Treatment of Asylum Seekers

Joint Committee on Human Rights
UK Parliament

Memoranda of evidence submitted by: Scottish Refugee Council

September 2006
**About the inquiry**

The Joint Committee on Human Rights (JCHR) is conducting an inquiry into the human rights issues raised by the treatment of asylum seekers in the UK. The inquiry will consider any significant human rights concerns relating to the conditions of life for asylum seekers and failed asylum seekers in the UK, focusing in particular on those relating to: access to accommodation and financial support; the provision of healthcare; the treatment of children; the use of detention and conditions of detention and methods of removal of failed asylum seekers; and the treatment of the media.

**About Scottish Refugee Council**

Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues. We are also an active member of the European Council on Refugees and Exiles (ECRE), a network of over 80 refugee-assisting organisations across Europe.

1. Introduction

1.1 Scottish Refugee Council continues to be deeply concerned by many aspects of Government legislation and policy with regard to the treatment of asylum seekers and people who have been refused asylum in the UK and we welcome the Committee’s inquiry into this area. In particular we are concerned by the increasing use of Government policies and legislation whose aims are to:

- use the removal of welfare support as a coercive tool to ensure compliance with immigration control;\(^1\)
- be seen by the general public to be acting tough on asylum seekers;\(^2\) and
- act as a deterrent for asylum seekers to register an asylum claim in the UK.

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\(^1\) Such as Section 9 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 which removes financial support of asylum seekers with dependent children who have reached the end of the asylum process and fail to arrange to leave the country or fail to comply with removal directions.

\(^2\) Such as the restrictive conditions attached to Section 4 of the Immigration and Asylum Act 1999 the only support available to asylum seekers who have been refused protection but who cannot return to their country of origin through no fault of their own.

\(^3\) Such as Section 10 of the Section 10 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 which gives power to the Secretary of State to require those who receive section 4 support to take part in ‘community activities’. The Government believes that refused asylum seekers will be able to “give something back to the community” and “occupy themselves purposefully in a manner which is beneficial to the public” by carrying out community work in return for their board and lodging.
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We believe that in many cases the treatment of asylum seekers in these areas and others may potentially breach the European Convention on Human Rights (ECHR) and other international human rights instruments.

1.2 Whilst we welcome the focus that the inquiry places on examining the treatment of asylum seekers in the UK, we would suggest that acknowledgement is made in the inquiry to the increasing methods of border controls used by the UK Government to restrict the fundamental human right to seek sanctuary in a safe country. Despite the Government’s recent assertion that it is committed to providing sanctuary to refugees fleeing persecution, we are worried that increased immigration control methods to strengthen the UK’s borders are undermining the fundamental human right enshrined in Article 14 of the Universal Declaration of Human Rights and the 1951 UN Convention on Refugees by denying access to those fleeing persecution. Increased immigration controls such as juxtaposed controls, visa requirements, airline liaison officers, carriers’ sanctions and new technologies to detect migrants in transit do not make a distinction between those fleeing persecution and other migrants seeking to come to the UK for other purposes. Thus, we are deeply concerned that these controls are restricting the fundamental right to asylum and thus have an impact on how the UK Government treats asylum seekers.

1.3 As a member of the Asylum Support Programme Inter-Agency Partnership (IAP), Scottish Refugee Council fully endorses the issues raised around accommodation and financial support to asylum seekers and refused asylum seekers made by the Partnership and the evidence submitted in their response.

1.4 As a member of the Asylum Positive Images network in Scotland, we also support the evidence in the submission made by Oxfam UK’s Poverty Programme on the treatment of asylum seekers by the media.

1.5 This submission focuses on areas where legislation and UK Government policies impact on the treatment of asylum seekers in Scotland in terms of differing practice and devolved arrangements in Scotland.

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4 “While making the rules strict and workable, we will make sure we don’t slam the door on those genuine refugees fleeing death and persecution.”, Tony Blair, Controlling our borders: making immigration work for the UK, February 2005

2 The treatment of asylum-seeking children in Scotland

2.1 The UN Convention on the Rights of the Child

2.1.1 Article 226 of the UN Convention on the Rights of the Child (UNCRC) guarantees the protection of children seeking asylum. In general, the rights protected by the Convention should apply to all children. The UK has however entered a general reservation to the UNCRC as regards the entry, stay in and departure from the UK of children who are subject to immigration control.

