

## **Framework for Local Authority Decision-making (2022): Support for Migrants with No Recourse to Public Funds**

### **What is the purpose of this document?**

The framework sets out the current policy position for local authorities in Scotland on providing support to people with No Recourse to Public Funds. There are specific equalities and human rights risks for people with NRPF including risks of destitution and rough sleeping. The framework is designed to assist local authorities to interpret their duties towards people in these circumstances as we recover from the pandemic and to understand the support that can be put in place. It will be reviewed in line with any significant changes in public health advice or legal opinion.

### **Who should read it?**

- Local Authority staff including Directors of Social Services/ Chief Social Work Officers, Heads of Housing, Social Security/ Welfare leads
- NHS Directors of Public Health and IJB Chief Officers;
- Anyone who is involved in planning and providing support to migrant communities/ people with No Recourse to Public Funds

### **Key Messages**

- Local Authorities will continue to support families with children and adults with care needs with NRPF who are eligible for social services assistance
- Local authorities will additionally need to consider the use of public health powers to provide temporary or emergency accommodation to destitute adults with NRPF
- Local Authorities will need to make sure they are upholding the rights of EEA Nationals, including people with Pending EUSS Applications.
- Local Authorities are encouraged to promote the available guidance training and support provided by COSLA to local authority staff working in housing, social work and welfare advice services
- Local authorities should undertake local assessments to determine people's rights and entitlements and the support that can be put in place. Temporary/emergency accommodation may need to be provided during this time, e.g. if a person is at risk of rough sleeping.
- Local support will need to meet urgent crisis needs and connect people to qualified immigration advice
- The support that local authorities are able to provide is contingent on available funding and will need to be determined locally.

**The framework will remain under review as we continue to manage public health developments and receive ongoing public health advice and legal opinion. For more information or to provide comments and feedback contact [cristina@cosla.gov.uk](mailto:cristina@cosla.gov.uk)**

## 1. Introduction

This framework provides information that will help Local Authorities to determine the support that can be put in place for people with No Recourse to Public Funds or other migrants who have restricted eligibility for public funds as a result of their immigration status, including some EEA Nationals without Settled Status.

There is a need for councils to maintain an up to date knowledge of how different immigration statuses impact on people's rights and entitlements to local authority services and the legislation that can be used to provide services including temporary accommodation and financial assistance, in order to prevent breaches in human rights and also to effectively prevent and mitigate issues including destitution and rough sleeping amongst migrant families and individuals.

The framework was first published in May 2020 to assist local authorities during the Covid-19 pandemic. This updated version is designed to support local authorities during the 'recovery' phase. We know that there continue to be risks from the virus for the foreseeable future and that some of the new ways of living together, working and delivering services are likely to remain in place. There are specific equalities and human rights risks for people with NRPF and rapidly changing implications of immigration policy and legislation that local authorities need to be aware of, in particular changes to EEA Nationals rights but also considerations for British Nationals (Overseas); people arriving through certain visa routes from Ukraine and other people with NRPF including refused asylum seekers and people who are undocumented.

COSLA Leaders have agreed unanimously the approach to support people who are destitute and at risk of rough sleeping going forward. This continues to prioritise the protection of public health and human rights for all people, irrespective of their nationality, main country of residence or immigration status. The framework is designed to support councils to implement this, and to consider the legal basis for providing support services to people at risk of destitution and rough sleeping.

## 2. How to use the framework

The framework has been produced by COSLA with input and advice from Scottish Government, Public Health Scotland, local authorities and third sector partners. It also draws on emerging evidence and resources available to support local authorities. The framework should be read in conjunction with public health advice and Public Health Scotland will continue to work with COSLA and the Scottish Government to inform this framework and guidance as measures and risks of COVID change.

A full list of [COVID-19 guidance](#) can be found on the Scottish Government's website.

It should also be read in conjunction with the national guidance [Migrants' Rights and Entitlements to Local Authority Services and Support](#), which provides more detailed information on immigration rules and local authority practices and is currently being prepared for an update in 2022.

