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09 April 2013

Dear Lynne

### **Immigration Rule Changes - Ref 201300459**

Thank you for the advance warning of the changes to the Immigration Rules affecting separated children with Discretionary Leave. I would be very grateful for clarification on two issues that arise from bringing 'UASC DL' into the Rules.

In the last paragraph you say *'We think its right to also extend these changes to those unaccompanied children who already have UASC DL. We will enable them to apply for the new UASC leave at the expiry of their current discretionary leave'*

Our understanding from previous correspondence with Home Office officials is that further to the changes to the Immigration Rules made in July 2012 it would now take a separated child granted Discretionary Leave 10 years of continuous Discretionary Leave before they were entitled to apply for Indefinite Leave to Remain (as opposed to the six years prior to those changes). If I understand the last paragraph of your letter correctly, unaccompanied children granted Discretionary Leave prior to the 9 July 2012 will now be removed from the old six-year route under transitional provisions and considered to enter the new 10 year route when they make their further leave application. If that is the case, I am sure you would expect me to comment that this does not contribute to finding a durable solution to the situation of a separated child. Nor does it convince me that this change would be in a child's best interests, in fulfilment of their rights under the United Nations Convention on the Rights of the Child (UNCRC.) I would be keen to have your views on these issues.

The second matter that concerns me is the effect of moving Discretionary Leave from outside the Rules in respect of eligibility for housing assistance. Currently, people subject to immigration control have to be in an 'eligible class' in order to be eligible for housing assistance. 'Class B' covers a person –

- (i) who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and



(ii) who is not subject to a condition requiring him to maintain and accommodate himself, and any person who is dependent on him, without recourse to public funds;

My concern is that now that Discretionary Leave (a sub-set of the old 'exceptional leave to remain') will no longer be granted outside the Rules, separated children turning 18 will no longer fall within Class B and will no longer be eligible for housing assistance.

The change may have a significant impact on local authority provision, given that in some local authorities, separated children accommodated by children's services until they are 18 have been able to move into housing authority stock and obtain housing benefit while their Discretionary Leave remains current. The burden of housing separated children after they turn 18 may, as a result of these changes, now fall solely on the local authority's children's services under their children leaving care duties. This in turn may impact on the housing stock available to children's services for accommodating separated children. In hard pressed areas where housing stock is at a serious premium, the presence of these young people may also create tensions between them, and these receiving communities.

I do not know whether these changes were discussed with the ADCS prior to their announcement but I am aware that in some localities Directors of Children's Services and their colleagues in housing and other services already have grave issues with the system as it stands, and the changes you describe and my text above assumes are about to come into play are unlikely to help matters. I am therefore copying in Paul Greenhalgh, chair of the ADCS Asylum task force, so he can alert ADCS members to the potential impact.

Yours Sincerely,



Dr Maggie Atkinson  
Children's Commissioner for England

CC Paul Greenhalgh, DCS, Croydon.

