

# Written evidence from Scottish Government and COSLA (CPN0021)

1. This is a joint submission from the Scottish Government and COSLA (the Convention of Scottish Local Authorities). As immigration is reserved to the UK Parliament, the Scottish Government cannot lift or amend NRPF policy. As a result, there are limits on action that can be taken in a devolved context.
2. COSLA is the organisation that represents Local Government in Scotland. This response highlights concerns that are shared by our partners in Local Government across the UK, and that have also been set out in the joint submission from the Association of Directors of Children's Services, the Local Government Association and the NRPF Network.
3. This response provides evidence based on learning from the development of our joint strategy, *Ending Destitution Together*<sup>1</sup>, which sets out our approach, over the next few years, to prevent destitution and tackle the effects of the No Recourse to Public Funds (NRPF) policy in Scotland. It also draws on data collected by COSLA from fifteen Scottish local authorities regarding the support that has been put in place to assist people with NRPF during the pandemic.

## Introduction

4. COSLA and the Scottish Government welcome this inquiry into the impact of NRPF policy on children experiencing poverty. This is an issue of significant concern to communities in Scotland.
5. There is longstanding evidence of the damaging effects of the NRPF restrictions on children's rights and wellbeing.<sup>23</sup> A 2019 Child Poverty Action Group study found that some of children from the most severely deprived families with NRPF did not have access to food during the day<sup>4</sup>. By restricting access to benefits, local authority housing and homelessness services for adults with children, the NRPF rules place families on low incomes or facing financial insecurity at high risk of poverty and destitution.
6. This issue has only been worsened by the experience of the pandemic and will likely become even more acute as we manage the recovery period, along with changes to EEA nationals' rights following the UK exit from the EU, and prepare for the impact of provisions in the Nationality and Borders Bill, should this legislation be enacted as currently drafted.
7. It is our view that changes are urgently needed to the UK Government's immigration system and particularly the NRPF policy, to protect children's rights and wellbeing and to reduce poverty and inequality.
8. In Scotland we are committed to tackling child poverty. The Child Poverty (Scotland) Act 2017 sets out statutory targets to tackle and ultimately eradicate child poverty by 2030

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<sup>1</sup> [Ending destitution together: strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ending-destitution-together/strategy/pages/1.aspx)

<sup>2</sup> [Not Seen, Not Heard – Project 17](#)

<sup>3</sup> [Access Denied](#) – The Unity Project, June 2019

<sup>4</sup> [Living Hand to Mouth](#) – Child Poverty Action Group, Apr 2019

and monitor progress in line with the UN Convention on the Rights of the Child (UNCRC).

9. The Act requires Scottish Ministers to publish child poverty delivery plans at regular intervals, with annual reports to measure progress. Local authorities and health boards must also jointly publish annual reports on what they are doing to reduce child poverty in their local area. Tackling child poverty is also part of the Fairer Scotland Action Plan, which sets out our overall strategy for tackling poverty and inequality in Scotland. The core principles of the Act are further strengthened by the Children and Young People (Scotland) Act, the Getting it Right for Every Child (GIRFEC) approach, and the Early Years Framework. They are all designed to ensure that children's interests and rights are placed at the centre of our policy considerations.
10. Our national and local efforts to eradicate child poverty are severely impacted by the NRPf rules. The national delivery plan – Every Child, Every Chance: the Tackling Child Poverty Delivery Plan 2018-2022 – identifies the three main drivers of child poverty: employment – when income from parents' work and earnings is insufficient to lift them from poverty; household costs – when income is too low to meet daily living costs; and social security – when benefits are too low to lift families out of poverty.
11. The NRPf rules both increase the chances that children will experience poverty, but also limit the actions that can be taken at a devolved level to address this. They prevent people from accessing benefits designed to support people at times of financial insecurity such as job loss; they also prevent local authorities from being able to provide social housing to families with NRPf as another means of improving living standards and reducing household costs; and prevent local authorities from using their homelessness services to prevent crises. For families who are in the asylum system, immigration rules also restrict their right to work, preventing them finding a route out of poverty through employment.
12. In addition, the NRPf rules have implications for the role that Scottish Government can play in using devolved benefits to increase the role of social security in tackling child poverty. Key support such as the Scottish Welfare Fund are restricted under NRPf. In the case of the Scottish Child Payment, which uses top-up powers to deliver enhanced support to families, this cannot be provided to people subject to NRPf because they are restricted from accessing qualifying UK benefits. The issue also remains that the Home Office could choose to impose restrictions on any benefit paid by Scottish Ministers through changes to immigration rules.
13. The rules create significant barriers to our ability to deliver our ambitions for every child in Scotland, regardless of their immigration status or country of origin. The Ending Destitution Together strategy is part of our approach to ensure that, as far as possible, we can meet the specific needs and mitigate the unique risks of poverty for people with NRPf, including families with children. A key focus of our initial actions will be strengthening the statutory safety net that local authorities are able to provide and seeking to bolster the role that other services that are not restricted by NRPf rules can provide.
14. The Scottish Government and COSLA would be happy to support the Committee's inquiry in any way that would be helpful and look forward to your report which we hope will add further weight to the calls for the UK Government to remove NRPf restrictions from families with children to help to address child poverty and inequality.