Local Authorities should note that the national guidance has not been recently updated to reflect changes for EEA nationals and further guidance is forthcoming in 2022. In the meantime the following sources of information may be of assistance:

- Just Citizens have provided helpful information on [EEA Nationals rights](#).
- The NRPF Network have also produced a helpful [briefing](#) on EEA Nationals rights and entitlements for local authorities in England that may be of additional assistance to Scottish councils. This does not reflect the Scottish legal context and a dedicated briefing has been commissioned by COSLA to assist Scottish authorities, this will be available by end of April 2022.

Local authority decision makers are advised to check the current legal position and seek advice from their legal team on individual cases. They should refer to up to date public health advice on [NHS inform](#) and also seek advice from key colleagues including Chief Social Work Officers, Heads of Housing, Integrated Joint Board Chief Officers, equality officers, internal resilience teams, and NHS Directors of Public Health.

Councils will additionally want to ensure that their approach to supporting people with NRPF takes full advantage of various other networks of support being developed and delivered both nationally and locally in response to COVID-19 and to assist migrants with insecure immigration status.

### **3. How long does it apply for?**

The framework should apply for the duration of time that COVID-19 poses a public health risk. The context is changing rapidly, therefore it will be updated – and where necessary reviewed – to reflect any significant policy, public health or operational changes. COSLA will additionally monitor the funding implications for local authorities.

### **4. Who does the framework apply to?**

The framework is designed to improve support for people with No Recourse to Public Funds (NRPF) and people with similar restrictions on their eligibility to public funds.

NRPF is a condition applied to people who are 'subject to immigration control' under UK immigration law and restricts access to specific public funds which are defined in UK immigration legislation – they include homelessness assistance, local authority housing allocation and most mainstream benefits.

NRPF can apply to anyone:

- who is in the UK on a visa that is subject to the NRPF condition;
- who has applied for asylum or another form of protection in the UK;
- who is an adult dependent relative of a British citizen or person with settled status in the UK; or
- who does not have permission to remain in the UK.

At the time of writing this includes:

- **Students, workers and people with spousal visas** who have leave to remain subject to NRPF conditions;
- **People who have overstayed their visas, and appeal rights exhausted (ARE) asylum seekers**, who no longer have leave to remain but are unable to return home and require assistance from the local authority; and
- **EEA and Swiss citizens who have been refused or are ineligible for Settled Status**

More information can be found in [COSLA's Migrants Rights and Entitlements guidance](#).

### EEA Nationals

This framework also applies to EEA nationals who have been granted Pre-Settled Status but do not have the right to reside for the purpose of claiming Universal Credit. This will usually mean that people with pre-settled status who are not able to work will continue to be unable to access means-tested benefits and are at risk of destitution. Further information on right to reside can be found here: [Check if you have the right to reside for benefits - Citizens Advice Scotland](#)

The Home Office has put in place arrangements to enable those with reasonable grounds for missing the deadline to apply to the EUSS. People with a Late Pending EUSS Application may, however, require support from the local authority in the interim to prevent destitution. Therefore, elements of the supplementary guidance on putting in place support options will be relevant to consider here.

Providing support to EEA Nationals without Settled Status is a complex area, and local authorities will need to maintain an up to date understanding of the implications of different statuses and individual circumstances for the provision of local authority services, in particular housing and homelessness services.

Local Authorities should note that national guidance is being updated and COSLA is intending to publish a briefing in April 2022.

Good practice continues to be to accommodate people whilst assessments are undertaken regarding eligibility for homelessness assistance, for example if their status is unclear and if there is reasonable doubt as to whether or not someone has recourse to public funds and/or entitlements to support.

More information on EEA Nationals' rights can be found:

## Asylum Seekers and Refugees

The framework does not typically apply to people who are seeking asylum. Where someone seeking asylum would otherwise be destitute while awaiting the outcome of their asylum application they are entitled to apply to the Home Office Asylum Support System. Asylum seekers who are appeal rights exhausted and destitute may be able to apply for Section 4 or Section 95 support under the Immigration and Asylum Act 1999.

People with Refugee Status, including people who have been resettled under refugee resettlement schemes **have recourse to public funds**. They should receive the same service response as the wider community, although they are likely to need additional help to access housing and benefits. In some cases, people may identify as a refugee but have a form of discretionary or limited leave to remain status. This is a visa status which may include an NRPF condition, in which case this guidance **does** apply to them.

