will there be a need for further investigation with respect to physical and mental health? Where addressing identification of trauma and untreated physical disability / mental health needs in the individual, how will that be accomplished where records or access to medical treatment has been lacking?
* Is an interpreter needed and is there a way of continually assessing the quality of interpretation being offered?
* Does interim support may need to be provided whilst an assessment is being carried out?

For more information, see:

* 5.4 Use of interpreters
* 6.3 Meeting urgent need – adults
* 11 Assessments when the exclusion applies

## 9.6 Destitution exception

Local authorities are not required to provide social care services to a person whose needs have arisen due to destitution alone due to an exception that is set out in:

* Section 12(2A) of the Social Work (Scotland) Act 1968 – in relation to services provided under section 12 and 13A
* Article 12 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005/2078 - in relation to services provided under sections 25-27 of the Mental Health (Care and Treatment) (Scotland) Act 2003

This exception prevents a local authority from providing assistance (whether by way of residential accommodation or otherwise) to some people with NRPF:

*‘A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies is not to receive assistance under subsection (1) of this section (whether by way of residential accommodation or otherwise) if his need for assistance has arisen solely—*

*(a)because he is destitute; or*

*(b)because of the physical effects, or anticipated physical effects, of his being destitute.’*

This exception only applies to people who are ‘subject to immigration control’:

|  |  |
| --- | --- |
| A non-EEA national who…  | Examples |
| Requires leave to enter or remain in the UK but does not have it (is without leave) | * Visa overstayer
* Illegal entrant
 |
| Has leave to enter or remain in the UK which is subject to a condition that they have no recourse to public funds (NRPF) | * Spouse of a British citizen or settled person
* Tier 4 student and their dependants
* Leave to remain – family/private life
 |
| Has leave to enter or remain in the UK that is subject to a maintenance undertaking | * Adult dependent relative of a British citizen or person with settled status (for the first five years of residence in the UK)
 |

This exception does not apply to EEA nationals or a person who has the right to reside as the family member of an EEA national.

The definition of destitution that is used when determining claims for asylum support is to be followed:

 *‘A person is destitute if—*

*(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or*

*(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.’* [[80]](#footnote-80)

The intention behind this provision is to clarify that local authorities are not required to provide support to an adult *solely for the purpose of alleviating destitution when that person has no additional needs*. For example, where a person cannot maintain a habitable home environment for no other reason than because they are homeless, that need has solely arisen due to their destitution, rather than because of an illness or mental disorder or disability. When no other support needs are identified in such a case, the local authority will not have a duty to meet their needs (including by providing accommodation) under the legislation listed above. However, in some cases it may be appropriate to consider whether to use a discretionary power to provide support.

Therefore, proper consideration of the eligibility criteria will involve identifying what has given rise to a person’s particular need. Persons whose needs do arise from a physical or mental impairment, or illness, *not solely caused by destitution*, can be provided with assistance when they meet the eligibility criteria.

## 9.7 Schedule 3 exclusion

Section 54 and Schedule 3 of the Nationality Immigration Asylum Act 2002 contains an exclusion that may limit whether accommodation and financial support can be provided by social services to certain people, depending on their nationality and immigration status. Support or assistance may only be provided to a person who is in an excluded group when this is necessary to prevent a breach of their human rights or EU treaty rights.

The exclusion applies to support or assistance provided under sections 12 or 13A of the Social Work (Scotland) Act 1968.

The main groups that this applies to are people who are without leave and EEA nationals. When a person is in an excluded group, the local authority has a legal obligation to consider return to country of origin as an alternative providing social services’ support to the individual in the UK. The local authority will usually undertake a human rights assessment in order to establish whether return to country of origin is possible or whether there is a legal or practical barrier preventing this. This would need to be conducted in addition to the community care assessment.

The exclusion does not apply when a person is provided with assistance under the Mental Health (Care and Treatment) (Scotland) Act 2003, or does not prevent a community care assessment being undertaken or urgent needs from being met.

For more information, see:

* 7 Social services’ support – exclusion
* 11 Assessments when the exclusion applies

## 9.8 Section13A of the Social Work (Scotland) Act 1968

Section 13A of the Social Work (Scotland) Act 1968 imposes the duty to make arrangements for:

‘..*the provision of**suitable residential accommodation where nursing is provided for persons who appear to them to be in need of such accommodation by reason of infirmity, age, illness or mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.’*

Residential accommodation includes a care home or psychiatric hospital.

The destitution exception applies to this provision so must also be considered.

Additionally, for people who are in an excluded group, residential accommodation under section 13A can only be provided where this is necessary to prevent a breach of their human rights, so the local authority would also need to undertake a human rights assessment to determine whether support may be provided.

For more information, see:

* 9.5 Destitution exception
* 9.6 Schedule 3 exclusion

## 9.9 Mental Health (Care and Treatment) (Scotland) Act 2003

The Mental Health (Care and Treatment) (Scotland) Act 2003 sets out a wide range of requirements with regard to the care and treatment of adults with mental health conditions. These must be considered alongside the Code of Practice.[[81]](#footnote-81)

Sections 25 to 27 require the local authority to provide, or secure the provision of certain services for persons who are not in hospital and who have or have had a mental disorder.

A mental disorder includes a mental illness, personality disorder or learning disability.

Care and support services under section 25:

* Need to be designed to minimise the effect of the mental disorder on such persons and give such persons the opportunity to lead lives which are as normal as possible – section 25(2)
* Include residential accommodation and personal care and personal support (but not nursing care) – section 25(3)
	+ ‘Personal care’ means ‘care which relates to the day to day physical tasks and needs of the person cared for (as for example...eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash)’.
	+ ‘Personal support’ means ‘counselling, or other help, provided as part of a planned programme of care’ - paragraph 20 of schedule 12 to the Public Services Reform (Scotland) Act 2010.

Services under section 26, which are designed to promote the well-being and social development, provide:

* Social, cultural and recreational activities
* Training for such of those persons as are over school age
* Assistance for such of those persons as are over school age (normally 16 years or older) in obtaining and in undertaking employment – section 26(2)

Assistance with travel to enable these services to be used can be provided under section 27.

The Act specifies that residential accommodation can be provided. It is likely that other types of accommodation can also be provided, where this is necessary to minimise the effect of the mental disorder on such persons and give such persons the opportunity to lead lives which are as normal as possible. Commentary accompanying the Act at paragraph 4 refers to ‘accommodation with appropriate levels of support’. This suggests that there may be circumstances where a person with NRPF can be provided with accommodation under section 25 in order to reduce the effect of their mental disorder where supported accommodation is required.

The destitution exception applies to the provision of care and support under sections 25 to 27, so must also be considered when assessing need.

However, the immigration exclusion that applies to some aspects of social services’ support does not apply to any services provided under the Mental Health (Care and Treatment) (Scotland) Act 2003. Therefore, services can be provided to a person regardless of their immigration status and must not be refused to an individual on that basis.

If the person’s support needs do not engage the need for supported accommodation, then the local authority would need to establish whether they can be provided with accommodation under section 12 of the Social Work (Scotland) Act 1968, however for some people, accommodation can only be provided on this basis if it is necessary to prevent a breach of their human rights, so the local authority would also need to undertake a human rights assessment if the person is in an excluded group.

For more information, see:

* 9.5 Destitution exception

## 9.10 Discretionary powers

Section 20 of the Local Government in Scotland Act 2003 gives a local authority the power to do anything to promote or improve the well-being of its area or persons within its area. This is a wide-ranging power in that it allows giving financial assistance, including services and accommodation.

Section 21 of the Act imposes a condition on the exercise of this power, noting that a local authority must have regard to any guidance published by the Scottish government.

Section 22 of the Act places limits on the use of the power where, by virtue of a limiting provision, the local authority’s powers are limited, in some respect. This means, there is no limitation of the use of the power of well-being unless a statute expressly prohibits, prevents or limits a particular action.

This means that local authorities have the discretionary power to use Section 20 of the Act to meet needs of people subject to immigration control who would otherwise be destitution or homeless, *even if those needs appear to arise solely from destitution*. There is not yet any settled case law in Scotland on this issue.

In England, there is a broadly similar general power of competence that the Courts have been clear needs to be considered when an adult is not eligible for accommodation under social care legislation, but has vulnerabilities that mean that refusing to provide housing would result in a human rights breach.

Examples that have been considered in the English courts:

* A Swiss national who was a wheelchair user and had various mental health conditions was assessed as not being able to return to Switzerland due to mental capacity issues. Her vulnerabilities meant that were she to be destitute in the UK, she was likely to experience social isolation, previous effects of homelessness included suicidal ideation and she could not afford accommodation as her only income was Personal Independence Payment. Taking all of these circumstances into account, failure to provide accommodation would give rise to a breach of her human rights as being homeless would result in her experiencing inhuman and degrading treatment.[[82]](#footnote-82)
* An EEA national who was a confirmed victim of trafficking was at risk of returning to prostitution when her Salvation Army support ended and she was waiting for her leave to remain decision.[[83]](#footnote-83)

It follows that the local authority would only use a discretionary power to provide support when:

* There is no duty to accommodate under any other legislation
* The person has no alternative accommodation options, including return to country of origin
* Support is necessary to prevent a breach of human rights

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| Good practice exampleA local authority works in partnership with a local domestic violence charity to respond to single adult victims of domestic violence who have NRPF but are not in need under the Social Work (Scotland) Act 1968. Where appropriate, the charity assists the person to apply for the Destitution Domestic Violence Concession and the local authority provides accommodation on a discretionary basis whilst this is being done until the person is able to access mainstream benefits and housing services.  |

## 9.11 Protection duty

The Adult Support and Protection (Scotland) Act 2007 sets out adult safeguarding duties with the aim of protecting and supporting adults who are at risk of being harmed. It also provides measures to identify and protect individuals who fall into the category of ‘adults at risk’, further set out in the associated Code of Practice.[[84]](#footnote-84)

An ‘adult at risk’ of harm is defined as a person aged over 16 who is:

* unable to safeguard their own wellbeing, property, rights or other interests, and
* at risk of harm, and
* because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

Harm may include:

* Physical harm
* Psychological harm
* Financial harm
* Sexual harm
* Neglect

The Act requires local authorities to:

* make the necessary inquiries and investigations to establish whether or not further action is required to stop or prevent harm occurring, and
* provide appropriate services, including independent advocacy, to support adults where an intervention under the Act is considered to be necessary.

Working Together to Improve Adult Protection - Risk Assessment and Protection Plan (2007) provides guidance on the completing of risk assessments and the development of adult support and protection plans.[[85]](#footnote-85)

A person’s immigration status does not affect the local authority’s duty to undertake an enquiry or establish what action needs to be taken to prevent or stop harm. This duty may apply to a person who is a victim of modern slavery or trafficking, or is experiencing domestic violence.

Where a person who is subject to this duty has NRPF, the adult support and protection plan must identify how their immigration status impacts on entitlements to services, and what accommodation options they may have. The local authority may need to consider whether accommodation can be provided under sections 12 or 13A of the Social Work (Scotland) Act 1968 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

The local authority may also need to consider whether the person’s ability to safeguard their personal and financial welfare is affected by any incapacity under the Adults with Incapacity (Scotland) Act 2000.

## 9.12 Support for carers

The Carers (Scotland) Act 2016 is designed to support carers’ health and wellbeing and help make caring more sustainable.

Since 1 April 2018, relevant local authority duties arising under this Act have included:

* A duty for local authorities to provide support to carers, based on the carer’s identified needs that meet the local eligibility criteria, and which cannot be met through support provided to the person being cared for, or through general local services.
* Providing a specific adult carer support plan and young carer statement to identify the carers’ needs and personal outcomes. This must be carried out for any carer that requests an adult carer support plan.

The Carers’ charter summarises carers’ rights under the Act.[[86]](#footnote-86)

The Schedule 3 exclusion that applies to some aspects of social services’ support does not apply to any services provided under the Carers (Scotland) Act 2016. Therefore, services can be provided to a carer regardless of their immigration status and must not be refused to an individual on that basis.

The adult carer support plan must include information about the carer’s personal circumstances. Therefore, it will be relevant to identify and record the carer’s immigration status. The plan must include reference to the extent to which the carer is able and willing to provide care, and emergency planning. This could include considering how the carer’s immigration status may impact on this, for example, if the carer is without leave and is at risk of being detained and removed from the UK.

## 9.13 Pregnant women with NRPF

When a woman with NRPF is pregnant but does not have children in her care, then duties to provide support that arise under Children’s legislation would not apply to an unborn child. Local authorities would therefore need to consider whether any duties arising in legislation applicable to adults may enable accommodation to be provided, bearing in mind that the lack of appropriate shelter and nutrition may have a detrimental impact on the unborn child’s health. As duties under the Children (Scotland) Act 1995 will apply as soon as the child is born, ensuring that the mother is adequately supported through her pregnancy may affect what level of assistance is required by her child if it is in need following the birth.

Where a pregnant woman with NRPF does not have accommodation and/or sufficient means to afford to meet her daily living needs, and is in need of assistance due to her pregnancy, the local authority may provide support under section 12 of the Social Work (Scotland) Act 1968.

The destitution exception would apply to this provision, so must also be considered, but is unlikely to prevent assistance being provided where a woman is in need due to her pregnancy rather than the effects of being destitute.

For some pregnant women, accommodation and financial support can only be provided under section 12 if that is necessary to prevent a breach of their human rights, so the local authority would also need to undertake a human rights assessment if the woman is in an excluded group. Therefore, the stage at which the pregnancy is at in terms of the woman’s ability to travel would be a highly relevant factor in determining whether return to country of origin is an option to avoid a situation of destitution within the UK.

For more information, see:

* 9.1 Section 12 of the Social Work (Scotland) Act 1968
* 9.5 Destitution exception
* 9.7 Discretionary powers
* 11 Assessments when the exclusion applies

## 9.14 Support options for offenders with NRPF

Local authorities in Scotland have a statutory function to establish joint arrangements to assess and manage risks posed by sex offenders and violent offenders. They also have a duty to provide advice guidance and assistance to offenders who are released from prison or another form of detention on licence. There may be situations where the local authority will be required to fund accommodation for an ex-offender when other support options are not available to them. [[87]](#footnote-87)

Where an ex-offender has NRPF and requires accommodation, the following options may be considered:

* Whether they are in need of assistance and require accommodation under s12 of the Social Work (Scotland) Act 1968. Where the person is in an excluded group, a human rights assessment would also need to be undertaken.
* Whether they are eligible for Home Office asylum support either under section 95 or section 4(2) of the Immigration and Asylum Act 1999.
* If they are being released following a period of immigration detention, whether they qualify for Home Office immigration bail accommodation under schedule 10 of the Immigration Act 2016.

For people seeking release from immigration detention, their options are limited now that the Home Office has repealed section 4(1) of the Immigration and Asylum Act 1999, which allowed for the provision of accommodation for people released from immigration detention or on immigration bail. The Home Office will only provide accommodation for the purpose of granting immigration bail to an offender in ‘exceptional circumstances’:

* When the Special Immigration Appeals commission (SIAC) grants bail and imposes exceptionally strict bail conditions, including a residence condition, to control the risk posed by the individual.
* When a person has been assessed as being at a high or very high risk of causing serious harm to the public.
* When a person is at high risk of harmful reoffending against an individual, for example, offences of domestic burglary, robbery, sexual assaults and violence, and has nowhere suitable to live in accordance with their probation licence and/or multi-agency public protection arrangements (MAPPA).[[88]](#footnote-88)

Home Office guidance states that when exceptional circumstances apply, accommodation would only be provided for a limited period (three to four months), whilst the person makes arrangements either to leave the UK or to move to alternative accommodation, unless there are exceptional circumstances to justify continuing it, for example, public protection issues.

