

**JustRight Scotland's Written Briefing to the
Constitution, Europe, External Affairs and Culture Committee
Session on the Crisis in Ukraine
March 2022**

JustRight Scotland (JRS) is Scotland's legal centre for justice and human rights. We use the law to defend and extend people's rights. We operate 4 national centres of legal excellence providing direct legal representation, legal outreach, and legal education: (i) the Scottish Refugee & Migrant Centre; (ii) the Scottish Women's Rights Centre; (iii) the Scottish Anti-Trafficking & Exploitation Centre; and (iv) the Scottish Just Law Centre. You can find out more about us here: www.justrightscotland.org.uk.

Introduction

1. We are providing this briefing and evidence before the Committee by drawing on our lawyers' longstanding practical experience and expertise in providing legal information, advice and representation to refugees, asylum seekers, and survivors of trafficking and exploitation. Within this area, we specialise in working with children and young people, women affected by violence, those at risk of destitution, and refugee family reunion. With specific reference to the war in Ukraine, the below is informed by advice provided by our team of lawyers through the Ukraine Advice Project¹, and Ukraine Advice Scotland² which is a JustRight Scotland project funded by the Scottish Government to provide free, confidential legal advice and information to Ukrainians and their families on legal routes for seeking safety in Scotland.
2. In this briefing we wish to provide our perspective on (i) the existing schemes in operation for Ukrainians; and (ii) issues to be borne in mind by local authorities and services in Scotland in responding to the crisis.

The Immigration Schemes in Operation

3. We note that the SPICe Briefing for this committee session provides an overview of the two main immigration schemes established by the UK Government in response to the Ukrainian crisis. They are the Ukrainian Family

¹ A volunteer initiative giving free legal advice on UK immigration and asylum law to those affected by the war in Ukraine - <https://advice-ukraine.co.uk/>

² <https://www.justrightscotland.org.uk/what-we-do/migrant-refugee-rights/ukraine-advice-scotland/>

Scheme³ (“UFS”) and the Homes for Ukraine Scheme⁴ (“HUS”). We do not propose to set out their eligibility criteria in detail, but rather to draw your attention to certain elements of the scheme which cause us concern for those arriving or already living in Scotland. These elements are shortfalls which, unless remedied by the UK Government, will lead to Ukrainian nationals being unable to access family in Scotland. They will also put those Ukrainians already in Scotland at risk of homelessness and destitution. It is therefore important for the Committee to understand these shortfalls, despite immigration being a reserved area of law, to ensure that Scottish local authorities and services can step in to meet the need that arises and mitigate the negative consequences. We would make the following 3 critical points.

4. The first is that these are **visa schemes**, not humanitarian schemes. This means that they require an online application to be made by individuals via the Home Office website, upload evidence of their eligibility and suitability per the criteria, and for a decision-maker based in the UK to consider the application. For Ukrainians applying to the UFS, if they do not have a passport, they also require to make an appointment at a UK Visa Application Centre (“VAC”) and register biometrics. As a response to a war so proximate in geography to the UK, which has created well over 3.5 million refugees in a few short weeks,⁵ this is manifestly unsuitable. By its very nature, it is a slow and bureaucratic system. As of 22 March 2022, there have been 66,700 applications opened, 33,500 applications submitted, and 15,800 visas issued.⁶ This amounts to 0.4% of those that have fled Ukraine. Visa schemes such as the UFS and the HUS require documentation and evidence to satisfy the eligibility criteria. For individuals fleeing war – perhaps having had their home destroyed – this is a significant barrier.

Case Study: Advice was provided to a Ukrainian person who was on holiday abroad when the war began. His mother lives in the UK and has pre-settled status. He wished to apply under the UFS to join her in the UK. According to the UFS, he required to produce evidence of his residence in Ukraine by 1 January 2022, and proof of relationship to his mother. He could access mobile bank statements showing residence, but had no access to birth documentation proving relationship status. In any event, his birth certificate was in Ukrainian and would need translated into English. He was confused about how he could make the UFS application.

Barriers such as this not only create confusion or a belief that individuals cannot apply to the scheme, but also delays in the processing of the applications.

³ <https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>

⁴ <https://homesforukraine.campaign.gov.uk/>

⁵ <https://data2.unhcr.org/en/situations/ukraine>, last accessed 23 March 2022

⁶ <https://www.gov.uk/government/publications/ukraine-family-scheme-application-data/ukraine-family-scheme-application-data-22-march-2022>, last accessed 23 March 2022.

