



JustRight Scotland
Written Evidence in Response to the UK Government
Family Returns Consultation
04 June 2026

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 towards a model of collaborative social justice. We work in partnership with non-lawyers and others towards the shared aims of increasing access to justice and reducing inequality in Scotland. 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 migration, citizenship, trafficking and exploitation, women's legal justice and gender-based violence, and access to justice and equality.

Our Response to the Family Returns Consultation

As human rights lawyers, engaged in the day-to-day practice of providing immigration, legal advice and representation to children, young people and families across Scotland, we are deeply concerned about the Government's proposals set out in this consultation.

We believe that the overarching impact of Part 1 of these proposals, if implemented, will be an increase in children, young people and families facing poverty, destitution and ultimately street homelessness. This will, in turn, result in increased risks of physical and psychological harm, exploitation and abuse for these already vulnerable groups. We consider the proposals in Part 2 amount to an unacceptable de-prioritisation of children's welfare which will have significant and long-lasting negative impacts on their health.

Ultimately, we are of the view that these proposals are cruel, inhumane, unnecessary, contradictory, not evidence-based and potentially unlawful.

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 (S0305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703). Our Registered Office is: 1/1, Robertson House, 152 Bath Street, Glasgow G2 4TB.

1/1, Robertson House
152 Bath Street
Glasgow
G2 4TB

T ▶ 0141 406 5350
F ▶ 0141 406 5351
W ▶ www.justrightscotland.org.uk
▶ @justrightscot

Part 1: Reforms to the support for families and adult care leavers without immigration status

At the outset, we oppose these proposals as they are not supported by evidence. The proposals suggest that stripping essential support away from appeal rights exhausted (“ARE”) asylum seeking families will lead to more families choosing to leave the UK voluntarily. This assumption is not supported by evidence. In 2004/2005, the Home Office ran a pilot project withdrawing support from a number of ARE families. The [findings](#) from the Home Office’s own evaluation of the pilot clearly noted that the withdrawal of support did influence ARE families’ behaviour and ultimately did not lead to families leaving the UK. We find it very concerning that the consultation fails to engage with evidence from a pilot run by the government which tested the very assumptions that are behind these proposals.

From our casework experience, enforced destitution does not lead to individuals leaving the UK. Vulnerable individuals who are stripped of essential support, in our experience, are more likely to disengage with systems and go underground, than to engage with voluntary return. This, in turn, results in individuals failing to engage with healthcare and other essential services putting already vulnerable individuals at increased risk of harm. In our experience, stripping migrants of essential support also prevents them from meaningfully engaging with legal advice, ultimately creating further obstacles in immigration issues being resolved. In addition to this, [evidence](#) already shows that migrants living in destitution in Scotland experience poor physical health, mental health and are at significant risk of exploitation and abuse (including domestic abuse). We are concerned that implementing the proposals will mean that families, including children and young people, will face those same risks.

These proposals ultimately also stand at odds with the UK Government’s efforts to tackle child poverty in the UK. The UK Government’s own [Tackling Child Poverty Strategy](#) makes it clear that experience of poverty for children can have lifelong impacts in terms of health outcomes, educational attainment and future opportunities. Beyond this, it also emphasises that child poverty has wider costs for UK society as a whole. The Strategy sets an ambitious aim for the current UK Government to bring about an enduring reduction in child poverty. These proposals fly in the face of this policy intention as they will inevitably increase the level of poverty, destitution and homelessness experienced by migrant children in the UK.

Beyond this, it is our position that, should the proposals be implemented as they are currently framed, they would be potentially in breach of human rights legislation (section 6 of the Human Rights Act 1998 as incompatible with Articles 3 & 8 ECHR)

and children's legislation (e.g. 55 of the Borders, Citizenship and Immigration Act 2009, United Nations Convention on the Rights of the Child).

Section A: Reforms to the support provided by the Home Office under Schedule 11 to the Immigration Act 2016 (the 2016 Act)

At the outset, we outright oppose the proposals to strip ARE families from asylum support following them becoming appeal rights exhausted for the reasons noted in the previous sections. There is no evidence that withdrawing essential support from ARE families will lead to an increase of voluntary returns. Rather, based on our experience, it will make it less likely a voluntary return would happen because destitution and homelessness are barriers to engaging with administrative processes.

