

# **KIND Resources.**

## **‘Children in Need’: Immigration and Citizenship Matters**

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A guide for local authorities in Scotland

*October 2022*





**Kids In Need of Defense UK (KIND UK) provides free legal help to children, young people and families as they navigate the UK's immigration and nationality procedures.**

**We partner with lawyers and law firms across the country to ensure the best quality legal advice and representation**

**We protect the rights and wellbeing of undocumented children and young people**

**We campaign for systemic change to ensure that all children are safe and able to thrive regardless of their immigration or nationality status**

Last year we supported over 700 undocumented children, young people and families. Over 450 lawyers from 20 partner law firms worked on KIND cases, and we achieved a success rate of 99%.

KIND UK is a collaboration between five award-winning, UK based organisations that specialise in children's immigration and asylum law: Migrant and Refugee Children's Legal Unit, JustRight Scotland, Coram Children's Legal Centre, Central England Law Centre, and Greater Manchester Immigration Aid Unit.

We partner with KIND, a US charity supporting legal representation for children facing deportation proceedings alone.

**For information about accessing KIND UK's services visit:**

[www.kidsinneedofdefense.org.uk/cases-we-take](http://www.kidsinneedofdefense.org.uk/cases-we-take)

**Initial information about a child's immigration status/citizenship at:**

[www.pathtopapers.com](http://www.pathtopapers.com)

Families on a low income will normally be financially eligible for Legal Aid, meaning that they will not be liable to pay for legal fees. An updated list of legal aid immigration solicitors offering advice in Scotland can be found [here](#).

**Organisations that can offer assistance to NRPf families in Scotland:**

[Scottish Refugee Council](#)

[British Red Cross](#)

**For queries about this resource, please contact:**

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*This guide seeks to set out some helpful information for professionals working with children in need (and their families) who are not British citizens.<sup>1</sup> It includes information on how local authorities can find out about a child's nationality and immigration status, refer children and families for legal advice, and access other sources of support.*

*Most local authority professionals working with children in need should not be expected to be experts in immigration and nationality law; however, they are in a key position to identify children, young people and families who may need legal assistance. Children benefit immensely from 'regularising' their immigration status (getting some form of temporary permission to stay in the UK if they have none), but they benefit even more if they can access long-term solutions as early as possible, such as indefinite leave to remain or 'settled status', or British citizenship where appropriate. With adequate legal assistance, these solutions are possible for many children.*

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1. This briefing does not discuss the situation of children taken into care – information about immigration and nationality issues where the local authority is or has been the corporate parent can be found in the COSLA guidance available [here](#)

## 1. Case study

# Dan

## A child in need<sup>2</sup>

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*The case study below demonstrates the benefits of providing support and early referral for legal advice about nationality and immigration status, and additional case studies (linked at end) further illustrate some of the challenges that can arise:*

**Dan loves football and animals.** He dreams of being a footballer or vet when he grows up. He's like a lot of British children in these ways. And like a lot of children in the UK, Dan was not a British citizen at birth, although the UK is the only country he knows. He was born outside the UK to non-British parents, Al and Cara, and came to England with them at age 5. His parents entered legally, with visas and work permits, and continued working for several years. They paid off some debts back home, helped Al's elderly parents, and saved a little.

In April 2020, when Dan was 13 years old, Al died of Covid-19. Dan and Cara were devastated. Cara was not able to carry on working and lost her job. They soon spent all their savings on rent and essentials. Cara became depressed and anxious. They stayed with a friend of Cara's for a while, but it was a small 1-bedroom flat. When school resumed in person, Dan got upset at school several times, and often did not attend.

A month after his dad died, Dan's and Cara's permission to stay in the UK expired. Cara didn't want to leave the UK. She had no close family or friends to help her in her home country, didn't think she could get a job back home, and she worried that Dan would suffer if he had to leave his friends and his school. But because she was going through a hard time, Cara didn't get legal advice about their immigration status right away. She knew that she had 'no recourse to public funds' and thought she couldn't get any financial support or accommodation. She worried that Dan might be taken away from her if social services got involved. A counsellor at Dan's school eventually told Cara that she thought Cara and Dan were eligible for financial and other support, assured her Dan should not be taken from her, and referred her to the local authority.