More information on NRPF conditions and on migrants rights and entitlements can be found in [section two of the national guidance on migrants rights and entitlements](#) and the [Ending Destitution Together strategy](#).

Local Authorities will be aware of the rapidly evolving situation in Ukraine. The Home Office has published the following details of the schemes to support people arriving into the UK from Ukraine:

### **Overall fact sheet on Ukraine Schemes:**

<https://homeofficemedia.blog.gov.uk/2022/03/11/factsheet-home-office-visa-support-for-ukrainians/>

### **Ukraine Family Scheme:**

How to apply: <https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>

### **Home for Ukraine Scheme:**

How to apply: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme>

Guidance for councils: <https://www.gov.uk/guidance/homes-for-ukraine-guidance-for-councils>

Factsheet: <https://www.gov.uk/government/publications/homes-for-ukraine-factsheet-for-ukrainians>

Frequent asked questions: <https://www.gov.uk/guidance/homes-for-ukraine-scheme-frequently-asked-questions>

### **Ukraine Extension Scheme:**

How to apply: <https://www.gov.uk/guidance/apply-to-stay-in-the-uk-under-the-ukraine-extension-scheme>

Further guidance was published for local authorities in Scotland:

[Super Sponsor Scheme and Homes for Ukraine: guidance for local authorities - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/super-sponsor-scheme-and-homes-for-ukraine-guidance-for-local-authorities/pages/1-1-introduction.aspx)

When it comes to access to public funds, the Home Office have provided the following information:

Ukrainian nationals granted status under the Ukraine Family Scheme, the Humanitarian Sponsorship Scheme and the Ukraine Extension Scheme will not be subject to a NRPF condition, they are able to work and access benefits.

Ukrainian nationals arriving in the UK without making a prior application to the schemes listed above are granted six-months Leave Outside the Rules (LOTR), which is not subject to a NRPF condition.

This is an area that is subject to rapidly changing policy and legislation, and local authorities are encouraged to check the latest information and guidance on the topic.

Local Authorities are asked to get in touch with COSLA if Ukrainian refugees are requiring assistance from the local authority.

### British Nationals (Overseas)

The UK Government has created a new visa to allow British National (Overseas) (BN(O) status holders, ordinarily resident in Hong Kong and the UK, and their immediate family members to settle in the UK to live, work and study. People with this visa are subject to No Recourse to Public Funds. In certain circumstances, people will be able to apply for the condition to be lifted.

COSLA has produced a [Welcome Hub](#) which provides dedicated information to support Hongkongers and local authorities who are providing assistance to people on this visa route.

For more information please contact [hongkongBNO@cosla.gov.uk](mailto:hongkongBNO@cosla.gov.uk).

## **5. Policy Context**

COSLA Leaders agreed in July 2021 that the ongoing approach to supporting destitute people with NRPF and similar restrictions on their eligibility for public funds during the recovery phase of the pandemic, should include taking steps to prevent homelessness and rough sleeping and to support people to comply with public health measures.

This framework is intended to help to implement this position and will require local authorities to consider the ongoing use of devolved legislation - including both public health and adult and child safeguarding powers and duties - to provide support alongside developing partnerships with third sector and community based organisations.

The decision means in practice that local authorities should:

- Consider the need to provide temporary/emergency access to accommodation and any necessary financial assistance to support people with NRPF who are destitute and at risk of rough sleeping where this is deemed necessary and appropriate to prevent or mitigate a public health risk,
- Continue to assess and meet the needs of especially vulnerable groups, including families with children and adults with community care needs, where they have an eligible need under statutory safeguarding duties;
- Take any other relevant measures required to protect public health and human rights, for example considering the need to provide temporary emergency accommodation whilst people's needs are being assessed and they are accessing immigration advice;

This position, and the work of Local Government and partners to implement it, will help to ensure that measures in place to protect public health during the recovery period are accessible to everyone in Scotland regardless of their nationality, main country of residence and immigration status. It is consistent with wider COVID-19 policy to reduce transmission and acknowledge the additional known health risks that COVID-19 presents to migrant communities with insecure status, who can be at higher risk of infection, severe consequences of infection, and of not being vaccinated.

