

## Call for evidence from the Joint Committee on Human Rights on the rights of asylum seekers in the UK: our response

### About JustRight Scotland

JustRight Scotland (JRS) is Scotland's legal centre for justice and human rights. We use the law to defend and extend people's rights. We operate 4 national centres of legal excellence providing direct legal representation, legal outreach, and legal education: (i) the Scottish Refugee & Migrant Centre; (ii) the Scottish Women's Rights Centre; (iii) the Scottish Anti-Trafficking & Exploitation Centre; and (iv) the Scottish Just Law Centre.

Whilst our work is specific to Scotland, our work covers both devolved and reserved policy areas, and as such we endeavour to respond to policy consultations across both Scotland and UK, where appropriate.

You can find out more about us here: [www.justrightscotland.org.uk](http://www.justrightscotland.org.uk).

We also host JustCitizens, an advisory panel of people who have lived experience as migrants in Scotland.

You can find more about JustCitizens here: [www.justcitizens.scot](http://www.justcitizens.scot)

Our response to the call for evidence from the Joint Committee on Human Rights looking into the rights of asylum seekers in the UK.

### “Safe and legal routes”

#### **1. Is it compatible with the UK's human rights obligations to deny asylum to those who do not use what the Government calls “safe and legal routes”?**

No.

The term “safe and legal” route is used to describe sanctioned immigration provisions that provide access to the UK for humanitarian reasons - normally through an application or approval process made overseas.

Any other type of journey to the UK is not considered a safe and legal route.

However, that does not make it unlawful or illegal, as there is no requirement in international law for a claim to be made in any particular country, and a person seeking asylum may legitimately cross multiple borders to reach the country in which they wish to seek refuge.

The right to seek and receive asylum from persecution in a different country than the person's own country is made clear in Article 14 of the 1948 Universal Declaration of Human Rights. Article 31 of the 1951 UN Convention relating to the Status of Refugees, to which the UK is a signatory, prohibits the imposition of any penalty upon a refugee simply by reason of having entered or being present without permission.

### JustRight Scotland

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). Our Registered Office is: Room 1, 1st Floor, Libertas House, 39 St Vincent Place, Glasgow, G1 2ER.

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## **2. What “safe and legal routes” currently exist for asylum seekers in the UK? Should new routes be introduced?**

There are three main safe routes to the UK for people seeking asylum and their families:

1) Refugee family reunion – it provides a safe way for family members to join someone in the UK who already has refugee status. Since the Nationality and Borders Act 2022 came into force in April, people who claimed asylum from June 28 onward, need to show exceptional circumstances to be reunited with their closest family. Our Scottish Refugee & Migrant Centre runs the refugee family reunion service – a needed service that reflects the need for legal advice for refugees to navigate existing provisions.

2) Refugee resettlement – it transfers refugees to the UK from an initial country of asylum. The UK currently operates three refugee resettlement schemes:

- UK Resettlement scheme (UKRS) for vulnerable refugees in refugee camps neighbouring countries with conflicts.
- Community Sponsorship – same criteria as UKRS but refugees are matched with a local community group.
- Mandate Resettlement Scheme – a scheme for refugees with a close family member in the UK who is willing to accommodate them (hardly used).

3) Nationality specific routes – including the Afghan citizens’ resettlement scheme (ACRS), which resettled four people so far, the Ukraine Family Scheme, the Ukraine Sponsorship Scheme, and the Honk Hong British National Overseas visa (which is not a protection-based scheme). These bespoke systems are welcome, but they are grossly insufficient and cannot become the new gold-standard for asylum-seekers in the UK, where those who fall outside these schemes have increasingly limited routes to seek asylum in the UK.

Departure from the EU and withdrawal from Dublin III Regulations resulted in nearly no safe and legal routes for people seeking asylum in the UK - people fleeing war, prosecution and violence are forced to make dangerous journeys to the UK and across the Channel.

Our Scottish Refugee & Migrant Centre works with unaccompanied asylum-seeking children, an already vulnerable group, who are even more exposed to risks after the UK’s withdrawal from the Dublin III Regulations.

The immigration rules make no provision for individuals to come (or apply to come) to the UK for the purpose of making an asylum claim and Home Office policy is clear that no claim for asylum in the UK will be considered unless made by a person who is already in the UK. The Nationality and Borders Act has further restricted protections and rights for people seeking asylum, as it expands criminal penalties for asylum seekers, including that anyone entering the UK through irregular routes without entry clearance commits an offence.

We firmly believe that the current routes are inadequate and wholly insufficient, and from our experience even when we try and use one of the very few safe and legal routes, claims are often refused<sup>1</sup>. New legal and safe routes should be introduced to

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<sup>1</sup> <https://www.thenational.scot/news/23192003.plea-urgent-change-asylum-system-small-boat-tragedy/>

offer protection and sanctuary to people fleeing violence and persecution, and to reduce exploitation, abuse, perilous journeys, and tragic preventable deaths.

