

SCOTTISH REFUGEE COUNCIL

WRITTEN SUBMISSION

About Scottish Refugee Council

1. Scottish Refugee Council is Scotland's leading refugee charity with a vision to ensure that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect and are able to achieve their full potential. We provide advice and information to people seeking asylum and refugees in Scotland. We also campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues, including in areas such as housing, welfare, health, education, employment, justice, gender and equalities.
2. We also support organisations in the community working with or led by refugees; coordinate a variety of arts and cultural events; and work to raise the profile of refugees and asylum seekers in the media.
3. Our women's project works in partnership with Refugee Women's Strategy Group (RWSG), a group of refugee and asylum seeking women whose aim is to represent the views of refugee women to policy makers and service providers on the issues that affect their lives in Scotland. We include reference below to evidence produced by RWSG in relation to welfare as it impacts specifically on women and families.
4. Our community engagement team works in partnership with a number of Refugee Community Organisations including the Scottish Refugee Policy Forum (a group of refugee and asylum seekers whose aim is to represent the views of refugees women to policy makers and service providers) in order to develop their activities and ensure their activities have maximum impact. We include reference below to evidence produced by SRPF.

Introduction

5. Scottish Refugee Council welcomes the opportunity to respond to this call for views. We have not endeavoured to answer all of the questions set out in the consultation document. Instead we focus on the key areas of the Bill which may affect refugees in Scotland. We preface our response with an overview of the particular issues refugees face in relation to housing access in Scotland.

Background

6. An asylum seeker is a person who has made an application to the UK Government for protection and who is waiting for a decision on their application. Asylum seekers are persons subject to immigration control with temporary admission but not leave to enter or remain in the UK. While they await a decision on their claim, if they appear to the Home Secretary to be destitute or as likely to become destitute, they may receive accommodation and financial support from the Home Office which may extend to limited support, in limited circumstances, if that claim for asylum is refused.¹
7. In Scotland, Glasgow is the only area where asylum seekers are accommodated (under contractual arrangement) by the UK Government, however, there are a small number of asylum seekers across Scotland staying with family and friends, who may receive financial – subsistence only – support, or who may not be receiving any government support. In 2011, an estimated 2101 people in Scotland sought asylum² (roughly 0.04% of the Scottish population).
8. An asylum seeker's application for asylum is assessed by the Home Office and if he or she meets the criteria set out in the 1951 UN Convention relating to the status of refugees, the asylum seeker will be recognised as a refugee and granted refugee status. In some circumstances, the asylum seeker may be granted a form of 'subsidiary protection' and status; either Humanitarian Protection or Discretionary Leave. The asylum seeker may also be granted an immigration status outside of the immigration rules. In the year 2012-2013, 869 refugees were granted leave to remain in Scotland.
9. Both asylum seekers and refugees have a right to access private and social housing (or at least to be admitted on to the waiting list).³ Refugees and people granted Discretionary Leave, Humanitarian Protection or

¹ Sections 95(1), 96(1) and 4(1)-(2) Immigration and Asylum Act 1999.

² This is not the actual number of asylum applications but an estimate based on the number of asylum seekers in Scotland receiving support from the Home Office.

³ This was confirmed by the Scottish Government Guidance on access to housing:

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/management/socialhousingaccess/allocations/Guide/Access/admissionlist>

Indefinite Leave to Remain are all entitled public funds and have access to full housing options, including homelessness and social housing.

10. In its strategy, [“New Scots: Integrating Refugees in Scotland's Communities”](#), the Scottish Government has recognised the need for action to intervene early to address the housing needs of newly granted refugees, increase housing options for refugees and improve refugees’ access to suitable housing. We will pick up on many of these themes throughout this response.

Aims of this call for evidence

11. The Housing (Scotland) Bill was introduced to the Scottish Parliament on 21 November 2013. The Bill proposes a number of changes to housing law including:

- a. Abolishing the right to buy in Scotland;
- b. Changing the allocation and transfer of tenancies in the social sector;
- c. Changing the procedure for dealing with repair problems in the private sector;
- d. Increasing regulation of letting agents; and
- e. Creating a new licencing regime for mobile home sites.