Bail for Immigration Detainees has produced a useful guide setting out the practicalities of accessing Home Office asylum and immigration bail support for people in immigration detention.[[89]](#footnote-89)

For more information, see:

* 9.2 Section 12 of the Social Work (Scotland) Act 1968
* 11 Assessments when the exclusion applies
* 16 Asylum seekers

## 9.15 Housing people with NRPF on public health grounds

When a person requires housing in order to mitigate a public health risk, for example, a person with a diagnosis of active TB who requires to successfully complete a course of TB treatment, then health care professionals will be required to work in partnership with local authorities to establish accommodation and financial support pathways for individuals with NRPF.

The local authority would be required to undertake a community care assessment when a person appears to be in need of community care services, with a view to determining whether any duties are engaged under Sections 12 or 13A of the Social Work (Scotland) Act 1968 or sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

If a person is in need due to their illness, or also has a disability or mental health condition, then section 12 of the Social Work (Scotland) Act 1968 may be engaged, and accommodation and financial support provided in addition to any other community care services that are required.

Where the person is in an excluded group, accommodation and other services can only be provided under section 12 if such support is necessary to prevent a breach of human rights. In such cases the local authority would also need to undertake a human rights assessment to determine whether return to country of origin is possible to avoid a breach of human rights, including considering whether the person’s ability to travel is affected by their illness or medical condition. See chapters 7 & 11.

**[Add here on what basis housing can be provided to people who are not eligible under section 12 - e.g. would it be by social care on a discretionary basis under Section 20 of the Local Government in Scotland Act 2003 or does the responsibility fall to health to fund?].**

It will be important for health practitioners to signpost patients with NRPF to immigration advice as soon as it is identified that the person may require this.

For more information, see:

* 9.2 Section 12 of the Social Work (Scotland) Act 1968
* 9.9 Discretionary powers
* 11 Assessments when the exclusion applies

# 10 Unaccompanied children & young people leaving care

This chapter sets out what a local authority may need to consider when it is responsible for supporting an unaccompanied or separated migrant child and young person eligible for aftercare.

## 10.1 Introduction

Local authorities may be required to care for an unaccompanied or separated migrant child. There are many circumstances that may give rise to this situation occurring and local authority officers must be aware of how a child’s immigration status may impact on their entitlements, particular where the child’s status is uncertain or unresolved. It will also be an essential element of a child’s care planning for local authorities to ensure that outstanding immigration issues are identified early and immigration advice is obtained in a timely manner.

Unaccompanied asylum seeking children (UASC) and separated migrant children under the age of 18 who have been trafficked to Scotland, are looked after and accommodated by local authorities as children in need under Section 25 of the Children (Scotland) Act 1995.

UASCs may have arrived in Scotland of their own accord, or been transferred in to the care of the local authority under a formal resettlement scheme, for example, the Vulnerable Children Resettlement Scheme, or from an English local authority via the National Transfer Scheme.

The accommodation and support of UASC children whilst they are seeking asylum is partly met through direct payments by the Home Office to local authorities. This is not, however, the case for other separated children, even if they have made an immigration application in order to regularise their immigration status.

In addition, some migrant children – for example, children who are living in Scotland as a dependent of a parents or caregiver who held leave to remain – may be taken into care for their own protection, and are also accommodated under Section 25 of the Act. Any migrant child taken into care will require early and urgent immigration advice, which is particularly important if they have leave to remain as a dependant on their parent’s status, or if it appears that they do not have any leave to remain. It may also be necessary to establish if the child has an entitlement to British citizenship, for example, if they were born in the UK and have lived here for 10 years.

Finally, children of EEA nationals exercising EU free movement rights may also be taken into care for their own protection. For these children, being taken into care can make it harder for them to prove that their parent (from whose activity their right to reside in the UK may derive), continues to exercise treaty rights in Scotland. Again, a child in this position requires early and urgent access to immigration advice on this issue and to also explore whether they may have an entitlement to British citizenship.

Section 25 of the Children (Scotland) Act 1995 requires local authorities to accommodate and support children in need in their area, up to age 18, regardless of their immigration status.

Difficulties arise, however, when children turn age 18, and have not yet been granted leave to remain. This may occur, for example, if an asylum seeking child has been refused asylum but granted limited leave to remain until age 17.5. This child will have made an immigration application for further leave to remain which could be pending, or might have been refused. This also occurs where a migrant or EEA child accommodated by the local authority has not yet made any application for leave to remain, and requires to do so.

In such cases, local authorities still owe leaving care and aftercare duties to formerly looked after children, regardless of migration status; however, the statutory framework for meeting those duties is more complicated than for children who are British or who have settled status or have been granted leave to remain.

## 10.2 Statutory Framework

As set out in earlier chapters, Section 25 of the Children (Scotland) Act 1995 establishes the duty of local authorities to accommodate ‘children in need’ in their local area. Local authorities owe after-care duties to children who were formerly accommodated by them, under Sections 29 and 30 of the Children (Scotland) Act 1995 and the Children and Young People (Scotland) Act 2014. These are further set out in the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (as amended by the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2015 (SSI 2015/62)) and associated Guidance.[[90]](#footnote-90)

Local authorities have a legal duty to:

* Prepare young people for leaving care or ceasing to be looked after (including preparation of a Pathway Plan).
* Provide advice and assistance to young people who have ceased to be looked after on or after their 16th birthday.
* Provide aftercare support until the care leaver turns 19, and to assess any eligible needs for aftercare support until they turn 26 (or beyond in some cases). This may include accommodation, where this cannot be provided in any other way, for example, through the local authority housing department or social security benefits.

In addition, under the Continuing Care provisions of the Children and Young People (Scotland) Act 2014, young people who are aged 16 or older who are looked after in a foster, kinship or residential care placement are eligible to request to remain in their placement until age 21. If their request is not agreed to, the local authority must prepare a welfare assessment explaining the reasons for the decision.

## 10.3 Eligibility for aftercare

The duties of local authorities to formerly looked after children arising under the Children (Scotland) Act 1995 and the Children and Young People (Scotland) Act 2014 apply, , although the immigration status of a young person will affect entitlement to aftercare when they are 18 or older.

However, as noted above, challenges may arise where a formerly looked after child does not have leave to remain, and therefore cannot access mainstream accommodation and benefits, significantly increasing the direct costs to local authorities of meeting these obligations.

For some young people, when they turn 18 they may only be provided with aftercare under sections 29 and 30 of the Children (Scotland) Act 1995 if this is necessary to prevent a breach of their human rights. When a young person is in an excluded group, either when they turn 18, or when they are older, and aftercare duties apply, the local authority would need to undertake a human rights assessment in order to establish whether such support and assistance can be provided or whether the young person could return to their country of origin to avoid a situation of destitution in the UK. This affects young people who are age 18 or older when their immigration status is one of the following:

* ‘Appeal rights exhausted’ following the refusal of their asylum claim (if made in-country)
* ‘Appeal rights exhausted’ following an unsuccessful application for leave to remain after a period of UASC leave
* Otherwise in the UK without leave, for example, as a visa overstayer
* EEA national

For more information, see:

* 7 Social services’ support – exclusion
* 11 Assessments when the exclusion applies

## 10.4 Age dispute and age assessment

There may be instances where the age of an asylum seeking child is disputed, which has implications for whether they are treated as a child or adult for immigration and local authority support purposes.

Local authorities would need to follow the Scottish Government’s statutory guidance - Age assessments: practice guidance- when undertaking age assessments- and those undertaking assessments should be appropriately trained and supported.[[91]](#footnote-91)

When a young person’s age is disputed, questions may arise about the local authority’s responsibilities regarding the provision of support. The courts in England have established the following points with regards to the provision of accommodation to a looked after child under section 20 of the Children Act 1989 (equivalent to section 25) and leaving care duties (equivalent of aftercare):

* Whilst an age assessment is being carried out, the child must be treated as a child and looked after under section 20.[[92]](#footnote-92)
* Leaving care duties cannot apply where a child has not been accommodated under section 20. If a child has been unlawfully refused s20 accommodation because of an incorrect age assessment, which means that leaving care duties do not apply, the local authority could use its discretion to treat the young person as a former relevant child and provide leaving care support.[[93]](#footnote-93)
* If a young person is age assessed as an adult, the local authority can: terminate support under section 20 immediately after the young person has been informed about this in person, refer the young person to the Home Office for asylum support, and accommodate for a short period to allow the transfer to take place (in this case support was provided for 24 hours).[[94]](#footnote-94)

## 10.5 Considerations in care planning

There is no specific guidance in Scotland which sets out the criteria for care planning for separated migrant children and young people, and general principles – including the application of GIRFEC to the conduct of assessments, service planning and delivery apply.

However, there are some specific considerations, in working with this group of young people, that should be taken into account. They include:

* The need to identify a child’s immigration status early, and refer children with uncertain immigration status to specialist legal advice and support urgently. For example, all UASC and non-EEA trafficked children in Scotland are entitled to receive independent advocacy support of a guardian from the Scottish Guardianship Service, so a referral can be made promptly to that service. Furthermore, immigration status can change over time, and therefore should also be kept under continuous review, in the child’s care plan.
* Taking account of barriers commonly faced by UASC, trafficked and migrant children, including due to cultural and linguistic differences, trauma (including separation trauma), possible fear of engagement with statutory authorities.
* Also considering challenges commonly faced by migrant children with uncertain immigration status, including fear and anxiety arising from an uncertain future, as well as potentially suffering discrimination, bullying or harassment at school, or in accessing services.
* Taking account of how linguistic barriers and experience of a different education system might affect access to education – such as the need for additional support with English and foundational study skills.
* For children with uncertain status, putting in place “triple pathway planning” – meaning a future plan for the accommodation and support of a child, dependent on the outcome of a child’s asylum or immigration application (grant of leave, refusal of leave but not returned to home country, returned to home country).

The Department for Education has recently revised its statutory guidance for local authorities in England, which sets out some helpful guidelines for care planning.[[95]](#footnote-95)

The Local Government Ombudsman in England has found two councils at fault for failing to properly identify and address the immigration issues of children in their care:

* Delaying and refusing to pay for legal advice for a child who was a visa overstayer, resulted in the child failing to benefit from an Immigration Rule that allowed for children who had lived in the UK for seven years to be granted leave to remain when certain conditions were satisfied. Following failures by the local authority to obtain appropriate advice for her, she made an unsuccessful application by herself after she turned 18 when the rule no longer applied. She had obtained a university place but her immigration status meant that she was unable to undertake higher education.[[96]](#footnote-96)
* Not identifying and helping looked after children to obtain British citizenship led to two siblings missing out on opportunities to travel abroad.[[97]](#footnote-97)

These decisions make it clear that local authorities must have a clear strategy to: identify immigration status, address outstanding issues early on, not delay obtaining legal advice, record advice and ensure that a young person’s expectations reflect any implications or limitations of their immigration status.

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| Good practice example**[Showing how a local authority undertakes ‘triple planning’ or prepares a young person for all eventualities regarding their immigration/ asylum outcomes?]**  |

# 11 Assessments when the exclusion applies

This chapter provides guidance on how the local authority would undertake a human rights assessment in order to establish eligibility for social services’ support when Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies and the person is in an excluded group.

## 11.1 Purpose of the human rights assessment

When an adult, young person (age 18+) or parent is in an excluded group, they can only be provided with social services’ support where this is necessary for the purpose of avoiding a breach of their rights under the European Convention on Human Rights (ECHR) or European Union (EU) treaties.[[98]](#footnote-98)

In interpreting this, the Court of Appeal in England, in the case of *R(Kimani) v LB Lambeth* (2003), found that:

*‘A State owes no duty under the Convention to provide support to foreign nationals who are permitted to enter their territory but who are in a position freely to return home.’* [[99]](#footnote-99)

In the case of *SSHD v Limbuela* (2004), the Court of Appeal found that a decision which compels a person to sleep rough or without shelter and without funds usually amounts to inhuman treatment and therefore engages Article 3 of the ECHR (the right not to be subjected to inhuman or degrading treatment).[[100]](#footnote-100)

Therefore, where a person can freely return to their country of origin in order to avoid a situation of destitution in the UK, the local authority will not be required to provide support. The High Court in England has determined that the denial of support in such instances does not constitute a breach of human rights.[[101]](#footnote-101)

However, where a person cannot freely return to their country of origin because a legal or practical barrier prevents them from doing so, and where the local authority has identified that has a duty to provide support because a child or adult has been assessed as in need by social services, then a failure to provide assistance is likely to give rise to a breach of Article 3.

It is possible that human rights considerations would have been made within the holistic GIRFEC assessment or community care needs assessment, but Schedule 3 requires the local authority to specifically consider the person or family’s ability to return to their country of origin. It is therefore recommended that a human rights assessment addressing return is recorded separately within the needs assessment.

For more information, see:

* 7 Social services’ support – exclusion

## 11.2 Human rights assessment

Although the primary purpose of the human rights assessment is to establish the extent to which the local authority is required to support a person or family when the Schedule 3 exclusion applies, the process of undertaking this assessment also performs other important functions as it:

* places an individual’s rights at the forefront of the local authority’s decision making;
* explores solutions to the person or family’s destitution in the UK;
* facilitates an open conversation about available options;
* seeks an alternative to enforced removal by the Home Office;
* provides transparency in the decision making process;
* enables the local authority to clearly explain why, in many cases, support will need to be provided when the exclusion applies;
* assists the local authority to identify what action to take to help a person or family find a pathway out of dependency on social services’ support; and
* enables the local authority to focus resources on the most complex cases rather than those that require a more straightforward assessment.

In order to be able to conclude whether support needs to be provided to prevent a human rights breach, or whether return to country of origin would avoid a human rights breach, the local authority would need to establish the following:

* Whether a legal or practical barrier preventing return applies.
* What findings have already been made by the Home Office and/or appeal courts on relevant immigration/ asylum decisions.
* When the person last received independent legal advice about their immigration case and whether they have any grounds to pursue further claims.
* Whether return to country of origin would give rise to a breach of human rights.
* Whether return to country of origin would give rise to a breach of EU treaty rights.

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| What constitutes a breach of human rights?The European Convention on Human Rights (ECHR) sets out human rights which people hold in the UK. The Human Rights Act 1998 operates to prohibit statutory authorities, including local authorities, from breaching individuals’ human rights by their action or inaction.Key human rights that are relevant in the context of an NRPF human rights assessment include:**Article 2 Right to life** **Article 3 Freedom from cruel, inhuman or degrading treatment*** A person may fear return to their own country because they believe they may be killed, tortured or seriously harmed there.

**Article 4 Freedom from slavery and forced labour*** Similarly, a person may fear return to their own country because they believe they may be exploited, trafficked or re-trafficked, held in slavery or subjected to forced labour.

**Article 8 Right to family and private life*** Individuals have a right to maintenance of their family life, and this includes a right to live with family members present in the UK, and to contest custody of children in family law proceedings in the UK. Individuals and families who have resided in the UK for a long time, and have built close personal connections to their community and support workers, have also established a private life, which is also protected by Article 8.
 |

Not all of these steps need to be followed, so some assessments will be more straightforward than others, for example, where a person who is a visa overstayer is waiting for a human rights application to be decided by the Home Office. In such instances, the assessment would simply confirm that the local authority cannot pre-determine the outcome of an application made to the Home Office and therefore is unable to make further enquiries about return whilst such a legal barrier is in place.

Local authorities may use the NRPF Network’s human rights assessment template as a guide to this process and what they would need to consider in conjunction with its detailed practice guidance: Determining eligibility for social services’ support when the Schedule 3 exclusion applies. It is recommended that social workers or other local authority staff who are responsible for undertaking these assessments are appropriately trained and supported by managers and local authority lawyers.

