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**Migrants’ Rights and Entitlements to Local Authority Support**

**National Guidance for Scottish Local Authorities**

Local Government has a crucial role in reducing poverty, homelessness and discrimination towards anyone living in their area, as well as supporting people who are or are at risk of destitution. Local authorities are expected to support the integration of migrants, asylum seekers and refugees in Scotland. Their equality and human rights obligations extend to every person living in Scotland, regardless of their nationality and background.

‘Migrants’ Rights and Entitlements to Local Authority Support’ is a national guidance that sets out current legal framework and good practice to assist in meeting their statutory safeguarding duties and delivering an effective social work response when working with members of our communities who have insecure immigration status and may have no recourse to public funds (NRFP).

Social workers and others who are responsible for administering social services’ support may wish to refer to the guidance in order to establish how to best work with a person or family from the point of referral to finding a pathway to reduce their need for support the local authority. It highlights specific considerations for working with children and young people, adults with disabilities, and survivors of trafficking or domestic abuse, that may require a targeted response.

COSLA and Scottish Government recognises that more support is needs for Local Authorities to better meet the needs of migrants at risk of destitution and published the guidance that is being launched today.

This document sets out a short summary of key points highlighted in the guidance and a summary of its content. The full version of the guidance is available online on COSLA’s Migration Scotland website at [www.migrationscotland.org.uk](http://www.migrationscotland.org.uk).

**About COSLA**

COSLA is leading work to strengthen support for Scottish local authorities to better meet their needs of migrants at risk of destitution. We facilitate a national NRPF Network for Scotland that provides a forum for local authority staff to meet to discuss good practice, policy development and partnership working.

In addition to the guidance COSLA is organising a series of training and dissemination events to improve the skills and confidence of frontline local authority staff and to raise the awareness and understanding of migrant’s rights to access support.

If you have any queries relating to the guidance or wider NRPF work, please contact Ania Tajsiak (annat@cosla.gov.uk) or Eloise Nutbrown (eloise@cosla.gov.uk).