2.1.2 Scottish Refugee Council is extremely concerned by the UK Government’s insistence on maintaining such a reservation to the UNCRC. We are concerned that this has been too widely interpreted by the Government and the impact of the reservation extends beyond the determination of refugee status, and leaves asylum-seeking children and refugee children with less protection in terms of their rights under the UNCRC. We support both the UN Committee on the Rights of the Child’s call for this reservation to be withdrawn and we would ask the Committee to reiterate its previous recommendations that the UK Government withdraw its reservation.

2.2 Destitution of asylum-seeking children: Section 9

2.2.1 Section 9 of the Nationality, Immigration & Asylum Act 2004 extends provisions under the Nationality, Immigration and Asylum Act 2002 to create the category of, “failed asylum seeker with family”, who cease to be eligible for any form of support. Under the Act, families who are deemed to have “failed without reasonable excuse to take reasonable steps to leave the UK voluntarily” have no recourse to financial and other assistance. Children of families in Scotland remain eligible for support under the Children (Scotland) Act 1995, but only if separated from their families and being looked after by local authorities. Support to the whole family can only be provided if there is felt to be a potential breach of the ECHR.

2.2.2 Whilst Section 9 has not been implemented in Scotland nor was Scotland included in the pilot, Scottish Refugee Council caseworkers have already witnessed the fear, panic and confusion that this policy evokes. In July NASS 72 letters, the first step in the Section 9 process, were sent to clients in Glasgow informing them that support to them

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6 States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

7 Concluding observations of the Committee on the Rights of the Child: CRC/C/15/Add.34. 1995

8 Section 9 (1)

9 Section 9 (1) (b) (i)
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and their families would stop.  
This is despite the fact that many had on-going cases.

2.2.3 Scottish Refugee Council has grave concerns about the impact that Section 9 would have in Scotland where a high number of asylum-seeking families are housed in one local authority compared to other dispersal areas in the UK. We believe that this policy is exceptionally damaging to the welfare of children and potentially in breach of Articles 3 and 8 of the European Convention on Human Rights. Moreover, on a practical level, we believe that there is very little realistic possibility of introducing such a policy due to capacity of Children’s Services in Glasgow. Both of these concerns have been raised by Kathleen Marshall, Scotland’s Commissioner for Children & Young People:

2.2.4 … there must be serious concerns about the human rights impact of such a response, as well as its basic practicality. There would simply not be enough “looked after” places to accommodate any more children, least of all those with caring families whose need is based purely on material considerations. Nor should policy-makers underestimate the impact that the possibility of such action might have on the mental well-being of families and children. I have been told anecdotally about children “whispering in the playgrounds” about the possibility of being removed from their parents in these circumstances. I cannot evidence this, but it rings true. We must surely avoid strategies likely to instill such fear in the hearts of innocent children.

2.2.5 Criticism of Section 9 and its potential human rights breaches have come from many other quarters, including: NGOs, the Home Affairs Select Committee, The House of Lords and the Joint Committee on Human Rights itself.

2.2.6 Provision for withdrawing Section 9 from statute was included under Section 44 of the Immigration, Asylum and Nationality Act 2006. Scottish Refugee Council would strongly urge the Committee to recommend in its inquiry that Section 44 is enacted.

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10 Between July 2005 and October 2005 Scottish Refugee Council Casework Services provided advice to 43 clients and their families in relation to NASS 72 letters.
11 Some families had judicially reviewed the decisions to reject their claims, others had lodged fresh claims. We do not have exact statistics on this, but it is estimated that around a quarter of families had some aspect of their claim ongoing.
15 JCHR, fifth report, session 2003-2004, para 45
16 The Secretary of State may by order provide for paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (failed asylum seeker with family: withdrawal of support) to cease to have effect.
2.3 Destitution of asylum-seeking families: bureaucratic routes

2.3.1 Despite Section 9 not being implemented at this stage, Scottish Refugee Council is extremely concerned by the destitution experienced by children caused by bureaucratic errors and delays in administering financial support to asylum-seeking families.

2.3.2 Case study 1 gives one example from our recent casework of where children were subjected to destitution due to administrative delays in issuing support by NASS.