The following flowcharts are designed to assist with working through the template:

* Human rights assessment: how to determine eligibility for support when the adult, young person (18+) or parent is a visa overstayer, refused in-country asylum seeker or illegal entrant
* Human rights assessment: how to determine eligibility for support when the adult, young person (18+) or parent is an EEA national (or dependant of an EEA national)

**When immediate assistance appears to be required, for example, to prevent homelessness, the local authority would need to consider whether it is necessary to provide interim support whilst the social care needs assessment and human rights assessment are being undertaken.**

For more information, see:

* 6.2 Meeting urgent need – families
* 6.3 Meeting urgent need – adults
* 6.4 Establishing immigration status

## 11.3 Possible outcomes

Once the assessment has been completed, the local authority would need to clearly conclude whether support can be provided or whether return is to be recommended.

Potential outcomes and suggestions for what further action may be required depending on the reason for deciding whether to support or not are set out in the table below. Where support is provided, it will be important to undertake regular reviews of this.

|  |  |  |
| --- | --- | --- |
| Conclusion  | Reason  | Further action  |
| The local authority will be required to provide accommodation and financial support to prevent a breach of Article 3, which may occur if the person or family are destitute in the UK | A legal or practical barrier to return is identified | Regularly review the status of the barrier, for example, if there is a pending immigration application/ appeal:* Request an update from the Home Office and/or legal representative
* Signpost to an immigration adviser if the person is unrepresented
 |
| Immigration advice is required and/or a new immigration claim needs to be made | Signpost to an immigration adviserRegularly review the person’s circumstances and request updates from the immigration adviser/ Home Office |
| Return to country of origin would give rise to a breach of EU treaty rights  | Regularly review the person’s circumstances Signpost to an immigration or benefits adviser to help document their right to reside Send a query to the AIRE Centre if the matter is complexHelp the person access employment or evidence this to enable them to claim benefits |
| The local authority will not be under a duty to provide accommodation and financial support because the person or family can freely return to their country of origin in order to prevent a breach of Article 3, which may occur if they are destitute in the UK | No legal or practical barrier has been identified, there are recent decisions from the Home Office/ courts or a legal opinion to rely upon, and return to country of origin would not give rise to a breach of human rights or EU treaty rights. | Offer assistance with return - funded by the Home Office or local authorityTime-bound support may need to be provided if return is being taken upProvide information about Home Office asylum support, local charities, immigration advisers and voluntary return |

|  |
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| Case examples**Support provided to prevent a breach of human rights**A Czech national has high level care needs following a brain injury. His consultant has advised that he is currently not fit to travel and a capacity assessment is being undertaken. He is ‘in need of assistance’ under section 12 of the Social Work (Scotland) Act 1968, and is provided with a residential care home placement. The local authority determinations that there is a barrier to return in place and so it will be necessary to provide support to prevent a breach of human rights.It is thought that he has been living in the UK for at least four years and has been in and out of work. He does not appear to have any family in the UK. The local authority is seeking specialist advice to find out whether he may have a right to reside in the UK under EU law, in order to establish any entitlement to benefits. His social worker is also trying to help him to document his residence in the UK in preparation for making an application under the EU Settlement Scheme after the UK leaves the EU. **Assistance with return provided to prevent a breach of human rights**A South African mother entered the UK in 2006 as a visitor and overstayed. Her three-year old child was born to a South African father, who it is believed was also an overstayer and has since returned to South Africa. The child has been found to be in need under section 22 of the Children (Scotland) Act 1995. The mother applied to the Home Office for leave to remain on the basis of her family and private life. The application was refused, her subsequent appeals were unsuccessful and she has recently become appeal rights exhausted. The local authority has confirmed via the Home Office that there are no further outstanding applications or appeal rights. There are no medical issues preventing travel. The local authority has regard to the recent Home Office and court determinations and considers that there are no other legal or practical barriers preventing return. It concludes that the family could avoid a breach of human rights by relocating to South Africa where their needs could be met. The Home Office or local authority can provide assistance with return and time-bound accommodation and financial support is provided whilst the family’s return is arranged. |

For more information, see:

* 13 Pathways out of destitution

# 12 Reviews and ending support

This chapter sets out what a local authority may need to do to help a person or family with NRPF establish a pathway out of dependency on social services’ support. It also sets out good practice considerations when support is withdrawn.

## 12.1 Reviews

When support is provided to an adult or family, it is important that regular reviews are undertaken to identify any change of circumstances which might affect their eligibility, and to ensure that proactive steps are taken to help the person or family establish a pathway out of dependency on social services’ support. By doing this the local authority will be acting in the best interests of a child or promoting a vulnerable adult’s well-being, as well as reducing overall support costs.

According to UK data on NRPF service provision, the average time an NRPF household is supported for is just under 2.5 years and that in 2017-18, just under 70% of households exited social services’ support following a grant of leave to remain with recourse to public funds. This demonstrates that the pathway out of dependency on social services for accommodation and financial support for the majority of NRPF households will be a change in immigration status. This can only be achieved more expediently when the local authority works in partnership with local legal advice providers and the Home Office. [[102]](#footnote-102)

The review checklist provides a summary of issues that need to be considered when a case is being reviewed.

For more information, see:

* 13 Pathways out of destitution

## 12.2 Ending support

A decision to withdraw support may only be made following an assessment that finds the person or family not to be in need of assistance because they are either no longer eligible under social care legislation or they are able to return to their country of origin to prevent a human rights breach arising from being destitute in the UK.

It is good practice for conversations to have already taken place to prepare the person or family for such an outcome and what their options will be, particularly if they are in a group excluded under Schedule 3 of the Nationality, Immigration & Asylum Act 2002 and are being supported to prevent a breach of human rights, as the basis upon which they are provided with support could regularly change.

Any decision to end support should be confirmed in writing, setting out the reason for ending support, and other organisations assisting the family should also be informed of the decision, subject to the person’s consent.

## 12.3 Transfer to mainstream benefits

When support is terminated because there has been a change of circumstances that means that a person can now claim benefits and homelessness assistance, they will need to be given a notice period and help with making these claims. Steps should be taken to avoid any interruption to any care or support package an adult or family with NRPF may be receiving.

Social services or NRPF workers would need to establish good partnerships with their local housing authority and those in any other areas where they might provide NRPF households with temporary accommodation. Flexibility regarding the notice period may be required to allow for support to continue if there are delays in benefits being issued, or if it appears that the housing authority can prevent homelessness by enabling the family to remain in their current home or by securing a private tenancy for them, and a short extension of the notice period would enable this to take place.[[103]](#footnote-103)

Local authorities also need to consider what information they may need to provide to people exiting support in order to prevent future requests for housing and financial assistance. A person may re-present, for example, if they fail to apply to extend their leave to remain because they could not afford the application fee, or if they are granted leave to remain with the NRPF condition imposed when they extend their leave, and as a consequence loses access to benefits and becomes at risk of homelessness.

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| Good practice exampleExample of an information leaflet provided by a local authority to a person granted leave tor remain with recourse on the 10-year settlement route when their support ends. You are advised to:* Seek advice from an immigration adviser in good time before you need to apply to the Home Office to extend your leave.
* Find out how much the application will cost to make (note that fees usually increase every April) and consider how you will save up for this.
* Ensure that your immigration adviser includes submissions about your financial circumstances when you apply to extend their leave if you still need to have recourse to public funds.
* Seek advice immediately from benefits, housing or immigration advisers, as required, if you are granted leave to remain with NRPF and this causes any benefits you are receiving to stop and you start accruing rent arrears.
 |

## 12.4 Return to country of origin

When the provision of accommodation and financial support is refused following a human rights assessment concluding that the person or family can return to their country of origin, then assistance with return must be offered. This could be provided by the Home Office or local authority.

It will normally be appropriate for the local authority to provide accommodation and financial support to a person or family whilst return is being arranged. In the English High Court case of R (O) v *London Borough of Lambeth* (2016), the Judge found that the local authority had made ‘sensible, humane and appropriate undertakings’ in agreeing to provide interim accommodation for a reasonable period pending the return on the condition that the parent signs a formal undertaking in which she accepts that she and her child can be returned to Nigeria and takes steps to co-operate with the local authority in arranging a facilitated return.[[104]](#footnote-104)

When the local authority has lawfully determined, following a human rights assessment, that a person or family can freely return to their country of origin, the courts in England have found that any hardship or degradation suffered if the person does not do this will be a result of the person’s decision to stay in the country and not as a result of any breach of human rights by the local authority.[[105]](#footnote-105)

If the person indicates that they will not be taking up a voluntary return, it would be good practice to make appropriate referrals to local third sector organisations working to prevent migrant destitution, provide them with information about their emergency options should they stay in the area, including details of immigration advisers, local charities, night shelters etc.

For more information, see:

* 13.4 Home Office Voluntary Returns Service
* 13.5 Local authority funded return

# 13 Pathways out of destitution

This chapter sets out what a local authority may need to do to help a person or family with NRPF establish a pathway out of dependency on social services’ support. It can also be referred to by local authorities and other organisations to advise people at the point of presentation to a service, where there may be an opportunity to take immediate steps to prevent a situation of homelessness

## 13.1 Options based on immigration status

The table below sets out what appropriate action can be taken depending on the person or parent’s immigration status.

|  |  |  |
| --- | --- | --- |
| Immigration status | Whether the Schedule 3 exclusion applies to social services’ support | Suggested steps to resolve the case or to prevent a situation of destitution arising  |
| **Leave to remain with NRPF**Granted under FM family/private life 10-year settlement route or outside of the rules | No | Signpost to a legal representative to find out whether they can apply to Home Office for leave to be varied to remove the NRPF condition by making a change of conditions application.[[106]](#footnote-106) Provide guidance and support with accessing employment. |
| **Leave to remain with NRPF**Granted as the spouse or partner of a British citizen or person with settled status (under 5 or 10-year settlement routes) | No  | Signpost to a legal representative to find out what immigration options they have, including whether they can apply for indefinite leave to remain under the domestic violence rule and therefore apply for the destitution domestic violence concession.[[107]](#footnote-107) Provide guidance and support with accessing employment. |
| **Derivative right to reside under EU law as a Zambrano carer**Primary carer of a British (or other EEA national) child | No | Signpost to a legal representative to find out if they can make an application for leave to remain under the Immigration Rules with a view to gaining recourse to public funds and obtaining a form of immigration status that will allow them to settle permanently in the UK. Provide guidance and support to access employment. |
| **EEA national**  | Yes – unless there is a legal or practical barrier in place preventing the person/family from leaving the UK, or the local authority has otherwise determined that support is necessary to prevent a breach of human rights or EU treaty rights. | If there is a practical barrier to return in place, e.g., a medical condition, ensure the status of the barrier is regularly reviewed. Signpost to a specialist benefits or immigration adviser to establish whether the parent is exercising a right to reside and therefore can access benefits. Provide guidance and support accessing employment.Support the person to make benefit applications if they appear to be eligible.Make them aware of how to stay up to date about post-Brexit arrangements for EU nationals.[[108]](#footnote-108) For more information, see:* 11.2 Human rights assessment
* 15 EEA nationals and family members
 |
| **Asylum seeker**Has a pending asylum application or is appealing a refusal of their asylum claim | No  | Make a referral to a third sector organisation to assist the person or family to apply for section 95 asylum support and chase up the progress of the asylum support application, with the Home Office. NB Some adults cannot be referred to the Home Office for accommodation.For more information, see:* 16 Asylum seekers
 |
| **Visa overstayer** **Illegal entrant****ARE asylum seeker (who claimed asylum in-country)** | Yes – unless there is a legal or practical barrier in place preventing the person/family from leaving the UK, or the local authority has otherwise determined that support is necessary to prevent a breach of human rights or EU treaty rights. | If there is a barrier to return in place, ensure the status of the barrier is regularly reviewed. Signpost to an immigration adviser for advice about options. Chase up the progress of pending immigration applications with the Home Office. Advise on voluntary return options. In-country ARE asylum seekers only– find out whether asylum support may be available from the Home Office, but note that a family can only be referred for section 4 support when this is available and will be sufficient to meet the needs of the child. For more information, see:* 11.2 Human rights assessment
* 16 Asylum seekers
 |
| **ARE asylum seeker (who claimed asylum at port of entry)**  | No  | Signpost to an immigration adviser for advice about options to pursue asylum case or other claims. Advise on voluntary return options. If there is no further basis to pursue asylum or any other claim, find out from the Home Office what further action will be taken, e.g. has a family been referred to the Home Office family returns team. For more information, see:* 6.4 Establishing immigration status
* 16 Asylum seekers
 |

|  |
| --- |
| Good practice examples**EEA family** An EEA national mother is helped to get back into employment following a referral to the Council’s employment service. The NRPF worker helped her to find childcare close to her place of employment and to document her wages for three months in order to make a successful benefits claim, so she was no longer reliant on social services’ support.**Non-EEA family**The local authority was informed directly by the Home Office through NRPF Connect that a parent had been granted leave to remain with recourse to public funds. The social worker could then help the family to access benefits and homelessness assistance as soon as the immigration documentation was issued, reducing the delay that often occurs when families transfer to mainstream benefits. |

## 13.2 How to find a legal aid lawyer or OISC adviser

It is a criminal offence to provide immigration advice that is specific to a person’s matter unless the adviser is a member of the appropriate regulatory bodies for solicitors and barristers or an immigration adviser regulated by the Office of the Immigration Services Commissioner (OISC).[[109]](#footnote-109)

Therefore, it is not appropriate for a social worker or other local authority officer to advise a person about the specifics of a person’s case, or to make a judgement on whether they have grounds for a specific type of application and the merits of such an application. Instead, they will need to signpost the person to a legal aid lawyer or OISC regulated adviser.

To find a local legal aid lawyer:

* The Law Society of Scotland holds a register of lawyers who are registered to practice in Scotland, and this can be searched by the area of law in which they practice. Please note however that not all lawyers on this register will necessarily accept legal aid in payment for services.[[110]](#footnote-110)
* The Scottish Refugee Council also keeps a register of legal aid lawyers, who are specialists in immigration, asylum and asylum support law.[[111]](#footnote-111)

To find an OISC registered adviser:

* There are relatively few OISC registered advisers in Scotland who offer independent advice, as most of this work is taken up by legal aid lawyers. The OISC publishes a register of accredited advisers.[[112]](#footnote-112)

For more information, see:

* 4.8 Legal aid

## 13.3 Other advocacy support and free advice providers

Locally, there may be charities and voluntary sector organisations which provide advocacy or other forms of holistic support which can facilitate or improve access to legal advice, particularly for vulnerable people.

It is good practice for social workers to consider signposting or referring to these organisations at the same time as they assist people or families to access legal advice.

## 13.4 Home Office Voluntary Returns Service

The Home Office can fund and arrange travel for people who wish to return to their country of origin, and in some cases can provide additional assistance.[[113]](#footnote-113)

Any person who is living in the UK without leave or has been refused leave to enter or stay in the UK can apply to undertake a voluntary return. This includes EEA nationals who are not exercising a right to reside. The Home Office will organise and fund the flight, but will expect the person to arrange their own documentation if they do not already have this. The Home Office can normally only provide additional support in obtaining documentation when a person has a vulnerability which means that it would be difficult for them to do this by themselves.

Most people and families supported by the local authority should be eligible to receive more assistance with their return.