**1. Approximately how many children in the UK live in households that have NRPF? What are the challenges involved in estimating this accurately?**

15. The Home Office does not routinely collect or publish data on the number of people who are subject to NRPF across the UK, and they do not systematically monitor the impact of the policy on individuals or public services.
16. We understand that the Home Office's Chief Statistician made a commitment in 2020 to investigate the administrative data held by the Home Office and whether it can provide "any meaningful information on the issue of hardship"<sup>5</sup> – we would be keen to understand whether the Committee has any detail of the outcome of this.
17. The gaps in available information make it challenging for the Scottish Government and local authorities to determine the numbers of people in Scotland with NRPF and to plan for and meet their needs. An inquiry by the Scottish Parliament's Equality and Human Rights Committee<sup>6</sup> in 2017 concluded that there are significant hidden needs because of the NRPF rules.
18. We therefore urge the committee to press the Home Office for routine and transparent collection, publication, and analysis of data on the application of the NRPF restrictions and its impact on people and public services, particularly as they relate to children and people who intend to remain in the UK in the long term.
19. Despite the limitations of existing data, COSLA assumes that the majority of local authority areas in Scotland will have some residents who have NRPF or EEA nationals with similar restrictions on their entitlements to benefits. Migrants who are subject to immigration control living in the UK are able to move within and between local authority areas. Informal exercises conducted by COSLA have highlighted that Glasgow, which is an asylum dispersal area, as well as Edinburgh, typically have the highest number of people in Scotland requiring assistance because they have NRPF, followed by Dundee and Aberdeen. Other areas including Perth and Kinross, Dumfries and Galloway and Highland Council also indicated awareness of temporary residents working in seasonal employment such as food processing and agricultural work, as well as hospitality and tourism. Fifteen Scottish local authorities responded to a recent informal snapshot survey conducted by COSLA to capture information on support provided to people with NRPF.

**2. How many children in the UK are undocumented or have an insecure immigration status?**

20. The Scottish Government and local authorities in Scotland do not collect data on the immigration status of people living in Scotland, as this is a reserved matter. We do not have direct access to Home Office data. We are also unable to develop a figure for Scotland due to the lack of consistent data recorded and published by the Home Office to identify people who are not currently within the immigration system or whether they reside in the UK.
21. We understand that a report published by the Mayor of London and Wolverhampton University has estimated that there are around 215,000 undocumented children across

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<sup>5</sup> [Response from Daniel Shaw to Ed Humpherson: Parliamentary question response – Office for Statistics Regulation \(statisticsauthority.gov.uk\)](#)

<sup>6</sup> [Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in Scotland \(azureedge.net\)](#)

the UK<sup>7</sup>. Previous research into the population of undocumented children within the UK<sup>8</sup> was undertaken in 2011 and estimated that there were 120,000 undocumented children. On these calculations we assume the population of undocumented children has likely increased significantly.

