



T: 0300 244 4000
E: scottish.ministers@gov.scot

Christina McKelvie MSP
Convener
Equalities and Human Rights Committee
The Scottish Parliament
By e-mail: equalities.humanrights@parliament.scot

21 July 2017

Dear Christina

Thank you for your letter of 19 May, enclosing a copy of the Equalities and Human Rights Committee's report, Hidden Lives – New Beginnings.

I was pleased to be able to give evidence to the Committee's Inquiry into Destitution, Asylum and Insecure Immigration Status in Scotland. I believe this Inquiry has brought a much-needed focus to issues of destitution, which are a consequence of the asylum and immigration systems.

I enclose a formal response to the recommendations in the report, which are directed to the Scottish Government. As I said in the Parliamentary debate on 30 May, the Scottish Government will take a sympathetic and 'can-do' approach to the recommendations using our devolved powers where we can, but noting that many of the recommendations cover areas which are reserved to the UK Government or are impacted by reserved issues. I met the new Minister for Immigration, Brandon Lewis MP on 12 July and took the opportunity to raise the Committee's Inquiry with him. He committed to look at the report and its recommendations, and I will follow up these discussions as we take this work forward.

I hope that you find this response helpful and look forward to discussing these matters further in due course.

Yours sincerely

ANGELA CONSTANCE

SCOTTISH GOVERNMENT RESPONSE TO EQUALITIES AND HUMAN RIGHTS COMMITTEE'S INQUIRY INTO DESTITUTION, ASYLUM AND INSECURE IMMIGRATION STATUS IN SCOTLAND

The Scottish Government welcomes the Equalities and Human Rights Committee's report into Destitution, Asylum and Insecure Immigration Status in Scotland and commends the Committee on seeking to tackle destitution among people, who face particular vulnerabilities due to their immigration status. The Scottish Government notes that these issues can only be resolved at source through reform of the asylum and immigration systems, which are reserved matters, but that action to mitigate some of the impacts can be taken using devolved powers.

This response covers the recommendations directed to the Scottish Government. The recommendations have been grouped into three categories:

1. Recommendations, which cover reserved matters and which, therefore, require the Scottish Government to follow up with the Home Office;
2. Recommendations related to the development of an anti-destitution strategy; and
3. Other recommendations for the Scottish Government.

1. Recommendations to follow up with the Home Office

Recommendation 1. (Para. 41) Being able to claim asylum and make fresh submissions in Scotland, rather than having to travel to Croydon or Liverpool.

Recommendation 2. (Para. 42) In relation to Recommendation 1, Home Office to fund any essential travel, including overnight accommodation where necessary.

Recommendation 6. (Para. 65) Extend the scope of the Destitute Domestic Violence concession to include all women with insecure immigration status, including asylum seekers.

Recommendation 7. (Para. 66) Enable all women to access safe refuge accommodation, regardless of their entitlement to housing benefit, immigration status, or access to public funds.

Recommendation 13. (Para. 95) Right of asylum seekers to undertake paid or unpaid community work in Scotland.

Recommendation 14. (Para. 106) Resettlement schemes to be open to all asylum seekers in the UK who meet/met the criteria or funding is increased for asylum seekers outwith resettlement programmes to restore the balance.

Recommendation 15. (Para. 110) Address the 'two-tier' approach in the 'New Scots' work programme with a view to mitigating its impact.

The recommendations in this group cover matters, which are reserved to the UK Government. As the Committee has noted, the Scottish Government does not, therefore, have powers to implement these recommendations itself. However, the Scottish Government does support these recommendations. The Cabinet Secretary for Communities, Social Security and Equalities met the new Minister for Immigration, Brandon Lewis MP on 12 July and raised the Committee's Inquiry and recommendations with him. We will follow up on this initial discussion, as we take this work forward.

Making asylum claims and further submissions in Glasgow

In relation to Recommendations 1 and 2, the Scottish Government has long believed that people in Scotland should be able to claim asylum and make further submissions in Glasgow, rather than having to travel to Croydon or Liverpool and has consistently pressed the UK Government on this issue. The Scottish Government also supports the recommendation made by the Committee that if people do have to travel to Croydon or Liverpool, their travel costs should be funded by the Home Office.

Destitute Domestic Violence Concession and refuge accommodation

With regard to Recommendations 6 and 7, the Scottish Government is committed to supporting women who experience domestic abuse. The Destitute Domestic Violence Concession, which was introduced in 2012, increases front line service providers' capacity to support women who are affected by the No Recourse to Public Funds (NRPF) rule. However, as immigration is reserved to the UK Government, the Scottish Government's options for helping those affected are limited.

The Scottish Government is implementing Equally Safe, Scotland's strategy to tackle all forms of violence against women and girls, which aims to prevent violence occurring in the first place, building the capability and capacity of mainstream and specialist services, and strengthening the justice response to victims and perpetrators. We are consulting on a draft delivery plan, and we expect the issue of destitution and NRPF to be highlighted in responses. The Scottish Government will look carefully at what support women with NRPF need and engage with our stakeholders on this.