Instead, as almost every European Union country has done, visa entry requirements should be waived and a form of protection status should be provided, ensuring that as many people as possible can access safety. This would represent a true humanitarian response.

5. The second key point is that the **eligibility criteria** for the HUS and the UFS have enormous gaps for Ukrainians living in Scotland on various different visas. No support is in place for Ukrainians in the UK on temporary visas and their position is becoming increasingly urgent.

Visit Visas

6. There are many Ukrainians in the UK on visit visas who were stranded here and not able to leave at the end of a pre-planned trip. The small visa concession so far made for visitors was that they would be allowed to switch into other visa routes, so long as they met the requirement to do so. This can be very complex and is not of assistance to many visitors; many do not qualify for UFS or HUS. Visitors cannot work, access benefits, free secondary NHS care, or student finance. They are therefore in a position where they must spend their resources until they become at risk of destitution. If they cannot resolve their immigration status, or leave the UK, they will become immigration overstayers which has significant consequences for their future immigration prospects in the UK.

Case Study: Per the Ukraine Advice Project - an 80+ year old Ukrainian woman was on holiday in the UK when war broke out. She is only supposed to stay in the UK for 6 months on a visit visa. She has health needs, has no family in the UK and there is no prospect of her 'switching' onto a work or other visa. She is being left destitute, at risk of breaching the Immigration Rules by overstaying, and her friends cannot afford to house her long-term. She needs to be able to move into a temporary protection route the equivalent of the Ukraine Family Scheme or Homes for Ukraine scheme, but the current schemes do not allow for this.

Student Visas

7. There are Ukrainian nationals on student visas in Scotland. They usually have to pay international student fees. They have a time-limited visa with no recourse to public funds, and have a restricted right to work (usually between 10-20 hours per week during term time). At present, it is unclear whether the UK Government has made any provision at all for students within the small visa concessions already granted.
8. Many people on student visas are worried about their family but are unable to sponsor family under the UFS. They also have concerns about being able to continue their course and they will not be able to return home to Ukraine in the holidays or at the end of their course. They are at risk of destitution and of being unable to comply with their strict visa requirements.

9. We recommend that Scottish educational institutions are assisted to ensure that their students affected by the Ukrainian war have support to access temporary protection status akin to that granted under the UFS and HUS. Although at present no such route exists.

Work visas & Seasonal Workers

10. There are a range of work visas which are time-limited. People on work visas cannot sponsor family to come to the UK under the UFS and usually will have no access to public funds (including disability benefits if they become too unwell to work). They themselves also cannot access the UFS or HUS because they are 'in country'. There are a range of ways that a person can 'fall off' a work visa route with no safety net while they are unable to safely return to Ukraine.
11. At particular risk are those on Seasonal Worker Scheme visas. We note that the Scottish Refugee Council estimates in its briefing that there are between 3,000-6,000 workers from Ukraine on temporary, 6-month visas in the UK. Nearly all of these are Seasonal Work Scheme visas. Home Office statistics from 2021 show that 67% of all Seasonal Worker Scheme visas were issued to Ukrainian nationals. Home Office statistics do not tell us where in the UK they work, but a large portion are working on farms. It is reasonable to assume that there are a great deal living and working in Scotland.
12. Many seasonal workers have left close relatives in Ukraine to come and work in the UK temporarily. They are not eligible to sponsor their family members under the UFS or the HUS. This is a cause of significant concern and is an unnecessary eligibility limitation to the schemes. Many seasonal workers are living in temporary, shared accommodation like caravans provided on farmland which is unsuitable for long term habitation. The UK government has announced that seasonal workers would have their visas extended until December 2022, but this is clearly insufficient.
13. It is important to understand that seasonal workers must remain with the same employer that sponsored their visa. They cannot simply change employer and continue to use their visa. Many employers cannot offer consistent employment to these Ukrainian nationals, hence why the visas are called seasonal worker visas. Therefore, even with the best-intentioned employer, Ukrainian seasonal workers find themselves trapped in difficult working arrangements with no access to benefits, including sickness and disability benefits. It is not satisfactory that the immigration system should trap these workers in these conditions and then outsource responsibility for preventing destitution onto British employers. If the employer/employee relationship

breaks down, the Ukrainian seasonal worker will be in breach of their visa and at risk of destitution. This situation places a great pressure on employers and leaves Ukrainian workers at high risk of abuse and exploitation (we discuss this further below).