An assisted return may be available to:

* Families with children under 18
* People who have claimed asylum and have been refused or wish to withdraw their application
* Children under 18 travelling alone
* Victims of trafficking or modern slavery
* People who previously had discretionary leave to remain that has since expired
* People who need more help with their return, for example, due to a medical condition

EEA nationals will not be eligible for an assisted return unless they have been confirmed to be a victim of trafficking or modern slavery through the National Referral Mechanism.

An assisted return involves the Home Office arranging and funding flights, a financial reintegration package and additional support on a case by case basis. The method by which the reintegration package is provided depends on which country the person is returning to.

The Home Office administers all voluntary returns and, although will be able to answer questions about the returns process, does not provide independent and confidential advice to people who are considering return.

It is important to note that non-EEA nationals undertaking a voluntary return which is funded by the Home Office (with or without a reintegration package), will be subject to a re-entry ban of two or five years, depending on how long they were in the UK after being issued with a liability to removal notice or becoming appeal rights exhausted. A person would need to be signposted to an immigration adviser to find out how long the re-entry ban will be, and what the effect of such a ban might be on their prospects of any future route of return to the UK.

Home Office Voluntary Return Service contacts:

* People can apply online or contact the helpline: 0300 004 0202 [[114]](#footnote-114)
* Email: voluntaryreturns@homeoffice.gsi.gov.uk

## 13.5 Local authority funded return

If return is not possible with assistance from the Home Office, local authorities have a power to fund a family’s return to country of origin.

For EEA nationals and people with refugee status granted by another EEA state, the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 provide a power to:

* purchase travel tickets to enable the person to return to their country of origin, and
* provide time-bound interim accommodation pending the return to country of origin, but not cash payments.

Alternatively, national embassies may be able to assist with arranging return for EEA nationals.

**[For non-EEA nationals who are without leave, funding a return would be an appropriate use of the general power of competence set out in section 1 of the Localism Act 2011. Enabling a family to return to their country of origin would be an effective response to resolving their destitution in the UK when there is no duty to provide support. ]**

# 14 Social services’ support - NRPF service delivery

This chapter sets out what a local authority would need to put in place to ensure that the provision of accommodation and financial support to families or adults with NRPF is targeted, cost-effective and safeguards the welfare of children and vulnerable adults

## 14.1 Basic principles

Local authorities deliver services in different ways in order to be able to best meet the needs of their residents. There will be a significant difference in levels of demand for assistance from people with NRPF across Scottish regions, which may change over time, and local authority staff will have different levels of experience of dealing with such cases. Therefore, each local authority will take a different approach to administering support to people with NRPF. Even where a local authority currently receives no or a low number of referrals for support, local, national or UK-wide changes could give rise to a new demand for services. Local authorities would also need to consider how they can adhere to the Fairer Scotland Duty by reducing inequalities through the provision of NRPF support and establishing sustainable outcomes for destitute migrants.

There are some basic principles that can be incorporated into a local authority’s approach, regardless of its size, demand for services and internal operating arrangements. Having worked with local authorities across the UK for over a decade, the NRPF Network recommends that a specialist and targeted response is required from the point that people with NRPF may approach the local authority to the time that support ends, in order to ensure this essential safety net is administered robustly, lawfully, consistently and cost-effectively. This does not necessarily require a specialist team or workers, but staff will require clear procedures, practices and appropriate levels of specialist training. The allocation of resources may need to be balanced against the savings that will be gained, for example, where proactive action from the local authority will result in support ending earlier than it might have otherwise done.

Although there are statutory requirements with regards to who may undertake social care assessments, local authorities are free to decide how other elements of NRPF support provision are administered. Specialist NRPF workers who are not registered social workers may therefore have an advisory role and/or be responsible for some aspects of case management that includes some or all of the tasks below.

For a summary of the overall support process see ‘NRPF service provision – at a glance’.

Internal processes need to be reviewed to ensure cases are managed effectively from start to end by the local authority:

* Identify the points by which a person or family with NRPF may approach the local authority – staff will need to be trained to understand what support options the person has, particularly where social services support may apply.
* Set up internal referral routes so that people approaching services, e.g. housing or welfare rights can be promptly referred to social services or the NRPF workers
* If there are specialist workers within or outside of social services’ teams, ensure there are protocols in place so that all cases are identified and referred to them consistently.
* Consider how NRPF support will accounted for within budgets, and whether this will be separate from the wider social care budget.
* Use council legal teams on an advisory basis for guidance on complex cases and human rights assessments
* Ensure there is a mechanism in place to monitor caseloads and expenditure.
* Ensure there is a mechanism in place for identifying when cases need to be reviewed.
* Provide effective management oversight to ensure that assessments (including human rights assessments) are approached consistently and correctly.
* Enable partnership working between council departments, e.g., legal teams, housing departments and fraud officers.
* Build external partnerships with voluntary sector organisations providing advocacy and support to migrants and families, to identify gaps in services, agree referral routes and ensure effective coordination and signposting
* Reduce time spent on support by taking proactive action to end a person or family’s dependency on social services’ support, for example, partnership working with immigration advisers and the Home Office to achieve a change in immigration status.
* Consider how the local authority’s voluntary sector funding streams can be used to provide services for people with NRPF who are supported by social services or who are in the community and may be at risk of homelessness e.g. funding immigration advice provision.
* Where gaps are identified regarding the above, then the local authority may need to support one or two staff to develop the knowledge and skills to ensure these tasks are covered.

## 14.2 Examples of service models

The service models outlined below are those that are followed by local authorities in Scotland, with an evaluation of each model’s benefits. Examples one and two demonstrate how local authorities with several NRPF cases organise their services, whereas three and four show how a local authority with a small caseload may operate their service.

Example 1: Local area social work teams manage cases

Benefits:

* A social worker who is an expert in their locality will be responsible for managing assessments and allocating resources, promoting equality and fairness in decision making
* Chief Social Worker has oversight of cases that are referred to them leading to consistent decisions being made

Example 2: Specialised NRPF team (families)

Benefits:

* Specialist workers will be responsible for assessments and reviews
* Central oversight of caseload to manage spend
* Consistent approach with regards to the support that is provided

Example 3: Centralised advice & case panel process (families)

Benefits:

* Social worker will be responsible for assessments and reviews.
* Central oversight of caseload to manage spend.
* Multi department/agency approach to case panel will achieve holistic response.

Example 4: Specialist immigration adviser with cases held by social work teams

Benefits:

* OISC level 1 adviser can provide advice to prevent homelessness in some instances and guide social workers on immigration matters
* Multi-department approach to case panel will promote cooperation between departments and consistency in decision making

# 15 EEA nationals and family members

This chapter provides some basic information to help guide local authorities in assisting European Economic Area (EEA) nationals and their family members. It is not to serve as a comprehensive guide to rights under European Union (EU) law and benefit eligibility, so further information may need to be referred to or specialist advice obtained.

**The UK is due to leave the European Union (EU) on 29 March 2019. The UK Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves. The Government is proposing that free movement rights currently enjoyed by EU nationals and their family members to live and work in the UK will continue until 31 December 2020. EU nationals and their family members present in the UK by that date must apply under a new EU Settlement Scheme if they wish to stay here. The information contained in this chapter will therefore continue to apply after 29 March 2019 and will be updated to reflect any significant changes.**

## 15.1 European Economic Area (EEA) countries

The European Economic Area (EEA) is comprised of all European Union (EU) countries and some non-EU members.

|  |
| --- |
| EEA member states |
| **EU countries**  |
| Austria | Estonia | Italy | Portugal |
| Belgium | Finland | Latvia  | Romania |
| Bulgaria | France | Lithuania | Slovenia |
| Croatia | Germany | Luxembourg  | Spain |
| Cyprus  | Greece | Malta | Slovakia |
| Czech Republic | Hungary | Netherlands | Sweden |
| Denmark  | Ireland | Poland  | UK\* |
| **Non-EU member states** |
| Iceland | Norway | Lichtenstein |  |

\* For the purpose of this guidance the term ‘EEA national’ does not include UK nationals but does include Swiss nationals, who also enjoy similar free movement rights as a result of bilateral treaties.

No EU member states are subject to any transitional arrangements, so nationals of accession states that have recently joined, for example, Bulgaria, Romania and Croatia, have the same rights and entitlements as other EU nationals.

## 15.2 Rights of residence

EEA nationals and their family members do not require leave to enter or to remain in the UK. Their rights to enter, live and work in the UK are governed by European law, and are commonly referred to as ‘EU treaty rights’ or ‘free movement rights’. These rights are transposed into UK law through the Immigration (European Economic Area) Regulations 2016.

An EEA national’s right to reside is acquired on the basis of their circumstances **and there is no requirement in law for an EEA national or most family members to obtain confirmation of this**, although they may apply for documentation from the Home Office if they choose to do so. This can make it difficult for an EEA national to establish their right to benefits in the UK and for local authority officers who are advising them.

All EEA nationals have an initial right of residence for up to three months. To stay in the UK beyond this period, they must be ‘exercising a treaty right’, which means being a ‘qualified person.’

An EEA national must be undertaking one of the following specified activities that are set out in the 2016 Regulations in order to be a qualified person:

* Jobseeker
* Worker (including a worker who recently stopped working)
* Self-employed person (including a former self-employed person)
* Self-sufficient person
* Student

To be recognised as a qualified person, an EEA national must satisfy specific requirements that are set out in the 2016 Regulations.

EEA nationals will acquire the right of permanent residence after five years’ continuous residence in the UK as a qualified person under the 2016 Regulations, or if they meet the criteria as a worker or self-employed person who has ceased activity because of a permanent incapacity to work.[[115]](#footnote-115)

However, nationals of recent accession countries may need to have complied with arrangements during the transition period in order for any employment during that time to count towards permanent residence.

Certain family members of EEA nationals, whether they are EEA nationals themselves or non-EEA nationals, will also have the right to reside in the UK where the EEA national is a ‘qualified person’. Family members may also acquire permanent residence.

The Immigration (EEA) Regulations 2016 define who is considered to be a family member:

* Spouse or civil partner\*
* Child under 21 of the EEA national or their spouse/civil partner
* Dependent child age 21 and older of the EEA national or their spouse/civil partner
* Dependant relatives in the ascending line i.e. a parent or grandparent of the EEA national or their spouse/civil partner[[116]](#footnote-116)

\* Following a separation, a person will continue to be considered as a spouse or civil partner until the marriage or civil partnership is legally terminated. After that point, they may retain their right of residence if they meet certain conditions set out in the Regulations.[[117]](#footnote-117)

Extended family members of EEA nationals also have the right to reside, including a partner who is in a durable relationship with the EEA national, and other relatives who may be dependent on the EEA national or the EEA national’s spouse or civil partner.[[118]](#footnote-118)

It is also possible for a person to acquire a derivative right to reside under EU law when one of the following situations apply: [[119]](#footnote-119)

* The non-EEA national primary carer of a British (or EEA) national adult or child, where failing to permit the carer to stay and work in the UK would lead to the British (or EEA) national leaving the EEA. A person with this right is often referred to as a ‘**Zambrano carer**’.
* The primary carer of a child of an EEA national worker, or former worker, where that child is in education in the UK, and where requiring the primary carer to leave the UK would prevent the child from continuing their education in the UK. This is often referred to as a **Teixeira/ Ibrahim** case.
* The primary carer of an EEA national child who is exercising free movement rights in the UK as a self-sufficient person, where requiring the primary carer to leave the UK would prevent the EEA national child exercising those free movement rights. This is often referred to as a **Chen** case.

For more information, see the Home Office Modernised Guidance:

* EEA and Swiss nationals: free movement rights [[120]](#footnote-120)
* Free movement rights: direct family members of EEA nationals [[121]](#footnote-121)

## 15.3 Benefit entitlement

The table below sets out benefit entitlement based on a person’s right to reside under EU law.

|  |  |  |
| --- | --- | --- |
| Right to reside | Eligible for benefits? (See note A) | Eligible for homelessness assistance/ social housing allocation?  |
| **Initial right of residence** for three months following entry to the UK by EEA national or their family member | May only be eligible for:* Child Benefit
* Child tax credit
 | Yes (see note **B**) |
| **EEA jobseeker** or their family member | May only be eligible for:* JSA (IB)
* Universal Credit
* Child benefit
* Child tax credit
 | Yes |
| **EEA worker** (including a person who has retained worker status) or their family member | Yes | Yes |
| **EEA self-employed person** (including a person who has retained self-employed status) or their family member | Yes | Yes |
| **EEA self-sufficient person** or their family member | Yes (see note **B**) | Yes |
| **EEA student** or their family member | Yes (see note **B**) | Yes  |
| **EEA permanent right of residence**  | Yes | Yes  |
| **Derivative right to reside: Teixeira and Ibrahim**  | Yes | Yes |
| **Derivative right to reside: Zambrano** | No | Yes  |
| **Derivative right to reside: Chen** | Yes (see note **B**) | Yes |

**Notes**

**A.** The benefits referred to for these purposes are those with a right to reside requirement: Child benefit (claimed on or after 1 May 2004); Child tax credit (claimed on or after 1 May 2004); Council tax reduction; Housing benefit; Income- based Jobseeker’s Allowance; Income related Employment and Support Allowance (from 31 October 2011); Income support; State pension credit and Universal credit.

To claim most benefits and housing assistance the person must have been living in the Common Travel Area (UK, Republic of Ireland, Channel Islands and Isle of Man) for a period of three months prior to the claim.

**B.** A benefits assessor or housing office will consider whether the claim does not amount to an unreasonable burden on the social assistance system of the UK in order to determine whether the person is fulfilling the requirements to be exercising their right to reside. Claiming benefits does not mean a person will fail this test, and it is arguable that if the assistance required is only for a short period, they would not be an unreasonable burden.

Due to the challenges and complexities of establishing whether a person has a right to reside, and difficulties with regards to evidencing this, there may often be differences in opinion between social services and the local housing authority or the DWP. These authorities may even make inconsistent or conflicting decisions. It is important, in this context, to remember that whilst the Home Office is the agency responsible for determining whether a person has a right to reside, in the absence of any requirement for a person to make an EEA application to the Home Office, social services, the local housing authority and the DWP might have to make their own determination of this, before applying assessing eligibility for services or benefits.

The points made here are to help local authority officers identify when an EEA national or their family member may be able to challenge a refusal of assistance.

* In order to determine whether an EEA national is a worker, is self-employed, or has retained worker or self-employed status, the DWP and local authority housing benefit department will apply the ‘minimum earnings threshold’. This is a two-part test which is not set out in legislation and requires a person to have regularly earned a specified amount of money over a three-month period, set at what someone working 24hrs/week at minimum wage would earn. When a person does not satisfy the minimum earnings threshold, the benefits assessor must consider whether the employment is ‘genuine and effective’. Note that it is not a legal requirement for a person to demonstrate that they meet the minimum earnings threshold.[[122]](#footnote-122)
* There is no requirement for work to have been legal so a person receiving cash in hand payments can be a worker, but this may be difficult to evidence. This principle also applies to an EEA national who is a survivor of modern slavery or trafficking as work undertaken, despite it being exploitative, may mean they have a right to reside as a worker or have retained worker status.
* When a person has separated from an EEA national spouse or partner due to domestic violence, and they are unable to provide evidence of their former partner’s employment to support an application to the Home Office to confirm that they have a right to reside as a family member of an EEA national, or have a retained their right of residence, then the Home Office has the power under section 40 of the UK Borders Act 2007 to obtain evidence directly from HMRC, and has a policy setting out details of this.[[123]](#footnote-123)
* When an EEA national has resided in the UK for five years or more then they may have a permanent right of residence; an immigration adviser can help to establish this and apply for documentation from the Home Office.

