

HC 1039 AND LIMITED LEAVE AS AN UNACCOMPANIED CHILD SEEKING ASYLUM, EFFECT ON ELIGIBILITY FOR HOMELESSNESS SERVICES AND HOUSING ALLOCATIONS

1. As a result of the *Alvi* case¹, the Home Office is now incorporating some types of immigration leave into the Immigration Rules. The latest of these changes to the Rules came into effect on 6th April 2013 via Statement of Changes in immigration rules HC 1039. These amend the Immigration Rules to “include the requirements to be met for limited leave to remain as an unaccompanied asylum seeking child to be granted”. These children will now be granted leave under paragraphs 352ZC-352ZE of the Immigration Rules.
2. Previously, immigration leave was granted to these children outside the Immigration Rules (this is what has generally been described as “Discretionary Leave”). Such leave is time limited but has no restrictions on recourse to public funds. The new leave arrangements mirror this: the leave is time limited but with no restrictions on public funds.
3. However, because of the way in which benefits and housing regulations are framed, the effect of bringing these children into the regulations is to deprive them of eligibility for homelessness services and housing allocations from local authorities. This is because the regulations on eligibility (the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 2006/1294) define eligibility for people subject to immigration control by “classes” (regulations three and five). Children given discretionary leave fitted Class B:

“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) whose leave to enter or remain 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;”
4. Because these children will now be given immigration leave under the Immigration Rules they will not fit the definition of Class B, or those for other classes (which cover people with refugee status, indefinite leave to remain and humanitarian protection). Young people who wish to apply for local authority housing or homelessness assistance once they have leave will not be able to do

¹ *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33

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so. They retain the option of asking social services departments for accommodation.

5. Benefits laws and regulations make different provision from housing regulation. Benefits rules generally exclude from benefits a person subject to immigration control who has immigration leave which is subject to a condition that he or she does not have recourse to public funds. They do *not* exclude a person who has leave which is *not* subject to a condition that he does not have recourse to public funds (see section 115(9) of the Immigration and Asylum Act 1999). But children who are not in fact habitually resident are ineligible for key benefits of last resort, including Housing Benefit², Income Support and Universal Credit,³ if they have leave granted under these new Immigration Rules. This is so even though there is no condition on recourse to public funds. By contrast, children who were granted Discretionary Leave were exempt from the requirement to be in fact habitually resident. This change may deny benefits to children granted leave soon after arrival.

Problems arising from this change

6. Most children in this situation will have no option but to rely entirely on social services for accommodation and support. Many currently do so anyway, but the changes remove choices from them should they want to secure assistance as homeless persons, or pursue options for independent accommodation, including, for example, help via housing benefit for their rent (where a child is not habitually resident).
7. The exclusion from homelessness assistance as a result of the change also imposes a potential extra burden on local authority social services departments, which would appear not to have been discussed with them or evaluated, which is contrary to the relevant provisions in the New Burdens Doctrine of 2011.⁴
8. As the Home Office continues the process of incorporating policies and concessions into the Immigration Rules there is a clear danger that other groups currently given leave outside the Rules may face the same problems. It would be helpful to know which groups of people the Home Office intends to bring within the Immigration Rules: for example, are they considering the current arrangements for survivors of domestic violence who get three months leave outside the rules to enable them to make an application for indefinite leave to remain? Many of them rely on the access to homelessness services and benefits that this arrangement offers.

² See reg 10(2) of the Housing Benefit Regulations 2006, SI 2006/213.

³ Income support under regulation 21AA and universal credit under regulation 9 of the Universal Credit Regulations 2013, SI 2013/376.

⁴ Available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5960/1926282.pdf

9. An example of another group definitely affected appears within the same rule changes⁵. Stateless persons can now apply for leave to remain for 30 months, renewable, with the chance to apply for indefinite leave after five years. The small number of people who will get this leave will have no bar on recourse to public funds. However, because their leave is given under Immigration Rules (and is not refugee status or humanitarian protection) they will not be able to apply for housing or homelessness assistance, and may face problems accessing some basic benefits. They are likely, therefore, to have to rely on local authority social services provision if falling within definitions of vulnerability or in a household with children.
10. Neither Department for Work and Pensions nor Department for Communities and Local Government have issued any guidance about the rule changes, which may well indicate that they have not been consulted or informed about the rule changes and may not be aware of the effects of them.
11. Local authorities are likely to be concerned at the failure to consult and evaluate the cost to them once they become aware of the additional burdens and this may become the subject of legal and other challenges.
12. Children affected may also bring challenges: obviously these actions would be against the DWP and relevant local housing authorities in first instance but would be likely to involve the Home Office and Department of Communities and Local Government in all actions, because of the failure to protect children and focus on their best interests in the decision-making.

Possible solutions

13. Generally it has been the policy of the Government to align benefits, housing and recourse to public funds rules. We recommend that this be the approach here as well.
14. This is best achieved by changes to the relevant housing and homelessness regulations to redraft “class B”, so that they cover those granted immigration leave **within and outside** the rules where such leave includes no bar on recourse to public funds. The benefit rules exemption from showing actual habitual residence should also be applied to this group. This would then “future-proof” them against further changes to the Immigration Rules.

ILPA 23 April 2013

⁵ HC 1039 paragraphs 124 ff, which introduce a new Part 14 of the Immigration Rules HC 395.