The local authority assessed Dan and found that he was a child in need. They prepared a 'child in need' plan, in accordance with Section 22 of the Children (Scotland) Act 1995, that included providing counselling, financial support and accommodation for Dan and Cara. They also helped Cara get an appointment with an immigration solicitor. The solicitor assisted them, free of charge, to apply for leave to remain in the UK (with recourse to public funds) and for a fee waiver, as they couldn't afford the Home Office fees. Their applications for leave to remain were based on Dan having lived in the UK for 7 years and they were granted 2.5 years leave to remain in the UK, with recourse to public funds. After this, they were able to get on mainstream benefits. Later, Cara was able to start working part-time, but they continued to receive some benefits as her income was too low to support

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2. This is a realistic scenario, but not the story of a specific child.

them adequately. Dan and Cara continued to struggle with their mental health and continued counselling.

In August 2022, Cara asked their solicitor to help with renewing their immigration status, which would expire in 2023. The solicitor advised that they could submit an application to renew Cara's status, and that Dan, now almost 16, could apply for British citizenship. This would be on a discretionary basis, as Dan was not born in the UK, but it was clear that British citizenship would be in his best interests and that his future lies in the UK. Cara could not afford to pay the Home Office fees for her own application or Dan's. The solicitor advised them since from 16 June, it is possible to apply for a fee waiver for children's applications for British citizenship if they cannot afford to pay the fee.<sup>3</sup> The solicitor advised that they would need to provide evidence that they qualified for fee waivers. Cara was able to provide documents showing that she currently has £175 in savings, and after paying for essentials such as rent, utilities, food, personal and household essentials, and transport to work, over the past 6 months, she has sometimes had £50-100 pounds remaining at the end of the month, and sometimes nothing at all. Four months ago, she had to borrow £50 from a friend because her mobile phone broke and she couldn't afford a new one. The solicitor advised that Cara and Dan will meet the affordability tests for fee waivers, and they will be able to submit applications for fee waivers and leave to remain for Cara and British citizenship for Dan as soon as they gather all the necessary evidence. The solicitor also advised them that the Home Office had recently updated its guidance relating to children's discretionary citizenship applications,<sup>4</sup> so that children who have lived in the UK for 10 years should be granted British citizenship if they and their parents are lawfully present in the UK and meet other relevant criteria. This was good news: it was even more likely than before that Dan's citizenship application would succeed. The solicitor advised that both applications have a good chance of success.

Because they received financial assistance, counselling, and other support, and were referred for specialist legal advice, Dan and Cara were able to cope better emotionally, and Cara able to start working again. The support from their social worker and their solicitor gave Cara and Dan hope that, despite the difficulties they experienced, they could have a better future. Dan is doing well in school now, and after he acquires British citizenship, he will have the documents he will need later in life to go to university, get a job, open a bank account, rent accommodation, get a driving permit, and do lots of other things. Because his immigration status and citizenship have been addressed while he's still young and he's gotten other support, he can continue growing up knowing that he belongs in the UK and can follow his dreams.

**Additional real-world case studies are available at the links below:**

\*All names changed to protect privacy.

[Khalima: Child in Need taken into care in Scotland, domestic violence; EU Settled Status for relative of EEA national](#)

[Lena: Child in Need in England; teenager from non-EU country; adult sibling; domestic violence; 7-year residence application](#)

[Gemma: Child in Need and family, EU Pre-Settled Status \(Toddler\); EU Pre-Settled Status; homelessness; domestic violence; unsuitable accommodation; initial rejection by local authority\)](#)

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3. [Home Office, Affordability Fee Waiver: Citizenship Registration for Individuals under the Age of 18.](#)

4. [Home Office, Registration as a British Citizen – Children, p 29.](#)

## 2.

# Why is British citizenship important for children?

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- When someone acquires British citizenship through birth, registration or naturalisation they are legally recognised as a national of the UK.
- British citizenship attracts certain rights and privileges: to leave and enter the UK freely, to get a British passport, to vote, to access help from a British embassy abroad, to pass citizenship on to one's children in most circumstances.
- British citizenship can also ensure that a child will be able access higher education, be able to work, open a bank account, get a driving license, access benefits if needed, and do lots of other things that require official documents.
- British citizenship can strengthen a child's sense of identity and belonging.
- Citizenship takes a child out of a cycle of precarious immigration status which needs to be renewed and prevents potentially losing indefinite leave to remain, for example due to living outside the UK for lengthy periods.
- Citizenship provides the most secure status for a child, particularly for children who subsequently commit criminal offenses, and avoids them being double-penalised by a criminal sentence and deportation.
- Families can benefit financially from children acquiring British citizenship early on, compared to having to pay to renew their immigration status repeatedly.
- Information about routes to British citizenship for children is available [here](#).