Transitional provisions (Q7-8)

We oppose the proposals for reforms to asylum support to apply **retrospectively**, as this will disproportionately affect families and children who are likely to have resided in the UK for substantial periods of time. Removing support from families who have already been accessing it and have abided by the terms of the support. This is "moving the goalposts" for these families, with enforced destitution and street homelessness as the consequence.

If the proposals are to be applied retrospectively, the Home Office will need to provide detailed guidance to families themselves, in a meaningful, accessible way. Families affected should be given extensive notice to consider their options and access advice.

Considering how stretched and at capacity the advocacy and legal advice sector already are in this area, the onus cannot and should not be put on the third sector and legal representatives to manage this transition. Should the proposals be applied retrospectively, the Home Office should ensure that accommodation providers (Migrant Help in Scotland) are tasked and resourced to be able to meaningfully engage with ARE families affected by these changes.

In relation to the proposals around **Section 95A (Qs 9-17)**:

- We are of the view that the proposed **90 days grace period** is too short in the circumstances. It seems particularly unreasonable to move from a position to where families are supported indefinitely to setting a 90-day period. We would recommend for at least a minimum 180-day grace period to be introduced. In our view, in any event, any grace period should be built flexibly, allowing for this period to be extended, particularly where families might otherwise face street homelessness and destitution;
- Even where a grace period is to be introduced, we proposed that **late applications** ought to be considered. In our experience, there can be a multitude of reasons why vulnerable individuals may miss important deadlines. These include, but are not limited to:

- Poor physical and mental health (beyond hospitalisation);
- Lack of access to legal advice and/or advocacy support, particularly considering the limited capacity of the legal advice and advocacy sector;
- Ongoing trafficking or exploitation;
- Ongoing domestic abuse

These are just some examples of circumstances we see in our casework. For this reason, we suggest it would be inadequate to set out an exhaustive list of grounds for late S95A applications to be considered. Providing caseworkers with flexibility to accept late S95A applications will also avoid inevitable expensive and time consuming litigation.

- We are supportive of families being **automatically transitioned** from S95 to S95A, where evidence is already available to confirm eligibility. Avoiding families having to submit fresh applications will ensure that families avoid support gaps and avoid facing destitution and street homelessness;
- Should the proposals be implemented, the Home Office will need to ensure that **strong safeguards** are in place where asylum support is to be stopped for ARE families. In addition to the measures noted in the consultation (referral to children’s services, safeguarding assessments and provision of information on alternative support and voluntary returns), caseworkers must ensure that the family is provided with adequate housing by the local authority before asylum support is stopped and the family evicted from Home Office accommodation. Failure to do this would result in families with children facing street homelessness and, in our view, would be a potential breach of Section 55 of the Borders, Citizenship and Immigration Act 2009, Article 3 & 8 ECHR, and the Children (Scotland) Act 1995. Forcing families into street homeless also raises serious concerns around compliance with the United Nations Convention on the Rights of the Child (“UNCRC”), which has been incorporated into domestic legislation in Scotland through the UNCRC (Incorporation) (Scotland) Act 2024.
- We are of the view that the current definition of “**genuine obstacles**” proposed in relation to S95A is too restrictive. There are many other good reasons, based on our casework experience, as to why ARE families might be unwilling or unable to leave the UK. Some examples from our casework include, but are not limited to:
 - Outstanding NRM referrals;
 - Ongoing court proceedings (criminal justice, family law);
 - Ongoing compensation or damages proceedings (CICA, reparations);
 - Ongoing or past experience of trafficking and exploitation (including cases where a NRM referral is yet to be made);
 - Ongoing or past experience of domestic abuse;

- Inability to access legal advice in regard to making further submissions, particularly in light of the [legal aid crisis](#) in Scotland;
- Out of time asylum appeals;
- Outstanding immigration applications (non-protection) – e.g. Article 8, VTS leave;
- Ongoing Judicial Review proceedings against a refusal to consider further submissions (where permission has not been granted yet);

Beyond this, we are of the view that any decision to refuse support for ARE families under the proposed S95A must give weight to the **best interests of any children** involved to be compliant with Section 55, human rights and children’s legislation, including UNCRC.

