

Policy Statement on the intended evidence requirements in relation to the residence test for civil legal aid

1. The draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) (Amendment of Schedule 1) Order 2014 would, if approved, introduce a residence test for applicants for civil legal aid.
2. This policy statement sets out the Government's intended approach in relation to the evidence requirements which an individual will need to meet to demonstrate that they are lawfully resident or do not need to satisfy the test.

Evidential requirements

3. There are two types of documentation that will need to be provided by those subject to the residence test:
 - (i) evidence of lawful residence in the UK (or Crown Dependencies or British overseas territories (BOTs)), both at the time an application for legal aid is made and covering a continuous 12 month period at any time in the past; and
 - (ii) evidence that an individual is exercising that right at the time they apply for civil legal aid and have exercised that right during a continuous 12 month period in the past.
4. Individuals who fall into an excepted category of person and who are not required to satisfy the test (or, in the case of children under 12 months, only required to satisfy it in part) will need to provide documentary evidence to show that they fall into such a category.
5. The residence test would be carried out by the legal aid provider who was dealing with the application for civil legal aid and may subsequently be validated by the Legal Aid Agency (LAA).
6. Acceptable forms of evidence for demonstrating lawful residence or that an individual falls into an excepted category of person will be added to the Civil Legal Aid (Procedure) Regulations 2012, by way of a further Statutory Instrument amending those Regulations. Examples of what these forms of evidence will look like will be set out by the Director of Legal Aid Casework (DLAC). The DLAC will also issue guidance setting out a list of documentation which the DLAC considers demonstrates that a person is currently exercising their right to reside and did so for a continuous 12 month period at some time in the past
7. Exceptionally, the personal circumstances of the client may make it impracticable for evidence of the kind set out in the regulations and guidance to be supplied in whole or in part (for example because of their age, mental disability or because of being homeless). Such persons will have some flexibility over their evidential requirements. In such cases, the provider should seek to establish so far as possible whether the client is lawfully resident (or qualifies for one of the exceptions to the test). Where evidence of the kind set out in the regulations and guidance cannot be provided by the individual but the provider is nonetheless satisfied on a reasonable basis that the residence test is met or that the individual falls within an exception, the attendance note must

give the reason why the provider considered the personal circumstances made it impracticable for full evidence to be supplied and the basis on which the provider nonetheless reached the view that the test/grounds for an exception were met. This may be subsequently validated by the Legal Aid Agency.

8. We intend to make and lay the negative Statutory Instrument amending the Procedure Regulations following the making of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order (subject to Parliamentary approval). The DLAC will then publish guidance. However, to assist Parliamentary consideration of that Order, we have set out below and at **Annex A** how we currently intend each part of the test to be evidenced.

Evidence of a right to lawful residence

9. We intend that evidential requirements of being lawfully resident in the UK (or Crown Dependencies or a BOT) will be set out in the Civil Legal Aid (Procedure) Regulations 2012.
10. Employers are under a legal duty¹ to prevent illegal working by carrying out document checks to confirm if a person has a right to work in the UK or face a civil penalty or imprisonment. Evidential requirements are set out in secondary legislation² and detailed guidance is published for employers on acceptable documentation³.
11. We intend that the evidential requirements showing lawful residence for the purposes of the civil legal aid residence test will broadly align with those set out in the Immigration (Restrictions on Employment) Order 2007. This follows the long-standing precedent for employer checks. Many legal aid providers (as employers themselves) should be familiar with the requirements. Table 1 of Annex A sets out in further detail the proposed documentary requirements for this part of the test.