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Case study 1
A 41-year old single mother of 5 children approached Scottish Refugee Council for advice regarding a NASS support issue. She lost her ARC card on June 25 2006 and she was subsequently unable to collect her weekly NASS payment from the Post Office. NASS was informed about the issue the following day and the client was provided with emergency support until 28 August 2006. No ARC replacement was issued by that date and NASS failed to provide additional Emergency Support Tokens from 28 August until 12 September 2006 despite many contacts (telephone calls, faxes) about the issue. This caused a lot of stress to client and her children as they had to come to Scottish Refugee Council and Social Work Services for assistance with the matter on numerous occasions. Social Work Services were reluctant to give interim support to the family despite their obligations under the Children (Scotland) Act 1995. There is still a risk of not getting her NASS support payment on time as the issue of ARC card replacement is yet to be resolved.

2.3.3 Scottish Refugee Council recently published research into the destitution of asylum seekers and refugees in Scotland\(^{17}\). This research disturbingly revealed that there were at least 24 asylum-seeking children from 16 families affected by absolute poverty living in Glasgow during February 2006. Seven of those families (a total of 10 children) had been destitute for longer than six months. Eight of the families who were recorded within the survey were destitute because they are at the end of the process. Three of those families had applied for Section 4 support but had become destitute while they waited for it to start. That means that a total of four children were destitute in Glasgow during February 2006 because of an administrative delay on the part of NASS.

2.3.4 A further four families were also at the end of the asylum process but were not receiving Section 4 support either because they did not meet the criteria for the support or were unwilling to apply. Such families should continue to receive NASS support until they leave the country. However, this is often not the case either because a child has been born after the parents received their final refusal on their asylum case, or because they failed to register their child on their asylum claim, or because a

\(^{17}\) They Think We Are Nothing, A Survey of Destitute Asylum Seekers and Refugees in Scotland, Mhoraig Green, Scottish Refugee Council, August 2006. [http://www.scottishrefugeecouncil.org.uk/pub/Destitution_Research](http://www.scottishrefugeecouncil.org.uk/pub/Destitution_Research)

Scottish Refugee Council, 5 Cadogan Square, (170 Blythswood Court), Glasgow G2 7PH  
Tel: 0141 248 9799  Fax: 0141 243 2499  www.scottishrefugeecouncil.org.uk
dependent child had arrived in the country after asylum claim had failed. In these cases Social Work Services are obliged to provide support for the children under Section 22 of the Children Scotland Act 1995, but in practice whether they also provide support to the parents varies depending on which social work team is responsible for the area the family live within.

2.3.5 Two families were destitute and potentially homeless because their NASS support had been terminated because of a breach of conditions (for example, being caught working or allowing destitute asylum seekers to share their accommodation). This is despite the fact that families with children whose NASS support had been terminated for this reason should be supported by Local Authorities under Section 22 of the Children Scotland Act 1995.

2.3.6 We are very concerned that the human rights of these children are being breached and we would urge the Committee to recommend to the Government that:

- All families should continue to be supported while they remain in the UK, regardless of whether the children were born after their parents became fully refused asylum seekers;
- Families should not be forced to become dependent on the charitable support of organisations and other asylum seekers as the only route out of their destitution; and
- The role and responsibility of local authorities in Scotland for supporting destitute asylum-seeking families should be clarified to ensure that children are not made destitute.

2.4 Enforced removal of asylum-seeking children

2.4.1 There has been considerable, much-publicised, concern in Scotland around early morning enforced removals involving children. NGOs, churches, local communities, The Children’s Commissioner for Scotland\(^{18}\) and many others have all expressed grave concern at the way in which such removals are conducted, the disproportionate use of force by immigration enforcement officers and the impact that such removals has on the mental and physical well-being of children.

2.4.2 Such practices have also been criticised by Ministers of the Scottish Parliament and the First Minister Jack McConnell. On 21 September in a Scottish Parliamentary motion Peter Peacock, The Scottish Education Minister expressed the Scottish Executive’s concern for the welfare of children who are subject to enforced removals:

2.4.3 [the Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognises that, while the Scottish Executive has no direct responsibility for the operation of the immigration and asylum system, it is responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC;

\(^{18}\) For example: [http://news.bbc.co.uk/1/hi/scotland/4293600.stm](http://news.bbc.co.uk/1/hi/scotland/4293600.stm)
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...commends the substantial work done in Scotland to ensure the effective education and inclusion of the children of asylum seekers; believes that, in the vast majority of cases, failed asylum seeker families do not pose either a security threat or a serious risk of flight; calls on Scottish ministers to give the greatest possible urgency to realising their aspirations for the most vulnerable children in Scotland, including those facing detention and removal, and urges them to continue discussions with the Home Office with a view to agreement that the Home Office will work closely with services for children and young people before the removal of any family and to convey to the Home Office the widespread concerns about practices such as so-called “dawn raids”, handcuffing of children, and the removal of children by large groups of officers in uniform and body armour. 19