The implementation of this approach will be subject to local decision making and will vary depending on the legal options for providing this support and the availability of resources locally as well as individuals' particular circumstances. The framework is intended to support local assessments of need and decisions about the provision of services to people with NRPF and insecure immigration status who are at risk of destitution. It outlines key principles for the recovery period; support options that are available and outlines the pieces of relevant legislation that may be drawn upon to provide support.

Supplementary guidance has also been provided in addition to this, setting out further advice on how to implement support in practice and to consider other relevant policies for people with NRPF. This is a complex area of service provision and local authorities will need to seek their own legal advice when reaching decisions about the support that can be put in place. It is important that officers maintain an up to date understanding of changing policy and legislation in this area.

Useful sources of information and support are provided at the end of this document and in supplementary guidance

## **6. Recovery Principles**

COSLA Leaders agreed that Local Government should seek to use devolved powers as far as lawfully possible to provide support, including temporary emergency accommodation for destitute people with NRPF, who require assistance and are not

typically eligible for other forms of support e.g. from the Home Office, mainstream benefits, housing or homelessness services.

Support in some circumstances may need to include emergency/temporary accommodation and financial assistance, to reduce the risk of virus transmission and enable people to comply with public health advice as well as to alleviate destitution and safeguard human rights whilst people are receiving any relevant needs assessments by the local authority and/or accessing immigration advice.

The following underpinning principles can be used to guide local decisions on provision of support going forward.

- Safe accommodation and the means to meet essential needs, including sanitation needs to be available/accessible to people with NRPF to prevent and mitigate public health and human rights risks – this may need to be provided by the local authority or in partnership with third sector and community organisation
- People should not be removed from temporary/emergency accommodation or have other emergency assistance removed until they have accessed appropriate legal advice. Where it is legally possible, local authorities should seek to avoid the removal of support until suitable alternative accommodation has been identified or the individual has established the means to meet their own needs, for example through achieving a change in immigration status or accessing support within the community.

In practice this will mean that local authorities should maximise their legal powers and work in partnership with the third sector to establish the support options that are available locally, including temporary/emergency accommodation.

Local Authorities will need to consider:

- Duties to provide accommodation, financial assistance and other support to families with children and vulnerable adults with eligible health and social care needs, in line with statutory safeguarding duties
- The potential to use public health powers to provide or continue to provide temporary/emergency accommodation and/or financial assistance to people who are destitute and at risk of rough sleeping where that is necessary or appropriate to alleviate a public health risk.
- Opportunities to work with multiagency partners including the third sector to enable an individual to access appropriate legal advice, casework or other support, for example employability services, to resolve their insecure immigration status and to establish alternative options to end homelessness.
- Pursuing refusal and removal of emergency support to people in need/ at risk of destitution and rough sleeping as a last resort, when all other support options have been exhausted.

The support that local authorities are able to provide is contingent on available funding and will need to be determined locally and in line with relevant legislation.



It is also encouraged to follow the principles of the *Ending Destitution Together* and *Ending Homelessness Together* strategies and the joint COSLA and Scottish Government approach to COVID-19 Recovery.

This approach should apply for as long as COVID-19 poses a public health risk. Public Health Scotland and Scottish Government will continue to work with COSLA to inform the framework and associated guidance and any significant developments in the Local Government position will be considered by COSLA Leaders.

## 7. Public health and equality considerations

During the recovery phase of the pandemic there are ongoing public health risks for people with NRPF that will need to be taken into consideration in the planning and delivery of services. The NRPF condition and a range of additional personal, social and other factors mean that they may face higher risks of infection, severe consequences of infection, and of not being vaccinated.

People with insecure immigration status and NRPF:

- are more likely to be from Black, Asian or other minority ethnic communities that are impacted by significant health inequalities
- are more likely to be living in unsafe or unsanitary conditions and may struggle to comply with public health measures as a result
- may not be vaccinated and may be reluctant to take up offers of vaccination e.g. because of fear of removal from the UK and/or other misconceptions about accessing services
- may be reluctant to access health services for similar reasons or face barriers to accessing health services
- may have pre-existing health conditions.

