

The New Plan for Immigration Consultation

NRPF Network submission

6 May 2021

The No Recourse to Public Funds (NRPF) Network, hosted by Islington Council, has a membership of c. 5000 local authority and other practitioners across the UK, works with 69 councils using the NRPF Connect database and engages with councils nationally through its regional networks. We provide advice and guidance to local authorities on statutory support for people who are destitute or at risk of homelessness and have no recourse to public funds.

Q3 Please use the space below to give further detail for your answer. In particular, if there are any other objectives that the Government should consider as part of their plans to reform the asylum and illegal migration systems.

Changes to the asylum and immigration system must not be viewed solely in terms of meeting the Government's immigration policy objectives and wider consequences of the proposed changes need to be fully assessed. The Government must set out how proposed changes to asylum and immigration systems are likely to affect the success of achieving other objectives, such as ending rough sleeping and protecting victims of domestic abuse. Policy impacts must also be considered in the wider context of events that affect other migrant groups, such as the deadline to apply for status through the EU Settlement Scheme.

The limited availability of free legal advice provision is likely to have a significant impact on any steps taken to streamline asylum claims, appeals, and voluntary return/ removal processes. Wider reform of the legal aid system is required to ensure that legal advice is available at all stages of the asylum and immigration process. This would involve extending what is in scope of legal aid, ensuring sufficient matter starts are available to meet demand in all areas, and making sure that it is financially viable for firms to operate legal aid contracts.

Q25 Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform.

Proposal: Introducing a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but

cannot be returned to their country of origin (as it would breach international obligations) or to another safe country.

Without arrangements established with the EU or individual countries, it is highly unlikely that the Home Office will be able to return the majority of people who are granted Temporary Protection Leave to a safe country. Therefore, the imposition of Temporary Protection Leave for periods of 30 months (as opposed to granting 5 year's limited leave on a settlement route) on a person who has been recognised as having a well-founded fear of persecution for a Convention reason and therefore cannot return to their country of origin, gives rise to the following risks:

- The person's immigration position will be precarious, despite having been recognised as having a well-founded fear of persecution and unable to return to their country of origin. Living with continued uncertainty and under threat of removal to a safe country will not promote integration in the UK and will negatively impact on the welfare of children.
- When a person needs to renew their leave every 30 months they will be at risk of losing their lawful status if they cannot access legal advice or make an application in time, becoming subject to hostile environment measures.
- People with this status will be at risk of homelessness and destitution if the No Recourse to Public Funds (NRPF) condition is imposed as a default or on subsequent grants of leave when a person has a low income/ is unable to work. However, the rationale for imposing the NRPF condition on grants of Temporary Protection Leave and its intended effect needs to be clarified, given that the majority of asylum seekers receive Home Office support prior to the conclusion of their claim and therefore will be entitled to recourse to public funds on the basis of being destitute. Additionally, it is unclear what form the proposed reception centres will take, but the likelihood that people will be able to immediately access employment in order to fully support themselves following a grant of Temporary Protection Status will be reduced if asylum seekers have not been living within the community and able to access education, training or volunteering opportunities whilst their claims are pending.
- Local authorities have a range of powers and legal duties to provide accommodation and financial support to people who are destitute and ineligible for benefits, including those who have leave to remain with NRPF, as well as those who become unlawfully present and are not removed from the UK. Local authorities are not funded by central government to provide this support, so the introduction of a new category of leave that is subject to the NRPF condition, on an immigration route that requires more frequent renewal applications, is highly likely to give rise to more people being in need of local authority intervention to alleviate destitution.
- It will be challenging for local authorities to undertake meaningful pathway planning and engage with children and young people in local authority care who are granted leave for a short period with no guarantee of a future in the UK, despite making a successful asylum application. Children and care leavers may also be at risk of going missing when faced with an uncertain future.

- The creation of more administrative processes (such as renewals of Temporary Protection Leave every 30 months and Change of Conditions process to remove the NRPF condition), is likely to divert Home Office resources away from other casework areas and may lead to decision-making delays on substantive asylum and other immigration claims.

If this proposal is imposed then we recommend that the following steps are taken to mitigate these risks:

- When a person is receiving Home Office asylum support or local authority support, grants of Temporary Protection Leave should confer recourse to public funds as the default position.
- Temporary Protection Leave granted to children in care and care leavers should always be granted with recourse to public funds.
- A Change of Conditions process should be available for people who are at imminent risk of destitution to be able to quickly obtain recourse to public funds, without having to meet high evidential thresholds.
- Legal aid must be made available for people with Temporary Protection Leave who are renewing leave and when they are faced with removal whilst holding this leave.
- Temporary Protection Leave should not be refused if it would result in a person being left in limbo, without any leave in the UK.

Q41 Please use the space below to give further feedback on the proposals in chapter 8. In particular, the Government is keen to understand

(a) If there are any ways in which these proposals could be improved to make sure the objective of enforcing and promoting compliance with immigration laws, ensuring the swift return of those not entitled to be in the UK is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach the Government is taking around removals.

Proposal: ‘..working with local authorities and partners we will seek to enforce returns’.

The Plan is not clear what is meant by this proposal. Assumptions should not be made about the role local authorities that will be able to undertake, with enforcement of returns quite different to assisting people who decide to leave voluntarily.