2.4.4 Article 8 of the ECHR states that family privacy should be respected. Any intrusion has to be clearly justified on grounds that it is proportionate and has a legitimate end. Article 3 of the UNCRC also states that the best interests of the child must be at least a primary consideration on any matter affecting her. Article 12 states that the child should have the right to have a say about decisions that affect her and have their opinion heard. We contest that current practices of enforced removal in Scotland may not be compliant with these Articles.

2.4.5 We believe that very little attention is paid to ensuring that child protection issues and the best interests of the child concerned are central to the process of removal. Whilst the guidance to enforcement staff stipulates that pastoral visits should be undertaken prior to removals taking place, we are deeply concerned that when they do take place in many cases these are perfunctorily carried out as intelligence gathering exercises to ascertain the best time for immigration officers to effect removal, rather than to ensure that children’s needs are met.

2.4.6 Many areas of oversight are wholly lacking to ensure the best interests of the child are taken into consideration, such as:

• assessing the current physical and mental health of the child and their suitability for travel;
• ensuring that the child is appropriately immunised for diseases prevalent in the country they will return to and to which they may not have natural immunity, such as malaria and yellow fever;
• ensuring that the removal takes place at appropriate breaks in the children’s education and they have access to their educational records;
• ensuring that the children’s own concerns are heard; and
• ensuring there are no outstanding child protection issues.

2.4.7 On the last point, we are aware of instances where a lack of knowledge of officers about outstanding child protection cases has resulted in children at risk being detained...

19 Scottish Parliamentary motion S2M-3323.2 – Children of Asylum Seekers, Supported by: Robert Brown, Malcolm Chisholm Lodged on 21 September 2005; taken in the Chamber on 22 September 2005

http://www.scottish.parliament.uk/sch/motion.page?clause=WHERE%20motionid=8861
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and subsequently removed with their parents. This raises serious concerns that the current process is paying scant regard to the human rights, safety and welfare of the children involved.

2.4.8 We welcome the Scottish Executive’s support for the principles of the UNCRC and also welcomed their statement on the creation of the position of a “lead professional” to support the welfare of children at the end of the asylum process and pilot it in Scotland:

2.4.9 The role of the lead professional will be key to the welfare of children as they will feed in vital information about children’s health, education or any other considerations that should be taken into account prior to the timing of removal being confirmed.20

2.4.10 Although we are pleased that considerations of health and education are now being considered to make steps to ensure the best interests of the child figure in the removals process, details however on the actual role, responsibility, authority, independence and accountability of this “lead professional” have not been announced and we seek clarification and further dialogue to what extent this role will play.

2.4.11 On 27 March 2006, the Home Office Minister, Tony McNulty announced a range of measures21 to improve the current process. This included a National Review of IND’s Family Removal Process.

2.4.12 Whilst we welcomed this review and submitted evidence. We were disappointed by the narrow focus of the questions put forward for consultation as we feel that these do not reflect the complex nature of the issue of return and families at the end of the asylum process and are not convinced that this review will lead to changes which will guarantee that the best interests of the child will be fully considered. We firmly believe that a far more comprehensive review of the Government’s policy on returns and family removals is essential. We urge the Committee to question the progress that has been made by IND in the range of measures announced on 27 March 2005, including the Review of Family Removal Processes, and to assess whether any proposed changes will ensure that the human rights of children subject to enforced removal are not breached. We have appended our submission of evidence to the IND’s Review of Family Removal Processes should you wish to consider this matter more in depth.