There are particular risks for:

- **Single adult men** who are not currently in receipt of local authority support, are at highest risk of rough sleeping and destitution and are likely to struggle to comply with current public health advice.
- **Women** who may be vulnerable to domestic abuse, commercial sexual exploitation and other forms of gender-based violence because of their insecure immigration status and lack of access to public funds.
- **Children within families who have NRPF** who may become reliant on support from the local authority to meet their basic needs.
- **Adults** with health and social care needs who may be at particularly high risk of illness from the virus and face potential barriers to employment, for example people with an underlying health condition.

Local authorities will need to consider the impact of destitution and insecure immigration status on mental health and wellbeing, on the risks of rough sleeping and on public health, safety and human rights (both for individuals and communities more widely). It is important to note that the recent experience of lockdowns and the pandemic may have created changes in people's personal circumstances, including their employment status and income, family relationships and experiences of domestic abuse and other forms of gender-based violence. They may also face

practical delays to being able to make immigration applications or to meet the costs of applications, all of which could increase risks of destitution at this time and in the months to come.

These risks apply to people with a range of immigration statuses that have the NRPF conditions applied. EEA nationals who have not yet applied for Status under the EU Settlement Scheme, are refused or not eligible to apply are now unlawfully present and have NRPF. They face new and high risks of homelessness and destitution. Other high risk groups may include people who have been refused asylum and people who are undocumented. However, consideration needs to be given to the risks and vulnerabilities for anyone with the NRPF conditions, particularly those with low incomes and with more limited family and community support networks.

The risks of destitution for people with NRPF during this period may affect people who are currently in a local authority secure tenancy or private rented accommodation, as well as destitute people who are in insecure accommodation or unsuitable accommodation (for example people who are in hostels, sofa surfing or rough sleeping). There are likely to be hidden needs which may only be identified when people seek to apply for housing or make a fresh benefit claim. There is likely to be an increase in need for support whilst the individual is preparing to make or awaiting the outcome of an immigration application, for example extension of leave or settlement application or where there is cost associated with making an application.

More information can be found in the [Ending Destitution Together strategy](#).

COSLA and Scottish Government have developed joint COVID-19 Supplementary VAW Guidance for Local Authorities that provides more information on specific risks for women and girls.

[https://www.cosla.gov.uk/\\_data/assets/pdf\\_file/0023/17762/COVID-19-Supplementary-VAW-Guidance-FINAL.pdf](https://www.cosla.gov.uk/_data/assets/pdf_file/0023/17762/COVID-19-Supplementary-VAW-Guidance-FINAL.pdf)

## **8. Support that can be provided**

The NRPF policy restricts individuals' access to specific public funds which are defined in UK immigration legislation – they include homelessness assistance, local authority housing allocation and most mainstream benefits.

Other forms of assistance can be lawfully provided by public services, provided that these are not listed as public funds in relation to Section 115 of the Immigration and Asylum Act 1999 and Paragraph 6 of the Immigration Rules.

Some of these supports include:

- Health services including GP registration, mental health and suicide prevention services
- School education, early years and other children's/ family support services
- Accommodation provided by third sector organisations and Housing Associations

- Food and other crisis support
- Immigration advice

Devolved legislation may also in certain circumstances be used to provide discretionary emergency/temporary support by local authorities to people to safeguard and protect human rights and mitigate a public health risk. Eligibility and entitlement varies depending on factors including an individual's immigration status and personal circumstances but may include:

- Temporary/emergency accommodation
- Financial assistance

Supplementary guidance produced alongside this framework provides information relating to the provision of support during the recovery period. This includes advice on accommodation options and how to support people to access qualified immigration advice to regularise their immigration status. See 'No Recourse to Public Funds Framework – Part Two'.

More information can also be found in the [Migrants Rights and Entitlements to Local Authority Services](#) national guidance. (This is due to be further updated in 2022).

## 9. Legal basis for providing support

The use of local authority powers and interpretation of local authority duties towards destitute people with NRPf is a matter for individual local authorities to determine and councils should seek their own legal advice. Below are relevant pieces of legislation that local authorities will want to consider when making decisions about support that can be provided.

Local authority decision makers are advised to check the current legal position and seek advice from their legal team on individual cases. They should refer to up to date public health advice on NHS Inform and also seek advice from key colleagues including Chief Social Work Officers, Heads of Housing, Integrated Joint Board Chief Officers, equality officers, internal resilience teams, and NHS Directors of Public Health. They should also seek to monitor changing immigration rules and regulations and can seek support from COSLA in this regard.

