

New Plan for Immigration; Just Citizens Consultation Response

Introduction

JustCitizens Project:

[The JustCitizens Project](#) is hosted by JustRight Scotland and funded by the Paul Hamlyn Foundation. Its purpose is to support the development of a fairer Scotland for migrants, through participatory methods, co-production and the design of a “social citizenship” model for Scotland.

Input to this consultation response was provided through our Migrant Advisory Group which co-produces our JustCitizens project. This group includes 14 migrants from diverse backgrounds including those with experience of the UK asylum system.

About JustRight Scotland:

JustRight Scotland is a registered charity established by an experienced group of human rights lawyers. We use the law to defend and extend people’s rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality. We do this by providing direct legal advice to individuals and organisations, running outreach legal surgeries and helplines, delivering rights information, training and legal education, and contributing to research, policy and influencing work.

We work across a number of policy areas including women’s legal justice, trafficking and migration and citizenship. Whilst our work is specific to Scotland, we appreciate that our areas of focus cover both devolved and reserved legislation and as such we endeavour to work across both the Scottish and UK Parliament where appropriate.

We work with clients directly providing legal advice and representation. In this briefing we highlight specific cases to demonstrate clearly the lived experience of migrants and asylum seekers, and the reality of harm caused by current policies and systemic inequalities.

We give consent for this response to be published along with other consultation responses.

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Overview of the current system:

The immigration system and the unlawful conduct ¹ by the Home Office continues to harm the lives of migrants and asylum seekers. From the high costs associated with visa applications and appeals, to the complex and changing landscape of

¹ <https://www.bbc.co.uk/news/uk-54632985>

immigration policy, the system remains hostile to migrants often forcing them into poverty and harm. The constant attacks and barriers put in place for safe and legal routes to the UK push migrants into the hands of traffickers and increase the chance of illegal or dangerous activity². The interventions by the Home Office, in particular over the last five years, have been entirely counter-productive to the apparent intention of the new immigration plan which is “*to increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum.*”.

We find these new proposals are not rooted in fairness whatsoever, will further penalise asylum seekers and will cause considerable harm. The continuation of multiple policies which have been found to be unlawful and breach human rights illustrates the Home Office intention to utilise the immigration system as a political tool. These proposals are not evidence-based, are dangerous and ineffective.

The experiences of our advisory group:

The Just Citizens advisory group is made up of a diverse range of migrants which include asylum seekers and refugees. Our group includes individuals who have experienced torture, abuse and have fled persecution. Many of our group members have experienced first hand the consequences of the UK’s complex, unfair and hostile immigration system, which these proposals only further extend and embed. Our group includes; campaigners, a housing support officer, a translator, a nurse, a charity worker, a carer and law student. All of whom make an invaluable contribution to Scotland. These proposals reflect a disdain for members of our group and asylum seekers across Scotland who have fled to the UK in the hope of finding safety, inclusion and respect.

This consultation process and lived experience expertise:

It is important the Just Citizens expresses the complex and in accessible method of consultation used to engage the public in this immigration plan from the UK Government. The process is purposefully difficult to prevent engagement rather than being the transparent and inclusive participation method the UK Government and Home Office should be aspiring to. Given the UK is part of the Global Open Government Network and agreed to the principles of Open Government, this consultation process is contradictory to those very principles. The consultation is not being delivered in an effective or appropriate manner. As such, we are concerned that responses will be limited, will be difficult to decipher and will not provide the clear evidence required for such a fundamental change in policy. The consultation process is weighted towards answers which assume support for the Home Office plan and assume support of previous interventions. Many questions do not allow for

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<https://static1.squarespace.com/static/5e9ef0be1f6c190462853033/t/6023bb663f7fc957048f9255/1612954471385/RAMP+Submission+-+Safe+%26+Legal+Routes+for+web.pdf> (RAMP 2021)

Scotland’s Legal Centre for Justice and Human Rights

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703).

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answers which accurately express our strong disagreement with the proposals or provide space for a balanced response.

We would strongly urge that the consultation process takes a different approach and reaches out specifically to third sector, human rights and advocacy group who can provide input of lived experience expertise from those who have gone through or are going through the immigration system. This would enable a more competent and evidence-based immigration system to be created with human rights and equality at the centre.

The proposed changes:

Just Citizens are a group of diverse migrants however, we do not work deliver services to or provide expertise related to human trafficking, family reunification or work with children. As such our response below related to the proposals in general terms and focuses on the areas we feel it is appropriate for us to comment on. We endorse and agree with the responses from JustRight Scotland and Amnesty UK.

This plan will not create a fairer immigration system or create a safer UK. The proposals focus on punishing potential asylum seekers, are likely to contravene international asylum and human rights obligations, (including duties related to children and refugees) and continues the Home Office's pursuits of closing access to asylum for those at risk and who are in desperate need of safety in the UK.