20 Statement by Peter Peacock, Education and Young People Minister, Scottish Executive: Minister welcomes package of measures for children of asylum-seeking families, Scottish Executive press release

21 Measures announced included: the introduction of enhanced criminal record checks for frontline immigration enforcement staff working across the UK; the creation of a new post of Regional Director for Immigration in Scotland, with responsibility for co-ordinating and managing immigration arrangements in Scotland as part of a broader UK development; significant progress on increasing the numbers of failed asylum seekers who leave the UK voluntarily through the Government’s enhanced voluntary returns package; a provision in the Police and Justice Bill, currently going through Parliament, which will allow for the independent inspection of the immigration service; and a review of family removals processes by the Home Office; Immigration Minister Welcomes Continuing Dialogue with Scotland, Home Office press release, 27 March 2006, http://press.homeoffice.gov.uk/press-releases/dialogue-with-scotland
2.5 Detention of asylum-seeking children

2.5.1 Detention, even for a short period, is a traumatic experience for children, inhumane and has serious impact on their physical health, mental health, personal development and education. This has been supported by reports from Her Majesty’s Inspectorate of Prisons, NGOs and most recently by the British Medical Journal\textsuperscript{22}. Scottish Refugee Council believes that the best interests of children should be of paramount consideration and detaining children is fundamentally not in their best interests.

2.5.2 We believe that detaining children for the purposes of immigration control in the UK runs contrary to many international human rights conventions and standards\textsuperscript{23}. These standards state that detention can only be justified in all but the most exceptional circumstances as a measure of last resort.

2.5.3 As a result of the high-profile public debate in Scotland around the detention of children, families are now detained for a maximum of 72 hours in Dungavel House Removal Centre in South Lanarkshire. We are seriously concerned that children are being frequently transferred around the UK detention estate from one centre to another as removals are not being effected. For example, we have heard of several cases of asylum-seeking families being detained at Dungavel, and then moved to another centre only for them to appear again back in Dungavel. This has not only caused extreme distress and disorientation, but also difficulties in accessing current or new legal representation. The length of time of these transfers and the length of time and conditions to effect removal are serious cause for concern. Case study 2 gives one such example.

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\textbf{Case study 2} \\
\textit{A mother and daughter (aged 9 years) were taken from Dungavel during the night. They arrived at Manchester airport at approx. 7am. They were offered breakfast at this time which they took but couldn’t eat. No food or drink or sandwiches on offer until 3pm, which again they struggled to eat. They spent all day at the airport (waiting 14 hours on a chair) and at 12.30am were taken from the airport back to Dungavel arriving approximately at 5am the following morning. They were totally exhausted and it was lunch time before they ate again. Testimony given to Toryglen Community Group by woman upon release from detention, 4 October 2006} \\
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\textsuperscript{22} “[detention centres in the UK]… hold children, placing their normal psychosocial development at risk by exposing them to isolated, deprived, and confined conditions, a situation that bodes poorly for their future adaptation, whether they are ultimately resettled or repatriated. \\
http://bmj.bmjournals.com/cgi/content/full/332/7536/251

\textsuperscript{23} UN Convention on the Rights of the Child (UNCRC), Article 37 (b); UNHCR: Guidelines on unaccompanied asylum-seeking children (UNHCR 1997), Revised guidelines on the detention of asylum-seekers (UNHCR 1999), and ExCom Resolutions (principally No44); European Convention on Human Rights (ECHR), Article 5.
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2.5.4 These problems are compounded by cross-border movements from England to Scotland and vice-versa as not only is there the impact of geographical distance between client and lawyer, but also the major problem with transference from one legal system to another. The full extent of this practice is difficult to assess due to a lack of transparency and available data.

2.5.5 We are also concerned about the lack of independent monitoring of asylum-seeking children in Dungavel. In July 2005, as part of a report into safeguarding children’s rights, Chief Inspectors from various statutory bodies looked into the issue of asylum-seeking children in detention. However, the report did not look into arrangements for children at Dungavel as this was “outside the scope of the review”. The only independent report so far into conditions at Dungavel was published by Anne Owers, HM Inspector of Prisons, in 2003. We are therefore concerned that in detention centres based in England various inspectors have the authority and power to inspect facilities, conditions and practices yet will not cross the border into Scotland. Meanwhile, their power does not appear to fall to their Scottish counterparts.

2.5.6 Detention of asylum-seeking children in the UK is not proportionate to international human rights. Statistics on the number of children detained, the length of their detention and the difference in numbers detained compared to the numbers removed unmistakably show that it is not used as an option of last resort.

2.5.7 Scottish Refugee Council as part of the No Place for a Child Coalition is opposed to the detention of children for immigration purposes and has called on the UK Government to stop this practice. The All-Party Parliamentary Group on Refugees in support of this campaign has proposed alternatives to detaining children. We would urge the Committee to recommend that the Government stops detaining asylum-seeking children and seek a more humane and less harmful alternative.