Evidence of exercising the right to lawful residence

12. In addition to evidence of a right to lawful residence, individuals will need to show that they are exercising that right, i.e. that they are in fact living in the UK, the Crown Dependencies or a BOT at the time of applying for civil legal services and that they have exercised that right for a continuous 12 month period in the past.
13. It will be necessary for providers to satisfy themselves that sufficient evidence has been provided to meet this requirement. We recognise that there is no single form of documentation which can establish absolutely whether somebody is in fact residing in the UK (or Crown Dependencies or a BOT) on the day they apply and that they have in the past been resident for a continuous period of 12 months (subject to allowing for breaks of up to a total of 30 days in that 12 month period). We therefore intend that providers may consider taking into account several different forms of documents. Guidance will set out the forms of documents which DLAC considers demonstrate the tests are met. We have considered the frequency with which documents are

¹ Sections 15-25 of the Immigration, Asylum and Nationality Act 2006

² The Immigration (Restrictions on Employment) Order 2007

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<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/>

generally issued i.e. asking for a utility bill issued within the last three months, or a record of health/care services over a 12 month period. Tables 2-3 of Annex A set out in further detail the proposed documentary requirements for this part of the test.

Evidence of falling into an excepted category of person and case

14. The residence test will apply to any individual applying for civil legal aid on any of the matters set out in the Legal Aid Sentencing and Punishment of Offenders Act 2012, with the following exceptions:

Exceptions for a category of person

- Serving members of Her Majesty's UK Armed Forces and their immediate families, and asylum seekers will not be required to satisfy the residence test.
- Children under 12 months old will not be required to have at least 12 months of previous lawful residence (but will need to be lawfully resident at the time the application for civil legal services is made and be exercising that right).
- An asylum seeker who is successful in their asylum claim will not be required to satisfy the residence test until 12 months after their claim for asylum was made, or until their claim for asylum was determined (whichever is later).
- Other categories of refugee who never make a claim for asylum in the UK, but are resettled or transferred here (and individuals accorded equivalent rights and benefits) would not be required to satisfy the residence test until 12 months after they enter the country (after which point they would have been able to accrue sufficient lawful residence to satisfy the test).

15. Tables 1 and 2 of Annex A set out in further detail the proposed documentary requirements for excepted categories of person.

Exceptions for categories of case

16. There will be exceptions for certain categories of case in Schedule 1 to the Legal Aid Sentencing and Punishment of Offenders Act 2012, which broadly relate to an individual's liberty, or where the individual is particularly vulnerable or where the case relates to the protection of children. No specific forms of evidence will be required for individuals applying for civil legal aid on the following matters:

- Detention cases (paragraph 5, 9⁴, 20, 25, 26 and 27 (and challenges to the lawfulness of detention by way of judicial review under paragraph 19) of Part 1 of Schedule 1 to LASPO);
- Victims of trafficking (paragraph 32 of Part 1 of Schedule 1 to LASPO), victims of domestic violence and forced marriage (paragraphs 11, 12, 13, 16, 28 and 29 of Part 1 of Schedule 1 to LASPO);
- Protection of children cases (paragraphs 1, 3⁵, 9⁶, 10, 15 and 23 of Part 1 of Schedule 1 to LASPO) There will be a further exception for sections 17 and

⁴ There will also be an exception for deprivation of liberty cases falling under paragraph 9 of Part 1 of Schedule 1 to LASPO.

⁵ Exceptions to the residence test for cases under paragraph 3 of Part 1 of Schedule 1 to LASPO would only apply for cases where the abuse took place at a time when the individual was a child.

20 of the Children Act 1989 cases falling within paragraph 6 of Part 1 of Schedule 1 to LASPO. In addition, we will make exceptions for sections 22A, 22B, 22C, 23, 23B, 23C, 24, and 24A and 24B of that Act cases falling within paragraph 6 of Part 1 of Schedule 1 to LASPO.

- Special Immigration Appeals Commission (paragraph 24 of Part 1 of Schedule 1 to LASPO).
- Certain judicial review cases for individuals to continue to access legal aid to judicially review certifications by the Home Office under sections 94 and 96 of the Nationality, Immigration and Asylum Act 2002 (under paragraph 19 of Part 1 of Schedule 1 to LASPO).