### 3.

## Why is regularising immigration status important for children?

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*Where a child or young person doesn't yet have a route to British citizenship, or where it is not in their best interests to acquire British citizenship, it's important that their immigration status is as secure as possible. Having a secure form of immigration status or British citizenship ensures that:*

- Children are less likely to live in extreme poverty and/or homelessness for prolonged periods if their parents have permission to work and/or access mainstream benefits. They are also less vulnerable to risks such as domestic violence, exploitation, and poor pre-natal or ante-natal care. Lack of immigration status and ineligibility for public funds often pose serious safeguarding risks, as highlighted in Serious Case Reviews, for example that of 'Ellie', a young child who died with her mother, who had no recourse to public funds.<sup>5</sup>
- Children can feel more secure and a stronger sense of belonging and avoid the stress and other adverse impacts on their well-being caused by insecure immigration status.
- Children who acquire indefinite leave to remain or settled status likely won't face the trauma of removal to a country they don't know.<sup>6</sup>
- Some types of immigration status will also permit older children to access higher education, get jobs, access benefits, open bank accounts, and much more – but acquiring British citizenship offers much more security than a temporary or even a settled immigration status.

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5. Medway Safeguarding Children Board, [Serious Case Review 'Ellie'](#) (Jan 2018)

6. 'Leave to remain' means permission to stay in the UK. It is sometimes referred to as having a 'visa' or 'residence permit'. Leave to remain can be 'limited' to a certain time period or can be 'indefinite' – ie, unlimited/permanent. EU/EEA statuses are unique in some ways; EU Settled Status is in some ways equivalent to indefinite leave to remain/permanent residence. More information about EU/EEA statuses is available [here](#).

## 4.

# Why is assessing children's citizenship and immigration status important for local authorities?

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- Insecure immigration status and lack of British citizenship often adversely affect the safety and emotional and financial well-being of a child. Local authorities must address these issues to comply with their legal duties to assist children in need and act in their best interests.
- Early resolution of immigration and citizenship issues can save the local authority a lot of money and other resources. Social services support under Section 22 of the Children (Scotland) Act 1995 (or equivalent legislation in other parts of the UK)<sup>7</sup>, is not considered a 'public fund'<sup>8</sup>. If a family has 'no recourse to public funds' and remains on Section 22 support, this funding comes from local authority budgets rather than central government welfare benefits budgets. Similarly, formerly looked after children who enter their adulthood with precarious status, or no status, receive support from local authorities under section 29 Children (Scotland) Act 1995. Resolving immigration issues and supporting transitions to mainstream benefits and/or self-supporting employment may eliminate the need for long-term financial assistance by the local authority and thus [save the local authority thousands of pounds](#).<sup>9</sup>

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7. See, for instance, Section 17 of the Children Act (England) 1989, Part IV (Articles 17-18) of The Children Order (Northern Ireland) 1995; and Parts 3 and 4 of The Social Services and Well-being (Wales) Act 2014.
  8. [S 115 of the Immigration and Asylum Act 1999](#) provides the definition of public funds for immigration purposes. See also Home Office, [Public Funds: Migrant access to public funds, including social housing, homelessness assistance and social care](#), v 18 (Aug 2021); and NRPF Network, 'Who has no recourse to public funds (NRPF)?'
  9. See also [SLRA's 2021 report](#) providing an example of Lewisham Council's savings of approximately £384,000 (in 14 months) through early referral and resolution of immigration issues for people with NRPF (p 15); and see the Care Review's '[Case for Change](#)' noting that in 2019/20, 66 local authorities were estimated to have provided £44m in Section 17 support to 2,450 households' which had NRPF.



## 5. How should a local authority assess a child's nationality and immigration status?

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*In order to assess eligibility for some types of support and services, local authority staff must know an applicant's nationality and immigration status. Local authority staff are not normally in a position to resolve immigration and citizenship issues themselves, but should be able to identify issues and signpost or refer appropriately. Local authorities should take thoughtful, supportive approaches to identifying nationality and immigration status, based on children's rights and best interests.*

