

Guidance on supporting separated and unaccompanied children to access legal aid in immigration cases

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Aim

The aim of this briefing is to raise awareness among social workers, advocates, lawyers, foster carers, and others supporting separated and unaccompanied children who need to access legal aid with their immigration, asylum and nationality cases.

Background

Following a successful legal challenge, [the Government announced](#) on 12th July 2018 that it will reinstate legal aid for unaccompanied and separated children requiring legal advice and representation in relation to all non-asylum immigration matters. The implementation of this policy was discussed with a consultative group involving officials from the Ministry of Justice, the Legal Aid Agency (LAA), legal experts and NGOs working with separated and unaccompanied children.

The amendment to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ['LASPO'] has [now been laid](#) and is subject to approval by both Houses before it is brought into force. This is unlikely to happen before the autumn. Once implemented, the amendment will bring non-asylum immigration and nationality matters for this cohort into scope of legal aid. The amendment intends to ensure that children, without parents who can help them, can get legal aid for advice and representation for non-asylum immigration matters to secure their rights and that any decisions are made in accordance with the best interests of the child.

How can children access legal aid through the interim arrangements?

In the interim, the Lord Chancellor issued guidance to Legal Aid Agency (LAA) caseworkers in the form of a [letter dated 26 July 2018](#) which indicates that:

- a. Caseworkers ought to operate on the basis that there is a strong presumption that under Article 8 of the European Convention on Human Rights unaccompanied or separated children – defined as **children under the age of 18 who have been separated from both parents** - require legal aid in relation to non-asylum matters.
- b. In light of this presumption, applications by or on behalf of unaccompanied and separated children in relation to non-asylum immigration matters **need not be supported by detailed evidence** in relation to issues relating to vulnerability and ability to participate in proceedings without legal aid (as this will be presumed)

This means that all separated and unaccompanied children who need legal aid for advice and representation in all non-asylum immigration matters must still apply for Exceptional Case Funding in the interim but won't need to put in detailed information in order to be granted ECF. **To get ECF they only need to provide evidence that the applicant is a child who is unaccompanied or who is separated from both parents, and needs advice and representation in relation to immigration matters.**

Which children does this cover?

The presumption covers all children under 18s who are unaccompanied or have been separated from both parents. These include children who are looked after as defined by section 22 of the Children Act 1989; or those not being cared for by an adult who has parental responsibility for them. This covers, for example unaccompanied children who are in care or looked after or otherwise supported by local authorities as a 'child in need' under s17 under the Children Act 1989. This provision is also intended to cover children who are in private fostering arrangements and children who have been reunited with family members under Dublin 3 transfers. But this is not an exhaustive list.

What types of immigration matters does this presumption cover?

Immigration matters relates to any type of immigration claim for enter or leave to remain, to secure and settle a child's status, whether they are inside or outside of the immigration rules, such as claims based on ECHR Article 8 grounds, claims under or outside of the immigration rules, and so on. They also relate to citizenship and nationality issues, family reunion advice and support, trafficking cases including pre-National Referral Mechanism (NRM) advice and support. It also includes support for children who may be stateless and need to advice, support and representation to access the statelessness procedure. It includes support to children who are requesting a transfer to the UK under EU and UK law.

The support is also available where children have so-called 'mixed cases' linked to both asylum and immigration matters. For example to provide advice to an unaccompanied asylum seeking child in relation to their asylum claim which may have Article 8, section 55 and best interests grounds; as well as providing representation at appeals that engage other non-asylum grounds. This should allow legal aid lawyers to provide comprehensive support to children, not only limited to the asylum grounds in their case.

Practitioners should consider whether further work could be carried out in relation to evidencing that child's private and family life in the UK, ability to comply with any aspect of the immigration rules, or the potential to register as British. This may be the case where children have spent long periods of time in the UK, or have particular needs as a result of trauma, health problems, disability or being a looked-after child.

We urge practitioners and those supporting children to make applications for ECF as widely as possible.

What do practitioners need to do?

Unlike immigration applications, ECF applications do not require OISC regulation and can be done by anyone supporting a child. Applications for ECF must be made with the [CIV ECF 1 FORM](#) and should be submitted electronically to contactECC@legalaid.gsi.gov.uk

During this interim period, immigration cases will fall under the Graduated Fixed Fee scheme and will be paid a fixed fee of £234, and have an upper disbursement limit of £400 which can be extended on application of a CW3C form (those with delegated powers may wish to confirm with the LAA that these extend to self-granting extensions in immigration cases). The experience of practitioners who regularly undertake applications of this nature is that there is a strong likelihood that a properly prepared and evidenced immigration application for a separated or unaccompanied child will escape the fixed fee scheme and then be paid at higher hourly rates.

If providers have queries about availability of additional New Matter Starts (NMS) to undertake immigration work for unaccompanied and separated children they should

initially approach their contract manager.

Where can I find more information?

To find out more or if you have any queries, please contact Ilona Pinter and Matt Hussey at The Children's Society on 020 7841 4400 or policy@childrenssociety.org.uk.