



Home Office

Dr Maggie Atkinson
Children's Commissioner for England
Office of the Children's Commissioner
33 Greycoat Street
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16 September 2013

Lynne Spiers
Operational Policy and Rules
Immigration Border Policy
Directorate
Home Office
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40 Wellesley Road
Croydon, CR9 2BY
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Dear Dr Atkinson,

RE: Immigration Rule Changes – Ref 201300459

Thank you for your letter dated 09 April 2013 and apologies for the delay in replying. You asked for clarification regarding the length of continuous leave an unaccompanied asylum seeking child (UASC) granted Discretionary Leave (DL) prior to the 9 July 2012 Immigration Rules changes, must complete before they are entitled to apply for Indefinite Leave to Remain (ILR); and, the effect of the introduction of UASC Leave on 1 April 2013 on eligibility for housing benefit.

In respect to your first point, those granted leave under the DL policy in force prior to the changes to the Immigration Rules on 9 July 2012 will continue to be considered for settlement under the policy in force before that date (normally after accruing six years continuous leave); this includes cases where further periods of leave are granted after 9 July 2012 in continuation of leave granted before that date. The 10 year route applies to people granted initial periods of leave on or after 9 July 2012.

To be eligible for settlement the circumstances prevailing at the time of the original grant of leave must still persist at the date of the new decision or, if not, the individual must qualify for leave under another provision. Children granted UASC leave due to the absence of safe and adequate reception arrangements in the country of return would no longer qualify under this provision upon turning 17½ years of age and would be expected to take steps to leave the UK, unless they qualify for a further grant of leave under a different provision.

In respect to your second point, we have been discussing the regulations you refer to with officials in the government departments responsible for them and understand consideration is being given to some changes. For further information you may wish to consider contacting the relevant department directly.

However, it is important to mention that the wording of the regulations has not in practice had any impact on the ability of young persons granted limited leave (whether under the rules or through DL) to obtain access housing and other benefits when they reach 18 (subject to other general requirements). Although young people granted UASC leave are not specifically covered in the relevant regulations they would be able to access benefits if they satisfy the normal Habitual Residence Test. Guidance for decision makers on the

factors/issues they have to consider when determining whether someone is factually habitually resident is available on the Department for Work and Pensions website.

Similarly, local authorities have not reported that the very specific issue you mention in respect to the housing regulations has placed an extra financial burden on them. We fund local authorities for their costs in supporting separated children in the asylum system, so regularly discuss issues relating to the financial impact of carrying out their responsibilities. We will of course keep the matter under review and consider any evidence from the ADCS or individual local authorities that the changes have had an impact.

I hope that this response sufficiently answers your concerns. If you require further clarification on the points raised, please do not hesitate to contact me or a member of my team.

Yours sincerely,

A handwritten signature in blue ink that reads "L. Spiers".

Lynne Spiers