### **Adults with care needs and children and young people**

- **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**

Social services assistance is not a 'public fund' for immigration purposes and therefore can be provided to a person with NRPF, where they have an eligible need and it is necessary to do so to avoid a breach of human rights, typically under the above legislation.

A child will be in need if a family is destitute or at risk of homelessness and the parent has no access to benefits or other resources to cover their housing and living costs. Eligibility for support will be determined through a GIRFEC assessment. A local authority has a duty to provide services, including accommodation, to an adult who is in need of community care services, although is not required to meet needs that arise solely due to the adult's situation of destitution if the adult has leave to remain that is subject to the NRPF condition or is unlawfully present in the UK. Eligibility for support will be determined through a community care assessment.

For more information about social services' duties to provide accommodation and financial support to people who are unable to access benefits, see [chapters 5-10 of the COSLA Rights and Entitlements Guidance](#).

The support that can be provided under this legislation can include the provision of accommodation and financial support by social services. This is recognised by the UK and Scottish Governments, and the UK Supreme Court, as being an essential safety net for children within families, care leavers, and adults with care needs, who are at risk of homelessness and cannot access benefits due to their immigration status.

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, practitioners will need to ensure that consideration is given within social care assessments that does 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.

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

There are some circumstances where the local authority will not be in a position to provide support under this legislation. For example, if a person is entitled to support from the Home Office, such as Section 4, 95 or 98 support for destitute asylum

seekers, then it is the Home Office's responsibility to provide accommodation and financial assistance.

UK immigration law also excludes certain migrants and their families from being provided with accommodation and financial assistance by social services, unless refusing to provide support would result in a breach of human rights. With regard to people who are 'in breach of immigration laws' i.e. without lawful status in the UK, Schedule 3 exclusions under Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002 apply to the support that local authorities are permitted to provide.

Schedule 3 exclusions mean that legally a local authority can only provide support in circumstances where the person has both an eligible health and social care need and their human rights would be breached if support is not provided. In these circumstances, the local authority must additionally carry out a human rights assessment in addition to the needs assessment to determine their eligibility for support.

A human rights breach could occur, for example, if there is a practical barrier to returning to their country of origin e.g. because an individual lacks the documentation required to travel or because they are unwell and physically unfit to travel. It could also occur where there is a legal barrier to returning to their country of origin e.g. the individual lacks the documentation they require to be able to travel or have a pending immigration application.

Good practice continues to be to accommodate destitute people whilst assessments are undertaken regarding their eligibility, for example if their status is unclear and if there is reasonable doubt as to whether or not someone has recourse to public funds and/or entitlements to support or there is a period of delay in the person accessing the support they are entitled to and they would otherwise be destitute/ at risk of rough sleeping. This also applies to EEA nationals whose status under the EU Settlement Scheme, and associated entitlements to services, may be difficult to establish by the local authority.

In some cases, a human rights assessment will be required to determine whether social services' support can be provided.

More information is provided in [Migrants Rights and Entitlements to Local Authority Support – Social Services support](#)

The NRPF Network has also produced new [guidance on how to undertake a human rights assessment](#).

### **Destitute people who aren't eligible for support under the above legislation**

- **Public Health (Scotland) Act 2008**

The pandemic has created a context in which public health powers have been used by local authorities to provide temporary emergency accommodation and financial

assistance to people at risk of homelessness and rough sleeping, where they would typically not qualify for local authority support in order to mitigate a public health risk. Local authorities have the power to determine, in these circumstances, that a failure to provide accommodation poses a public health risk.

The Public Health (Scotland) Act 2008 places duties on NHS boards and on local authorities to protect public health in their areas and sets out respective areas of responsibility and a duty to co-operate in carrying out their duties under the Act. NHS Boards have the duty, to identify a public health need.

COVID-19 was designated as a notifiable disease for purposes of the Public Health (Scotland) Act 2008 in February 2020. For example, if a person has, or is suspected to have, COVID-19, they must isolate to prevent transmission, and to safeguard their own physical health. No access to accommodation in which to isolate would constitute a public health risk.

