

ILPA information sheet

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Legal Aid Bill 4 – Children

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This information sheet provides information about how the Legal Aid, Sentencing and Punishment of Offenders Bill would affect Legal Aid provision for children affected by immigration control.

General

The June 2010 “Legal Aid Bill” and “Legal Aid Bill 2” information sheets generally set out how the Bill would affect Legal Aid provision in immigration and asylum cases. In these cases, the Bill treats children in the same way as adults. So, if the Bill provides for Legal Aid, Legal Aid is to be available for both a child and an adult (as in asylum cases). If the Bill does not provide for Legal Aid, Legal Aid is not to be available for a child or an adult (as generally in immigration cases).

Other Legal Aid provisions in the Bill affecting children

The Bill makes special provision for children in some provisions on Legal Aid that are not about immigration and asylum Legal Aid. For example, the Bill provides for Legal Aid for children who are involved in family law proceedings (see paragraph 13, Schedule 1 to the Bill). The Government has explained that it accepts it is not reasonable to expect children to represent themselves in these family proceedings. It is difficult to understand why the Government thinks it is reasonable to expect children to represent themselves in immigration proceedings.

Evidence to the Public Bill Committee concerning children

More information about the Public Bill Committee, and evidence that has been given to it, is provided in the “Legal Aid Bill 3 – Update” information sheet.

A number of organisations have written to the Public Bill Committee raising concerns about the provisions in the Bill to exclude Legal Aid for children in immigration proceedings:

- The Refugee Children’s Consortium’s evidence to the Committee is available at:
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la37.htm>
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la38.htm>
- Barnardo’s evidence to the Committee is available at:
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la12.htm>
- Just Rights’ evidence to the Committee is available at:
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la13.htm>
- ILPA’s evidence to the Committee is available at:
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la04.htm>

Specific situations in which children would be affected by the Bill

The examples set out here show the circumstances in which, if the Bill becomes law, Legal Aid will no longer be available in cases affecting children. The examples given here are not exhaustive.

A child facing separation from his or her parent because of a decision by the UK Border Agency to remove the parent from the UK: Children in this situation may be British or non-British citizens. If the UK Border Agency makes a decision to remove the child's parent, the parent will usually have a right of appeal. However, unless the parent makes an asylum claim, the parent will not be able to get Legal Aid. The appeal will be conducted without Legal Aid, and (unless the parent can afford legal representation) there will simply be no legal advice or representation available to ensure the interests of child and parent are properly considered in the proceedings.

A child facing being removed from the UK because of a decision by the UK Border Agency to remove his or her parent from the UK: Children in this situation may be British or non-British citizens. The situation is generally the same as the previous example. The only difference is that in this example, the child faces being forced to leave the UK in order to avoid separation from his or her parent. This situation may affect children born in the UK, or who have lived here many years (including from a very early age). In some cases, children may not speak the language spoken in the country to which the parent is to be removed and may have no connection with that country. Their school, friends and community may all be in the UK (as may their other parent). As in the previous example, Legal Aid will not be available.

A child facing removal from the UK because of a decision by the UK Border Agency to remove the child: Children in this situation are not British citizens. However, as in the previous example, children born in the UK, or who have lived here many years (including from a very early age) may face removal. In some cases, children who were brought to the UK when they were babies or very young, and do not know that they have no entitlement to be in the UK face removal. Only years later may their immigration status become significant, at which point the child (in some cases, then young adult) is faced with needing to take steps to sort out his or her immigration status. If the UK Border Agency makes a decision to remove a child, that child will usually have a right of appeal. However, unless the child also makes an asylum claim, the child will not be able to get Legal Aid. The child's appeal will be conducted without Legal Aid, and (unless the child can afford legal representation) there will simply be no legal advice or representation available to ensure the interests of the child are properly considered in the proceedings.

A separated (or unaccompanied) asylum-seeking child applying for an extension of discretionary leave: Children in this situation are not British citizens. Many of them will come from countries with serious security and human rights concerns – such as Afghanistan, Eritrea and Somalia. Legal Aid will be available for a separated child who makes an asylum claim (just as it will for an adult making an asylum claim). However, if a child is refused asylum, he or she is often granted discretionary leave to remain in the UK for three years or until he or she is 17½ years of age. When a child's discretionary leave to remain is coming to an end, he or she may need to apply for further leave to remain; and if this is refused the child will usually have a right of appeal. However, unless the child now makes an asylum claim again, Legal Aid will not be available. By way of example, a 12 years old child refused asylum will still be only 15 years old at the time he or she is denied Legal Aid to deal with these immigration proceedings.