22. Data has also been provided from the NRPF Network. This showed the support provided by 66 local authorities across the UK and is included in their joint response to the Committee.
23. We are exploring ways to develop collection of data from local authorities and third sector organisations working in Scotland to improve our understanding of the scale and impact of destitution associated with NRPF and will consider this as part of the delivery of our Ending Destitution Together strategy.

**3. What other financial support from the Government is available for families with NRPF who are facing financial hardship? How effective is this support?**

24. Not all public funds and services are restricted under NRPF. The Immigration and Asylum Act 1999 establishes the application of NRPF and paragraph six of the immigration rules sets out the funds that are classed as public funds for immigration purposes, which includes most forms of social security and local authority housing and homelessness allocations.
25. The UK immigration rules definition of public funds also include “a payment made from a welfare fund under the Welfare Funds (Scotland) Act 2015” which further restricts emergency welfare payments to families in crisis through the Scottish Welfare Fund, a devolved crisis grant administered by local authorities. This limits the effectiveness of this policy as a means to address financial hardship and creates further challenges for tackling poverty in Scotland.
26. There are a number of benefits which have been devolved to the Scottish Government or introduced using new social security powers. Although the Scottish Government can determine eligibility for each of the benefits it administers, the UK Government retains control of the list of restricted public funds for immigration purposes and qualifying benefit requirements can restrict eligibility. As with the Scottish Welfare Fund, the UK Government may add any devolved benefits to the list, restricting access for people subject to NRPF. Where possible, the Scottish Government has worked with the Home Office to ensure access to devolved benefits has been permitted for those restricted by NRPF. The benefits are:
  - The Best Start Grant Pregnancy and Baby Payment. This is one of a range of measures aimed at giving children the best start in life and helps with expenses associated with pregnancy or with having a new child. Home Office confirmation has been received that parents under eighteen with NRPF can apply for the Pregnancy and Baby Payment without it affecting their immigration status. For applicants over the age of 18, the Home Office continues to require people to be in receipt of a qualifying benefit, thus excluding people subject to NRPF who are restricted from accessing a qualifying benefit.
  - The Young Carers Grant provides financial support to young people with caring

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<sup>7</sup> [London's children and young people who are not British citizens: a profile \(london.gov.uk\)](https://www.london.gov.uk/press-releases/major/london-children-young-people-not-british-citizens-profile)

<sup>8</sup> [Undocumented Migrant Children in the UK \(Compas\)](#)

responsibilities. Following a change on 1 April 2020, young carers with NRPF can now access the Young Carers Grant.

27. Scottish local authorities can provide limited forms of financial support to families with children with NRPF, in circumstances where statutory powers and duties are engaged to safeguard the welfare of a child in need (s22 Children Scotland Act 1998). They also have statutory duties to support adults with care needs and former looked after children who qualify for leaving care support until they are 26 years old.
28. Councils are providing an essential safety net to destitute families who are restricted from accessing mainstream benefits. This includes regular financial support to help to meet daily living and housing costs as well as supporting families to access immigration advice and other services and support to safeguard and protect children's welfare. Local authorities can also apply their discretion to provide entitlements to Free School Meals for older children from NRPF households and to funded early learning and childcare placements for two-year-old children.
29. COSLA and the Scottish Government commissioned national guidance in 2019<sup>9</sup> which outlines the circumstances under which these and wider forms of devolved assistance can be provided to people with NRPF. Interpreting the rights and entitlements to support for families with NRPF is challenging for local authorities and can be very time consuming for frontline staff and therefore the Scottish Government has also provided funding to enable COSLA to provide training workshops and to facilitate ongoing support to councils.
30. The costs of providing support to families are high and unsustainable for local authority services and the lack of UK Government funding to meet these is a significant challenge. The financial pressures are particularly acute for Glasgow City Council and City of Edinburgh Council, as both local authorities have higher numbers of families experiencing poverty who have NRPF. They also face significant pressures in terms of meeting the accommodation needs of destitute families with NRPF who are not eligible for local authority housing or homelessness services. The costs are also disproportionately high for smaller local authorities who may have less capacity to co-ordinate this assistance, less access to third sector support and less experienced staff to deal with complex immigration cases.
31. Despite the best efforts of councils and the Scottish Government to ensure that there is available support at a devolved level, the rising levels of need and significant financial implications mean that there remain significant gaps in the provision of statutory support, high ongoing risks of poverty and challenges for devolved services in meeting rising needs alongside wider pressures within communities. There are also hidden needs. For example, because families are often afraid to request local authority support for fear of immigration enforcement action, they may not present to a local authority or public service unless in crisis, or because they do not understand that it may be possible for them to be assisted by local authorities, they may seek to survive through the support of friends, family or the third sector. People with lived experience who participated in engagement to inform the Ending Destitution Together strategy highlighted significant concerns about any perception that they might need support impacting on their long term status in the UK and that this fear can prevent them from seeking support.
32. These challenges contribute to the broader pressure on public services and harm our

