

No Recourse to Public Funds (NRPF)

Supporting NRPF Families, and Understanding their Legal Rights

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JustRight Scotland

Scotland's Legal Centre for Justice and Human Rights

Our vision: Collaborative Social Justice

- We use the law to **defend** and **extend** people's rights
- Create collaborative projects – with legal and non-legal partner organisations – that cross disciplines, sectors and borders to pool expertise and resources to meet those gaps

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NRPF training



1. Legal framework governing UK Immigration law
2. Definition of NRPF and when this applies
3. Social work support to NRPF families: the exclusion and human rights assessments



Legal Framework

International

- UN Convention on the Rights of the Child (UNCRC)
- Refugee Convention 1951
- European Convention on Human Rights (ECHR)
- CoE Trafficking Convention & EU Trafficking Directive

UK Law

- Immigration Acts and Rules
- UKVI guidance and policy

Scots Law

- Children (Scotland) Act 1995
- Social Work (Scotland) Act 1968



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UK Legislation - Migration

Subject to
Immigration Control

Immigration
Act 1971 &
Immigration
Rules

British Nationals

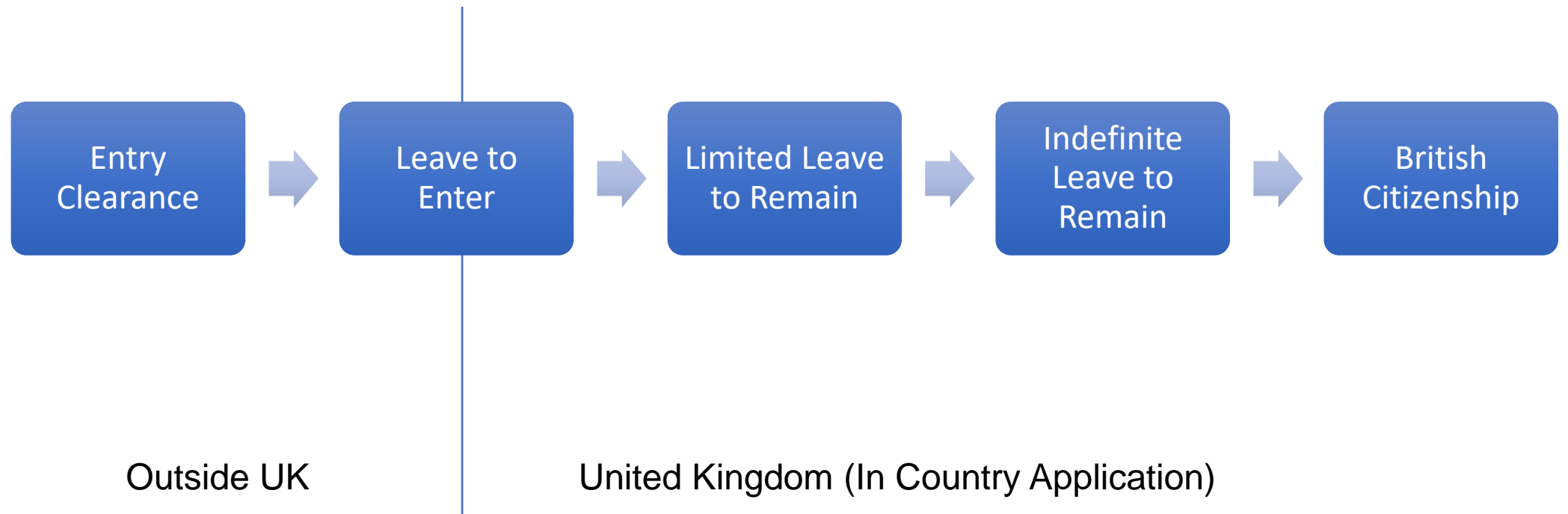
British
Nationality
Act 1981

UK Legislation

- Immigration Act 1971, Section 1: **anyone not having the right of abode in the UK is subject to immigration control** and can only live, work and settle in the UK by permission
- British citizens have the right of abode (British Nationality Act 1981)
- EEA nationals are no longer exempt from immigration control (European Union (Withdrawal Agreement) Act 2020)



Process Map of Immigration Control



Immigration Status

- Permission to live and work in the UK is called **leave to remain** and is subject to conditions:-
 - Limited or indefinite
 - No recourse to public funds (NRPF)
 - Conditions of study, work or residence
 - Dependency on primary leave holder's status



No Recourse to Public Funds

NRPF is a condition imposed on someone due to their immigration status. Section 115 Immigration and Asylum Act 1999 states that a person will have 'no recourse to public funds' if they are 'subject to immigration control'.