12 months continuous residence

17. In applying the test, we intend that “continuous” should bear its natural meaning, so that significant breaks in residence would not satisfy the “continuous” requirement. However, we consider it would be appropriate and proportionate to allow for short breaks in residence. Therefore breaks of up to 30 days (whether taken as a single break or several shorter breaks) would not breach the requirement for 12 months of previous residence to be continuous.

⁶ This exception to the residence test for cases under paragraph 9 of Part 1 of Schedule 1 to LASPO would only apply to cases under the inherent jurisdiction of the High Court in relation to children.

Annex A – Proposed documentary evidence requirements

Table 1: Evidence of lawful residence in the UK (or Crown Dependencies or British overseas territories) at the time an application is made and covering a previous 12 month period at any time in the past.

Acceptable forms of evidence
A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies who have the right of abode in the UK.
A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of an EEA country or Switzerland.
A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home office to a national of an EEA country or Switzerland.
A permanent residence card or document issued by the Home Office to the family member of a national of an EEA country or Switzerland.
A Biometric Residence Permit issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
An Immigration Status Document issued by the Home Office, to the holder endorsed to indicate that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.
A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.
A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.
A certificate of registration or naturalisation as a British citizen together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.
A letter issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.

A valid passport, residence permit, work permit or other document evidencing the individual's right to reside lawfully in a British overseas territory

A birth certificate or adoption certificate issued in Ireland

Notes

1. Evidential requirements for this part of the test will be set out in Civil Legal Aid (Procedure) Regulations 2012, by way of a further Statutory Instrument amending those Regulations.
2. Examples of what this evidence will look like will be provided by the DLAC.
3. Individuals may provide either (i) a single document which is both valid at the time the application for civil legal services is made and covers a previous 12 month period; or (ii) two separate documents, one valid at the time the application for civil legal services is made, and an earlier document covering a previous 12 month period.
4. The provider must see the original document(s).

Table 2: Documentation which DLAC will consider demonstrates evidence of actual current residence in the UK, Crown Dependencies or British Overseas Territories at the time of applying for civil legal aid.

Acceptable forms of evidence– this is a non-exhaustive list of evidence
Bank or building society statement confirming full name and residential address. Should be issued within the past three months of the application for civil legal services being made.
Bank or building society account opening confirmation letter, accompanied by supporting debit/credit card, confirming full name and residential address. Should be issued within the past three months of the application for civil legal services being made.
Council tax or property/parish rates statement or demand letter confirming name and address. Should be issued within the past 12 months of the application for civil legal services being made.
Utility bill or demand letter (gas, electric, telephone, water) confirming full name and residential address. Should be issued within the past three months of the application for civil legal services being made. This includes those issued in the Crown Dependencies (or by the Crown Dependencies (or any of their trading entities)) or in the BOTs constitute acceptable evidence.
A statement evidencing receipt of a social security benefit (e.g. child benefit, pension, jobseeker's allowance, carer's allowance) confirming individual's full name (or dependent's full name) and residential address.

<p>Should be issued within the past three months of the application for civil legal services being made.</p> <p>Statements evidencing receipt of local benefits particular to any Crown Dependency or BOT constitute acceptable evidence</p>
<p>A record of health or other care services which bears the individual's full name and residential address.</p> <p>Should be issued within the past three months of the application for civil legal services being made.</p>
<p>A letter from a prison or other detention facility confirming the individual's full name and that they are currently detained.</p> <p>Should be issued within the past month of the application for civil legal services being made.</p>
<p>A record of attendance at school within the period of 1 month prior to the application day.</p> <p>Should show attendance at school within one month of the application for civil legal services being made.</p>
<p>A tenancy agreement confirming individual's full name and residential address.</p> <p>Should be issued within the past 12 months of the application for civil legal services being made.</p> <p>Letters regarding informal tenancy agreements will <u>not</u> be acceptable.</p>
<p>A mortgage statement confirming individual's full name and residential address.</p> <p>Should be issued in past 12 months of the application for civil legal services being made.</p>
<p>A letter from a Local Authority or Housing Association confirming individual's full name and residential address and that individual is in receipt of social housing/social housing services.</p> <p>Should be issued within the past three months of the application for civil legal services being made.</p>
<p>A default notice/letter before action/notice to quit from Mortgage lender, Landlord, Local Authority/Housing Association confirming individual's full name and residential address.</p> <p>Should be issued within the past three months of the application for civil legal services being made.</p>
<p>A court summons, order or warrant confirming individual's full name and residential address.</p>