There are 36 affiliated Women's Aid charities across Scotland, and four others that are unaffiliated, which provide services, including refuge spaces, for women and their children affected by all forms of Violence Against Women and Girls. The large majority of refuge spaces are funded through housing benefit, which comes from the public purse. Whilst women's aid charities could offer women with insecure immigration status a place in refuge, the associated costs would currently need to be met from funds other than those from the public purse.

Right to work

In relation to Recommendation 13, the Scottish Government believes that asylum seekers should have the right to work and to participate in volunteering activities, rather than 'unpaid work'. We believe that all work should be paid at an appropriate rate. Given the vulnerability of many asylum seekers, there is a risk that enabling 'unpaid work' could lead to exploitation and abuse. The Scottish Government sees access to employment as a crucial factor in supporting integration. It enables people to use and develop skills and get out of poverty and helps to build social connections. It also builds self-esteem and a sense of fulfilment for people, as they are able to contribute to their new communities.

Two tier system

Recommendations 14 and 15 focus on the issue of the two tier system, which has emerged as a result of the large disparity between the support given to people in the asylum system, many of whom will receive refugee status, and those who have arrived under the Syrian Resettlement Programme. The Scottish Government has welcomed the UK Government's commitment to resettlement of Syrian refugees and the funding attached to it, which has enabled local authorities to commit to the long term support of those arriving. However, the Programme has created inequalities between its beneficiaries and refugees coming through the asylum system, who may have been through very similar experiences, but who currently receive no integration support. This disparity was also noted by the Home Affairs Committee

in its report of its Inquiry into Asylum Accommodation, which recommended the replication of the model of holistic support provided under the Syrian Resettlement Programme. The Scottish Government supports this recommendation.

The New Scots refugee integration strategy aims to take a holistic approach to the support of all refugees and asylum seekers and will continue to do so. Although Recommendation 15 specifies New Scots, it has been included in this group of recommendations, because the source of the issue is the different treatment by the Home Office of resettled refugees and those who are in or have been through the asylum system.

2. Recommendations related to the development of an anti-destitution strategy

Recommendation 3. Establishment of a Scottish anti-destitution strategy, including identification of the number of destitute asylum seekers and people with insecure immigration status in Scotland.

Recommendation 8. Creation of a destitution fund to mitigate the impact of restrictions on access to public funds for those with insecure immigration status and European Economic Area migrant women experiencing domestic abuse.

Recommendation 11. Research undertaken by Glasgow Psychological Trauma Service into the links between destitution and exploitation and the mental health impact of destitution to be used by the Scottish Government to inform an anti-destitution strategy.

Recommendation 16. Identification of the costs incurred to address destitution among asylum seekers and people with insecure immigration status by local authorities and health authorities.

Recommendation 17. Identification of the costs incurred to address destitution among asylum seekers and people with insecure immigration status by third sector organisations.

Recommendation 18. Creation of a Crisis Fund for destitute asylum seekers and people with insecure immigration status.

Recommendation 19. Updating of the *Establishing Migrants' Access to Benefits and Local Authority Services* in Scotland guidance.

Recommendation 23. *Migrants Access to Benefits and Local Authority Services* guidance to clarify requirements on human rights assessments.

Recommendation 25. Provision of a fully funded independent advocacy service for destitute asylum seekers and people with insecure immigration status.

Recommendation 26. Establishment of a national coordinated practitioners' network to include, Scottish Government officials, representatives from health boards, COSLA, local authorities, third sector organisations and others.

Recommendation 28. Undertake a Scotland-wide consultation before any regulations are made to extend the Home Office regulated local authority support provision contained within Schedule 12 of the Immigration Act 2016 to Scotland.

Anti-destitution strategy

This group of recommendations centres on the development of an anti-destitution strategy (Recommendation 3) and a number of initiatives, which could support the implementation of such a strategy. The Scottish Government and its partners will aim to ensure that destitution in relation to the asylum system is appropriately covered in the next New Scots strategy. However, the recommendation for an anti-destitution strategy extends more broadly than the asylum system, and New Scots does not cover wider migration. To try and widen its scope

to cover the range of work recommended by the Committee would risk unbalancing the strategy, which has integration as its main focus.

The Scottish Government will, therefore, work with stakeholders to consider how it can take forward the development of an anti-destitution strategy focused on people with NRPF. Other recommendations in this group (Recommendations 8, 11, 16, 17, 18 and 25) will be considered as part of work on this strategy.

Crisis funds

Recommendations 8 and 18 relate to the establishment of crisis funds to support people with NRPF, including women experiencing domestic abuse and destitute asylum seekers. The Scottish Government is sympathetic to the Committee's intentions with these recommendations. However, while the establishment of this type of fund would provide some support to people experiencing destitution, we are concerned that the causes of the problems resting in the asylum and immigration systems would remain.