- In relation to ARE families having to **evidence their eligibility** for S95A support, we are of the view that the Home Office should exercise flexibility in relation to how quickly evidence can be obtained. Any policy should include the ability to extend deadlines to obtain evidence required. We would also recommend that the Home Office provide funding for ARE families to obtain evidence which might be very expensive (e.g. medical reports), particularly for unrepresented ARE families and for families who do not have access to legal aid to cover these costs.
- We are very concerned that the proposed S95A includes a condition for families to be taking all **reasonable steps to leave the UK**, particularly considering the very high threshold proposed in relation to the definition of “genuine obstacle”. If the Home Office is indeed satisfied that a family is facing a significant obstacle to leaving the UK, attempts should be made to support the family to secure lawful permission to remain in the UK, rather than remove them from the UK. The evidence provided by the Home Office in the consultation indeed points to the fact that most families will eventually secure status in the UK and remain in the UK. Attempts and resources, in our view, would be better spent to enable families to regularise their status in the UK, enabling integration, rather than prolonging precarity and unnecessary “legal limbo” which inevitably have a significantly negative impact on vulnerable adults and children.

Section B: Reforms to the support provided by Local Authorities under Schedule 12 to the Immigration Act 2016 (the 2016 Act)

We oppose the proposals to strip ARE families and ARE care leavers from local authority support. In our casework, we recognise that local authority support for migrant families and care leavers represents a lifeline. Without this support, vulnerable families, children and young people would be left facing street homelessness, destitution and face significant risks of harm, abuse and exploitation.

The proposals undermine the ability of local authorities to fulfil their statutory obligations under children’s legislation. If implemented, these reforms would create a **subclass of children and young people**, violating their rights under children rights

legislation solely on grounds of their immigration status. We are of the view that these proposals are also likely to breach the UK's international obligations under ECHR and UNCRC.

We further note that the consultation explicitly refers to the proposals being solely applicable to local authorities in **England**. We are concerned about how this would work in practice. If implemented, these changes may result in additional pressures on local authorities in Scotland to provide essential support to ARE families who would have, but for these changes, been eligible for support in England. Local authorities in Scotland are already facing a [state of crisis](#), with several local authorities being unable to fulfil their statutory obligations under housing legislation. Implementing the proposals as set out in the consultation will simply result in further pressure on local authorities outside of England.

Beyond this, if UK Government extended these proposals to Scotland, **legislative consent** should be sought from the Scottish Parliament. Failure to do so would be contrary to the devolution agreement as the proposed changes to local authority support through the Children (Scotland) Act 1995 and the Social Work (Scotland) Act 1968 fall within the scope of issues devolved to the competence of the Scottish Parliament.

Turning to the substance of the proposed new support framework itself ([Q18-19](#)), the conditions set out at paragraphs 27-29 of the consultation are very restrictive. In our view, this restrictive list of conditions is likely to result in significant numbers of ARE families being unable to access local authority support. We would refer to our submissions above in relation to the definition of “**genuine obstacles**” for some examples of reasons why ARE families might be unable or unwilling to leave the UK.

The proposal to introduce a new, stripped back type of support administered by local authorities (hereinafter referred to as “**destitution support**”) is both unnecessary and misconceived. Local authority support provided to families under children's legislation (in Scotland, section 22 of the Children (Scotland) Act 1995) is flexible in its application. It allows experienced social workers to conduct a needs assessment and determine the level of support required, while taking into account the resources of the local authority. It can take the form of B&B accommodation, clothing and food vouchers, or something more structured and comprehensive depending on the health, vulnerability and circumstances of the children and family. By taking this decision out of local authority hands, and central government directing the eligibility and resources of this destitution support, the UK Government is creating a twin track social care system differentiated not on human need, but on immigration status.

In our casework, we have worked and continue to work with a number of undocumented families who access local authority support under children's legislation whilst regularising their immigration status in the UK. This support is a lifeline for these families, who would otherwise face street homelessness. This included families who have experienced domestic violence, trafficking and exploitation. Accessing local authority support enables these vulnerable families to be safe and engage with legal advice. If the support were absent, they would often have little choice but to return to their abuser or exploiter. Ultimately, the vast majority of the families we have supported

have either regularised their status or are actively working towards doing so and have been able to contribute meaningfully to UK society.

We are also very concerned about the proposals relating to **aftercare support** for ARE care leavers (Q20-25). In our casework, we routinely represent and advise unaccompanied migrant children and young people and we recognise that local authority support is crucial for young people to be safe and protected from harm. Research has shown that this cohort is at significant risk of exploitation and trafficking, even whilst in local authority care. Pushing ARE care leavers into street homelessness and destitution will inevitably result in more young people becoming exploited, harmed and abused.