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24 Safeguarding Children July 2005 The second joint Chief Inspectors’ Report on Arrangements to Safeguard Children
25 Commission for Social Care Inspection (CSCI), HM Inspectorate of Court Administration (HMICA), The Healthcare Commission, HM Inspectorate of Constabulary (HMIC), HM Inspectorate of Probation (HMIP), HM Inspectorate of Prisons (HMIP), HM Crown Prosecution Service Inspectorate (HMCPSI),The Office for Standards in Education (OFSTED)
26 Safeguarding Children July 2005 The second joint Chief Inspectors’ Report on Arrangements to Safeguard Children, p.86: “7.2 This chapter also examines arrangements for children held with their families using evidence from HMI Prisons inspections of two immigration removal centres in England: Oakington (Cambridgeshire) and Tinsley House (West Sussex). The centre at Dungavel (South Lanarkshire) is outside the scope of this review, although asylum-seeking families based in England might be placed there pending deportation.”
27 See www.noplaceforachild.org Other members of the coalition include Refugee Council, Save the Children, Bail for Immigration Detainees and Welsh Refugee Council
28 See www.noplaceforachild.org
3 Access to financial support and accommodation with reference to Scotland

3.1 Destitution of asylum seekers in Scotland

3.1.1 Scottish Refugee Council, like other members of the Inter-Agency Partnership, NGOs, churches and community groups supporting asylum seekers, is extremely concerned by the increasing number of asylum seekers who are experiencing absolute and severe poverty through the withdrawal of statutory support and the withdrawal of the right to work to support themselves.

3.1.2 We recently conducted a survey of destitute clients presenting at our offices and the offices of other voluntary-sector support agencies in Glasgow29.

3.1.3 The survey revealed that at least 15430 asylum seekers, refugees and their dependents were destitute. 27 people surveyed were asylum seekers with active claims, 7 were refugees and had yet to access mainstream support and 78 had been refused asylum and were at the end of the process. However only 33% were satisfied with their legal support, indicating that people may have been let down by the well-documented failings of the asylum system.

3.1.4 We append the survey to give the Committee an overview of the extent and devastating impact that UK Government policy and administrative delays and errors are having on asylum seekers. We believe that in many instances the situation that destitute asylum seekers are facing could constitute breaches of Article 3 of the ECHR and Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights.

3.1.5 We would like to take this opportunity to present particular issues relating to unresolved differences between UK Government policy and differences in Scottish legislation which are having a significant impact on the treatment of asylum seekers in Scotland.

3.2 Asylum seekers with care needs in Scotland

3.2.1 Scottish Refugee Council is increasingly encountering difficulties securing financial support and accommodation for clients with special needs from Social Services in Scotland. In several cases Social Work Services in Glasgow refuse to support clients regardless of clear indications that clients’ needs are above and beyond that which can

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29 The aim of the research was to capture a snapshot of the number of destitute asylum seekers and refugees presenting to voluntary sector agencies in Scotland during a one-month period and to find out more about their experiences and what led them to become destitute. A quantitative survey took place in Glasgow, where the overwhelming majority of Scotland’s asylum seekers live, between 30 January and 28 February 2006.
30 These numbers are likely to significantly underestimate the actual number of destitute asylum seekers because of the methods used and the problems associated with reaching a hidden population.
be met by Section 4 support (if eligible). The threshold for accessing this support is set extremely high in Glasgow and the most vulnerable asylum seekers including those with mental health needs are being left in dire situations. This is due, in large part, to the different legislative framework in Scotland. One such case where a mentally-ill woman who was left without any support committed suicide attracted considerable media attention\(^{31}\) and case study 3 gives an example from our case files.

3.2.2 The Immigration and Asylum Act 1999 removed the right of asylum seekers to access mainstream welfare benefits, public housing and some forms of Local Authority assistance, i.e. services to meet a need that ‘arises solely out of destitution or the effects of destitution’.