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<sup>9</sup> [Migrants Rights and Entitlements to Local Authority Services \(migrationscotland.org.uk\)](https://migrationscotland.org.uk)

efforts to eradicate child poverty. The issues are replicated across the UK. The NRPF Network data for the financial year 2020-21<sup>10</sup>, suggested that supporting all groups with NRPF cost 68 local authorities across the UK £57 million at the end of March 2021. The data also demonstrate that the majority of families (79%) and adults (51%) will exit support due to a grant of leave to remain or change in immigration status granting recourse to public funds, with only a very small proportion of families and adults returning to their country of origin. This evidence raises significant questions about the proportionality and fairness of the NRPF of rules.

33. We are working, through the Ending Destitution Strategy, to strengthen as far as possible the devolved support in Scotland, but this will remain challenging. NRPF rules are a reserved matter and the UK Government continues to control decisions regarding entitlements to social security and housing for people with NRPF, which are two of the most crucial levers for tackling child poverty.

**4. How have families with NRPF benefited from the new support that the Government introduced in response to the pandemic, such as the Coronavirus Job Retention Scheme and the COVID Local Support Grant?**

34. Most of the support provided to help people protect themselves and comply with public health restrictions was delivered through existing welfare distribution mechanisms, including Universal Credit and the Scottish Welfare Fund, which are inaccessible for people subject to NRPF. However, because of the public health emergency, it has been possible for the Scottish Government and local authorities to directly fund the provision of support and services to reduce public health risks. The Scottish Welfare Fund provided an existing route to support quick distribution of grants to people in need, but its inclusion on the restricted public funds list prevented it being used to support everyone in Scotland. Instead, alternative means of supporting people subject to NRPF had to be identified.

35. The Scottish Government and local authorities responded quickly to provide accommodation and support to everyone who needed it during the Covid-19 pandemic. On 18 March 2020, a £350 million Communities funding package was announced. This has been used to provide resources to local authorities, third sector organisations and community groups so that they can support those most affected by the pandemic and enable swift response according to local need. Some of this funding bolstered the Scottish Welfare Fund, which is restricted under the UK Government's NRPF policy. However, the new funding routes supported by this resource were not restricted and enabled Scottish Government partners and funding recipients to support people based on their needs and not their status. This included over £500,000 Immediate Priorities funding to organisations supporting people subject to NRPF to meet their essential needs.<sup>11</sup>

36. The Scottish Government was able to fund services, provided they did not relate to the reserved matter of immigration, including making over £1.5 million available to enable third sector organisations to acquire emergency hotel accommodation for people experiencing, or at risk of experiencing, homelessness. This provision was on the basis of public health requirements, both for the individual who would be at risk of contracting Covid-19 and the general need to reduce the spread of the virus in the community.

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<sup>10</sup> [NRPF Connect Data Report 2020-21 \(NRPF Network\)](#)

<sup>11</sup> [Funding to prevent destitution during Covid-19 - gov.scot \(www.gov.scot\)](#)

Where possible, Covid-19 support was extended on the same basis to people subject to NRPF, including through the Social Isolation Support Grants for those asked to self-isolate by Test and Protect, and Winter Hardship Payments to families in receipt of free school meals.