At present, unaccompanied children seeking asylum in the UK are accommodated and looked after by local authorities up to, depending on their needs, aged 26. Whilst a local authority will be required to carry out a human rights assessment where a care leaver becomes ARE (as required by Schedule 3 Nationality, Immigration and Asylum Act 2002), decisions around support are entrusted to local authorities. This is in line with children's legislation, recognising that migrant children are children first, migrant second.

The current proposals will mean that, once a care leaver becomes ARE, they will **immediately cease** to be eligible for aftercare support from a local authority. Local authorities will either evict young people who will become street homeless and face destitution or will provide the stripped back "destitution support" set out in the proposals. There is no grace period, unlike for ARE adults and families.

They will be unable to access destitution support until one of the conditions set out in paragraph 32 of the consultation is satisfied. For conditions A-C to be satisfied, this would clearly require for a care leaver to be able to access legal advice and to be able to lodge an immigration application and/or an appeal. This creates a 'catch-22' whereby the very conditions that trigger loss of support make it harder to satisfy the conditions required to regain it. In our casework experience, as noted above, where vulnerable individuals are forced into destitution and street homelessness, they are much more likely to go underground and to disengage with services, including legal advice. In relation to condition D, it is unclear in what situations this would be met. We would therefore urge the UK Government to further clarify this.

Significant questions remain over the differentiated support available depending on the **type of immigration application** made by an ARE care leaver. For instance:

- The proposals state that if an ARE care leaver makes an immigration application based on **Article 8 ECHR (non-asylum)** then they are entitled to access **aftercare support** through the Children's Act if it is their **first application**. The support remains until the application is finally determined.
- If they make an application based on Article 8 ECHR that is **not their first time application**, then they can only access **destitution support**.

- It is unclear whether, if they make **further submissions** for consideration as a fresh claim for asylum, whether they move onto **S95 asylum support** or retain access to any type of local authority support. Many further submissions include arguments on Article 8 ECHR; it is unclear whether further submissions are considered an Article 8 ECHR application or not (we are assuming not as it is an asylum-related application).

Rather than simplify matters for young people, families, local authorities and advisers, the proposals complicate them. To illustrate our point:

Hypothetical case study based on our client group:

*Aland is a care leaver who becomes ARE after an Upper Tribunal decision. Under the proposals, he immediately loses access to **aftercare support**. His situation is more punitive than a single non-care experienced adult or family because there is no grace period. Instead, the local authority carries out an assessment on whether to provide **destitution support** or to render him homeless.*

*If Aland is fortunate enough to access **destitution support**, he works with his solicitor to make **further submissions**. He is moved off destitution support onto **S95 asylum support**; there is nothing in the proposals to suggest that ARE care leavers do not move to adult asylum support in this scenario. This, in itself, is a significant change to the current system.*

*If his further submissions are refused by the Home Office, he either accesses a 21-day grace period during which he either applies for **S95A** or he requests another assessment from the local authority for **destitution support**.*

*In either scenario, if Aland then goes onto make a first-time **Article 8 ECHR** application, he moves back onto **aftercare support** provided by the local authority. It is more than one year since he became ARE and only now is he accessing statutory aftercare support.*

*Aland's Article 8 ECHR application is successful, and so he continues to receive his statutory aftercare support. In a short timespan of maximum precarity for Aland, he has been moved support **four times across three or four types of support** (aftercare, destitution support, S95, and S95A). He has also been on the cusp of street homelessness for the entire period.*

Broadly speaking, we are of the view that, as set out, the proposal will result in significant confusion among professionals and statutory agencies, with foreseeably high numbers of migrant care leavers becoming destitute, street homeless and at very significant risk of trafficking, re-trafficking and harm.

Beyond homelessness and destitution, the proposals also threaten care leavers' access to **education**. We are firmly opposed to these proposed changes. In Scotland, student funding continues to be available for unaccompanied asylum-seeking children and young people. In implementing this reform, the Scottish Government recognised the particular vulnerability and barriers to education this cohort faces. We believe the UK Government should ensure migrant care leavers are able to access education to

enable them to contribute to UK society, rather than restricting them from accessing it at all.

Impact Assessments (Q26-27)

The proposals set out in the consultation will disproportionately affect, amongst others, **children and women**.

We have already outlined above the devastating impact that these changes will have on migrant children and care leavers. In relation to women, data shows that in [2024-2025](#), 74% of migrant families supported by local authorities were female-led single-parent households, compared to just over 5% male-led single-parent households. Restricting access to local authority support will therefore disproportionately affect migrant women, who are likely to face destitution, homelessness and harm as a result.