3.2.3 Despite the changes in entitlements brought about by this legislation, asylum seekers retain entitlement to some Local Authority services. Existing Community Care legislation, the National Assistance Act 1948, which sets out the responsibilities of Local Authorities towards people with disabilities, mental health or other health needs still applies to asylum seekers. However, many Local Authorities disputed their responsibilities and a resulting legal challenge in the English courts defined the parameters.\(^{32}\)

3.2.4 Whilst this judgement settled the threshold for social work and other assistance in England and Wales and has subsequently informed policy since, it has no bearing in Scotland where existing social work policy remains unchanged. Policy Bulletin 82 in which NASS clearly states the limits of support it can provide under section 95 for those with care needs does mention Scottish legislation. However, it relies on the Westminster ruling which, although it could be considered persuasive, does not constitute legal precedent in Scotland.

3.2.5 This lack of precedent leaves asylum seekers with care needs in Scotland in a precarious position which subsequent Policy Bulletins have failed to address. Most recently, the draft Policy Bulletin 75 on Section 55 Guidance again assumes that the National Assistance Act 1948 has an exact equivalent in Scottish legislation (which it does not\(^{33}\)), and that the Westminster ruling has a binding effect on Scottish authorities.

3.2.6 On an operational basis, Scottish Refugee Council caseworkers continue to make persuasive cases to ensure that clients with special needs receive appropriate support and entitlements. However, the Home Office, Scottish Office and the Scottish Executive have still to address this issue.

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\(^{31}\) [http://www.theherald.co.uk/news/70321.html](http://www.theherald.co.uk/news/70321.html)

\(^{32}\) Westminster City Council v National Asylum Support Service (NASS)

\(^{33}\) Social Work (Scotland) Act 1968
Case study 3
An Iraqi male, appeal rights exhausted in 2004 has been in and out of hospital with mental health problems. The client is married to a Scottish citizen who also suffers from mental health problems.

A Community Care Assessment (CCA) was requested on 5 November 2004. Two weeks later, the client was admitted to hospital. He was allocated a social worker the same week. A CCA was carried out in December 2004 and during the assessment, the client and his wife expressed the need for financial assistance. The social worker had said that the chances of Social Services providing financial support at the time or in the future was very low. She did however agree to liaise with client’s psychiatrist.

During this time, the Glasgow City Council had started eviction proceedings to remove client from NASS accommodation. The client’s solicitor also made further representation to the Home Office on medical grounds.

On 12 January 2005, the client came to Scottish Refugee Council extremely distressed, stating that a social work manager had visited him and informed him that social work would not support him financially and that he was going to commit suicide. His social worker was contacted who said she would liaise with seniors to see whether they would change their mind. Section 4 support was discussed with client as an option.

The client returned to the office two days later, stating he was worried that he would not be able to live on his own if he was to get Section 4 support.

On 18 January 2005, Scottish Refugee Council received letter from Social Work Services, refusing client support.

On February 4 2005, the client applied for Section 4 support on the basis of his further representations. On 18 February, Section 4 support was refused. The reason given was the client’s needs were above and beyond destitution.

Scottish Refugee Council again contacted Social Work to ask them to support the client. We were informed by COSLA however, that Glasgow Social Services had a new policy stating asylum seekers would not be supported unless their needs were so exceptional as to warrant residential care. The client was left in limbo where neither NASS nor Glasgow City Council would support him.
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3.3 Refusal to recognise differences between legal systems in Scotland and England

3.3.1 Scottish Refugee Council is concerned that asylum seekers in Scotland are falling through gaps in procedural differences between Scottish and English legal systems and being left destitute and in appalling situations. This is due to NASS refusing to accept timescales for lodging appeals. Case study 4 gives an example of this situation.

Case study 4
A young Iraqi woman approached Scottish Refugee Council on many different occasions seeking assistance in connection with her case. She became destitute after NASS terminated her support despite her having an ongoing asylum appeal at Edinburgh Court of Session. NASS stated that the client’s appeal was made out of time (an appeal must be made within 12 days from the previous court decision date according to English law. However, under the Scottish legal system this is 42 days). Evidence from the client’s solicitor and Edinburgh Court of Session confirmed that the appeal was made timely but NASS refused the client’s application for support re-instatement stating that according to its policy her appeal should have been made within 12 days for her to be considered for support. The client has been left destitute and homeless. She is now dependent on charitable support and temporary accommodation provided by friends to avoid having to sleep on the streets. Her lawyer is pursuing this case at judicial review.

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Addendum 1 – Scottish Refugee Council submission to IND National Review of Family Removal Procedures, 3 June 2006

Addendum 2 – “They Think We Are Nothing” – A survey of destitute asylum seekers and refugees in Scotland, August 2006, Scottish Refugee Council