37. The Scottish Parliament's Local Government and Communities Committee undertook work to scrutinise the actions of the Scottish Government in its response to the Covid-19 public health emergency, including support for local authorities and the third sector, during the last Parliament. Papers and evidence are published on the Scottish Parliament website, including a letter from then Cabinet Secretary for Communities and Local Government of 23 September 2020 setting out in detail how the £350 million Communities funding package was being utilised.<sup>12</sup> It also includes evidence gathered from local authorities in August 2020, detailing the support that was provided during the pandemic and the impacts on people with NRPF.<sup>13</sup>
38. In June 2020, the Social Renewal Advisory Board was created to build on shifts in policy and practice which had taken place as part of Scotland's response to Covid-19 and consider how reducing poverty and disadvantage, embedding human rights based approaches and advancing equality could progress as Scotland emerges from the pandemic. The Board's independent report, *If Not Now, When?* was published in January 2021.<sup>14</sup>
39. At the start of the public health crisis, COSLA produced a Covid-19 specific framework<sup>15</sup> which outlined measures local authorities could lawfully take to assist people in need during the pandemic, under existing statutory duties and through emergency Coronavirus legislation and Public Health legislation at a devolved level. This framework built on the guidance already available for local authorities and outlined additional measures that may need to be taken to assist during the pandemic, including consideration of increased payment levels to meet the increased costs of living and education related costs for families with school age children. The guidance also outlined the need to include children with NRPF within policies to provide free school meals during this period.
40. The framework additionally outlined the range of UK Government support that can be accessible to people with NRPF to ensure local authorities could play a role in raising awareness of individuals rights and entitlements. COSLA's survey of local authorities highlighted that this framework was successful in strengthening the assistance that local authorities put in place, although we do not have information that enables us to evaluate the success of UK Government measures such as the Coronavirus Job Retention Scheme.
41. In terms of the local support provided at a devolved level, the survey showed that during the pandemic councils in Scotland have attempted to find ways to open up emergency support to people with NRPF and provided a range of local welfare support to communities regardless of people's immigration status or country of origin. Additional support was also provided as needed for families with children. City of Edinburgh Council, for example, assessed the extra stresses on families with NRPF through weekly phone contact with families; translating information about coronavirus and self-isolation

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<sup>12</sup> [COVID-19 - Parliamentary Business : Scottish Parliament – Scottish Government](#)

<sup>13</sup> [COVID-19 – Parliamentary Business: Scottish Parliament - COSLA](#)

<sup>14</sup> [If not now, when? - Social Renewal Advisory Board report: January 2021 - gov.scot \(www.gov.scot\)](#)

<sup>15</sup> [Covid-19 Framework: Local Authority Support for People with NRPF](#)

support where possible; and sharing with families other information about how to keep safe. Social Work services put in place access to food parcels and weekly payments of financial support were increased in recognition that families are not receiving free school meals. Risks of face-to-face contact were reduced by weekly payments and emergency money being given via Paypoint, whereby families can receive a code to their phone and access money in shops and supermarkets that provide this service. In circumstances where a family did not have a phone, these were provided to families to receive financial support and also improve communication. Mobile apps were used to aid communication.

42. COSLA officers also established an NRPf Consortium which brought together multiagency partners to monitor the communities' needs during the pandemic. Through these meetings, we were able to identify emerging risks to migrants with insecure immigration status and better inform our responses. Consortium members raised a number of suggestions for how national and local government could build on our response to Covid-19.
43. To support people at risk of financial hardship when required to self-isolate, the Scottish Government established the Social Isolation Support Grant (SISG)<sup>16</sup> for people on a low income who need to self-isolate and would experience reduced earnings as a result. The SISG was administered by local authorities on behalf of the Scottish Government using existing statutory provisions in the Welfare Funds (Scotland) Regulations 2016 and therefore restricted under NRPf. COSLA and the Scottish Government worked together to ensure an equivalent discretionary grant was accessible for people subject to NRPf, administered using statutory provisions in the Public Health (Scotland) Act 2008. Councils and local partners have indicated that there has been some confusion and a lack of awareness that the support was available for those with NRPf, and that the grant requires additional resources locally to administer support and also to make sure there is awareness of what assistance is available. However, there was consensus that this was a positive outcome, enabling an important public health and poverty mitigation measure to reach everyone who requires it.
44. Scottish Government and COSLA both called on the Government to suspend NRPf during the pandemic, as did local authorities across the UK<sup>17</sup>, to enable us to fully support those within the community facing destitution to access all of the support that is available, and to protect public health.