### **Relocation of asylum seekers**

#### **3. Is the policy of relocating asylum seekers to third countries consistent with the UK's human rights obligations?**

No.

The UK is a state party to the European Convention on Human Rights. Removal or "relocation" to a country where there's a risk for human rights violations – for example by prolonged arbitrary detention or inhuman treatment – would be unlawful.

The UK Government made arrangements with Rwanda that see the responsibility of the Home Office to carry out refugee status assessments, exported to Rwanda. That is not consistent with the UK Government's international obligations as a signatory to the Refugee Convention, it threatens international refugee law, and it shifts the obligations that the Government has towards the international protection of refugees to a third country.<sup>2</sup> Evidence also shows that Rwanda is a country that already breaches the human rights of people in the LGBTQI+ community and that lacks the ability to offer the level of protection required by the Convention - allowing for potential breaches of the principle of *non-refoulement* found in article 33 of the Convention.

The Nationality and Borders Act also expanded the admissibility rules, so that a person with a "connection" to a safe third state will be ineligible to claim asylum in the UK and will be removed to a safe third country. The lack of legal routes together with the geographical location of the UK means that most asylum claims will be declared inadmissible.

### **Detention**

#### **4. Are the rules on detention and processing, and the treatment of detained asylum seekers, consistent with the UK's human rights obligations?**

No.

The UK is the only country in Europe that allows people to be detained in immigration centres without a time limit. That can be a breach of article 5 of the Human Rights Act – the right to personal freedom – as indefinite detention is not authorised by a judge and can hardly be reviewed.

Indefinite detention could also amount to degrading and inhumane treatment, breaching Article 3 of the Human Rights Act.

Children arriving in the UK are systematically separated from their parents and unaccompanied minors have been unlawfully detained contravening international obligations under the UN Convention on the Rights of the Child.

Lastly, the Universal Declaration of Human Rights states the right to a decent standard of living, but evidence from across the country shows that asylum seekers detained in detention centres live in extremely poor conditions.

### **Electronic tagging**

#### **5. Is the electronic tagging of asylum seekers a necessary and proportionate interference with their human rights?**

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<sup>2</sup> <https://www.justrightscotland.org.uk/2022/04/the-uk-rwandan-plan-an-agreement-to-trade-people/>

No.

We believe that the electronic tagging of asylum seekers is an unnecessary and disproportionate tool that has detrimental effects on their physical and mental health. It is an invasive plan that can breach article 8 – right to family life - and article 14 – right to be free from discrimination - of the European Convention on Human Rights.

### **Legal aid, accommodation, and subsistence**

#### **6. Is the support available to asylum seekers under the legal aid, accommodation, and subsistence rules compliant with the UK's human rights obligations?**

No.

Access to legal advice is essential to people seeking asylum. Nonetheless, changes to the legal aid system are leaving many asylum seekers completely unable to access the legal assistance they require. Limited access to justice is an issue set to become more acute as the Home Office has recently made every local authority in Scotland an asylum dispersal area, resulting in asylum seekers living in localities where there is no legal aid provision at all. On 13th April 2022, The Minister for Safe and Legal Migration announced with immediate effect the move to a full model for dispersal where “all local authority areas in England, Scotland and Wales are expected to participate in the new system process to allow us to move from hotels to less expensive and more suitable dispersed accommodation<sup>3</sup>”.

Asylum support, which is the type of support available to asylum seekers from the Home Office, is currently set at £40.85 per person per week to cover the essentials, like food, transport, and clothing.

For people housed in asylum accommodation where food is provided, the rate is set at £8.24 per week. With such low financial support, most asylum seekers are unable to meet their basic needs – GP appointments, nutritious food, and mental health support – and are at an incredibly high risk of destitution.

We also have grave concerns about the increasing use of institutional accommodation in Scotland – such as hotels – and as part of the Roof Coalition we are calling for an end to the use of hotels and other forms of institutional accommodation for asylum seekers across Scotland<sup>4</sup>.

Despite the tragedy at the Manston Asylum Centre where one person died, the Prime Minister Rishi Sunak announced on December 13<sup>th</sup>, 2022, that the Government “will shortly bring forward a range of alternative sites such as disused holiday parks, former student halls, and surplus military sites”<sup>5</sup> to accommodate asylum seekers.