When an EEA national is having difficulty establishing their right to reside, they have the following options:

* Obtain advice from a benefits adviser with a good understanding of EU law
* Apply for Home Office documentation to confirm their right to reside - an immigration adviser with experience of EU law should be able to advise and assist with such an application – legal aid may be available, in some cases

Local authority officers may obtain advice on a query about an EEA national’s right to reside by contacting:

* Child Poverty Action Group (CPAG) in Scotland’s [advice line](http://www.cpag.org.uk/content/advice-line-frontline-advisers-and-support-staff-scotland)
* The AIRE Centre – written advice will be provided based on the information given, which may then assist a welfare rights adviser to prepare a benefits claim or appeal, but it may take several weeks to receive a response.

|  |
| --- |
| Good practice example **Of local authority and DWP working together.. – Edinburgh EEA housing team???** |

## 15.4 EEA nationals who are ineligible for benefits

When an EEA national is not eligible for benefits and has no other sources of support available to them, then the local authority would need to establish what assistance would be available to them.

This situation could arise in a number of circumstances, for example:

* An EEA national applies for Universal Credit and is found to be ineligible, leading to their housing benefit stopping and rent arrears accruing.
* An EEA national with children in her care has separated from her EEA spouse due to domestic violence and her claims for benefits have been refused on the basis that she does not have a right to reside.
* An EEA national came to the UK six months ago and has not managed to find work. His JSA has stopped as he could not show that he met the genuine prospect of work test and he is not eligible for housing benefit.

An overview of responsibility for providing support is set out in the assessment tool: support options for EEA nationals which can be referred to in conjunction with this section.

## 15.5 Housing duties

The local authority is required to provide temporary accommodation, under the Housing (Scotland) Act 1987, to an EEA national who is eligible and may be homeless. The local authority has a duty to take reasonable steps to prevent the EEA national’s current accommodation from being lost, where the EEA national is at threat of homelessness within two months and the threat of homelessness is unintentional.[[124]](#footnote-124)

However, there are some circumstances when an EEA national will be eligible for homelessness assistance but unable to claim housing benefit, for example, where they have an initial right of residence or have a right to reside as a jobseeker. This situation may also arise for a non-EEA national who has a derivative right under EU law as the primary carer of a British child.

In such cases, the local authority would not be able to refuse to provide temporary accommodation under the Housing (Scotland) Act 1987 and, if appropriate, would need to refer the person for a social services’ needs assessment to establish whether they can fund the accommodation and living costs. In these circumstances, the person can also be assisted to negotiate a ‘reasonable’ (lower) charge for the temporary accommodation, and the local authority cannot unreasonably refuse this request.

If an EEA national is not exercising a right to reside then they would not be eligible for homelessness assistance. The local authority should issue the person with a written decision setting out the basis on which the EEA national is not found eligible, and best practice would include making a referral to social services where this is appropriate.

## 15.6 Social services’ duties

When the housing authority has found that an EEA national is not eligible for homelessness assistance, or can be provided with temporary accommodation but is not eligible for housing benefit and has no other means to pay their rent, then a referral to social services will be necessary if there is a child under 18 in the household or the EEA national is a vulnerable adult.

For former looked after children receiving aftercare, social services would already be involved in providing support and would need to fund their accommodation and living costs whilst aftercare duties apply.

For families, social services would need to undertake a GIRFEC assessment to establish whether the child is in need. For adults, social services would need to undertake a community care assessment to establish whether the person is in need of assistance and any statutory duties are engaged.

However, accommodation and financial support can only be provided to an adult, young person (age 18+) or family if this is necessary to prevent a breach of human rights or rights under the EU treaties. Social services would therefore also need to consider whether the person can return to their country of origin to avoid a human rights breach arising from their destitution in the UK.

Social services have powers to meet urgent needs whilst assessments are undertaken, so may be able to provide or fund accommodation and financial support on an interim basis.

The local authority will be required to provide accommodation and financial support to prevent a breach of Article 3, which may occur if the person or family are destitute in the UK when:

* return to country of origin would give rise to a breach of EU treaty rights, i.e., support is necessary to enable the person to exercise their right to reside under EU law;
* a legal or practical barrier to return is identified; or
* return to country of origin would give rise to a human rights breach.

When support is provided, the local authority may need to:

* Regularly review the EEA national’s circumstances.
* Signpost to an immigration or benefits adviser to help document their right to reside or appeal a benefits refusal.
* Send a query to the AIRE Centre if the matter is complex.
* Help the person to access employment and evidence this to enable them to claim benefits.

When no legal or practical barrier preventing return has been identified and the local authority has established that return to country of origin would not give rise to a breach of human rights or EU treaty rights, then the local authority will not be under a duty to provide accommodation and financial support because the person or family can freely return to their country of origin in order to prevent a breach of Article 3, which may occur if they are destitute in the UK. In such cases assistance with return to country of origin should be offered.

Given the complexity of establishing whether an EEA national has a right to reside, the local authority may wish to take a proportionate and pragmatic approach, as illustrated in the case example.

For more information, see sections:

* 9 Social services’ support – children within families
* 10 Social services’ support – adults
* 11 Young people leaving care

## 15.7 Return to country of origin

An EEA national may approach the local authority requesting assistance with return, or this may be recommended following an application for social services’ support.

Return can be arranged by:

* The local authority under the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002
* A national embassy
* The Home Office Voluntary Returns Service may be able to assist an EEA national who is a victim of trafficking or modern slavery

Accommodation may need to be provided whilst return is being arranged.

|  |
| --- |
| Case example – EEA family Polish family (mother and two children) present to the housing department at their local council after the friend they were staying with has asked them to leave. The mother is found to be eligible for homelessness assistance on the basis that she has the right to reside as a jobseeker. The family are provided with temporary accommodation whilst their homelessness application is being investigated but cannot claim housing benefit to pay for the rent. The housing officer refers them to Children’s Services for a GIRFEC assessment. The children are found to be in need because their mother has only been able to claim Jobseeker’s Allowance for a short period and has no friends or family who are able to provide support in the UK. The mother has lived in the UK for six years and worked on and off but is not currently considered to have a right to reside as a ‘worker’ or been able to evidence to the DWP that she has a permanent right of residence. She hopes to work again when she has more settled accommodation and is actively seeking employment. Given that she intends to find work, social services agree to pay for her rent for a three-month period, and the human rights assessment will be reviewed at that point. The social worker refers the mother to a benefits adviser and an employment advice service, and helps her to find out about local childcare options. After two months the mother finds a part time self-employed cleaning job. The social worker agrees to continue to fund the rent and financial support for another three months, helps the mother to register with HMRC and to collate evidence of her earnings in order to make a successful claim for benefits. Social services’ support is withdrawn once the family are in receipt of benefits and the mother is given information about the EU Settlement Scheme and where she can seek advice about that in April 2019 to secure her status after the UK has left the EU. |

## 15.8 Rights of EU nationals after the UK leaves the EU

The UK Government has proposed that EU nationals and their family members, present in the UK as of 31 December 2020, must apply by the end of June 2021 for settled or pre-settled status under a new EU Settlement Scheme if they wish to stay after that date.

Many residents will be directly affected by the UK leaving the EU and, as a consequence, local authorities will need to play a role in reducing any negative impacts on communities that may arise if EU nationals lose their entitlement to benefits and employment. For more information about the settled status scheme.

There are several actions a local authority may consider undertaking in order to ensure EU residents are aware of the process and what they may need to do to protect their rights:

* Communicate information about the EU Settled Status Scheme to staff and residents.
* Explore options for providing residents with advice on their rights, for example, advice clinics in partnership with legal representatives. The Law Centres Network can provide a lawyer for information sessions run by community groups and the UK Government is operating a grant scheme to fund community groups assisting EU nationals.[[125]](#footnote-125)
* Identify vulnerable EU nationals and their family members (including children) who are engaged with council services in order to make them aware of the process and consider how they may be helped to overcome any barriers in making an application.

For EU nationals that are being supported by social services, including children in care:

* Signpost to obtain immigration advice now for the following reasons:
	+ A child may have an entitlement to British citizenship.
	+ A person with a derivative right to reside will not be able to apply under the Settled status scheme and will only be able to obtain a temporary form of status, and so will need to explore alternative options under the Immigration Rules that may confer leave to remain on a settlement route.
* Check that people who will need to apply for settled status (including children) have a valid passport or national ID card, and if they do not, help them to obtain identity documents from their national embassy. If a document cannot be obtained, help the person to evidence this e.g. by keeping correspondence with the embassy.
* Help people to document their residence in the UK for the period prior to being assisted by social services.
* If support is withdrawn, for example, because the EU national has obtained employment and access to benefits, signpost them to information about the EU Settlement Scheme so they can prepare for this application.

For more information, see:

* 19.1 Rights of EU nationals after the UK leaves the EU

# 16 Asylum seekers

This chapter sets out what the local authority would need to consider when a person who is seeking asylum, or has become ‘appeal rights exhausted’ (ARE) following the refusal of their claim, requests assistance. It also sets out the rules regarding responsibility for providing support and whether this lies with the local authority or Home Office.

Currently Glasgow is the only asylum dispersal area in Scotland, although talks are ongoing with regards to widening dispersal across the country. Serco is contracted by the Home Office to manage asylum support accommodation in Scotland.

## 16.1 Responsibility for providing support – families

Responsibility for providing accommodation and financial support to asylum seeking families depends on the status of the parent’s asylum claim and whether they would be eligible for Home Office asylum support under section 4 or section 95 Immigration and Asylum Act 1999. Details are set out in the table below.

The local authority would need to establish the status of the parent’s asylum claims in order to determine which type of support is available to them. It will be important to obtain confirmation that the parent has claimed asylum, the current status of the claim, and, if it has been refused, the date of the initial refusal, any appeal decisions and date the parent became appeal rights exhausted if they have received a final determination by the courts.

**Even when a family can be referred to the Home Office for support, either because they are eligible for section 95 support, or section 4 support has been assessed as being sufficient to meet a child’s needs, it may fall to the local authority to provide accommodation and financial support under 22 of the Children (Scotland) Act 1995 if there are delays in accessing Home Office support and the family has no alternative funds or housing available. In such cases a GIRFEC assessment will need to be carried out.**

|  |  |  |
| --- | --- | --- |
| Status of parent’s asylum claim  | Home Office support  | Local authority position: section 22 Children (Scotland) Act 1995 support  |
| Asylum seeker with pending application or appeal  | Section 95 | Section 122 of the Immigration and Asylum Act 1999 prevents the local authority from providing financial support and/or accommodation to a child who is eligible for or receiving section 95 support.Such families who approach the local authority need to be assisted to apply for section 95 support or referred to a local third sector organisation that can help with that.  |
| ARE asylum seeker with a child under 18 in the household at time the parent became appeal rights exhausted | Section 95 |
| ARE asylum seeker with no child under 18 in the household at time the parent became appeal rights exhausted, e.g. child is born after this date | Section 4 | When a parent has their child after becoming appeal rights exhausted, section 95 support will not be available to the family. Instead, the local authority must undertake a GIRFEC assessment under section 22 of the Children (Scotland) Act 1995. The local authority may only refer the family to the Home Office for support if it has confirmation that section 4 support is available and would adequately meet the child’s needs, so this should be considered within the GIRFEC assessment. [[126]](#footnote-126)Note that accommodation and financial support by social services can only be provided when the parent is an in-country ARE asylum seeker if support is necessary to prevent a breach of human rights, and there is a legal or practical barrier preventing return to the parent’s country of origin. A human rights assessment would also be required in addition to the GIRFEC assessment.  |

For more information, see:

* 7 Social services’ support – exclusion
* 8 Social services’ support – children within families

## 16.2 Social services’ assistance for children

When an asylum seeking family do not require accommodation from the local authority, for example because they are receiving section 95 support from the Home Office, there is no restriction on providing social care services to a child, for example, to meet any needs arising from a disability.

|  |
| --- |
| Case exampleAn asylum seeking family was accommodated by the Home Office in asylum support accommodation. One of the children suffered from a serious physical disability, and also suffered from seizures, which required the family to travel for numerous health care appointments weekly, and to make adaptations to their accommodation. The local authority conducted a disability/ carer’s assessment, and documented the additional support needs arising from the child’s disability. The local authority then committed to meeting some of these needs, including paying for adjustments to the property, access to medically required furnishings, and providing a modest cash allowance for travel to health care appointments. |

## 16.3 Responsibility for providing support – adults

When an adult asylum seeker is referred to the local authority and presents with an appearance of need, they must be assessed in the usual way with a view to determining whether they need to be provided with any social care services under sections 12 or 13A of the Social Work (Scotland) Act 1968.

The Home Office has published updated guidance to clarify its role in helping asylum seekers with care needs access support from the local authority as well as confirming which organisation will be responsible for providing accommodation. The guidance applies to Scotland but refers to legislation which applies in England (the Care Act 2014). This has a very different eligibility criteria and framework for providing care to that which applies in Scotland. Local authorities can therefore refer to this guidance but must also ensure all decisions comply with their duties under the Social Work (Scotland) Act 1968.[[127]](#footnote-127)

If the adult has not yet accessed support from the Home Office, the local authority would be required to undertake a community care assessment to establish what assistance they require, and whether residential accommodation is necessary to meet the person’s needs. Whilst assessments are being carried out the local authority may need to provide interim accommodation if the adult has no alternative housing available to them.

If residential accommodation is required, then the local authority will need to provide and fund this. If the person requires care which can be provided within the community, then the Home Office guidance states that suitable asylum support accommodation will be sourced, and any care required can be provided by the local authority.

An asylum seeker or ARE asylum seeker who has presented with an appearance of need, should only be referred to the Home Office for support when the community care assessment has been completed, the local authority has identified whether they are eligible for assistance, and if so, what kind of support will be required. If interim support, including housing, has been provided pending the outcome of the assessment, then it would be good practice for the local authority to assist the person to apply for asylum support if residential care is not required.

If the adult has been referred to the local authority when they are already living in Home Office accommodation, then a community care assessment should be carried out as usual. The local authority should disregard the availability of Home Office accommodation and identify whether residential accommodation is in fact required. If non-residential care is required, then the local authority must consider whether the Home Office accommodation suitably allows for the adult’s care needs to be met, and if not, will need to request that the Home Office sources more appropriate accommodation in line with the guidance.

The provision of support under sections 12 or 13A of the Social Work (Scotland) Act 1968 is not limited by Schedule 3 of the Nationality, Immigration and Asylum Act 2002 for adults with a pending asylum claim which has not been finally determined, or for adults who claimed asylum at port of entry, even if they have been refused and are appeal rights exhausted.

However, the Schedule 3 exclusion will apply to ARE asylum seekers where the adult:

* claimed asylum after they entered the UK (rather than at the port of entry), or
* has failed to comply with removal directions.

In such cases, care and support, including accommodation, may only be provided where this is necessary to prevent a breach of the person’s human rights, i.e., there is a legal or practical barrier preventing them from returning to their country of origin. The local authority will need to undertake a human rights assessment to establish this, as well as community care assessment.

For more information, see:

* 7 Social services’ support – exclusion
* 9Social services’ support – adults

## 16.4 Section 95 Home Office support

A person with a pending asylum or Article 3 human rights application (or appeal) may apply for support from the Home Office under section 95 of the Immigration and Asylum Act 1999 when they are destitute (have no accommodation or cannot afford to meet their essential living needs).

They can also apply for emergency support from the Home Office under section 98 of the Immigration and Asylum Act 1999 and may receive this support whilst the Home Office make a final decision on their application for section 95 asylum support.

The Home Office can provide housing and financial support (subsistence) through a card, which can be used in shops and to withdraw cash. A person who already has accommodation may request subsistence support only.