**Migrants’ Rights and Entitlements to Local Authority Support**

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| Immigration status and eligibility for public funds |
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| Key points |
| * Local authority officers working in frontline services need to be able to understand how a person’s immigration status affects their entitlement to benefits and other services, in order to ensure that people receive all of the services they are entitled to, establish correct referral routes, and take any necessary steps to alleviate destitution.
* People who have ‘no recourse to public funds’ (NRPF) will not be able to access most social security benefits, homelessness assistance and a local authority allocation of social housing, but in some cases may be able to receive accommodation and financial support from social services.
* Even when a person’s immigration status does not prevent them from accessing social security benefits, they may experience problems obtaining these, for example, because they do not meet other eligibility criteria linked to their residency in the UK, they cannot evidence the length of their residence in the UK, or because their entitlements are misunderstood.
* In most cases, establishing a pathway out of destitution will involve accessing specialist immigration advice. 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 is an immigration adviser regulated by the Office of the Immigration Services Commissioner (OISC). Local authorities must therefore ensure that staff do not provide immigration advice to individuals unless they are accredited to do so with the OISC, and should consider establishing lists of local regulated immigration advice services to signpost people to.
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| Public funds for immigration purposes |
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| Key points |
| * The ‘no recourse to public funds’ (NRPF) condition prevents people from accessing most mainstream social security benefits, homelessness assistance and a local authority allocation of social housing, although there are some exceptions which may mean a particular benefit can be claimed by a person with NRPF.
* A person with NRPF is not prevented from accessing other publicly funded services, although their immigration status or length of residence may be a relevant factor in establishing entitlement to certain services.
* Local authorities have duties to safeguard the welfare of children, young people leaving care and vulnerable adults, which can include providing accommodation and financial support when a person has NRPF and is prevented from accessing mainstream benefits and social housing by their immigration status.
* Local authority staff working across all first points of contact should be aware of the support options that a person with NRPF may have, so that an appropriate referral can be made to the relevant social work team when a family or vulnerable adult is at risk of homelessness.
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| Eligibility for other publicly funded services |
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| Key points |
| * A person with ‘no recourse to public funds’ (NRPF) is not prevented from accessing other publicly funded services due to having this condition. However, their nationality, immigration status or length or residence may be a relevant factor in establishing entitlement to some other services.
* Local authorities have the discretion to provide free school meals to children in low-income families that do not meet eligibility requirements due to parents’ immigration status. There is also local discretion to provide school clothing grants.
* Many NHS services in Scotland are provided free of charge regardless of a person’s immigration status.
* Social services’ duties to safeguard the welfare of children, young people leaving care and vulnerable adults may be engaged in order to alleviate destitution when a person or family is prevented by their immigration status from accessing social security benefits and requires accommodation and financial support.
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| Social services’ support- overview |
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| Key points |
| * Social services’ duties to safeguard the welfare of children, young people leaving care and vulnerable adults, may be engaged when a person or family is prevented by their immigration status from accessing social security benefits and requires accommodation and financial support to alleviate destitution.
* Social services’ assistance is not a public fund for immigration purposes and can be provided to children and adults who are in need, regardless of their immigration status. However, for certain adults and families, the provision of accommodation and financial support is subject to a human rights assessment which considers whether they can return to their country of origin to avoid a situation of destitution in the UK as an alternative to being supported by social services.
* Social workers need to be aware of the different ways that having ‘no recourse to public funds’ (NRPF) can impact on vulnerable groups, for example, women and children who are at risk of domestic abuse and must ensure that their practice is gender and culturally sensitive.
* When assessing eligibility for accommodation and financial support, in most cases social workers will need to undertake additional steps, for example, providing access to an interpreter, liaising with the person’s legal adviser, or obtaining immigration status information from the Home Office, ensuring that data protection legislation is adhered to.
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| Social services’ support – referrals  |
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| Key points  |
| * To ensure that practice is not discriminatory, local authorities will need to put in place processes to ensure that a consistent approach is taken when assessing eligibility and providing social services’ support to a family or person with no recourse to public funds (NRPF).
* When a person or family with NRPF is at risk of homelessness, it may be necessary to provide interim accommodation and financial support whilst a community care or GIRFEC assessment is being carried out.
* Social workers will need to be familiar with UK immigration documentation in order to identify a person’s immigration status and know how to verify this with the person’s legal representative or the Home Office, in line with data protection requirements.
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| Social services’ support – exclusion |
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| Key points |
| * Assistance provided by social services is not a public fund for immigration purposes and cannot be automatically refused to a person solely on that basis.
* However, the provision of accommodation and financial support is subject to the ‘Schedule 3’ exclusion, which means that such assistance can only be provided to certain people when this is necessary to prevent a breach of human rights.
* The Schedule 3 exclusion applies to adults, young people leaving care (age 18+), and families where the person or parent is a European Economic Area (EEA) national or non-EEA national who is without leave in the UK.
* When the exclusion applies to a person or family, the local authority would need to undertake a human rights assessment to consider whether there are any legal or practical barriers preventing the person or family from returning to their country of origin to avoid a situation of destitution in the UK.
* For adults in need, the exclusion also applies to the provision of community care services.
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| Social services’ support – children within families |
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| Key points |
| * Local authorities should ensure that their decisions are consistent with the rights of the child and should seek to mitigate adverse impacts of growing up with insecure immigration status on the child’s mental health, wellbeing and integration.
* The requirement to undertake a GIRFEC 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 Schedule 3 exclusion applies.