### **Right to work**

#### **7. How do the rules on right to work impact on the human rights of asylum seekers?**

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<sup>3</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-06-01/11671/>

<sup>4</sup> <https://www.justrightscotland.org.uk/what-we-do/migrant-refugee-rights/destitution/endhoteldetention-in-scotland/>

<sup>5</sup> <https://www.gov.uk/government/speeches/pm-statement-on-illegal-migration-13-december-2022>

People seeking sanctuary in the UK are effectively banned from working. As a consequence, people are left in poverty and destitution, unable to meet all their essential living costs, especially during this cost-of-living crisis.

We believe that a right to work would be beneficial to asylum seekers, the communities in which they live and the economy. JustCitizens, our panel of people with lived experience of migration, also recognises the willingness of asylum seekers to work to contribute to the economy, to feel part of the community and to feel financially independent and secure<sup>6</sup>.

It would facilitate the integration process, it would allow people seeking asylum and their families to live with dignity, it would help with their mental health, it would make use of their different set of skills, it would help challenge exploitation and modern slavery and it would contribute to the economy through increased tax revenues and consumer spending.

In October 2020, the Lift the Ban campaign presented the Home Office with a petition signed by more than 180,000 people calling on the Government to lift the ban. In March 2022, YouGov polling found that 81% of the public support the right to work for people seeking asylum in the UK<sup>7</sup>.

Giving asylum seekers the right to work would also be in line with international human rights standards, in accordance with the International Covenant on Economic, Social and Cultural Rights.

## **Modern slavery**

### **8. Is the UK's legal framework for tackling modern slavery and human trafficking effective, and is it compatible with our human rights obligations? Are there changes that should be made?**

Modern slavery should not be seen through an immigration lens, as done in the Nationality and Borders Act. Modern slavery is a victim care issue and a serious crime.

JustRight Scotland and Scottish Refugee Council jointly commissioned a legal opinion<sup>8</sup> from Christine O'Neill QC and colleagues at Brodies to better understand the devolved impacts of the UK Government's Nationality and Borders Bill (the Bill), for Scotland, and ways to mitigate its harms.

We highlighted how the Act interferes with Scotland's anti-trafficking legislation and system. Some of the most harmful parts of the Bill are in areas devolved to the Scottish parliament. For example, the Parliament passed the Human Trafficking and Exploitation (Scotland) Act 2015, which defined in Scotland the crime of human trafficking and exploitation. It provided rights of support and assistance to survivors. The Act also reflected that criminal prosecution in Scotland of perpetrators of this crime are in the jurisdiction of the Lord Advocate. None of this should have been conflated with or tainted by UK immigration law.

We therefore believe that the changes brought forward in the Act poses a risk to the people it should protect by creating a harsher system for survivors with higher thresholds. Specifically, part 5 of the Bill pose a significant risk to the UK's fulfilment of its international obligations around the prevention, suppression, and punishment

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<sup>6</sup> [https://justcitizens.scot/wp-content/uploads/Just-Citizens\\_Factsheets\\_work\\_2.pdf](https://justcitizens.scot/wp-content/uploads/Just-Citizens_Factsheets_work_2.pdf)

<sup>7</sup> <https://www.refugee-action.org.uk/lift-the-ban/>

<sup>8</sup> <https://www.justrightscotland.org.uk/wp-content/uploads/2022/02/Legal-Opinion-FINAL.pdf>

of trafficking in persons, and it also excludes significant numbers of victims from receiving protection and support and increases the risk of traffickers acting with impunity.

Modern slavery should not have been reclassified as an immigration issue, and we urge the Home Office to reinstate the modern slavery brief within the responsibilities of the safeguarding minister.

**9. Is there any evidence that modern slavery laws are being abused by people “gaming” the system?**

Despite claims of people “gaming” the system, data shows that more than 90% of people from detention centres who were identified as victims of trafficking have later been confirmed as genuine via the National Referral Mechanism (NRM) – the Home Office’s formal process for identifying and providing support for victims of modern slavery.

The confirmation of whether an individual is a victim of trafficking is done by specific Competent Authorities and it usually takes around one to two years for the Competent Authority to make the final decision. A positive identification does not provide automatic rights, including leave to remain in the UK. While waiting for the decision and if considered to be undocumented, the individual cannot work, has no recourse to public funds, and has access to accommodation and limited financial support for a short period of time. Therefore, it would be really difficult for an individual to “game” the system and there would be very little benefit in doing so.

**Nationality and Borders Act 2022**

**10. To what extent has the enactment of the Nationality and Borders Act 2022 had an impact on the human rights of asylum seekers?**

The Nationality and Borders Act 2022 has further limited and restricted access to protection and rights for asylum seekers and breaches the UK’s obligations under international law.

We believe the Act to represent a deeply regressive shift in UK immigration law. It is punitive legislation that restructures the UK’s relationship with key international human rights law, including the UN Refugee Convention but also the European Convention against Trafficking (ECAT), the European Convention on Human Rights (ECHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United Nations Convention on the Rights of the Child (UNCRC).