The asylum seeker’s dependants will also be provided with support. If the person’s asylum claim is unsuccessful and they become appeal rights exhausted, then support will end following a short notice period unless there is a child who was part of the household before the claim was finally determined. In such instances, support will continue until the youngest child turns 18 or they no longer meet the requirements, for example, the Home Office has evidence that they are not destitute. Due to this, most ARE asylum seeking families remain supported by the Home Office and do not require local authority support.

An ARE asylum seeking family will not be eligible to receive support from the Home Office under section 95 when the first child was born after the asylum claim was finally determined by the Home Office or courts, but instead may be able to apply for section 4 support. However, if a child under 18 was part of the household prior to the asylum claim being finally determined, the family should be able to access section 95 support when they have not previously claimed this.[[128]](#footnote-128)

Section 95 accommodation will usually be terminated when:

* A single adult or family are granted leave to remain – 28-day notice period
* A single adult is refused asylum and becomes ARE – 21-day notice period

In some cases, an asylum seeker or family may receive a notice of termination of support in error, or a refusal to grant Section 95 support after receipt of Section 98 support. In these cases, they may be able to exercise a right of appeal against the decision and should be signposted to an asylum support advice provider for advice and information on their rights to do so.

## 16.5 Section 4 Home Office support

In certain circumstances, destitute ARE asylum seekers may be provided with support from the Home Office under section 4 of the Immigration and Asylum Act 1999. They need to show that they:

* are taking all reasonable steps to leave the UK;
* are unable to leave the UK due to physical impediment;
* have no safe route of return;
* have been granted leave to appeal in an application for judicial review in relation to their asylum claim; or
* require support to avoid a breach of their human rights, for example they have made further submissions for a fresh asylum claim.

The support provided comprises of accommodation and subsistence, which is intended to cover the costs of food, clothing and toiletries, through a card which can be used in shops but not to withdraw cash. Subsistence support cannot be provided independently of accommodation.

Eligibility for section 4 support is subject to complex rules. A person or family must prove that they are destitute or at risk of destitution (within the next 14 days) and also furnish evidence that they meet the requirements of the appropriate rule (set out above). Destitute ARE asylum seekers should be referred to organisations for specialist advocacy and support in making these applications. In some cases, the person or family’s immigration solicitor may be willing to make the asylum support application.

The following organisations provide more information about asylum support:

* Home Office[[129]](#footnote-129)
* Migrant Help (assistance with applications)[[130]](#footnote-130)
* British Red Cross
* Govan Community Project
* Scottish Refugee Council
* Asylum Support Appeals Project (assistance when support is refused)[[131]](#footnote-131)

Delays by the Home Office in determining Section 4 support applications have lengthened significantly in the past few years. In addition, the Home Office has increasingly used the practice of using “further information requests” to prolong the period before a final decision to grant asylum support is made. Therefore, even if a person or family is assessed to be eligible for section 4 support and signposted to an advisor for assistance, regard should be given to the possibility that there might be a delay in receiving this entitlement for up to 1-2 months, and an appropriate plan to prevent destitution during this period should be put in place.

# 17 Victims of trafficking and modern slavery

This chapter sets out what local authorities must consider when they suspect a child or adult may be a victim of human trafficking or slavery, servitude and forced or compulsory labour, and when a confirmed victim who has NRPF requires accommodation or support.

## 17.1 Human trafficking in Scotland

Human trafficking in Scotland is often referred to as a hidden crime, ‘hidden in plain sight’, with widespread acceptance that the incidence and scale of human trafficking is as yet unknown, due to underreporting and a lack of familiarity by many people of the many forms that human trafficking can take. Many people in Scotland think that human trafficking is a crime mostly confined to major cities; however, victims of human trafficking have been found in most local authorities across Scotland, including in many rural areas.

All local authorities in Scotland will therefore require to protect and assist victims of human trafficking, some of whom will also be subject to immigration control and may therefore also require accommodation and support.

Local authority duties towards survivors of human trafficking or slavery, servitude and forced or compulsory labour who require support are the same as those outlined in previous chapters towards NRPF individuals and families, with some additional considerations which require to be taken into account.

For example, some victims may choose to enter the NRM identification framework, which will also provide access for a temporary period of time to an alternate statutory form of support (NRM support) and the ability to apply for a discretionary form of limited leave to remain (NRM leave or trafficking leave). In addition, whether or not victims choose to enter the NRM framework, local authorities should bear in mind certain practice standards in assessing need, and designing and delivering services for victims of human trafficking.

## 17.2 National Referral Mechanism (NRM)

The National Referral Mechanism (NRM) is a UK-wide framework for identifying victims of human trafficking or slavery, servitude and forced or compulsory labour and ensuring they receive the appropriate support. Adult potential victims of human trafficking or slavery, servitude and forced or compulsory labour must provide consent for a referral to be made, and best practice includes access to information, and early legal advice if necessary, about the decision to consent, before entering the NRM process.

Consent is not required if the potential victim is a child. The decision to refer a child as a potential victim of trafficking under the NRM falls within child protection duties of local authorities and should be taken within the relevant frameworks.

A potential victim of human trafficking or slavery, servitude and forced or compulsory labour in Scotland can only be referred to the NRM by a ‘First Responder’.

In Scotland the following organisations are First Responders for the purposes of the NRM:

* Police Scotland
* British Transport Police
* UK Government Agencies – UKVI, Border Force and Immigration Enforcement
* Trafficking Awareness Raising Alliance (TARA)
* Migrant Help
* Gangmasters and Labour Abuse Authority (GLAA)
* Local Authorities

The National Crime Agency provides more information on the NRM framework.[[132]](#footnote-132)

## 17.3 NRM support and local authority duties

Individuals referred as a potential victims of trafficking under the NRM are eligible for funded advocacy and guidance as well as accommodation and support, for a limited period of time.

In Scotland, the following organisations provide support to victims of trafficking or slavery, servitude and forced or compulsory labour:

* Trafficking Awareness Raising Alliance (TARA) – for potential adult female victims of commercial sexual exploitation only
* Migrant Help – for all other potential adult victims of human trafficking or slavery, servitude and forced or compulsory labour
* Scottish Guardianship Service (SGS) – providing independent advocacy, for all forms of exploitation, under the age of 18
* Local Authorities – providing accommodation and support for separated children, for all forms of exploitation, under the age of 18

Adults

For adults, NRM support is provided from the date that a Competent Authority determines there are reasonable grounds to believe that the adult is a victim of the offence of human trafficking and ends on the earlier of a period of 90 days or the date on which there is a conclusive determination that the adult is or is not a victim.

The support and assistance available to potential victims includes (but is not limited to) the following:

* Accommodation
* Day to day living
* Medical advice and treatment (including psychological assessment and treatment)
* Language translation and interpretation
* Counselling
* Legal advice
* Information about other services available to the adult
* Repatriation

However, if the individual has additional needs, other than as a result of being a victim, for example drug or alcohol addictions, NRM support will not meet these additional needs, and local authorities may require to do so under their statutory duties.

In addition, local authorities retain a statutory duty to assess risk and provide support in line with their safeguarding duties and adult protection legislation. Therefore, NRM support should be taken into account as a service for meeting needs, and reducing risk, for a temporary period, but is not a substitute for an independent local authority assessment of its own responsibilities towards victims in their area.

There is, at present, no national Scottish guidance for local authorities on working with victims of trafficking; however, the Local Government Association has recently published a guide which local authorities might find helpful to consult. [[133]](#footnote-133)

Where a Competent Authority makes a positive conclusive grounds decision, with a grant of leave to remain, support can continue to be provided for at least two weeks. However, in some cases, a Competent Authority may make a negative conclusive grounds decision, or a positive decision with no grant of leave to remain, which the individual may wish to appeal.

If NRM support is then withdrawn, local authorities will then become responsible for accommodation and support, where statutory obligations are engaged.

For more information, see:

* 9 Social services’ support – adults

Children

All trafficked children are allocated a guardian who can provide independent advice, information and advocacy, from the Scottish Guardianship Service (SGS).

Where trafficked children are also separated, then the local authority will provide accommodation and support under Section 25 of the Children (Scotland) Act 1995. The SGS also works with trafficked children who do not require accommodation in order to provide advice, information, and advocacy.

In similar terms to the principles set out above in working with adults, local authorities require to protect and support potentially trafficked children by working through existing child protection frameworks.

The Scottish Government has set out Inter-Agency Guidance for Child Trafficking, and local authorities should have regard to this guidance in designing their own policies and procedures.[[134]](#footnote-134)

For more information, see:

* 10 Young people leaving care

## 17.4 Best practice in supporting victims of human trafficking

To achieve best practice in working with victims of human trafficking, there are some key considerations that local authorities should take into account:

* Safety and suitability of accommodation (including gender-specific accommodation, and whether single or shared accommodation is appropriate)
* Access to appropriate support services (including NRM support services, specialist mental health services, etc.)
* Access to interpreters, and suitability of interpreters (including whether interpreters in the community pose risks if potentially linked to traffickers)
* Potentially heightened fear of authorities, particularly government bodies
* Safeguarding decision making around access to communications, contact with relatives or potential traffickers and freedom of movement

# 18 Useful information and other services

##

## 18.1 Asylum seekers, refugees and destitute migrants

**British Red Cross, Refugee Support, Glasgow**

* Provides help with urgent needs, as well as a casework and advice service

<https://www.redcross.org.uk>

**Glasgow Asylum Destitution Action Network (GLADAN)**

* Links up local organisations that support migrants
* Runs a night shelter for destitute asylum seekers and for non-EU migrants who are not allowed into other accommodation

<https://destitutionaction.wordpress.com/>

**Migrant Help**

* Information about Home Office asylum support and assistance with making applications

<http://www.migranthelpuk.org/>

**Positive Action in Housing**

* Advice and support for asylum seekers and refugees in Glasgow

http://www.paih.org/

**Scottish Refugee Council**

* Telephone advice service and casework service
* Destitute Asylum Seeker Service

http://www.scottishrefugeecouncil.org.uk/

## 18.2 Benefits and housing

**Child Poverty Action Group Scotland**

* Second-tier advice line (for frontline advisers and support staff only) **0141 552 0552**

<http://www.cpag.org.uk/scotland>

**Citizen’s Advice Scotland**

* Information on benefits, debt, housing and a range of other issues

<https://www.citizensadvice.org.uk/scotland/>

**Housing Rights Information**

* Information for the public and practitioners including detailed information for EEA nationals

<https://www.housing-rights.info/scotland/index.php>

**Shelter Scotland**

* Free housing advice and homelessness helpline **0808 800 4444**
* Information for professionals:

<http://scotland.shelter.org.uk/legal>

* Information for the public:

<https://scotland.shelter.org.uk/>

## 18.3 Domestic violence, forced marriage and FGM

**Ruby Project, Rape Crisis Glasgow**

* Support and advocacy service specialising in working with women from black and ethnic minority communities

<https://www.glasgowclyderapecrisis.org.uk/content/ruby-project/>

**Saheliya**

* Specialist mental health and wellbeing support organisation for black, minority, ethnic, asylum seeker, refugee and migrant women and girls in Edinburgh

<http://www.saheliya.co.uk>

**Scottish Women’s Aid**

* Safe to Speak – Domestic abuse and forced marriage helpline **0800 027 1234**

<http://sdafmh.org.uk/>

* Information, advice and support for women who have survived domestic abuse

<http://womensaid.scot/>

**Scottish Women’s Rights Centre**

* Free legal advice and information for women who have survived gender-based violence - Helpline: **08088 010 789**

<https://www.scottishwomensrightscentre.org.uk>

**Shakti Women’s Aid**

* Help for black minority ethnic (BME) women, children and young people who are experiencing, or who have experienced, domestic abuse.

<http://shaktiedinburgh.co.uk/>

## 18.4 Education and student finance

**Student Awards Agency Scotland (SAAS)**

* Information about Scottish government funded financial support for higher education in the UK.

<https://www.saas.gov.uk>

**UK Council for International Student Affairs (UKCISA)**

* Information about student fees and finance eligibility criteria, immigration requirements, and a helpline for students.

<http://www.ukcisa.org.uk/>

## 18.5 EEA nationals

**AIRE Centre**

* Advice on the rights of EEA nationals including email enquiry service

<http://www.airecentre.org/>

**Civil Society Brexit Project**

* Factsheets and a guide to the rights of EU citizens in Scotland

<https://hrcscotland.org/brexit-resources-and-information/eu-eea-citizens/>

## 18.6 Employment programmes

**Fair Start Scotland**

* A Scottish Government funded programmes to help people into work

List of providers: <https://beta.gov.scot/policies/employment-support/fair-start-scotland-employment-support-service/>

**Skills Development Scotland**

* Scotland’s national skills agency – resources for skills development and support in seeking employment

<https://www.skillsdevelopmentscotland.co.uk>

## 18.7 Health

**Anchor (Glasgow Psychological Trauma Service)**

* Specialist mental health service working with survivors with a history of complex trauma, that has led to a complex PTSD diagnosis

<https://www.nhsggc.org.uk/your-health/health-services/glasgow-psychological-trauma-service/>

**Freedom from Torture Scotland (Glasgow)**

* Support, counselling, advocacy and legal advice for survivors of torture

<https://www.freedomfromtorture.org/about_us/freedom_from_torture_scotland_in_glasgow>

**NHS Inform**

* The NHS Inform overseas visitors’ helpline was established by the Scottish Government to provide advice on overseas visitors’ issues. **0800 22 44 88 (textphone 18001 0800 22 44 88**)

<https://www.nhsinform.scot/>

## 18.8 Legal advice

**List of Legal Representatives in Scotland – Asylum Law (Scottish Refugee Council)**

<http://www.scottishrefugeecouncil.org.uk/get_help/i_have_not_made_a_claim_for_asylum>

**Ethnic Minorities Law Centre**

* Offices in Glasgow and Edinburgh
* Provides advice and legal representation in asylum, immigration and human rights law

<http://emlc.org.uk>

**JustRight Scotland**

* Offices in Glasgow and Edinburgh
* Provides advice, information and legal representation to asylum seeking, refugee and migrant children and young people, women who have been subject to gender-based violence, individuals who have been trafficked or exploited
* Advice casework support for refugee family reunion applications, and settled status applications for EU citizens.

<http://justrightscotland.org.uk/>

**Legal Services Agency**

* Law centres in Edinburgh, Glasgow and Greenock
* Legal representation and telephone advice for migrant young people under 25 and migrant women, as well as practitioners working with them

<http://www.lsa.org.uk/>

## 18.9 Migrant children

**Coram Migrant Children’s Project**

* Information and advice resources
* <https://www.coram.org.uk/how-we-do-it/upholding-childrens-rights/migrant-childrens-project>

**JustRight Scotland**

* Legal advice and representation (Glasgow and Edinburgh)

<http://justrightscotland.org.uk/>

**Legal Services Agency**

* Legal advice and representation (Glasgow)

<http://www.lsa.org.uk/>

**Migrant and Refugee Children’s Legal Unit**

* Information and advice resources

<https://miclu.org>

**Scottish Guardianship Service**

* Independent advice, information and advocacy service for separated children and trafficked children

https://www.aberlour.org.uk/services/scottish-guardianship-service/

## 18.10 No recourse to public funds & social services’ support

**NRPF Network**

* Information and guidance for local authorities on NRPF support

<http://www.nrpfnetwork.org.uk>

**Web tool: Support for migrant families**

* Online tool that provides information about a family’s support options
* Can be used by social workers and other local authority staff to find out what they would need to consider if a family requests social services’ support

<https://migrantfamilies.nrpfnetwork.org.uk/>

## 18.11 Trafficking and Exploitation

**JustRight Scotland**

* Provides advice information and legal representation to individuals who have survived trafficking or exploitation

<http://justrightscotland.org.uk/>

**Migrant Help**

* Independent advice, information and advocacy service for men and women (over 18) (other than women who have survived commercial sexual exploitation)

<https://www.migranthelpuk.org/supporting-survivors>

**Scottish Guardianship Service**

* Independent advice, information and advocacy service for trafficked children (up to age 18)

https://www.aberlour.org.uk/services/scottish-guardianship-service/

**Trafficking Awareness Raising Alliance**

* Independent advice, information and advocacy service for women (over 18) who have survived commercial sexual exploitation

<https://www.communitysafetyglasgow.org/what-we-do/supporting-victims-of-gender-based-violence/%EF%BF%BC%EF%BF%BCtara/>

## 18.12 Voluntary return

**Home Office Voluntary returns service**

https://www.gov.uk/return-home-voluntarily

# 19 Upcoming legislative changes

This chapter sets out some changes which have been legislated for but have not yet been implemented in Scotland.