* 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 the local authority identifies that accommodation and financial support is required to meet a child’s needs, the authority cannot then refuse to provide these.
* 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, by alleviating any risks that may arise due to the parent’s exclusion from mainstream social security benefits, and taking proper account of the suitability and sustainability of any informal support being received, for example from friends, family or a third sector organisation.
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| Social services’ support – adults |
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| Key points |
| * A person should not be refused an assessment or assistance solely because they have no recourse to public funds (NRPF), because this in itself does not exclude them from social services’ assistance.
* 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 Schedule 3 exclusion applies.
* Although the cost of funding residential care or a care package can be considerable, budgetary constraints alone would not be an appropriate ground for refusing to meet the assessed care needs of a person with NRPF who is eligible for social care assistance.
* Where financial support is provided, this would need to be sufficient to mitigate any identified safeguarding risks, for example, the health of a pregnant woman or to a survivor of domestic abuse who may be at risk of returning to a violent partner.
* Where a local authority does not have a duty to provide support to an adult with NRPF, the person should be provided with information which may include: Home Office asylum support, local charities, local immigration advisers and the Home Office Voluntary Returns Service. In order to reduce migrant destitution in communities, the local authority may wish to consider making this information widely available through its website and other communications.
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| Unaccompanied children & young people leaving care |
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| Key points |
| * Local authorities need to have processes in place to identify a child’s nationality and immigration status when their involvement begins or when a child’s circumstances change. As a child’s immigration status can change, this must be kept under continuous review and recorded in the child’s care plan.
* A child with an outstanding immigration issue needs to be referred to specialist legal advice and support urgently, including a referral to the Scottish Guardianship Service where appropriate. (All Unaccompanied Asylum Seeking Children (UASCs) and non-EEA national trafficked children in Scotland are entitled to receive independent advocacy support of a guardian.)
* For children who do not have a form of immigration status that will allow them to settle in the UK permanently, it will be essential to undertake ‘triple pathway planning’ that accounts for how the different outcomes of their asylum or immigration claim may impact on their ability to access healthcare, education and aftercare support from the local authority, and includes appropriate planning for the possibility of their claim being unsuccessful.
* When a young person is in an excluded group, for example, they become ‘appeal rights exhausted’ (ARE) following their asylum claim, the continued provision of aftercare support is subject to a human rights assessment that considers whether there are any legal or practical barriers preventing the young person from returning to their country of origin to avoid a situation of destitution in the UK. This exclusion is set out in Schedule 3 of the Nationality, Immigration and Asylum Act 2002 and means that in certain circumstances, support may be withdrawn before a young person turns 26.
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| * Planning to support a young person in these circumstances must involve establishing a durable pathway out of destitution. This could involve signposting to immigration advice to explore the possibility of pursuing a further claim to remain in the UK, support into employment when the young person has permission to work, or help with exploring assistance to voluntarily return to country of origin when the young person is an ARE asylum seeker.
* If a local authority withdraws aftercare support to a young person who is ARE, at age 26 or earlier, the young person should be provided with information which may include signposting to: Home Office asylum support, local charities, immigration advisers and the Home Office Voluntary Returns Service.
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| Assessments when the exclusion applies |
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| Key points |
| * The Schedule 3 exclusion requires local authorities to consider whether or not the person or family is subject to a legal or practical barrier that prevents them from returning to their country of origin. This could include an outstanding immigration application or appeal that raises human rights grounds, or a medical condition that means the person is not fit to travel.
* The process of undertaking a human rights assessment provides an opportunity for the local authority to identify whether a person needs specialist legal advice, for example, to make a new immigration application, a fresh claim or to explore their options if they do not have recent decisions from the Home Office or courts that can be referred to.
* Before return to country of origin can be considered, the local authority must be clear that there are no legal or practical barriers preventing return, so will need to establish whether there are any outstanding immigration claims or appeals pending, which may involve obtaining current information from the Home Office.
* Failure to provide assistance to a family, young person, or adult, where social services’ duties apply and a legal or practical barrier prevents them from returning to their country of origin, is likely to constitute a breach of human rights.
* In cases where the local authority concludes, following a human rights assessment, that it has no duty to provide support because the person or family can avoid a breach of human rights by returning to their country of origin, the person should be provided with information which may include signposting to: Home Office asylum support, local charities, local immigration advisers and the Home Office Voluntary Returns Service. Where a voluntary return or other support route is being taken up, the local authority would need to consider providing time-bound accommodation and financial support whilst this is being arranged.
* Social workers and other local authority staff who are responsible for undertaking these assessments should be appropriately trained and supported by managers and local authority lawyers.
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| Reviews and ending support |
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| Key points  |
| * 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 for continued support; the person should be advised from the outset on what basis support has been provided, and how this might change.
* Proactive steps should be taken to help the person or family resolve their situation of destitution and need for social services’ support. By finding a sustainable solution to prevent an ongoing or future need for social services’ support, the local authority will be acting in the best interests of a child and promoting a vulnerable adult’s wellbeing, as well as reducing costs incurred by the local authority.
* 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 the relevant social care legislation, or they are in an excluded group under Schedule 3 of the Nationality, Immigration and Asylum Act 2002 and the local authority, through conducting a human rights assessment, has concluded that they are able to return to their country of origin to prevent a human rights breach arising from their situation of destitution in the UK.
* When support is withdrawn, a reasonable notice period should be provided along with assistance in accessing alternative support arrangements, where this is appropriate, such as help with applications for social security benefits or local authority housing.
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| Pathways out of destitution |
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| Key points |