12. The Bill is now being scrutinised by the Infrastructure and Capital Investment Committee within the Scottish Parliament. Through this consultation, the Committee is seeking views on the general principles of the Bill.

Abolition of the Right to Buy

13. Scottish Refugee Council is broadly supportive of the abolition of the Right to Buy inasmuch as this is likely to increase the availability of socially rented accommodation to meet the immediate needs of the refugee population. Although many refugees do aspire to own their own home, homelessness and the search for settled rented accommodation remain the dominant challenges faced by refugees⁴. Scottish Refugee Council, therefore, welcomes any steps to increase the availability of socially rented properties.

⁴ For further information see [“New Scots: Integrating Refugees in Scotland's Communities”](#)

14. We do, however, have some concern that the three-year timetable for the abolition of the Right to Buy may be too long and may lead to increased buying activity within the next three years. We would argue that the timescale could be shortened to minimise the impact that the change has on the supply of social housing and to ensure that the changes come into effect swiftly.

Changes to reasonable preference categories in Social Housing

15. Scottish Refugee Council does not consider that there is a need to remove the categories of “intolerable standard of housing”, “overcrowding” and “large families” from the statutory requirements for reasonable preference. We consider that these categories are legitimate bases for preference for social housing and it is right that they should be specifically legislated for. We also consider that these parameters already give social landlords considerable flexibility so it is not clear why they should be abolished.

16. In particular, overcrowding is a serious issue for many refugees who have gone through the Family Reunion process (i.e. exercising their right to apply for family members to be reunited with them in the UK subsequent to their being granted refugee status). Such families commonly ask for rehousing in the social housing sector. This is a recognised problem in [“New Scots: Integrating Refugees in Scotland's Communities”](#). We consider that many providers of social housing will continue to give priority in these circumstances as they will recognise that such situations are likely to give rise to “unsatisfactory housing conditions”. However, there is a danger that others will not, creating a divergence in the way that providers deal with applicants and a potential for unfairness in the system. As noted in [“New Scots: Integrating Refugees in Scotland's Communities”](#), Scottish Refugee Council's research has indicated that 96% of refugees experience homelessness at some point after receiving status and there is evidence that many slip through the net and spend time 'sofa-surfing' and rough sleeping.

17. According to the most recent statistics from our Holistic Refugee Integration Service, in the last quarter of 2013 92.3% of Scottish Refugee Council clients were made homeless and presented to Glasgow City Council for assistance because of their asylum support ending. 3.8% of clients were made homeless through voluntary relocation and a further 3.8% were asked to leave their accommodation by friends.

18. Scottish Refugee Council therefore welcomes the proposal that homelessness continues to attract reasonable preference. However, we are concerned by the proposal to consider whether an applicant's needs are capable of being met by other housing options. It is our view that the concept of "other housing options" is ill-defined and potentially problematic. It is not clear in any of the Bill documents what sort of housing options a housing authority would be entitled to consider and in what circumstances. Would, for example, a registered social landlord be entitled to consider a Section 5 referral from the Local Authority as an alternative housing option? Would a landlord be able to direct an applicant to the privately rented sector if they felt that this was a suitable alternative housing option? If so, there is the potential of the Bill having the effect of *reducing* the housing options of applicants at a time when the Scottish Government hopes to embed the Housing Options approach, not least within ["New Scots: Integrating Refugees in Scotland's Communities"](#) and the Scottish Government's Homeless Prevention Strategy.
19. We note that the policy documents state that if a particular group is consistently overlooked by social landlords, ministers would have a power under the Bill to require all landlords to include these groups in their allocation policies. We do not consider this is sufficient as (a) it relies on applicants to raise complaints and (b) it does not cover the likely eventuality that only certain landlords will exclude certain groups, meaning that it is unlikely that any one group will be consistently overlooked by social landlords.
20. It is our view that the current system of considering the housing situation of the applicant at the date of application is sufficient to allow housing authorities to decide whether the applicant is in housing need. We do not believe that it is necessary or desirable to allow housing authorities to consider alternative housing options when allocating preference.
21. It is also unclear why it is necessary or desirable to allow housing authorities to take age into account during allocations beyond the existing permissions provided at section 2B(a)-(b) Housing (Scotland) Act 1987. We consider that any attempt to allocate a property on the basis of age, as the proposed clause 5 implies, is likely to give rise to a complaint of unlawful age discrimination. Furthermore, it is not at all clear that allowing age to be taken into account in either determining priority for or in making