Local authorities must comply with the law that currently applies, as set out in this guidance. Local authority officers can stay up to date about these and other changes by...

## 19.1 Rights of EU nationals after the UK leaves the EU

The UK is due to leave the European Union (EU) on 29 March 2019. The UK Government has set out its proposals for the rights of EU nationals who are currently living in the UK in a Statement of Intent, which implements the draft Withdrawal Agreement that has been made with the EU. However, the UK Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves, and a ‘no deal’ scenario may apply.[[135]](#footnote-135)

The UK Government is currently proposing that after the UK has left the EU on 29 March 2019, there will be a transition period until 31 December 2020, so free movement and the rights currently enjoyed by EU nationals and their family members to live and work in the UK will continue during this time. EU nationals and their​ family members living in the UK by the end of the transition period will need to take action before 30 June 2021 and apply for either settled or pre-settled (temporary) status under the EU Settlement Scheme if they wish to stay here. EU nationals and family members who arrive after 29 March 2019 and people who have already obtained a permanent residence document will also need to apply. The Government has indicated that a person who fails to apply by the end of June 2021 may have no lawful basis to remain in the UK, but it is unclear what the consequences of this will be. The EU Settlement Scheme is currently being piloted and is due to be fully implemented by the end of March 2019. ​

If the UK does not reach a deal with the EU, then the UK Government has confirmed that EU nationals and their family members living in the UK by 29 March 2019 will be able to apply under the EU Settlement Scheme, but must do this by 31 December 2020.[[136]](#footnote-136)

The position of citizens of the other European Economic Area countries that enjoy free movement rights (Norway, Iceland and Lichtenstein), and Switzerland, is currently being negotiated, but it is likely that they will be subject to the same scheme.

The position for EU nationals who arrive after the transition period is currently unclear. The UK Government is due to set out details of the immigration regime that will apply to EU nationals in a new Immigration Bill, which has not yet been laid before Parliament.

Many residents will be directly affected by the UK leaving the EU, therefore local authorities will need to play a role in reducing any negative impacts on communities that may arise if EU nationals fail to secure their status or their entitlements are misunderstood. It is thereforenecessary for councils to raise awareness of the procedures the Government is proposing amongst EU nationals in communities as well as identifying and assisting vulnerable residents to prepare for this process, including those receiving support from social services.

It is currently unclear how leaving the EU will impact on other legislation, such as Schedule 3 of the Nationality, Immigration and Asylum Act 2002, and reciprocal benefit and healthcare arrangements.

Resources for local authorities:

* NRPF Network factsheet, ‘Preparing European Union residents for Brexit’ [[137]](#footnote-137)
* EU Settlement Scheme: community leaders toolkit [[138]](#footnote-138)

For more information, see:

* 15.8 Rights of EU nationals after the UK leaves the EU

## 19.2 Social Security (Scotland) Act 2018

The Social Security (Scotland) Act 2018 received royal assent on 1 June 2018. The Act allows the Scottish Government to set up a new social security system to administer some benefits that are currently issued by the UK Government’s Department of Work and Pensions (DWP) to people living in Scotland.[[139]](#footnote-139)

The benefits that will be administered by the Scottish Government are:

* Disability Living Allowance
* Personal Independence Payment
* Attendance Allowance
* Severe Disablement Allowance
* Industrial Injuries Disablement Benefit
* Carer’s Allowance
* Best Start Grant (a Scottish replacement for Sure Start Maternity Grants)
* Funeral Expenses
* Cold Weather Payments
* Winter Fuel Payments
* Discretionary Housing Payments administered by local authorities

The Scottish Government has set up Social Security Scotland to administer these benefits. The Scottish Government also has the ability to create new forms of assistance, meaning that additional benefits may be created or that existing ones will be renamed or replaced, for example, Sure Start Maternity Grants is being replace by the Best Start Grant.

The Scottish Government has started to administer Carer’s Allowance Supplement, which is a supplementary payment to people who are receiving Carer’s Allowance as an interim measure.[[140]](#footnote-140) The first payments of the Best Start Pregnancy and Baby Grant will be made before Christmas 2018.

The Scottish Government states:

*‘We are using these powers to create a Scottish social security system based on dignity, fairness and respect, which will help to support those who need it, when they need it.’* [[141]](#footnote-141)

Although the Scottish Government will be able to determine its own rules for eligibility for each of the benefits it administers, the UK Government retains responsibility for deciding whether a particular benefit is a public fund for immigration purposes. The Scottish Government is currently discussing this with the Home Office, but the likelihood is that the UK Government will add devolved benefits to the list of restricted public funds, meaning that the guidance may not change for people with NRPF.

For more information, see:

* 3.1 Social security benefits

## 19.3 The Fairer Scotland Duty

The socio-economic duty forms Part 1 of the Equality Act 2010.  This duty has not been commenced by the UK Government, however, following the transfer of relevant powers under the Scotland Act 2016, this has been commenced in Scotland.

The duty – now called the Fairer Scotland Duty – came into force in April 2018, and focuses on socio-economic inequality issues such as low income, low wealth, and area deprivation.  It requires public bodies to actively consider socio-economic disadvantage and how inequalities can be reduced in any strategic decision made.

The duty applies to all public sector decision making and will be subject to a three-year implementation phase to ensure that it works in practice.  During this implementation phase, the Scottish Government is providing funding to the Improvement Service to offer support to public bodies around the duty, help share best practice, and deliver training.

Interim guidance for public bodies defining key terms and to help decide if a Fairer Scotland assessment is needed was published in March 2018.[[142]](#footnote-142)

## 19.4 Immigration Act 2014 – right to rent scheme

The Immigration Act 2014 contains the ‘right to rent’ provisions, which prevent private landlords from legally renting a property to a person who is without leave to remain in the UK. Landlords are required to conduct immigration status checks to establish whether a person has an unlimited right to rent, a limited right to rent or no right to rent. This requirement also applies to people sub-letting properties, people who are accommodating paying lodgers and to Housing Associations that operate their own allocations lists. The right to rent scheme does not apply to most hostels and refuges, Home Office asylum accommodation, or when local authorities are using properties in the private sector as temporary accommodation for people with NRPF.[[143]](#footnote-143)

The right to rent scheme was initially piloted in the West Midlands (Birmingham, Wolverhampton, Dudley, Walsall and Sandwell), and has been implemented across England since 1 February 2016.

The Immigration Act 2016 introduced further provisions that mean a landlord does not have to obtain a court order for possession of the property in order to evict a tenant without leave by not having to obtain a court order. These came into force in England on 1 December 2016.[[144]](#footnote-144)

The right to rent scheme has been legislated to also apply in Scotland but has not yet been implemented.

If introduced in Scotland, the right to rent provisions would mean that people without leave may not be able to accommodate themselves and their families within the community, even if they have funds to do this. People who are British or have a form of immigration status may also face difficulties securing housing where they struggle to evidence their status due to lack of documentation. The scheme could therefore give rise to more requests to local authorities for support and increase pressure on voluntary sector services. Its implications must also be properly considered when local authorities are establishing whether a person or family has any alternative housing options to being accommodated by the local authority.[[145]](#footnote-145)

## 19.5 Immigration Act 2016 – asylum support

The Immigration Act 2016 contains significant changes that affect the support options of ARE asylum seekers, and, in England, families and young people leaving care who are without leave and require local authority accommodation and financial support.[[146]](#footnote-146)

The asylum support reforms are legislated to apply in Scotland and across the rest of the UK:

* Section 95 Home Office asylum support will no longer continue for an ARE asylum seeking family after they become appeal rights exhausted.
* Section 4 asylum support for ARE asylum seekers (singles and families) will be abolished.
* If an ARE asylum seeker (single or family) can demonstrate that there is a ‘genuine obstacle to leaving the UK’, they may be eligible for the new section 95A Home Office asylum support, which will only be available for a limited period following the final decision on their asylum claim.

**These changes are not currently in force and the UK Government has not provided any indication about when they will be implemented, although has previously informed local government that adequate notice will be given to allow councils to prepare. Additionally, regulations will need to be made and passed by the UK Parliament before the legislation can be implemented.**

# Glossary

|  |  |
| --- | --- |
| **Appeal rights exhausted (ARE)** | A person will become ‘appeal rights-exhausted’ when their asylum or immigration claim and any subsequent appeals have been unsuccessful, the time to lodge an appeal has passed, or they have no further right to appeal. |
| **Asylum seeker** | A person who has made a claim to the UK government for protection (asylum) under the United Nations Refugee Convention 1951 and is waiting to receive a decision from the Home Office on their application or from the Court in relation to an appeal. |
| **ARE asylum seeker**  | A person who has made an unsuccessful claim for asylum which has been finally determined by the Home Office and/or courts, has no further right to appeal, and has not been granted any leave to remain. |
| **Calais leave** | **Limited leave to remain granted to an asylum seeking** child who was reunited with family in the UK following the Calais camps clearance between 17 October 2016 and 13 July 2017. They will be granted five years limited leave to remain, may work and claim public funds, and can apply for indefinite leave to remain after ten years. |
| **Country of origin** | Usually the person’s country of nationality but if this is unclear then local authorities would need to find out from the Home Office which country the person may be removed to or whether the person is stateless. |
| **EEA national** | A person who is a national of a European Economic Area (EEA) country or Switzerland: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Slovakia, Sweden & the UK.When the term EEA national is used in this guidance this does not include the UK. |
| **GIRFEC assessment**  | Getting It Right for Every Child (GIRFEC) is the policy framework under which a child wellbeing assessment is conducted to establish what assistance may be provided to a child and their family under the Children (Scotland) Act 1995. The assessment is a holistic assessment of a child’s needs using the National Practice Model, including consideration of the indicators of wellbeing, the My World Triangle and the Resilience Matrix, in accordance with the GIRFEC approach. |
| **Home Office**  | The government department that is responsible for maintaining immigration control, including:* UK Visas and Immigration (application casework)
* Border Force (border control)
* Immigration Enforcement (enforcement within the UK including the Intervention and Sanctions Directorate which undertakes immigration status checking for local authorities)
 |
| **Humanitarian Protection**  | A person who has been recognised as having a real risk of serious harm or well-founded fear of persecution in their country of origin, but not for any reason set out under the UN Refugee Convention 1951. They will be granted five years limited leave to remain, may work and claim public funds, and can apply for indefinite leave to remain after five years. |
| **Illegal entrant** | A person who has entered the UK without the correct immigration permission, has used deception to gain entry, has not passed through immigration control, or who re-enters the UK before their deportation order is revoked.  |
| **Immigration Rules** | The statutory instrument which sets out the categories under which people can apply for leave to enter or remain in the UK, the requirements which need to be met, the length of leave which will be granted and conditions attached to the leave.  |
| **Indefinite leave to enter****Indefinite leave to remain**  | Immigration permission with no time limit on the length of stay in the UK. Also referred to as ‘settled status.’ There are no conditions attached to this type of leave so a person may undertake employment and can access public funds (unless they were granted as an adult dependant relative and have lived in the UK for less than five years). |
| **Leave to enter** | Immigration permission issued by an Immigration Officer when a non-EEA national enters the UK. Most people are required to apply for prior entry clearance at a visa application centre abroad, which will be provided as a vignette in the person’s passport. |
| **Leave to remain**  | Immigration permission issued by the Home Office, which is applied from within the UK, usually by completing a form and submitting this online, by post or in person.  |
| **Leave to remain outside of the rules** | Leave to remain granted outside of the Immigration Rules on the basis of a person’s family or private life in the UK. |
| **Limited leave to enter****Limited leave to remain** | Immigration permission issued for a time limited period; conditions may include restrictions on employment and access to public funds.  |
| **No recourse to public funds (NRPF)** | A condition that prevents a person from being able to claim most social security benefits, homelessness assistance and social housing because of their immigration status. |
| **Primary carer** | When a person, who is the parent, grandparent, or legal guardian, either has primary responsibility for the child’s care or shares this responsibility equally with another person. |
| **Refugee** | A person who has been recognised as having a well-founded fear of persecution in their country of origin for reasons of race, religion, nationality, membership of a particular social group, or political opinion under the UN Refugee Convention 1951. They will be granted five years limited leave to remain, may work and claim public funds, and can apply for indefinite leave to remain after five years. |
| **Section 67 leave**  | Limited leave to remain granted to an Unaccompanied Asylum Seeking Child who came to the UK under the ‘Dubs scheme'. They will be granted five years limited leave to remain, may work and claim public funds, and can apply for indefinite leave to remain after five years. |
| **UASC Leave** | Limited leave to remain granted to an Unaccompanied Asylum Seeking Child who does not have adequate reception arrangements in their country of origin. Leave will be granted for 30 months or until the child is 17.5 years old, whichever is shorter. This type of leave does not provide a route to settlement. |
| **Visa overstayer** | A person who had leave to enter or remain in the UK for a limited period and is currently without leave because they:* did not make an application to extend their leave before their previous leave expired, or
* made an application which was refused after their previous leave expired.
 |

