

ILPA information sheet

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Legal Aid Proposals – Children

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ILPA has produced several information sheets about the Government's current proposals to make sweeping changes and cuts to Legal Aid – e.g. see the “Legal Aid 6 – The Latest Proposals” information sheet.

This information sheet provides information about how these proposals would affect asylum-seeking children and other children subject to immigration control. Of course, many other children in the UK would be affected by the proposed cuts – some would be directly affected (e.g. by proposals to remove Legal Aid for education-related matters) and others indirectly because their parents/families would be affected (e.g. by proposals to remove Legal Aid for welfare and debt).

How proposals on scope of Legal Aid may affect children

The “Legal Aid 7 – Immigration Proposals” information sheet gives information about for what it is proposed Legal Aid will continue and for what it will be removed. The general proposal is that Legal Aid is to remain for asylum (but not asylum support) but be removed for immigration. What is proposed is generally the same for children as it is for adults. However, this may cause particular difficulties for children.

A child asylum-seeker would, as now, ordinarily be eligible for Legal Aid advice and assistance to present his or her asylum claim to the UK Border Agency and any asylum appeal if the claim was refused. However, some children are granted permission (leave) to stay in the UK temporarily despite being refused asylum. This happens where there are no adequate care arrangements available for the child if returned to his or her home country. These children are usually granted discretionary leave to stay in the UK to the age of 17½ years (or for a period of 3 years, whichever is the shorter period). They may apply for further leave to stay in the UK, and if this is refused they may have a right of appeal. Some of these children may live in the UK for several years; and their cases often raise complex problems (of law and evidence) relating to the child's private and family life, as this has developed in the UK. However, under the Government's proposals, Legal Aid would not be available to deal with an application for further leave or any appeal that did not include an asylum claim.

There are many other children affected by the immigration system, including British children. Under the Government's proposals Legal Aid would be removed for immigration cases. Some children come to the UK lawfully when they are very young with a parent or other relative. However, in some cases, the child stays here and grows up here despite the time for which he or she was permitted to be here with his or her relative having expired. The child may still be very young when this happens, and may grow up without ever thinking there may be a problem about their entitlement to be in the UK. Some cases involve children who have spent many years, often the great majority of their life in the UK (sometimes even going on to the child becoming an adult).

These cases often raise complex problems (of law and evidence). However, Legal Aid would not be available under the Government's proposals.

Other children face the prospect of being separated from one or other of their parents, including in circumstances where it is likely the child may never see the parent again. This may happen because the UK Border Agency decides that one of the parents is not or is no longer entitled to remain in the UK. This may happen because one of the parents has been convicted of a criminal offence. In many such cases, the child has been born in the UK; and often is a British citizen. These cases often raise complex problems (of law and evidence), but under the proposals Legal Aid would not be available. Similarly, Legal Aid would not be available where instead of separation from the parent who is to be removed from the UK, the child faces separation from family (possibly including the other parent) and friends in the UK because it is proposed that the child also leaves the UK. Again, this often affects children who are born in the UK and children who are British citizens. In many cases, the country to which the child is to go is one to which he or she has never been, and one where the culture and language are completely unfamiliar.

Other children may be affected by the Government's proposal that Legal Aid be removed for asylum support. This would affect children whose parents have claimed asylum. The asylum support system is not straightforward, yet without proper legal advice it is possible that asylum-seekers, including families with children, become homeless and destitute because they are unable to secure the support and housing to which they are entitled. The consequences of this happening could be very severe as asylum-seekers are normally not permitted to support themselves by working. There are risks that parents, and even children, become vulnerable to exploitation or take serious risks trying to find ways to support themselves.

Refugees and migrants, including families with children, may also be disproportionately affected by proposals to remove Legal Aid for other areas (such as debt, employment, housing and welfare). For example, when an asylum-seeker is granted asylum in the UK (recognised by the UK as a refugee), he or she is no longer entitled to asylum support but becomes entitled to work in the UK and eligible for welfare support in the same way as a British citizen. At this time, many refugees need help to understand what their entitlements are and how these can be accessed. Without that help, and in some cases legal advice and assistance, there is a risk that recognition as a refugee can lead to problems of destitution or homelessness for a refugee and his or her family. The concern that removing Legal Aid for other areas may deny refugees the help they need to integrate in the UK after being granted asylum will be made worse if, as the UK Border Agency indicates is likely, the refugee employment and integration service (REIS) funded by the UK Border Agency is also cut or withdrawn.

How other proposals may affect children

There have been longstanding concerns that cuts to Legal Aid over the last several years have meant that many asylum-seekers and migrants have not been able to find Legal Aid advice or assistance to which they are entitled. Over this time, many good quality immigration lawyers have stopped doing Legal Aid work or significantly reduced the volume of Legal Aid cases they do. In March 2007, having received evidence that Legal Aid cuts were contributing to destitution among asylum seekers, the Joint Committee on Human Rights said "*We are concerned that the shortage of competent immigration advice and representation may indirectly result in destitution*" (page 35 of the Committee's Tenth Report of Session 2006-07 on *The Treatment of Asylum Seekers*). These concerns were made much worse last year with the closure of Refugee and Migrant Justice, and the effects of the 2010 tender process – see the "Legal Aid 5 – 2010 Update" information sheet.

The current proposals include further cuts of 10% in the fees paid to Legal Aid lawyers. There is a real risk that more good quality immigration lawyers stop or further reduce their Legal Aid work. Further loss of expertise and experience among immigration lawyers doing this work may disproportionately affect children because their cases often particularly need expertise.