**5. The Government has extended eligibility for free school meals to some categories of children with NRPf on a temporary basis. What has been the impact of this policy?**

45. In Scotland, free school meals are available on a universal basis to children during their first four years of Primary School, with universal provision being expanded to include Primary 5 from January 2022. Free school meals are available to older pupils where their families are in receipt of qualifying benefits, although local authorities also have the flexibility to make discretionary offers to families who do not meet the regular eligibility criteria, including for children from families subject to NRPf.
46. The pandemic exposed the need for food security measures to be provided to children in low-income households regardless of their parent's immigration status, alongside the importance of being clear on access and entitlements to services provided by local

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<sup>16</sup> [Self-Isolation Support Grant \(£500\) - mygov.scot](https://www.mygov.scot/self-isolation-support-grant)

<sup>17</sup> [Local Government Association written evidence, May 2020](#)

partners. Our view is that low-income families with NRPF should be able to access the same range measures in place to tackle poverty that are available for other children and families in Scotland.

47. In November 2020, Scottish Ministers announced a Covid Winter Hardship Payment of £100 to be paid for children receiving free school meals on the basis of low income – this includes children and young people receiving support based on local discretion, such as those from households subject to NRPF. This has been further bolstered by the announcement of Scottish Child Payment Bridging Payments of £520 in both 2021 and 2022. Whilst this support is available for school age children, levels of household income for those with NRPF can often be so low that this would not be enough to mitigate deprivation of itself.

**6. What role do other bodies, such as local authorities and third sector organisations, play in supporting children with NRPF?**

48. In addition to support outlined in response to questions 3 and 4, relating to the crucial role of local authorities in providing support, there is also a vital role for other organisations and the third sector in supporting children with NRPF.

49. Charities can provide support to people with NRPF because their services are not restricted public funds and many provide vital services and safety nets to mitigate the impact of NRPF rules. We know that charities in Scotland have provided emergency food to families who remain at risk of hunger because of NRPF rules and targeted crisis grants to families who are typically ineligible for the welfare fund and may not be in receipt of statutory support from the local authority.

50. In November 2020, as part of the Scottish Government's Winter Plan for Social Protection, funding was provided to British Red Cross to top-up their existing Hardship Fund and meet pandemic pressure. As part of the Ending Destitution Together strategy, the Scottish Government is continuing to fund British Red Cross for a further year. The Hardship Fund project operates inclusively, distributing cash grants to support people in vulnerable positions facing destitution, including those who have NRPF and people facing difficulty accessing public funds, through the British Red Cross Scottish Crisis Fund. The Hardship Fund project also supports a community of practice, involving advocacy and support organisations, and will capture data to improve our understanding of where and why destitution is occurring to help inform our long term approach.

51. There is a significant network of support provided to families within the asylum system in Glasgow. Some third sector organisations and community projects focus on providing additional support to families with children experiencing poverty and surviving on low levels of asylum support.

52. Access to healthcare and confidence to engage with health services is important. There is a role for the NHS and community-based health practices for supporting people with NRPF to access primary health care, to understand their rights, support them to take up the Covid-19 vaccination programme, and to understand the changing public health restrictions. We are concerned that reluctance to access public services, including healthcare, because of fear of immigration enforcement action can prevent people receiving the support and care that they need. NHS Scotland does not pass patient details to the Home Office for the purpose of immigration enforcement. NHS Inform provides information on accessing healthcare in Scotland for people who have come to

the UK from overseas, including overseas visitors<sup>18</sup>, who are likely to be subject to NRPF as part of their visa conditions, and people seeking asylum<sup>19</sup>.