- Project 17's [Children's Charter](#) makes excellent recommendations for local authorities, including listening to children and focusing on their best interests.
- Detailed guidance for local authorities is available through the [NRP Network](#). In late 2021, NRP Network published separate guidance relating to EEA nationals, available [here](#). This guidance confirms that '[a] child will be in need if the family are destitute or at risk of homelessness and have no access to benefits or other resources to cover their housing and living costs.' However, we note that the law relating to EEA nationals and welfare benefits is complex and subject to ongoing litigation on some points, and we highly recommend that specialist legal advice is sought prior to denying an EEA national (or their child) Section 22 support.
- Local authorities should note in particular that a human rights assessment is **not** required and should not be undertaken with respect to EEA nationals who are lawfully present in the UK, including those who have an application pending or can apply late for EU Pre-Settled or Settled Status.<sup>10</sup>
- Copies of any documents seen and any legal advice shared with the local authority relating to nationality or and immigration status should be recorded on the child's file so that they can be easily accessed later.
- Children and parents who have no leave to remain in the UK may be very anxious about the possibility of the Home Office seeking to remove them from the UK. They need assurance and competent, confidential legal advice about any options to regularise their status. To help build a trusting relationship, the local authority should inform the family at the earliest stage what, if any, information they are required to share with the Home Office or other agencies. Unless specifically required to be shared, information should be kept

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10. See also our briefing about Section 17 and other support for EEA nationals, [here](#)

confidential, for reasons relating to data protection and trust.

- KIND UK's [online tool](#) may help local authority staff get an initial assessment of a child's immigration status or nationality and confirm whether legal advice is needed.
- Only solicitors and other qualified advisers can advise a person about their immigration status and nationality. It is a criminal offense for a non-qualified person to advise about such matters.<sup>11</sup> In Scotland, families who are on a low income (the current threshold set by the Scottish Legal Aid Board is approximately £245/week), will normally be eligible for Legal Aid, meaning that they will not be liable to pay for legal fees. An updated list of legal aid immigration solicitors offering advice in Scotland can be found [here](#).

**Assessing nationality:** When a child is referred to a local authority for support and assessed as a child in need, local authority staff need to ask, sensitively, if the child and their parents have British passports. They need to request documents proving nationality because some children, parents or guardians may incorrectly assume that a child born in the UK or resident for a long time has British citizenship. Local authority staff should explain that they are asking about British passports and citizenship because the child/family may need specialist legal advice about their immigration status and/or British citizenship.

- If the child has a valid British passport or certificate of registration as a British citizen, that is usually sufficient evidence that they are a British citizen. If the child does not have either of these but appears to have British citizenship (for example because one of their parents was British or 'settled' in the UK before the child's birth in the UK), the local authority should inform them how to apply for a British passport, pay for the passport application if they cannot afford it, and refer them for specialist legal advice if needed.
- If the child does not have a British passport or certificate of registration and it is unclear whether they are a British citizen, they should be actively referred for specialist legal advice. Active referral means ensuring that the legal adviser has specialist knowledge of children's citizenship applications and the capacity to assist the child.
- Some children or parents may not be aware that a child does not have any nationality, because they assume that the child acquired a parent's nationality or British nationality at birth, but this has not occurred. Such children may have an entitlement to British nationality under provisions for stateless children, or they may be eligible for leave to remain in the UK as stateless persons.<sup>13</sup>
- Our [flowchart](#) may help local authorities approach these issues. More information about children's eligibility for British citizenship is available in [this summary](#).

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11. [See Section 84\(1\) of the Immigration and Asylum Act 1999.](#)

12. 'Settled' in this context means indefinite leave to remain, permanent residence, or EU settled status.

13. See European Network on Statelessness, [Invisible Kids: Childhood Statelessness in the UK](#) (July 2021).

**To ascertain immigration status**, and thus eligibility for mainstream benefits or local authority support, the local authority should review passports, which may contain visas or other evidence of leave to remain, and any letters or documents from the Home Office that say what type of leave to remain has been granted. However, it's important to be aware that:

- Immigration status and nationality should be considered from the perspective that they may represent needs for the child and should be addressed in their 'child in need' plan.
- There are lots of [different routes](#) to resolving children's immigration status. Specialist legal advice is needed.
- Even if a child has temporary leave to remain, they should be referred for legal advice to assess whether they are eligible for a more secure type of leave to remain or British citizenship.
- A child's eligibility for a particular immigration status or British citizenship changes over time due to their age, length of time in the UK, a parent becoming settled in the UK or acquiring British nationality, and amendments to immigration and nationality law and policy.
- Sometimes a child may have leave to remain or British citizenship but no evidence of it. A legal adviser can obtain Home Office records and should review them carefully.