Powers under public health legislation are also permissive and the exercising of these powers may follow where there is justification. It is understood that measures to mitigate the public health risk of COVID-19 would normally enable the exercising of local authority powers.

Public Health Scotland advised in November 2021 that becoming homeless and/or destitute presents a public health risk as we continue to manage the pandemic. Their position is that rough sleeping makes people more vulnerable to infection through lack of sanitation, nutrition, exposure etc.

The local authority will need to consider whether or not they determine that people with NRPF require support (including the provision of accommodation) on personal health or public health grounds “In order to mitigate a public health risk [...] or if a person is in need due to their illness [...]”. In these circumstances Section 12 of the Social Work (Scotland) Act 1968 may be engaged, and accommodation and financial support are provided in addition to any other community care services that are required.

Public Health Scotland can provide further information on assessing the current public health risks. Contact: Kelly Muir [kelly.muir2@phs.scot](mailto:kelly.muir2@phs.scot)

- **S20 Local Government in Scotland Act 2003**

This piece of legislation sets out the power to do anything the local authority considers is likely to promote or improve the well-being of their area and/or persons in it. Local authorities may wish to consider the use of Section 20 of the Local Government in Scotland Act 2003 to provide discretionary support to people with NRPF who are ineligible under other relevant pieces of legislation, as set out in the sections above.

The power has limitations, including not allowing Local Authorities to do something that it is restricted from doing because of a ‘limiting provision’. The NRPF rules do not explicitly prevent councils from providing all forms of support. 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 on 'Public Funds' - [Public funds - GOV.UK \(www.gov.uk\)](https://www.gov.uk) Councils may therefore want to consider whether its reasonable in specific circumstances to provide some of the support options set out in this framework.

COSLA will continue to seek advice on this matter and explore the potential for this legislation to be used. -We will keep councils informed of any additional updates around this.

### **Homelessness Assistance for EEA Nationals**

- **Sections 28 & 29 of Housing (Scotland) Act 1987**

Sections 28 and 29 of the Housing (Scotland) Act 1987 require a local authority to take homelessness applications and make temporary accommodation available where they believe someone may be homeless. Only following this can they go on to assess the applicant in line with the statutory enquiries that are prescribed by law. It is only when a local authority is confident and able to reason their decision that someone is ineligible for homeless assistance that a local authority may refuse to accept a homelessness application.

Where there is any doubt as to whether someone may be eligible for homelessness assistance, the local authority should take a homelessness application, provide accommodation and *then* make enquiries. This is particularly relevant to cases where an EEA national requires to make an application but does not have all their documentation to hand to demonstrate their eligibility.

This is a rapidly changing area of policy. COSLA has commissioned the NRPF Network to produce a dedicated briefing on EEA nationals' rights to homelessness services for local authorities in Scotland. This will be published in May 2022 and will be available on COSLA's website [migrationscotland.org.uk](https://migrationscotland.org.uk) or by request from [cristina@cosla.gov.uk](mailto:cristina@cosla.gov.uk)

## **10. Provision of Legal Advice**

Local authorities will need to engage with individuals who are accommodated to identify and assist them to achieve a sustainable solution to their homelessness. In the majority of cases, this will be achieved by a change of immigration status that enables the person to access employment and/or benefits. For example, making an application under the EU Settlement Scheme or a change of conditions application to remove an NRPF condition.

Whilst local authorities will be required to work with individuals and families to establish their immigration status, it is important to note that immigration advice

should only be provided by an OISC registered immigration adviser or a member of the appropriate regulatory bodies for solicitors and barristers. Immigration advisers and legal professionals can provide advice and services on a range of immigration matters, including:

- claims for asylum
- applications for entry clearance or leave to enter or remain in the UK
- immigration employment documents
- nationality
- citizenship
- residence
- deportation or removal
- bail applications and appeals against deportation

It is a criminal offence for a person to provide immigration advice or services in the UK unless their organisation is regulated by the Office of the Immigration Services Commissioner (OISC) or is otherwise covered by the Immigration and Asylum Act 1999. In practice, this means that local authorities should seek to make referrals to and/or work alongside OISC registered immigration advisers or members of the appropriate regulatory bodies for solicitors and barristers when assessing and delivering support for people with No Recourse to Public Funds.