The intention to create a two-tier system for refugees based on how they entered the UK is discriminatory and should be abandoned in full. The proposals suggest that the immigration system to determine the rights of someone to be granted refugee status based on how they entered the country; creating the idea of good and bad refugees. By doing so, the plan dismisses the reality of risk to peoples' lives which causes them to seek asylum in the first place. Most often those seeking asylum are fleeing abuse, persecution and/or war, under these circumstances, the individual may not be able to pursue official routes (such routes may not exist), they are forced to risk their lives on lorries or boats to make their way to safety. To then penalise them for the route they have taken to arrive in the UK is not only immoral but contravenes the UK's Refugee Convention. The creation of a two-tier system will only add to the delays and complexity already involved in making an asylum claim and extend the period of time that the Home Office leaves asylum seekers in poverty, at risk and in the dark about their status.

The two-tier system causes further harm as asylum seekers who arrive in the UK through lorries or boats (which may be their only option; for example women fleeing gender based violence or activists escaping unlawful imprisonment) but who are determined to be refugees will be given temporary status for as long as 30 months. Over this period they will be repeatedly reviewed (and asked to repeat their traumas) and will have no security in their status. Furthermore, they will be subject to No Recourse to Public Funds and limited rights, meaning they are very likely to be

trapped in poverty, at risk of exploitation and destitution with no access to social security/welfare support or publicly funded advocacy. This proposal in particular is hugely detrimental to the migrant community, to public health and to support service delivery in the UK.

The proposals also outline the intention to create a different and stricter UK test to define who is a refugee and therefore who is granted refugee status and safety within the UK. The current categorisations which need to be met to be considered a refugee are internationally agreed. The creation of a different categorisation/test is to simply make the process more difficult and have fewer asylum seekers granted refugee status. This is a thinly veiled attempt to create further barrier for asylum seekers, refuse entry for more individuals and crudely and cruelly decrease the number of refugees in the UK.

Respecting the boundaries of devolved legislation and policy setting in Scotland:

Although immigration policy is reserved, a number of proposals in this plan will interfere with and undermine devolved policy in Scotland. In particular the proposals related to human trafficking must be consistent with the framework set out in the Human Trafficking and Exploitation (Scotland) Act 2015 and any changes in policy at the UK level must not undermine the ability of the Scottish Government to enact this legislation, identify and delivery support interventions for victims of human trafficking. This immigration plan includes changes related to child protection, local authority support delivery, identification of victims and training – all of which is devolved to the Scottish Parliament and should not be influenced by these immigration proposals as it is outside of the scope of reserved powers. Similarly to this, the identification of survivors of gender based violence (and support provision) and determining age assessments of children seeking asylum are matters devolved to Scotland. In particular, we are concerned that confusion between these matters will make the delivery of advocacy and support services more difficult and will mean that asylum seekers and refugees and other migrants cannot fully access justice as they have the right to in Scotland.

Equality Impact Assessment and PSED:

These proposals will have harmful equalities impacts particularly for vulnerable groups including but not limited to unaccompanied children seeking asylum, women who have experienced gender-based violence, Black, Asian and Minority Ethnic communities, disabled people and LGBT people.

The Home Office has repeatedly failed to transparently assess the equalities impact of its policies³ and take action when they have been found to discriminate and exacerbate inequality.

³ Equality and Human Rights Commission, November 2021, <https://www.equalityhumanrights.com/en/our-work/news/home-office-failed-comply-equality-law-when-implementing-%E2%80%98hostile-environment%E2%80%99>

The consultation includes a section which asks the public to effectively conduct an equality impact assessment on these proposals. This is not appropriate and is not in line with the purpose of the Public Sector Equality Duty; the responses are likely to be unevidenced and not provide a full account of the realities of the risks to individuals through the implementation of this plan. The Home Office is equally not fit to conduct such an assessment of itself (given the EHRC found it failed to comply with PSED previously), equalities expertise and input specifically from organisations working with asylum seekers and refugees should be engaged in this process and a transparent process conducted.

Disinformation and narrative setting:

The context in which this immigration plan is being proposed cannot be overlooked. The political agenda, stirring up of hate for migrants and focus on a superficial decreasing of numbers of migrants has created the environment in which these inhumane proposals are being consulted on. The proposals repeatedly refer to “illegal” immigration or routes without explaining the reality that safe and legal routes have been increasingly restricted and as a result have effectively forced asylum seekers to risk their lives. In 2019, the Foreign Affairs Select Committee stated that *“a policy that focuses exclusively on closing borders will drive migrants to take more dangerous routes, and push them into the hands of criminal groups.”* However, as JCWI have explained⁴; *“there is simply no application form that exists and no process that can facilitate a safe and legal journey. The Home Office expects people to physically reach the UK before an asylum application can be lodged.”* The plan also states that asylum seekers have a duty to seek asylum in the first “safe” country they arrive in. No such requirement exists and by suggesting this the proposals and associated PR around it are promoting disinformation and increasingly hostility towards asylum seekers and the wider migrant community. The misuse of language and lack of evidence-based context setting seeks to create animosity towards asylum seekers and is being facilitated by the Home Office in order to garner support for these dangerous proposals. Any and all changes to immigration policy must be conducted honestly, factually, transparently and with the input of experts and communities.

⁴ <https://www.jcwi.org.uk/briefing-safe-and-legal-routes-to-the-uk>