53. Local authorities and third sector organisations also provide specialist support for women and children experiencing domestic abuse, including support provided through refuges. Where a woman and her children are reliant on the perpetrator of abuse for their immigration status in the UK, NRPF restrictions can increase the risk that they remain in or return to abusive or exploitative relationships. Charities and councils have to find ways to meet the costs of providing accommodation and meeting essential living costs for women with NRPF, but the lack of clarity around their entitlements and absence of UK government funding means there are gaps in access to services. Refuge spaces often rely on housing benefit to cover the cost of provision and can therefore be inaccessible for people subject to NRPF.
54. There is a Domestic Violence Concession which enables people who are in the UK on a partner visa to claim public funds, while applying to settle in the UK, following the breakdown of their relationship due to domestic violence. However, the concession does not extend to people whose partner has limited leave and should be available to anyone who is in the UK as a dependant on someone else's visa or protection status, regardless of the timescales of that status. The concession should also be available for people who have status in their own right in the UK and experience domestic abuse.
55. COSLA and Scottish Government's updated Ending Homelessness Together Action Plan committed to develop and implement human rights-based accommodation pathways for women and children with NRPF who are experiencing domestic abuse. This work will build on the specific recommendation in the Improving Housing Outcomes for Women and Children Experiencing Domestic Abuse report and will be progressed by the Implementation and Monitoring Group set up to oversee the implementation of all the report's recommendations.
56. Another important area is the provision of immigration and legal casework, advocacy and advice. The complexity of the UK asylum and immigration systems can make it challenging to navigate. The solution for many people subject to NRPF is to get good quality legal advice and representation. During development of the Ending Destitution Together strategy, people with lived experience raised concerns about the capacity and availability of qualified legal professionals, people's awareness of how to access legal advice, and the benefits of trusted advocacy to support people to engage while also helping with essential needs like food insecurity and accommodation. The Scottish Government has taken steps to increase provision, for example funding OISC accredited case work support, including to assist EEA national families and Looked After Children to secure Settled Status and to support families with NRPF who are supported by local authorities.

## **7. What impact has the pandemic had on these organisations' capacity to support children with NRPF?**

57. Public services and third sector organisations have had to manage rising demand for and pressure on their services in addition to staff shortages as people require to self-isolate and the need to deliver support in a Covid-safe environments. The Accounts Commission's Local Government Overview report for 2021<sup>20</sup> provides evidence of the

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<sup>18</sup> [Healthcare for those coming from overseas - Health rights | NHS inform](#)

<sup>19</sup> [Healthcare for refugees and asylum seekers - Health rights | NHS inform](#)

disruptive impact on the public sector and communities. Whilst highlighting the positive ways in which local government and communities came together to support communities, assisted by Scottish Government funding, it concludes that councils continue to face significant financial challenges, and these have been exacerbated by the pandemic.

The report specifically found that services such as education, social care and culture and leisure were badly affected. These are services that families with NRPF often rely on most heavily as these are not restricted by NRPF rules. The report shows that other core services also continued on a reduced basis. COSLA has estimated that the total net financial impact of Covid-19 in 2020/21 was £767 million. This includes forecast financial pressures of £855 million, with loss of income accounting for around £400 million of this total. The financial pressures have been offset slightly by estimated cost reductions of £88 million from a range of areas such as lower property costs and reduced school meal costs.