1. <https://www.gov.uk/government/publications/undocumented-commonwealth-citizens-resident-in-the-uk> [↑](#footnote-ref-1)
2. HB Bulletin U1/2018: 'Windrush generation' information for local authorities <https://www.gov.uk/government/publications/housing-benefit-urgent-bulletins-2018> [↑](#footnote-ref-2)
3. <https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change> [↑](#footnote-ref-3)
4. Section 115(9) of the Immigration and Asylum Act 1999 [↑](#footnote-ref-4)
5. An adult dependent relative of a British citizen or person with settled status will have indefinite leave to enter or remain in the UK with a prohibition on claiming public funds for a period of five years, although they may apply for non-means tested benefits during this period. Once five years has passed, or if the person who made the undertaking has died, they will have full recourse to public funds. Regulation 2 & Schedule of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 <http://www.legislation.gov.uk/uksi/2000/636/schedule>; Home Office Modernised Guidance on Public Funds <https://www.gov.uk/government/publications/public-funds> [↑](#footnote-ref-5)
6. <https://www.gov.uk/government/publications/public-funds> [↑](#footnote-ref-6)
7. In Northern Ireland included crisis loans and community care grants until 1 November 2016. [↑](#footnote-ref-7)
8. Added on 6 April 2016. Replaced community care grants and crisis loans in Scotland. England, and Northern Ireland have similar local welfare schemes which are also on this list, but the Discretionary Assistance Fund in Wales is not currently included. [↑](#footnote-ref-8)
9. Section 115 of the Immigration and Asylum Act 1999 and paragraph 6 of the Immigration Rules [↑](#footnote-ref-9)
10. Paragraph 118 of the Immigration and Asylum Act 1999; the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 [↑](#footnote-ref-10)
11. Paragraph 119 of the Immigration and Asylum Act 1999; the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 [↑](#footnote-ref-11)
12. <https://www.parentclub.scot/baby-box>; <https://www.mygov.scot/baby-box/> [↑](#footnote-ref-12)
13. <https://www.mygov.scot/child-maintenance/>; <https://www.gov.uk/child-maintenance/overview> [↑](#footnote-ref-13)
14. <http://www.cmoptions.org/> [↑](#footnote-ref-14)
15. https://www.mygov.scot/discretionary-housing-payment/ [↑](#footnote-ref-15)
16. <https://www.gov.uk/know-when-you-can-leave-school>; the Education (Scotland) Act 1981 [↑](#footnote-ref-16)
17. <https://www.gov.uk/government/publications/visit-guidance> [↑](#footnote-ref-17)
18. https://www.saas.gov.uk/ [↑](#footnote-ref-18)
19. <http://www.legislation.gov.uk/ssi/2007/156/contents/made>; <https://www.mygov.scot/ema/> [↑](#footnote-ref-19)
20. <https://www.mygov.scot/school-meals/> [↑](#footnote-ref-20)
21. <https://www.mygov.scot/school-meals/> [↑](#footnote-ref-21)
22. Section 47(1) of the Children and Young People (Scotland) Act 2014 (‘the 2014 Act’) [↑](#footnote-ref-22)
23. At section 47(2) of the 2014 Act and in the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, as amended [↑](#footnote-ref-23)
24. <https://www.mygov.scot/childcare-costs-help/start-and-end-dates/> [↑](#footnote-ref-24)
25. https://www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare/ [↑](#footnote-ref-25)
26. Section 1(C) of the Education (Scotland) Act 1980 [↑](#footnote-ref-26)
27. <https://www.gov.uk/help-with-childcare-costs/tax-free-childcare> [↑](#footnote-ref-27)
28. <https://www.slab.org.uk/public/civil/eligibility/> [↑](#footnote-ref-28)
29. <https://www.transport.gov.scot/concessionary-travel/> [↑](#footnote-ref-29)
30. https://www.gov.scot/Resource/0052/00525866.pdf [↑](#footnote-ref-30)
31. <https://www.nhsinform.scot/care-support-and-rights/health-rights/access/healthcare-for-refugees-and-asylum-seekers-and-overseas-visitors> [↑](#footnote-ref-31)
32. <https://www.gov.scot/Topics/Health/Services/Overseas-visitors> [↑](#footnote-ref-32)
33. <https://www.sehd.scot.nhs.uk/mels/CEL2010_09.pdf> [↑](#footnote-ref-33)
34. [https://www.sehd.scot.nhs.uk/pca/PCA2018(M)10.pdf](https://www.sehd.scot.nhs.uk/pca/PCA2018%28M%2910.pdf) [↑](#footnote-ref-34)
35. <https://www.mygov.scot/clothing-grants/> [↑](#footnote-ref-35)
36. Section 22 of the Children (Scotland) Act 1995 [↑](#footnote-ref-36)
37. The Children (Scotland) Act 1995 and the Children and Young People (Scotland) Act 2014 [↑](#footnote-ref-37)
38. Sections 12 or 13A of the Social Work (Scotland) Act 1968 [↑](#footnote-ref-38)
39. The Scottish Parliament Equalities and Human Rights Committee, Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in Scotland (22 May2017) <https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2017/5/22/Hidden-Lives---New-Beginnings--Destitution--asylum-and-insecure-immigration-status-in-Scotland>; *R (on the application of HC) (Appellant) v Secretary of State for Work and Pensions and others (Respondents)* [2017] UKSC 73 <https://www.supremecourt.uk/cases/uksc-2015-0215.html> [↑](#footnote-ref-39)
40. NRPF Connect annual report 2017-18 <http://www.nrpfnetwork.org.uk/Documents/NRPF-connect-annual-report-2017-18.pdf> [↑](#footnote-ref-40)
41. *R(G) v Barnet LBC* [2003] UKHL 57 <http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd031023/barnet-1.htm> [↑](#footnote-ref-41)
42. <http://www.legislation.gov.uk/ukpga/2018/12/contents>; <https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en> [↑](#footnote-ref-42)
43. Local Government Ombudsman investigation: Hertfordshire County Council (16 010 518) (17 March 2017), paras. 26 to 28 & 47 <https://www.lgo.org.uk/decisions/children-s-care-services/child-protection/16-010-518%20-> [↑](#footnote-ref-43)
44. Local Government Ombudsman investigation: Thurrock Council (16 012 994) (15 March 2017) <https://www.lgo.org.uk/decisions/children-s-care-services/other/16-012-994> [↑](#footnote-ref-44)
45. <https://ico.org.uk/> [↑](#footnote-ref-45)
46. Department for Education, *Working together to safeguard children* (July 2018), paragraph 76. <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2> [↑](#footnote-ref-46)
47. *Secretary of State for the Home Department v Limbuela & Ors* [2004] EWCA Civ 540. <http://www.bailii.org/ew/cases/EWCA/Civ/2004/540.html> [↑](#footnote-ref-47)
48. *SSHD v Limbuela & Ors* [2004] EWCA Civ 540. [↑](#footnote-ref-48)
49. <http://www.nrpfnetwork.org.uk/nrpfconnect/Pages/default.aspx> [↑](#footnote-ref-49)
50. NRPF Network data for 50 local authorities, NRPF Connect annual report 2017-18 <http://www.nrpfnetwork.org.uk/Documents/NRPF-connect-annual-report-2017-18.pdf> [↑](#footnote-ref-50)
51. Section 22(1)(b) of the Children (Scotland) Act 1995; *M v London Borough of Islington & Anor* [2004] EWCA Civ 235. <http://www.bailii.org/ew/cases/EWCA/Civ/2004/235.html> [↑](#footnote-ref-51)
52. Paragraph 3 of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 [↑](#footnote-ref-52)
53. This distinction is set out in the case: *AW, R (on the application of) v London Borough of Croydon* [2005] EWHC 2950 (QB). <http://www.bailii.org/ew/cases/EWHC/QB/2005/2950.html> [↑](#footnote-ref-53)
54. NRPF Network factsheet, Zambrano carers: local authority duties and access to public funds <http://www.nrpfnetwork.org.uk/Documents/Zambrano-Factsheet.pdf> [↑](#footnote-ref-54)
55. Approach set out by the House of Lords in *R (G) v Southwark London Borough Council*, applying with approval a list of criteria taken from the judgment of *Ward LJ in R (A) v Croydon London Borough Council* [2008] EWCA Civ 1445, [2009] LGR 24 CA [↑](#footnote-ref-55)
56. <https://www.gov.scot/Topics/People/Young-People/gettingitright>; <https://www.unicef.org/crc/> [↑](#footnote-ref-56)
57. <https://www.gov.scot/Topics/People/Young-People/gettingitright/national-practice-model> [↑](#footnote-ref-57)
58. <https://www.gov.scot/resource/0040/00408604.pdf> [↑](#footnote-ref-58)
59. *C, T, M and U, R (on the application of) v London Borough of Southwark* [2016] EWCA Civ 707, paragraph 12 <http://www.bailii.org/ew/cases/EWCA/Civ/2016/707.html> [↑](#footnote-ref-59)
60. *AC & SH, R (On the application of) v London Borough of Lambeth Council* [2017] EWHC 1796 (Admin), paragraph 42 [↑](#footnote-ref-60)
61. *R (C, T, M and U) v LB Southwark* (2016), paragraph 12. [↑](#footnote-ref-61)
62. *R v Northavon District Council, Ex p Smith*[1994] 2 AC 402 [↑](#footnote-ref-62)
63. *O, R (on the application of) v London Borough of Lambeth* [2016] EWHC 937 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2016/937.html>   [↑](#footnote-ref-63)
64. *AC & SH, R (On the application of) v London Borough of Lambeth Council* [2017] EWHC 1796 (Admin) [↑](#footnote-ref-64)
65. *R (on the application of N) v Greenwich London Borough Council* (2016) QBD (Admin) - extempore judgment; *R (U & U) v Milton Keynes Council* [2017] EWHC 3050 (Admin), paragraphs 27 & 38 <http://www.bailii.org/ew/cases/EWHC/Admin/2017/3050.html> [↑](#footnote-ref-65)
66. *R (U & U) v Milton Keynes Council* [2017] EWHC 3050 (Admin); *AC & SH, R (On the application of) v London Borough of Lambeth Council* [2017] EWHC 1796 (Admin); *R (on the application of CO & Anor) v Lewisham London Borough Council*(16 June 2017) QBD (Admin) [↑](#footnote-ref-66)
67. <http://www.nrpfnetwork.org.uk/Documents/Practice-Guidance-Families.pdf> [↑](#footnote-ref-67)
68. *C, T, M and U, R (on the application of) v London Borough of Southwark* [2016] EWCA Civ 707. [*http://www.bailii.org/ew/cases/EWCA/Civ/2016/707.html*](http://www.bailii.org/ew/cases/EWCA/Civ/2016/707.html) [↑](#footnote-ref-68)
69. *PO & Ors, R (On the Application Of) v Council of the London Borough of Newham* [2014] EWHC 2561 (Admin). <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2561.html> [↑](#footnote-ref-69)
70. *Mensah v Salford City Council* [2014] EWHC 3537 (Admin). <http://www.bailii.org/ew/cases/EWHC/Admin/2014/3537.html> ; *R (C, T, M and U) v LB Southwark* (2016), paragraph 43. [↑](#footnote-ref-70)
71. *R (PO) v LB Newham* [2014] EWHC 2561 (Admin) [↑](#footnote-ref-71)
72. Local Government and Social Care Ombudsman, London Borough of Southwark (14 009 121) (12 August 2015) <https://www.lgo.org.uk/decisions/children-s-care-services/other/14-009-121>; London Borough of Croydon (16 011 275) (23 August 2017) <https://www.lgo.org.uk/decisions/children-s-care-services/other/16-011-275> [↑](#footnote-ref-72)
73. <https://www.commonwealhousing.org.uk/projects/no-recourse-to-public-funds-working-title> [↑](#footnote-ref-73)
74. Section 86 of the Social Work (Scotland) Act 1968 [↑](#footnote-ref-74)
75. *MacGregor v South Lanarkshire Council* [2001] S.C. 502; 2001 S.L.T. 233 [↑](#footnote-ref-75)
76. <https://www2.gov.scot/Topics/Health/Support-Social-Care/Financial-Help/Charging-Residential-Care> [↑](#footnote-ref-76)
77. Circular CCD 3/2015: Guidance on the recovery of expenditure on accommodation and services under Section 86 of the Social Work (Scotland) Act 1968 <https://www.gov.scot/Topics/Health/Support-Social-Care/Financial-Help/OrdinaryResidence>; *Shah v London Borough of Barnet* [1983] 1 All E.R. 226 [↑](#footnote-ref-77)
78. <https://www.gov.scot/Publications/2014/04/5438/7> [↑](#footnote-ref-78)
79. <https://www.gov.scot/Publications/2014/08/5212/6> [↑](#footnote-ref-79)
80. Section 95(3) of the Immigration and Asylum Act 1999 [↑](#footnote-ref-80)
81. <https://www.gov.scot/Topics/Health/Services/Mental-Health/Law/Code-of-Practice> [↑](#footnote-ref-81)
82. *GS, R (On the Application Of) v London Borough of Camden* [2016] EWHC 1762 (Admin), para.75 [↑](#footnote-ref-82)
83. *R (AK) v Bristol City Council* (CO/1574/2015). Consent order: <http://dpglaw.co.uk/wp-content/uploads/2016/04/1092383-Consent-order-sealed-18.11.2015.pdf> [↑](#footnote-ref-83)
84. <https://www.gov.scot/Topics/Health/Support-Social-Care/Adult-Support-Protection>; <https://www.gov.scot/Publications/2014/05/6492/0>

 [↑](#footnote-ref-84)
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87. Management of Offenders etc. (Scotland) Act 2005; section 27 of the Social Work (Scotland) Act 1968 [↑](#footnote-ref-87)
88. Home Office, Immigration Bail <https://www.gov.uk/government/publications/offender-management> [↑](#footnote-ref-88)
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91. <https://beta.gov.scot/publications/age-assessment-practice-guidance-scotland-good-practice-guidance-support-social/> [↑](#footnote-ref-91)
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94. *R(KA) & Anor v London Borough of Croydon* [2017] EWHC 1723 (Admin) [↑](#footnote-ref-94)
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97. LGO complaint 15-015-327 Dudley MBC <https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/15-015-327> [↑](#footnote-ref-97)
98. Paragraph 5 of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 [↑](#footnote-ref-98)
99. *R (K) v London Borough of Lambeth* [2003] EWCA Civ 1150, paragraph 49. <http://www.bailii.org/ew/cases/EWCA/Civ/2003/1150.html> [↑](#footnote-ref-99)
100. *Secretary of State for the Home Department v Limbuela & Ors* [2004] EWCA Civ 540. <http://www.bailii.org/ew/cases/EWCA/Civ/2004/540.html> [↑](#footnote-ref-100)
101. *AW, R (on the application of) v London Borough of Croydon* [2005] EWHC 2950 (Admin), paragraph 35.<http://www.bailii.org/ew/cases/EWHC/Admin/2005/2950.html> [↑](#footnote-ref-101)
102. NRPF Connect annual report 2017-18 <http://www.nrpfnetwork.org.uk/Documents/NRPF-connect-annual-report-2017-18.pdf> [↑](#footnote-ref-102)
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104. *O, R (on the application of) v London Borough of Lambeth* [2016] EWHC 937 (Admin), paragraph 52. <http://www.bailii.org/ew/cases/EWHC/Admin/2016/937.html>   [↑](#footnote-ref-104)
105. *AW, R (on the application of) v London Borough of Croydon* [2005] EWHC 2950 (Admin), paragraph 35.<http://www.bailii.org/ew/cases/EWHC/Admin/2005/2950.html> [↑](#footnote-ref-105)
106. <https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change> [↑](#footnote-ref-106)
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117. Regulation 10, Immigration (EEA) Regulations 2016 [↑](#footnote-ref-117)
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<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2673.html> & *R (C, T, M and U) v LB Southwark* (2016) [↑](#footnote-ref-126)
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128. Section 94(5) of the Immigration and Asylum Act 1999 [↑](#footnote-ref-128)
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131. <http://www.asaproject.org/> [↑](#footnote-ref-131)
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133. <https://www.local.gov.uk/modern-slavery-council-guide> [↑](#footnote-ref-133)
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142. <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/> [↑](#footnote-ref-142)
143. Sections 20-37 & Schedule 3 of the Immigration Act 2014 <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>; the Home Office Code of practice on illegal immigrants and private rented accommodation <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice> [↑](#footnote-ref-143)
144. Sections 39-40 of the Immigration Act 2016 <http://www.legislation.gov.uk/ukpga/2016/19/contents> [↑](#footnote-ref-144)
145. The courts in England have been clear that local authorities must consider how the right to rent scheme impacts on a parent’s ability to access housing in the private sector if they are relying on this to conclude that a child is not in need for the purpose of providing support under section 17 of the Children Act 1989: *R (on the application of N) v Greenwich London Borough Council* (2016) QBD (Admin) - extempore judgment; *R (U & U) v Milton Keynes Council* [2017] EWHC 3050 (Admin), paragraphs 27 & 38 <http://www.bailii.org/ew/cases/EWHC/Admin/2017/3050.html> [↑](#footnote-ref-145)
146. Sections 66 & 68; Schedules 11 & 12 of the Immigration Act 2016 <http://www.legislation.gov.uk/ukpga/2016/19/contents> [↑](#footnote-ref-146)