The Scottish Government also notes that there are significant differences in the people in Scotland facing destitution due to insecure immigration status to those in Northern Ireland. The Scottish Government understands that there are more people facing long term destitution in Scotland, particularly refused asylum seekers, who have no prospect of being able to support themselves financially. This entrenched destitution will not be resolved through one-off small amounts of money. The Scottish Government would also have to be sure that any new crisis fund would not be added to the NRPF list by the Home Office, as this would defeat the objective of its existence.

Guidance for local authorities and practitioners' network

Recommendations 19 and 23 relate to guidance for local authorities on NRPF, and Recommendation 26 concerns a practitioners' network. The Scottish Government recognises that it can be difficult for local authorities to keep up to date with changes to the UK immigration rules and to negotiate the complex immigration landscape. The Scottish Government co-funds the Migration, Population and Diversity (MPD) Team within COSLA to support local authorities in their work with migrants, asylum seekers and refugees. The MPD Team, who also gave evidence to the Committee, coordinates the NRPF Network in Scotland, which aims to identify and address issues that arise when supporting people with NRPF, and to facilitate information sharing and good practice amongst Scottish local authorities. The Scottish Government will continue to work with COSLA to identify what further support local authorities require to support those with NRPF, including considering if existing guidance should be updated.

Immigration Act 2016

Recommendation 18 relates to the extension to Scotland of Schedule 12 of the Immigration Act 2016. The Scottish Government is currently awaiting information from the Home Office about plans for the extension of this and other parts of the Act to Scotland. A decision on action in relation to this recommendation will be taken, in conjunction with COSLA, once more information is known and following assessment of what could be achieved through a consultation, given that the Immigration Act is reserved to the UK Government.

3. Other recommendations for the Scottish Government

Recommendation 5. Investigation of the reasons for delay in accessing legal aid for victims of trafficking and actions to resolve them.

Recommendation 9. Funding of accommodation for destitute asylum seekers and people with insecure immigration status, who are undergoing treatment for communicable diseases as a preventative measure.

Recommendation 10. All relevant health staff, including midwives and non-medical staff to have access to sufficient guidance and training to be informed and understand the issues faced by asylum seekers and people with insecure immigration status.

Recommendation 12. Examination of the feasibility of extending the National Entitlement Card/Free Bus Travel Scheme to provide a short duration bus pass (6/12 months) to allow destitute asylum seekers and people with insecure immigration status to travel to appointments more easily.

Recommendation 27. Ensuring a sufficient and resourced provision of trained, knowledgeable and accessible immigration lawyers in the event of widening of asylum dispersal.

The remaining recommendations for the Scottish Government are linked to the development of an anti-destitution strategy, but cover other policy areas, so are dealt with separately in this response.

Access to legal aid and legal advice

Recommendation 5 is about access to legal aid and legal advice for victims of human trafficking. In Scotland, we have a system that maintains wide access to legal aid for both criminal and civil cases. It is not cost limited and has a high eligibility rate. A victim of human trafficking has open to them the full range of publicly funded legal assistance, as any Scottish citizen does. The statutory tests applied are exactly the same as for anybody else and access to publicly funded legal assistance is not dependent on recognition by the National Referral Mechanism. The Scottish Legal Aid Board has carried out a review of the accessibility and availability of legal services in relation to human trafficking under its statutory monitoring function. The findings have been incorporated into the fifth monitoring report, due to be published in the next few months.

In terms of legal advice, the Scottish Government grant funds TARA and Migrant Help to provide support to adult victims of human trafficking. That support includes securing legal advice as early as possible in the process, and both organisations pursue that aim. Although TARA and Migrant Help are based in the Glasgow and Greater Glasgow area, they provide support to victims of trafficking, wherever they are recovered in Scotland.

In relation to Recommendation 27 on widening asylum dispersal, the Scottish Government is aware that most immigration lawyers are based in the central belt. This issue is already being considered by the New Scots Asylum Dispersal sub-group and has been discussed in a number of other fora in the context of widening asylum dispersal. Further work will take place in line with any decisions to extend asylum dispersal to new areas.

Accommodation for people with communicable diseases

Recommendation 9 proposes additional support in the form of accommodation for people with communicable diseases. The Scottish Government will consider whether there is any legal impediment arising out of reserved immigration legislation, before considering the case for provision of accommodation for this purpose. However, it would be helpful if the

Committee could advise on the type of accommodation it had in mind, e.g. NHS services, supported accommodation or another type.

Guidance and training for health staff

In relation to Recommendation 10 on guidance and training for health staff, this will be taken forward through the New Scots refugee integration strategy, which will consider the existing guidance on issues faced by asylum seekers and people with insecure immigration status, and how awareness can be raised among staff.

Concessionary travel

With regard to Recommendation 12, the Scottish Government will, in the first instance, consider whether there is any legal impediment arising out of reserved immigration legislation, before considering the case for access to concessionary travel.

**Scottish Government
July 2017**