58. COSLA also undertook a snapshot survey in August 2021 of support provided by Scottish local authorities to people with NRPF. This indicated that the pandemic made it practically difficult to provide support to families with NRPF, as many services came under rising pressure from demands from across the wider community, staff shortages and the need for services to change the way in which they delivered support. For example, operating a remote service created significant difficulties when working with families. Local authorities and charities quickly changed the way they operated; for example some local authorities provided mobile payments instead of cash to NRPF families and increased the amount that was provided to take account of the changing cost of living.
59. There was a general rising demand on social services as a result of the pandemic including issues related to domestic abuse, mental health, poverty and substance misuse, which were the most common reasons for children and families needing help from children's social care. This meant the financial pressure on local authority support increased. Loss of employment has also placed families with NRPF into poverty and destitution who would previously have had a reliable income. This has increasingly become an issue for EEA nationals who have not yet secured Settled Status and are now subject to NRPF rules, as well as families with children who have Pre-Settled Status and face restricted eligibility for benefits.
60. These pressures continue as we move into the recovery stage and the ability for local authorities to provide effective support for destitute families with NRPF needs to be placed in the context of current pressures on children's services in addition to pressures on temporary housing as a result of having to provide accommodation and support to adults with NRPF who are at risk of rough sleeping.
- 8. People with leave to remain on family or human rights grounds can apply to have the NRPF condition lifted in some circumstances. How effective has this measure been at preventing families from falling into serious hardship?**
61. It is very challenging for local authorities to identify people at risk of destitution with NRPF. Applying to have the NRPF condition lifted is typically drawn upon to help to resolve and alleviate hardship at the point of destitution; it is therefore not effective in our view as a measure to prevent hardship.

62. The Committee will be aware of recent legal challenges which have seen some minor changes to the eligibility to apply to have the NRPF condition lifted, allowing for imminent risk of destitution rather than requiring people to be destitute before they can apply. However, eligibility remains restricted to leave on the British National (Overseas) visa or granted on the basis of family or private life, in which case it requires people to be on the 10 year route to settlement or otherwise accept that they will be considered to have moved to the 10 year route if their application to have NRPF lifted is successful while on the 5 year route.<sup>21</sup>
63. During engagement to inform Ending Destitution Together serious concerns were raised by legal professionals and support organisations that people need to reapply to have the NRPF condition lifted each time they need to renew their status and that if they no longer need support and wish to return to the five-year route, which is subject to NRPF, then none of the time previously accumulated will count toward a new five year period. People who intend to remain in the UK permanently, particularly those with British children, may therefore be eligible to apply to have the NRPF condition lifted but there are significant disincentives, presuming that people are aware that they can apply in the first place.
64. Local authorities in Scotland are concerned that families have to rely on social work assistance whilst they wait for their immigration status issues to be resolved and for the Home Office to process the applications – both those to lift NRPF conditions and other immigration status change applications e.g. settlement applications. In some cases, local authorities report that the process can be swift and straightforward but in others there are delays creating ongoing hardship for children and costs for councils. Local authorities are not provided with resources from the UK Government in order to undertake outreach work or to support the process of applying for changes of immigration status.
65. Additionally, the change of conditions process is not an option for all families who have leave to remain with NRPF, such as people with a UK Ancestry visa, leaving some families without the opportunity to gain access to benefits in this way if they lose their income or employment. When such families qualify for local authority support, their need for this could be open-ended.
66. This process also does not resolve issues relating to destitution for EEA national families who have Pre-Settled Status depending on their family circumstances. While EEA nationals with pre-settled status can apply for public funds, some will currently not meet the habitual residence test. Guidance and policy should be changed so that people who have pre-settled status should automatically meet the habitual residence test.
67. This leaves local authorities with a growing number of families with children experiencing poverty or destitution who require local authority support and are unable to easily resolve their destitution either through employment or through demonstrating eligibility for Settled Status.
68. Our view is that families with children should not be subject to NRPF restrictions. However, to make this current measure more effective, the UK Government should provide information to families with NRPF conditions advising them of their rights to apply to lift this condition and also provide resources for outreach, casework and advice support to resolve any immigration status issues as quickly as possible.

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<sup>21</sup> [Application for change of conditions of leave to allow access to public funds if your circumstances change - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change)

## **Conclusion**

NRPF rules are creating severe poverty and destitution for children living in low-income families. Our Ending Destitution Together Strategy aims to improve support but recognises that immigration, including NRPF policy, is reserved and outlines Scottish Government and COSLA's joint position on changes that are required at UK policy level to help prevent destitution and enable people to find a route out.<sup>22</sup>

*October 2021*

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<sup>22</sup> [Ending destitution together: strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/ending-destitution-together-strategy)