Case Study: Per the Ukraine Advice Project – Examples of advice sought from the Project include, (i) a concerned farmer seeking advice about two Ukrainian couples working for him with children in Ukraine and no way to bring them here; (ii) a seasonal worker who fled appalling working conditions and had been offered a job elsewhere but could not take it; (iii) a woman working on a seasonal worker visa in Scotland on a farm where there would not be enough work for her all year; and (iv) a seasonal worker separated from his unmarried partner who was in danger in Ukraine but he had no way to sponsor her.

14. The third and final key point we wish to make regarding the schemes themselves, is their **inherent complexity**. The Immigration Rules are labyrinthine, long and confusing. Typically, an experienced immigration advisor or a specialist immigration lawyer is required to navigate them. Penalties for failing to meet an eligibility criterion can involve becoming undocumented and therefore losing access to employment, education, benefits, and becoming liable to detention and removal, as well as losing thousands of pounds in application fees after a refusal. Ukrainians in the UK or those seeking to enter the UK, and not generally in the position to procure legal representation.

Case Study: Per Ukraine Advice Scotland – We gave advice regarding a seasonal worker resident in Scotland since December 2021. His visa has been extended to December 2022 and he is worried about his immigration options. His family members are still inside Ukraine and he wishes to help them get to safety. He also wishes to change jobs so he can send more money to help them in the meantime. We required to give advice regarding the eligibility of both the UFS and the HUS. He was eligible for neither. We gave advice about making an application to one of the schemes anyway, arguing compassionate circumstances. It is likely he would need legal representation in order to provide evidence of exceptional circumstances. We provided advice about claiming asylum, and the legal tests and processes involved there. This may allow him to continue working but he could not change jobs due to his seasonal worker visa requirements. There are long waits (years) and a high risk of destitution. We advised on his options were he to leave the UK and re-enter, and seek a new type of immigration leave. This is a complex picture and may be prejudicial, and there is not enough information to understand how the Border Agency would process him (if at all). We finally gave advice on seeking a new sponsor under a different visa scheme to change jobs, such as the Skilled Worker Scheme, but this comes with application fees.

15. This case study demonstrates the requirement for detailed advice on around 6 different visa routes or areas of immigration law for a single enquiry. This is an unnecessary burden for Ukrainians living in the UK or seeking safety in the UK. It also places additional pressure on the advice sector which is already under the strain of a dysfunctional asylum system and the continued operation of the Hostile Environment. It does not need to be this way. A visa waiver response, similar to those in operation in other European countries, is the best way forward.

The Response at the Local Level in Scotland

16. We welcome the fact that the Scottish Government has established itself as a “super sponsor” for Ukrainian nationals under the HUS. One of the key concerns we have about the HUS is that it is an outsourcing of responsibility by the UK Government to the British general public. It ought to be the British state that takes the lead, in accordance with its international human rights obligations, in ensuring that those fleeing Ukraine are offered protection in a humane and dignified way and, if required, an opportunity to rebuild their lives here. There is a role for well-resourced sponsorship schemes, with appropriate safeguards, in our asylum system, but it ought not to be the solution. The HUS is, at its most fundamental level, hoping that the British public act in good faith and places upon them a large burden when it need not.
17. As a result, it has significant implications for local authorities and services. The Scottish Government acting as a super sponsor comes with some degree of mitigation of these fundamental issues, but we would urge caution. We wish to bring to the fore some critical considerations which must be accounted for by Scottish public authorities in order to ensure that those who arrive here are truly safe. We will also bring in learning from other resettlement schemes such as those relating to Syria, Afghanistan, the ‘Dubs Scheme’, as well as the operation of the National Transfer Scheme (“NTS”) for unaccompanied asylum seeking children in the UK.
18. We note that the UK Government is providing funding to local authorities per Ukrainian national that arrives in its area under the HUS. We are unable to comment on the level of funding for obvious reasons. However, it appears clear to us that it will be very difficult for local authorities to measure the need and therefore resource services when it does not know how many people will be arriving in its area. The Scottish Government super sponsor scheme helps manage this to an extent, but it appears to us that a local authority could be allocated, say, 100 Ukrainian nationals under the super sponsor scheme (if that is indeed how it is to operate), but then another 500 arrive in its area through the broader HUS. This presents challenges for funding and resourcing.
19. There are significant challenges and risks around **safeguarding, including child protection**. It is not yet clear the extent to which sponsors