| * It will be necessary to explore and discuss the full range of options that may be available to a person who has no recourse to public funds (NRPF) and is at risk of destitution, in order to prevent homelessness or to reduce their current or future need for social services’ support.
* In most cases, establishing a pathway out of destitution will involve accessing specialist immigration advice. 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 is an immigration adviser regulated by the Office of the Immigration Services Commissioner (OISC). Local authorities must therefore ensure that staff do not provide immigration advice to individuals unless they are accredited to do so with the OISC, and should consider establishing lists of local regulated immigration advice services to signpost people to.
* Locally, there may be charities and voluntary sector organisations that can provide advocacy or other forms of holistic support which may facilitate or improve access to legal advice, particularly for vulnerable people. It is good practice for social workers to consider signposting or referring to local third sector organisations that work to prevent migrant destitution at the same time as they assist people or families to access legal advice.
* Where a person has leave to remain with NRPF and is able to work, or is an European Economic Area (EEA) national who can access benefits if they become economically active, then they may be provided with help accessing employment and other forms of support they may be entitled to, such as publicly funded early learning and childcare, and advice about maximising their income.
* 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, or alternatively, the local authority may fund a return. The local authority would need to check whether a person has received legal advice about the consequences of undertaking a voluntary return and signpost a person for advice if they wish to receive this before making a decision to take up return.
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| Social services’ support - NRPF service delivery |
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| Key points |
| * It is recommended that a specialist and targeted response is put in place to manage eligibility assessments and support, in order to ensure this essential safety net is administered robustly, lawfully, consistently and cost-effectively. This will require clear procedures, practices and appropriate levels of specialist staff training.
* The investment in staff training and procedures for preventing and responding to destitution experienced by people with NRPF may need to be balanced against the savings that can be gained in by applying an early intervention and preventative approach.
* 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.
* It is recommended that local authorities put in place policies and procedures for managing NRPF cases, based on the basic principles and learning from service models outlined in this guidance. Internal processes may need to be reviewed to ensure cases are managed effectively from start to end by the local authority.
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| EEA nationals and family members |
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| Key points  |
| * Currently, 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’.
* Benefit and housing entitlements for EEA nationals can be complex and usually depend on the EEA national being economically active or having a permanent right of residence, or a person being the family member of an EEA national who this applies to.
* In the absence of a requirement for an EEA national and most family members to make an application to the Home Office to clarify their status, social services, the local housing authority and the DWP, will need to make their own determination of this for the purpose of determining eligibility for services. This means they will need to establish whether a person has a relevant right to reside based on their employment or family circumstances. Local authority officers will therefore require training and support in order to be able to correctly assess EEA national’s eligibility for services, and when another agency may have made an incorrect decision that can be challenged.
* Local authorities need to undertake proactive action to ensure EEA residents are aware of the new EU Settlement Scheme and know what they may need to do to protect their rights after the UK leaves the EU on 29 March 2019. Local authorities will need to play a role in reducing any negative impacts on communities that may arise if EEA nationals lose their entitlement to benefits and employment by failing to successfully apply under the scheme.
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| Asylum seekers |
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| Key points |
| * Responsibility for providing accommodation and financial support to asylum seeking families or individuals will depend on the status of their asylum claim and whether they would be eligible for Home Office asylum support under section 4, section 95 or section 98 of the Immigration and Asylum Act 1999.
* The Home Office is responsible for providing accommodation and financial support to asylum seeking families, including when the parent’s claim is unsuccessful and they are ‘appeal rights exhausted’ (ARE).
* Local authorities may be responsible for providing accommodation and financial support to asylum seeking adults with care needs who require residential accommodation, and to some ARE asylum seekers who are assessed as having community care needs. Care packages and other assistance may need to be provided to adults with care needs who are accommodated by the Home Office.
* Although the Home Office should, in the first instance, provide emergency support, where there are delays in accessing this and a family or vulnerable adult has no alternative funds or housing available, it may fall to the local authority to provide accommodation and financial support to people seeking asylum, so a GIRFEC or community care assessment will need to be carried out in order to determine eligibility under section 22 of the Children (Scotland) Act 1995 and sections 12 or 13A of the Social Work (Scotland) Act 1968.
* There are no restrictions on providing social care services to a child within an asylum-seeking family, for example, to meet any needs arising from a disability.
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| Survivors of trafficking and modern slavery |
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| Key points  |
| * Local authority duties towards survivors of human trafficking or modern slavery, servitude and forced or compulsory labour who require support are the same as for any other vulnerable adults or families with children who have no recourse to public funds (NRPF), however, there are some additional considerations which need to be taken into account.
* Some survivors may choose to enter the National Referral Mechanism identification framework, which will also provide access for a temporary period of time to an alternate statutory form of support, funded advice and guidance, and may be able to go onto apply for discretionary leave to remain. Adults will need to consent to be referred to this form of support. Consent is not required if the potential victim is a child.
* Child survivors of trafficking should be referred to the Scottish Guardianship Service (SGS) who can provide independent advice, information and advocacy.
* The local authority will need to provide accommodation and support under Section 25 of the Children (Scotland) Act 1995 to unaccompanied children who have been trafficked.
* For adult victims of trafficking who have NRPF, the local authority’s protection duties may be engaged and a community care assessment may be required when a survivor appears to be in need of social care assistance, which may include accommodation and financial support where this is not available through the NRM.
* To achieve best practice in working with victims of human trafficking and modern slavery, there are some key considerations that local authorities should take into account including: the safety and suitability of accommodation, awareness of the effects of trauma, and the need to safeguard the person’s decision making and communications
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