## 6. What support must be provided to a child in need?

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- Section 22 of the Children (Scotland) Act 1995 requires that local authorities ensure that a child in need is **provided appropriate support and accommodation**.<sup>14</sup> There is no set statutory amount for financial support, as it depends on the child's situation. Some children's parents will be unable to work or access mainstream benefits due to their immigration status and having no recourse to public funds. Other parents are able to work, but their income is insufficient to support the child to an adequate level. Section 22 support must be provided to meet all the child's needs. Support under Section 22 is not a public fund; so even if the child/family is ineligible to receive public funds, they will still be eligible for Section 22 support if the child is in need.<sup>15</sup>
- Local authority staff can use the [NRPF Network's online](#) tool to find guidance about what support is available to a person who does not have recourse to public funds (however, as noted above, this may not be up-to-date for some situations, particularly for some EEA nationals). See our briefing on this, [here](#).
- Where a child in need or their parent(s) does not have British citizenship, part of the support offered by the local authority should be:

Referral for specialist legal advice to assess whether there are options to improve their immigration status, change a 'no recourse to public funds' condition,<sup>16</sup> or acquire citizenship.

Support to transition to mainstream benefits when eligible to do so – it may be a few months before such benefits are received, and children and their families should be provided appropriate financial and other support under Section 22 during the transition period.

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14. For similar legislation in other regions of the UK, see note 7.

15. For further advice on this, see the COSLA guidance on support for NRPF families which can be found [here](#)

16. A change of conditions application can be granted where a person is destitute or at risk of destitution; they are a parent/carer of a child and need access to public funds for reasons relating to the child's welfare; or there are 'exceptional circumstances' relating to their financial situation. Such applications are very likely to be granted for most applicants who are receiving Section 22 support. For more information, see the [Unity Project](#).

## 7.

# What about children in families that do not have permission to be in the United Kingdom?

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- Some children and families are excluded from accessing public funds or support under Section 22 because of their immigration status. Exclusion criteria are listed in Schedule 3 of the Nationality, Immigration and Asylum Act 2002 and include refused asylum seekers and people without leave to remain in the UK.
- Adults who do have leave to remain but have no recourse to public funds do not fall under this exclusion. If their children are in need, they should be provided with Section 22 support.
- Even where families are excluded from accessing public funds due to their immigration status, they might still be entitled to support by the local authority where refusing this would violate their human rights – for example, it would amount to inhuman or degrading treatment or would be a disproportionate breach of their right to respect for their family and private life.
- When assessing whether a family is entitled to Section 22 support, if (and only if) the family falls under the exclusion in [Schedule 3 of the Nationality, Immigration and Asylum Act 2002](#), the local authority should carry out a human rights assessment. The local authority must assess whether a breach of the applicants' human rights can be avoided by the family returning to their country of origin. The local authority must also consider whether there are any barriers to their return. Barriers which should be considered as preventing return include, for example (but are not limited to): one of the family has an application pending with the Home Office or a pending appeal/judicial review challenging a Home Office decision. Other barriers may include, for example, that one of the family members lacks documentation and/or is stateless and cannot be admitted to another country. If there are no barriers that prevent the family returning to another country, the local authority must also consider whether return would constitute a breach of one of the family's members human rights. Further guidance on human rights assessments can be found on the [NRPf network website](#).
- It is crucial that families who do not have a pending application or appeal to remain in the UK but who do not wish to leave the UK are referred to a qualified legal adviser to ensure that the family has access to competent legal advice as quickly as possible. This will assist the local authority to ensure that it does not commit or contribute to a breach of human rights or unnecessary hardship for the family.
- If the local authority finds that there are no barriers to the family returning to their home country, and there would be no human rights breach if the family returned, there might still be an obligation to support the family temporarily under Section 22 whilst return is arranged by the family to their home country. This process takes some time in some cases, especially if any family member needs to acquire new travel or identity documents.

## 8.

# Key considerations

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- British and non-British citizen children living in the UK who are homeless, destitute or unable to have all their needs met by their families are 'children in need'.
- Children in need whose parents have 'no recourse to public funds' must be provided support under Section 22, unless they are excluded and a properly undertaken human rights assessment has concluded that they could return to another country without breaching their human rights and they do not require support whilst arranging to leave the UK.
- Children in need (and/or their parents) who are not British citizens should be actively referred for competent, specialist legal advice.
- Only solicitors and qualified legal advisers can advise about nationality and immigration status.
- A child's eligibility to acquire certain types of leave to remain or British citizenship changes over time and needs to be reviewed regularly by a competent legal adviser.
- It is in children's best interests to have a secure immigration status and (usually) to acquire British citizenship as soon as possible.



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[www.kidsinneedofdefense.org.uk](http://www.kidsinneedofdefense.org.uk)