A list of organisations and relevant contacts is provided below under ‘Support for Local Authorities’ and ‘Support for Individuals’. More information about establishing immigration status; lifting NRPF conditions; applying for EUSS and establishing other legal rights and entitlements for people with insecure status are outlined in the supplementary guidance.

#### Support for Scottish Local Authorities

International Organisation for Migration (IOM) OISC-certified caseworkers are based in COSLA and are working alongside the COSLA Migration, Population and Diversity (MPD) Team. The caseworkers provide one-to-one immigration advice and support to vulnerable individuals, who have been referred by local authority officers.

COSLA and IOM have also started to provide access to casework support for other people with NRPF including support to establish immigration status and make an immigration application as well as to apply for a change of conditions/ removal of NRPF restriction attached to certain people’s immigration status. Scottish local authorities that are supporting EU nationals to make applications to the EU Settlement Scheme can still access support provided by IOM, in partnership with COSLA. Local authorities can contact: [immigrationadviceuk@iom.int](mailto:immigrationadviceuk@iom.int) or [cristina@cosla.gov.uk](mailto:cristina@cosla.gov.uk) for more information.

#### Support for Individuals

There is a range of support available for individuals through the Scottish Government’s Stay in Scotland campaign, this includes:

- [Factsheets published by JustRight Scotland](#)



- Citizens Advice Scotland run a free national helpline as part of their [EU Citizens' Support Service](#). Staff may be able to help individuals make a late application to the EUSS, they can get information, advice and support by phoning the helpline on 0800 916 9847.
- The Citizens' Rights Project can provide individuals with information about EU citizens' rights. They run sessions in different languages and have trained multilingual staff who can support EU citizens. Find information about [Citizens' Rights Project events](#), contact by phone on 07518926137 or email [info@citizensrightsproject.org](mailto:info@citizensrightsproject.org).

## 11. Funding for delivery

The support that local authorities are able to provide is contingent on available funding and will need to be determined locally.

Scottish Government previously provided £25 million flexible funding to support households experiencing financial insecurity over the Winter in 2021-22. The purpose of the flexible funding was to enable local authorities to support wellbeing by preventing and responding to financial insecurity. Guidance to assist local decision making in deploying this resource is available: [Financial insecurity: guidance to local authorities over winter 2021-2022 - gov.scot \(www.gov.scot\)](#)

This and any other similar funding is not a restricted public fund under the Immigration and Asylum Act 1999, unless it is allocated towards activities that are themselves restricted. It is therefore recommended that where available local authorities use some of their allocations to implement the framework, alongside any other local sources of funding that may be available.

COSLA is also working with Scottish Government to clarify any other funding streams that can be accessible to people with NRPF and/or support local authorities to implement this framework. Local authorities are encouraged to record the support they are providing and the associated costs and to identify any circumstances whereby current funding arrangements are insufficient to support them to meet locally identified needs for people with NRPF.

## 12. Feedback and Review

The framework will be reviewed and updated to reflect any significant changes in public health advice and legal opinion.

Local authorities are asked to provide any comments, feedback and/or updates on support provided in their area to [cristina@cosla.gov.uk](mailto:cristina@cosla.gov.uk)

## 13. Further advice

This framework is supported by Supplementary Guidance, which sets out more detail on the support options for destitute people with NRPF and considerations for putting in place and effective local responses.

Further guidance on EEA Nationals rights is forthcoming in May 2022. The national guidance, 'Migrants Rights and Entitlements to Local Authority Services remains a source of detailed advice to local authorities and will also be updated during 2022.

COSLA can additionally provide advice on NRPF policy and support to local authorities who are developing local policies and service approaches. We host a No Recourse to Public Funds Scotland Network, which is a forum to support local authorities to receive policy updates and share information.

Please contact [cristina@cosla.gov.uk](mailto:cristina@cosla.gov.uk) for more information.

Local authorities can contact: [immigrationadviceuk@iom.int](mailto:immigrationadviceuk@iom.int) or [cristina@cosla.gov.uk](mailto:cristina@cosla.gov.uk) for more information about how IOM can assist with legal advice and casework support.

The [No Recourse to Public Funds Network](#) also publish regular information and training services for local authorities across the UK.