decisions on the allocation of social housing will be capable of objective justification in terms of section 13(2) Equality Act 2010. The proportionality test for such discrimination is high entailing (a) that the aim of the policy must be legitimate, (b) it must achieve that aim (c) its discriminatory effects must be significantly outweighed by the importance and benefits of the policy and (d) the aim could not have been fulfilled in another or less discriminatory way.

22. Furthermore, the potential for unjustifiable age-based discrimination arising from the new section 2B to the 1987 Act as carried in clause 5 of the Bill, has not been identified in the equality impact assessment accompanying the Bill and we recommend this is revisited to ensure the Bill does not, unintentionally, undermine the Scottish Government's and local authorities' ability to proactively eliminating unlawful conduct, pursuant to the Public Sector Equality Duty at s.149(1)(a) Equality Act 2010.
23. It is also the case that over 70% of new refugees are under the age of 35. We, therefore fear that refugees, especially younger refugees, may become adversely affected if Social Landlords apply age as a criterion in allocation decision. This may have the effect of (i) indirectly discriminating against younger refugees or, more crudely, (ii) allowing landlords to use age as a proxy for direct race discrimination.
24. Our concern on the clause is, therefore, both at the general level that it enables the arbitrary use of age as a criterion in housing allocation (and hence increase the risk of unlawful discrimination) and, specifically, that such use may adversely affect new, young refugees in trying to satisfy their real need of accessing settled and appropriate accommodation.
25. Scottish Refugee Council does welcome the extension of the principles set out in the Equality Act 2010 to cover 16 and 17 year-old applicants for housing as this enforces the rights of a vulnerable group but considers that this objective could be achieved without allowing housing authorities to take age into account in the allocation of housing.
26. Scottish Refugee Council appreciates why the Scottish Government seeks to take into account the ownership of property when allocating social housing. However, we have some concerns about the change as it is proposed. Firstly, the list of "exemptions" from consideration of the

property appears somewhat restrictive. There are a number of reasons why a property owner may seek social housing (for example overcrowding or affordability problems) which are not captured by the legislation currently proposed and could lead to unfair decisions being made. Secondly, the question of domestic abuse is problematic and requires further explanation. What definition of abuse should housing authorities use when deciding this question? What evidence of abuse would applicants be required to produce?

27. We consider that further guidance would be required to settle these matters and that, in the absence of such guidance (or statement that guidance will be produced), no change should be made.

Conversion to / Granting of Short Secure Tenancies

28. Scottish Refugee Council is mindful of the seriousness of anti-social behaviour and harassment and the need to effectively deal with it. The most prevalent way in which refugees and asylum seekers experience such behaviour is through hate crime⁵ (reflected in the “Communities and Social Connections” section of [“New Scots: Integrating Refugees in Scotland's Communities”](#)). Thus we welcome initiatives to tackle harassment. However, this experience must be balanced against the need for secure homes, free from the threat of arbitrary eviction.
29. The Bill as we understand it will mean that a Secure Tenancy can be converted into a Short Secure tenancy by way of notice alleging anti-social behaviour or harassment, not involving a court order. Similarly, a Housing Authority will be able to create a Short Secure Tenancy if a notice has been served in the last three years. After the service of a Notice, the landlord would be able to terminate the tenancy, without proving the anti-social behaviour before a court.
30. Furthermore, we consider section 8(2) of the Bill to be unclear and somewhat poorly drafted. There is no reference, for example, to what constitutes anti-social behaviour, who decides when an incident of anti-social behaviour has occurred and how such a decision should be made. The Bill and associated documents do not specify the level of proof needed to trigger a notice under this section, nor do they specify how the