In addition to an equality impact assessment, we are of the view that, prior to the proposals coming into force, the UK Government should also publish a children's rights impact assessment as well as evidence to underpin the justifications of the proposals outline in this consultation.

Part 2: Changes to the Use of Force Policy

We strongly oppose the proposals in Part 2 of the consultation relating to changes to the Use of Force Policy (**Q8**). At JustRight Scotland, we do not accept that anyone, children or adults, should be physically handled purely for the purpose of immigration enforcement. We support the current position in the Use of Force Policy with regards to children which states that the physical handling of children in the context of immigration enforcement is prohibited except where it is necessary to prevent harm to the child or another person.

We note that the current Use of Force Policy was created in 2011 by the coalition Government following widespread recognition that the previous position which permitted immigration detention of children and families was actively harming children's welfare. The current policy recognises that immigration enforcement should not take priority over a child's rights and welfare.

The clinical language of the consultation does not reflect the reality of a child's experience of enforced removal. The prospect of enforced removal in itself can be a traumatic event which causes children to experience distress, confusion and anxiety, even without the possibility of physical handling. The consultation document states that the possibility of physical intervention, including being physically carried or handcuffed, will be consistently communicated to children throughout the returns process. This means that the proposed changes will affect the experience of all children, even those against whom physical force is not ultimately used. We submit that the threat of physical restraint by a Government official is harmful in and of itself (**Q19**).

The consultation fails to recognise the impact on children of the actual or potential use of force for the purposes of immigration compliance. There is a [substantial body of](#)

[evidence](#) which illustrates the negative impact on children's health of immigration detention and coercive family removals internationally. In relation to the impact on children in the UK prior to 2011, Medical Justice's 2010 report, [State Sponsored Cruelty](#), found a myriad of examples of both physical and psychological harm, including developmental regression, suicidal ideation, children witnessing violence, and deterioration in physical health. A deterioration in children's health is therefore a significant inevitable unintended consequence of the changes proposed in the consultation (**Q13**).

As highlighted in the [joint letter](#) signed by JustRight Scotland and more than 30 other organisations, in Scotland the proposed changes directly conflict with our national commitments to children's rights and wellbeing, including the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, GIRFEC, and our trauma-informed national practice frameworks.

The recent passing of the Children (Care, Care Experience, Services Planning) (Scotland) Act 2026 underscores Scotland's commitment to safeguarding children from harmful physical interventions. The Act introduces statutory guidance on the definition and use of restraint in children's care settings in order to meet Scotland's obligation to protect the human rights of children and young people. These protections are undermined by the suggestion that routine physical interventions on children should be used during immigration enforcement.

Moreover, as referred to in the consultation, there are a number of legal duties which apply at a UK level. These include the duty under s55 of the Borders, Citizenship and Immigration Act 2009 on the Secretary of State to carry out her functions in a way takes into account the need to safeguard and promote the welfare of children in the UK; the duty of those exercising immigration functions to have regard to the Every Child Matters Guidance and the duty under Article 3 the United Nations Convention on the Rights of the Child that in all actions concerning them, a child's best interests shall be a primary consideration. It is our position that these proposals conflict with all of these duties.

The safeguards proposed to comply with these 'children's duties' are non-mandatory additional training and possible use of body-worn cameras in certain circumstances (**Q15**). These do not sufficiently alleviate the likely harm to children's welfare. It is also relevant that the Secretary of State has not presented any evidence of children directly obstructing or being used to obstruct enforced removals (**Q10**).

Furthermore, we are alarmed by the overall lack of safeguards in the proposed policy change. We do not consider excluding 'pain-inducing techniques, pressure-point techniques and techniques that might compromise breathing or circulation' to be sufficient limitations on the use of force (**Q9**). Moving from a position where force is only to be used to prevent harm, to one in which the ceiling is prohibiting techniques intended to actively inflict physical pain on children, is a significant and highly concerning shift. There is also no explanation given as to how the factors considered in a risk assessment will be weighted or whether any exclusions would be applied with respect to any risk factors e.g. pregnancy or mental health crisis (**Qs 11+12**).

We have no intention of suggesting safeguards for this proposed policy change because it is anathema to a children's rights-respecting society in which we live.

Therefore, in summary, we oppose the use of force against children in the context of immigration enforcement and do not consider it can ever be safe or justifiable. Our position is based on the extensive evidence of the harm it causes to children and on the need and desire to comply with Scottish and UK legal duties with regards to safeguarding the welfare of children.

END