Draft Order laid before Parliament under section 41(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. XXXX

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019

Made - - - - ***

Coming into force in accordance with article 1

The Lord Chancellor makes this Order in exercise of the powers conferred by sections 9(2) and 41(1)(a), (2)(b) and (3)(c) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**).

A draft of this Order was laid before Parliament in accordance with section 41(6) of that Act and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019 and comes into force on the day after the day on which it is made.

Amendment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

2.—(1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services) is amended as follows.

(2) In Part 1 (services), after paragraph 31 insert—

"Immigration, citizenship and nationality: separated children

31A.—(1) Civil legal services provided in relation to a relevant application where the services are provided to an individual who, at the time of applying for those services, is a separated child.

(2) A relevant application is—

(a) an application made by the separated child or another person under the immigration rules for the grant of entry clearance, leave to enter or leave to remain in the United Kingdom (whether under or outside of the immigration rules),

(**a**) 2012 c. 10, to which, save as specified in the footnotes below, there are amendments not relevant to this Order.

(b) an application made by the separated child outside of the immigration rules for the grant of leave to remain in the United Kingdom, or

(c) an application made by the separated child for registration under the British Nationality Act 1981(**a**) as—

(i) a British citizen,

(ii) a British overseas territories citizen,

(iii) a British Overseas citizen, or

(iv) a British subject.

Exclusions

(3) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

Definitions

(4) In this paragraph—

"child" means an individual—

(a) who is under the age of 18, or

(b) whose age is uncertain, but who is treated by the Director as being under the age of 18;

"entry clearance" has the same meaning as in the Immigration Act 1971(**b**);

"immigration rules" has the same meaning as in the Immigration Act 1971;

"leave to enter" and "leave to remain" are to be construed in accordance with the Immigration Act 1971;

"separated", in relation to a child, means—

(a) not being cared for by a parent,

(b) not being cared for by a person with parental responsibility for the child (within the meaning of section 3 of the Children Act 1989(**c**)), or

(c) looked after by a local authority (within the meaning of section 107(6))(**d**).".

(3) In Part 3 (advocacy: exclusion and exceptions), in paragraph 13, after "29," insert "31A,"(**e**).

Amendment of the Civil Legal Aid (Procedure) Regulations 2012

3.—(1) The Civil Legal Aid (Procedure) Regulations 2012(**f**) are amended as follows.

(2) In regulation 9 (legal representation), after paragraph (2)(a) insert—

"(aa) is a separated child within the meaning given in paragraph 31A of Part 1 of Schedule 1 to the Act and those proceedings concern a relevant application falling within paragraph 31A(2)(a) of Part 1 of Schedule 1 to the Act;".

(3) In regulation 30 (licensed work: applicants), after paragraph (1)(a) insert—

"(aa) a separated child within the meaning given in paragraph 31A of Part 1 of Schedule 1 to the Act and the proceedings concern a relevant application falling within paragraph 31A(2)(a) of Part 1 of Schedule 1 to the Act;".

(**a**) 1981 c. 61, amended by sections 2 and 4 of the British Overseas Territories Act 2002 (c. 8). There are other amendments which are not relevant to this Order.

(**b**) 1971 c. 77, amended by section 39 of, and Schedule 4 to, the British Nationality Act 1981. There are other amendments which are not relevant to this Order.

(**c**) 1989 c. 41.

(**d**) Section 107(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was amended by S.I. 2016/413.

(**e**) Paragraph 13 of Part 3 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was amended by section 47 of the Modern Slavery Act 2015 (c. 30).

(**f**) S.I. 2012/3098, to which there are amendments not relevant to this Order.

Amendment of the Civil Legal Aid (Merits Criteria) Regulations 2013

4.—(1) The Civil Legal Aid (Merits Criteria) Regulations 2013(**a**) are amended as follows.

(2) In regulation 18 (legal representation), after paragraph (2)(a) insert—

"(aa) is a separated child within the meaning given in paragraph 31A of Part 1 of Schedule 1 to the Act and those proceedings concern a relevant application falling within paragraph 31A(2)(a) of Part 1 of Schedule 1 to the Act;".

(3) In regulation 22 (immigration and terrorism prevention and investigation measures etc), in paragraph (a), after "paragraphs 25 to 30" insert "and 31A".

(4) In regulation 39 (standard criteria for determinations for legal representation), in paragraph (c), at the beginning, insert "except in proceedings which concern a relevant application falling within paragraph 31A(2)(a) of Part 1 of Schedule 1 to the Act,".

(5) In regulation 60 (criteria for determinations for full representation in relation to immigration), in paragraphs (1) and (2), in each place where it occurs, after "paragraphs 25 to 30 (immigration)," insert "31A (immigration, citizenship and nationality: separated children),".

Amendment of the Civil Legal Aid (Financial Resources and Payment of Services) Regulations 2013

5.—(1) The Civil Legal Aid (Financial Resources and Payment of Services) Regulations 2013(**b**) are amended as follows.

(2) In regulation 6 (individuals in receipt of certain support), in paragraph (1)(a), after "paragraphs 24 to 30 (immigration and asylum)," insert "31A (immigration, citizenship and nationality: separated children),".

(3) In regulation 44 (contributions), in paragraph (3)(a)(i), after "paragraph 30 (immigration: rights to enter and remain)" insert "or 31A (immigration, citizenship and nationality: separated children)".

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order amends Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It makes provision for separated children to be eligible for legal aid for civil legal services in relation to the grant of entry clearance, leave to enter or leave to remain in the United Kingdom (whether under or outside of the immigration rules), applications made by separated children outside of the immigration rules for the grant of leave to remain in the United Kingdom, and applications for registration as a British citizen, as a British overseas territories citizen, as a British Overseas citizen or as a British subject.

Articles 3 to 5 make consequential amendments to secondary legislation.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Legal Aid Policy team, Access to Justice Division, Ministry of Justice, 102 Petty France, London SW1H 9AJ (telephone: 07542944606). The impact assessment is annexed to the Explanatory Memorandum which is

(**a**) S.I. 2013/104, amended by S.I. 2015/1414. There are other amendments which are not relevant to this Order.
(**b**) S.I. 2013/480, amended by S.I. 2015/1416. There are other amendments which are not relevant to this Order.

available alongside these Regulations on the UK legislation website at http://www.legislation.gov.uk.

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