⁵ Mulvey, G (2013) *in Search of Normality: refugee Integration in Scotland Final Report*, Scottish Refugee Council

use of short secure tenancies will be monitored or controlled. Although we think that there are a number of readings of the section which could be open to legal challenge, it is possible that the Bill gives an open-ended provision for landlords to choose when and how to serve conversion notices. We are, therefore, concerned about the potential over-use of short secure tenancies.

31. We consider that it is for the court, not the landlord, to decide whether someone has been guilty of anti-social behaviour or harassment. While we realise that tenants have the right to apply to the court to dispute the conversion of the tenancy, we are sceptical about how many tenants will be aware of this right and effectively exercise it. There is, therefore, a danger that tenants will face eviction without recourse to the legal system. This is likely to have an impact on individuals' right to a fair trial and may lead to unfair results.

32. On balance, therefore, while we would welcome any further action to reduce anti-social behaviour and hate crime (such as measures to increase reporting and measures to make house transfers easier), we do not agree that these proposals are a proportionate response to this issue.

12-month qualifying periods for joint tenancies, succession etc.

33. We appreciate the reasoning behind setting additional stipulations for these matters. However, many refugees apply for accommodation as a single person but are quickly joined by their families as part of Family Reunion. Family Reunion research⁶ and our operational experience confirms that refugees rebuilding new lives in Scotland experience difficulties obtaining suitable family accommodation, or adapting to living in a different type of accommodation. We consider that partners, spouses and children who go through this process should not be disadvantaged as, but for their forcible separation, they would have applied for accommodation as a family. We would, therefore, suggest that the Bill allows for exceptions to the 12 month rule in such circumstances.

Private rented housing tribunals

34. We have no particular view on the location of housing eviction cases within the court system. We would, however, add that any future system

⁶ [“One Day we will be reunited” Experiences of Refugee Family Reunion in the UK April 2010](#)

should be accessible to all communities and that legal aid should continue to be available for eviction cases.

Letting Agents and Private Housing Conditions

35. **“New Scots: Integrating Refugees in Scotland's Communities”** recognises that the private rented sector is unattractive for refugees. Of the 523 cases that Scottish refugee Council dealt with in 2012/2013, only 6 individuals were housed in a privately rented property. There is some evidence from our casework services that one of the reasons for this is that refugees consider that they would be vulnerable to ruthless landlords and letting agents. We, therefore, welcome the proposals to further regulate the private rental sector and to increase third parties’ rights to apply to the Private Rented Housing Panel. However, learning from the experience of landlord registration, it is important that future regulation of the private sector is designed to ensure standards are robustly enforced and regulating bodies are given real “teeth” to combat problems in the private housing sector. In the absence of this, the private sector will remain an unattractive housing option for refugees.

Other issues

36. We were disappointed to see that the Scottish Government has not taken forward proposals to improve security of tenure in the privately rented sector. We consider that (along with punitive Housing Benefit rules for under 35-year-olds⁷) the lack of security of the Short Scottish Assured Tenancy is one of the main factors deterring refugees from exploring the privately rented sector as a real housing option⁸. People need homes particularly following a period of major upheaval and unsettlement such as that entailed by the experience of fleeing for safety from persecution and seeking asylum in another country. Short tenancies do not provide the security needed to live a settled life. We would, therefore, urge the Scottish Government to consider further the need for private sector tenancy reform.

Scottish Refugee Council
28 February 2014

⁷ Statistics from our Holistic Refugee Integration Service show that approximately 73% of our refugees gaining status in Scotland are under the age of 35.

⁸ Shown in Netto, G *Navigating the Maze: Refugee Routes to Housing Support and Settlement in Scotland*. (2009) Scottish Refugee Council