Subject to Immigration Control if:	For Example:
Leave to remain in UK with specific condition of NRPF	Spouse visa, student visa, limited leave granted under family or private life rules
Leave to remain in UK that is subject to a maintenance undertaking	ILR as the adult dependent relative of a person with settled status (5 year prohibition)
No leave to enter or remain when the person is required to have this	Visa overstayers, ARE asylum seekers

Source: NRPF Network <https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/immigration-status-and-entitlements/who-has-no-recourse-to-public-funds-nrpf>

No Recourse to Public Funds

- What does 'Public Funds' mean?
 - Everything on the exhaustive list at section 115 Immigration and Asylum Act 1999 and paragraph 6 of the Immigration Rules

attendance allowance
child tax credit
DLA
housing benefit
income support
social fund payment
working tax credit

carers allowance
council tax benefit
discretionary welfare payments
income-based JSA
personal independence payment
state pension credit

child benefit
council tax reduction
housing & homeless assistance
income related ESA
severe disablement allowance
universal credit

IF IT'S NOT ON THIS LIST THEN IT'S NOT "PUBLIC FUNDS"!

See here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1013601/public-funds-v18.pdf

NRPF: EEA nationals



- Since Brexit, they are now ‘subject to immigration control’
- EEA nationals & their family members who have **settled status** will be eligible for public funds if they are habitually resident in the UK (the UK is their home and they plan to stay)
- EEA nationals & their family members who have **pre-settled status** will need to show they have the right to reside in order to be eligible for public funds (worker, self-employed, permanent resident)

What does this mean for local authorities?

- NRPF = immigration condition restricting access to benefits & social housing
- Social services' support is not a 'public fund'
- Social services duties to adults and children in need, and young people leaving care, may include providing housing & financial support
- Social services support = safety net to alleviate destitution

Providing Support to NRPF persons

- Assistance can be provided to:

Families with children

S.22 Children (Scotland) Act 1995

Child in Need Assessment

Formerly looked after young people

S.29 Children (Scotland) Act 1995

Needs Assessment (beyond 19)

Adults with illness or disability

Social Work (Scotland) Act 1968

Needs Assessment

Schedule 3: “The Exclusion”

- **Schedule 3 of the Nationality, Immigration & Asylum Act 2002** creates 4 excluded groups from social work support (includes their dependents):
 1. People who are unlawfully present in the UK
 2. People with refugee status that has been granted by an EEA country
 3. Refused asylum seekers who have failed to comply with removal directions
 4. Refused asylum seeking families that the Home Office has issued with certification confirming that they have failed to take steps to leave the UK voluntarily

N.B: The exclusion does not apply to people with valid leave to remain who have a NRPF condition attached to their leave

Schedule 3: “The Exclusion”

- This means that social services can only provide housing and financial support when this is necessary to prevent a **breach of the person or family's human rights** or rights under the European treaties (Sched 3, para 3).
- When the exclusion applies, social services will need to carry out a **human rights assessment** as well as a **needs assessment** to establish whether help can be given.



What does the exclusion mean in practice?

Establish nationality and immigration status
Is adult/ parent/ care leaver (18+) in an excluded group?

Yes

No

- Human rights assessment:
- Legal/practical barrier to return e.g. pending application?
 - Would return give rise to a breach of human rights?

Yes

Needs Assessment:
Provide support - eligible under Children (Scotland) Act 1995 and/or Social Work (Scotland) Act 1968

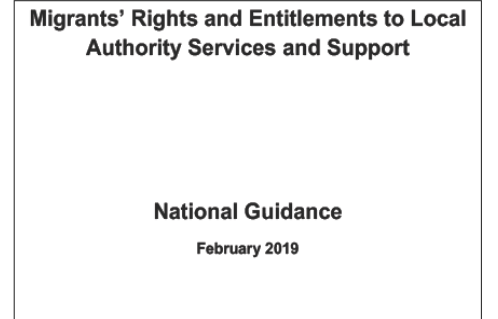
No

Advise about return options

The exclusion does not prevent the local authority from undertaking a child in need / needs assessment or meeting urgent need

Human Rights Assessments

- As assessment to determine whether the refusal of support would violate **Article 8 ECHR** (right to respect for family life) or **Article 3 ECHR** (prohibition of ill-treatment)
- ***R (Limbuella) v Secretary of State (2004)*** - a decision that would result in a person sleeping rough or being without shelter or funds, will usually be considered inhuman or degrading treatment



Human Rights Assessments

- COSLA guidance -
<http://www.migrationscotland.org.uk/migrants-rights-entitlements/social-services%E2%80%99-support-%E2%80%93-exclusion/7-4-human-rights-assessment>
- NRPF Network Guidance -
<http://guidance.nrpfnetwork.org.uk/reader/practice-guidance-adults/assessments-when-the-exclusion-applies/>

Contact Us



- Second Tier Advice Line: Wednesdays, 2-4pm-
0141 406 5353
- Referral form:
<https://www.justrightscotland.org.uk/need-help/make-a-referral/>

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Thank You!