Local authorities are concerned that being perceived to play a proactive role in enforcement is likely to make it more difficult to engage and win the trust of people who are rough sleeping, families who are living in the UK without status, survivors of domestic abuse, and looked after children and care leavers with uncertain immigration status. It is also at odds with the local authority’s role in facilitating refugee resettlement.

Proposal: Consulting with Local Authority partners and stakeholders on implementing the provisions of the 2016 Act to remove support from failed asylum-seeking families who have no right to remain in the UK.

(i) Removing support from ARE asylum seekers

The proposal to withdraw Home Office support when people are Appeal Rights Exhausted (ARE) is in direct conflict with the Government's strategy to end rough sleeping. Local authorities have gone to extraordinary efforts to ensure that the lives of homeless people, regardless of their immigration status, are protected during the Covid-19 pandemic; putting new groups of people at risk of homelessness is totally at odds with such positive practice developments. Local authorities are already concerned about the potential for rising homelessness and destitution after the deadline of 30 June 2021 for applying under the EU Settlement Scheme passes.

The Plan is unclear about the extent to which the Government intends to implement the measures set out in Schedule 11 of the Immigration Act 2016. The Plan does not provide any detailed analysis about why voluntary return is not taken up or enforcement action is not undertaken when people claiming asylum become Appeals Rights Exhausted (ARE). In the first instance we need to understand what work is being undertaken now to encourage take up of voluntary return when a person or family becomes ARE and is living in Home Office accommodation. This must include information about the role of the Home Office family returns team.

NRPF Connect data shows that return is rarely the final outcome for ARE families or adults with care needs who are receiving local authority support and we are not aware of any systematic interventions by the Home Office family returns team when families supported by local authorities become ARE. [1]

Additionally, there is no evidence that other 'hostile environment' measures set out in the Immigration Act 2014 and Immigration Act 2016 restricting access to services have resulted in an increased take up of voluntary return. [2] Instead, such measures lead to people going underground and more vulnerable to exploitation, creating safeguarding, community cohesion risks and health risks. Local authorities are concerned about families that have been in the UK for several years and may consider a period of time being homeless with their children here a better option than returning to their country of origin. Councils are also concerned that people who remain in the UK whilst excluded from services will develop health and social care needs, leading to more intensive interventions required from the local authority at a later date.

It is currently unclear whether the recent increase in financial assistance offered to people who are returning voluntary to a 'developing country' will have a significant impact on take-up.

Therefore, before any steps are taken to implement Schedule 11 of the Immigration Act 2016, the Home Office must:

- Demonstrate that the relevant bilateral arrangements have been made and returns can actually be facilitated to a receiving country, whether on a voluntary or enforced basis, so local authorities can have confidence in removal processes.

- Provide evidence of the steps that have been taken to proactively work with people to take up return whilst they are accommodated by the Home Office and a full analysis of why that has not achieved the intended outcome.
- Provide evidence that withdrawing asylum support would lead to people taking up voluntary return as opposed to remaining in the UK destitute.
- Demonstrate that the measures are consistent with its duties under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children.

(ii) Local authority support

Local authorities have a range of powers and legal duties to provide accommodation and financial support to people who are destitute and ineligible for benefits. In England these include section 17 and the leaving care provisions of the Children Act 1989, Part 1 of the Care Act 2014, and powers to provide accommodation on public health grounds.

The Plan does not specify whether the Home Office is also considering implementing Schedule 12 of the Immigration Act 2016, which takes the provision of accommodation and financial support for ARE families and care leavers out of the scope of the Children Act 1989 and establishes a new statutory basis for providing such support (paragraphs 10A & 10B Schedule 3 of the Nationality, Immigration and Asylum Act 2002). This also applies to people pursuing non-asylum routes. Until further regulations are made it is not known to what extent local authority support will be available to ARE families and care leavers who do not qualify for Home Office support under section 95A of the Immigration Act 1999. If the Government decides to proceed to implement Schedule 11 of the Immigration Act 2016 then we welcome further consultation with local government about the impacts of this and what effect the implementation of Schedule 12 would have in practice.

Key issues that will need to be considered include:

- An acknowledgment that local authorities hold significant financial risk due to the lack of government funding for providing support to people who have no recourse to public funds, regardless of whether support is provided under the Children Act 1989 or paragraphs 10A and 10B. A full assessment of the financial and resource implications for local authorities of removing asylum support will be required.
- Clarifying the actions that will be undertaken by the Home Office when a person or family becomes ARE in order to encourage take up of return prior the termination of their asylum support. Ensuring people have access to free legal advice at this stage will also be necessary.
- When there is no legal duty to provide support to an ARE family that decides not to take up voluntary return, the challenge for local authorities in terms of responding to this situation in line with duties to safeguard and promote the welfare of children (section 11 of the Children Act 2004) will remain, regardless of whether support is denied under the Children Act 1989, due to the bar on assistance (Schedule 3 of the Nationality, Immigration and Asylum Act 2002), or paragraphs 10A and 10B. As the support provider, local authorities, rather than the Home Office, will be the subject of legal challenges when such situations arise.

References:

[1] <https://www.nrpfnetwork.org.uk/-/media/microsites/nrpf/documents/nrpf-connect/data-report-201920.pdf>

[2] <https://www.nao.org.uk/report/immigration-enforcement/#>

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