under the HUS more broadly are vetted. Most Ukrainians arriving in Scotland will be women, children and the elderly. Many will have experienced significant trauma and be at risk of harm. Is there a visit to the sponsor's home, or a background check? Does Disclosure Scotland play a role? An example of good practice is Glasgow City Council's supported carer scheme for persons wishing to support and house unaccompanied asylum-seeking children in Glasgow, and this is a successful project.⁷ But it is operated by social work services and comes with robust safeguarding protocols and training. Most of the unaccompanied minors we work with in Scotland benefit from the care of the local authority under section 25 of the Children (Scotland) Act 1995. Other children in families benefit from social work support under section 22 of the Children (Scotland) Act 1995. Social work needs assessments very often require to be conducted. The HUS potentially means that women and children are being taken into the homes of people they do not know. It is not clear how and whether the local authorities will be able to keep track of those coming in. We believe that the Committee should carefully consider a comprehensive safeguarding response using existing powers, tools and good practice to ensure that those who come via the super sponsor scheme, and the HUS at large, are protected.

20. Further to the above, we believe that a **gendered analysis** of the risk posed by the schemes is critical. This ought to be cognisant of domestic abuse but also **human trafficking and exploitation**. Where there is war and conflict, there is trafficking and exploitation. We note that there have already been media reports of women and children fleeing Ukraine being trafficked for sexual exploitation and forced labour.⁸ In Scotland, the number of potential victims of trafficking referred to the National Referral Mechanism ("NRM") is at an all-time high.⁹ Understanding the vulnerability of the HUS to being used by traffickers goes back to the question of how sponsors are vetted. Other aspects are necessary to be understood - how many times can a person apply to be a sponsor? Is the application system able to recognise repeat applications? These risks must be considered by law enforcement in Scotland as well as public authorities and third sector services who provide support and accommodation to victims of trafficking. We would stress that our concerns set out above around the inability of Ukrainians to access a safe and appropriate immigration route can lead to destitution and therefore vulnerability to exploitation.

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[https://www.glasgow.gov.uk/index.aspx?articleid=27128#:~:text=A%20Host%20Family%20Supported%20Care%20\(HFSC\)%20offers%20safe%20and%20supportive,guidance%20to%20learn%20about%20Scotland](https://www.glasgow.gov.uk/index.aspx?articleid=27128#:~:text=A%20Host%20Family%20Supported%20Care%20(HFSC)%20offers%20safe%20and%20supportive,guidance%20to%20learn%20about%20Scotland)

⁸ <https://news.sky.com/story/ukraine-war-human-traffickers-preying-on-refugees-fleeing-conflict-12569986>, last accessed 23 March 2022

⁹ <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021>

21. Finally, it is vital to manage the provision of **housing, education and health**. We note that the super sponsor scheme will provide temporary accommodation, potentially in the form of hotels, before being moved towards community-based housing. We appreciate that this is an emergency response and that hotels meet a very short-term need, but we would encourage learning from the current asylum support system and the Afghan resettlement scheme. Hotel accommodation should only be used for the shortest possible timescale. Prolonged periods in hotels can be devastating for the physical and mental health of those housed there.
22. In terms of health provision, we must bear in mind that many arrivals will have experienced significant trauma. It is therefore obvious that the provision of health care is an immediate need. This includes mental health provision, with a requirement for specialism in treating trauma. At present, there is limited provision for this type of treatment across Scotland. In the past, refugee communities have largely resided in the central belt of Scotland, due to Glasgow's status as a dispersal centre for the Home Office. This means that there is a network of various services in the Glasgow area, including specialist trauma care. However, these services are at present stretched to capacity.
23. Beyond Glasgow, we understand that such trauma care is very limited, even in local authorities surrounding Glasgow. Our extensive experience of working with unaccompanied asylum-seeking children who have been looked after by local authorities outside the Glasgow area, via the Dubs Scheme and the NTS, tells us that this lack of provision is problematic. To be clear, this is not a criticism of those local authorities; if an area has historically seen very low numbers of asylum seekers then it is unlikely the local authority will have the resource to build services around them. But the inability to access appropriate mental health care can be isolating and is a huge barrier to individuals and families settling in and rebuilding their lives. The same applies for access to education, particularly English to Speakers of Other Languages ("ESOL"), and other cultural services. Indeed, our experience tells us that inappropriate provision of these key services can lead to the breakdown of relationships and housing arrangements. We recommend that the Committee considers the availability and resourcing of these services and encourages the Scottish Government and public authorities to ensure that they are at the forefront of the response.

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