Should be issued within the past three months of the application for civil legal services being made.
A letter from a care home confirming individual's full name and that they are that a current resident/in receipt of care services.
Should be issued within the past three months of the application for civil legal services being made.

Notes

1. Evidential requirements for this part of the test will not be set out in secondary legislation.
2. Further guidance on documents which DLAC will consider demonstrates proof of exercising the right to lawful residence will be provided by DLAC.
3. Copies/print-outs of documents are acceptable.
4. Documents should be issued within the past three months of when an application for civil legal services is made.

Table 3: Evidence of 12 months actual continuous residence in the UK, Crown Dependencies or British Overseas Territories

Acceptable forms of evidence – non-exhaustive list of evidence
Record of payment of Council Tax or property/parish rates over 12 months. Evidenced through bank statements and/or statements from Council/utilities provider.
Record of payment of social security benefits over 12 months. Evidenced through bank statements and/or statements provided by DWP.
A record of health or other care services over a 12 month period. GP records, hospital admissions, letter from care home, hospital or hospice confirming 12 months of residence
Evidence of rent or mortgage payments over 12 months. Evidenced through bank statements or letter from landlord/mortgage provider.
A letter from a prison or other detention facility confirming that individual was lawfully detained for at least 12 months.
Probation service/parole board records covering a 12 month period.
A letter/record confirming attendance at a school or other educational institution over a 12 month period.
Wage slips showing 12 months of employment.
Tax records/accounts submitted to HMRC showing 12 months of continuous UK residence.

Plane, boat or other travel ticket showing arrival/departure (details of travel documents).
Evidence of training/ apprenticeship/ volunteering/ community service i.e. a letter from employer or community service provider confirming name and dates.
Historic service records showing 12 months of residence in the UK. These would need to show that a person was resident in the UK, Crown Dependencies or a BOT during that period.

Notes

1. Evidential requirements for this part of the test will not be set out in legislation.
2. Further guidance on documents which DLAC will consider demonstrates proof of exercising the right to lawful residence will be provided by DLAC.
3. Providers may use a combination of different documents covering a single 12 month period in order to establish that this part of the test has been met.
4. Copies/print-outs of documents are acceptable.
5. Providers will also need to satisfy themselves that there was no break in actual residence in the UK, Crown Dependencies or British Overseas Territories exceeding 30 days (whether in one single break or several shorter breaks during the 12 month period). This could for example include checking the claimant's passport/other travel documents to confirm.

Table 4: Evidence of being an asylum seeker

Acceptable forms of evidence
A valid Application Registration Card issued in accordance with section 26A of the Immigration Act 1971

Notes

1. Evidential requirements for this part of the test will be set out by way of amendment to the Civil Legal Aid (Procedure) Regulations 2012, by way of a further Statutory Instrument amending those Regulations.
2. Further guidance will be provided by the DLAC.
3. A Standard Acknowledgement Letter (SAL) does not constitute acceptable evidence.
4. An original document must be provided.

Table 5: Evidence of membership of Her Majesty's UK armed forces

Acceptable forms of evidence
A valid identity card issued by any of Her Majesty's United Kingdom forces.
A letter from the MoD confirming that the individual is a member of Her Majesty's United Kingdom forces.

Notes

1. Evidential requirements for this part of the test will be set out by way of amendment to the Civil Legal Aid (Procedure) Regulations 2012, by way of a further Statutory Instrument amending those Regulations.

2. Further guidance will be provided by the DLAC.
3. If presenting a letter from the Secretary of State, it will be necessary to provide additional evidence of identity in the form of:
 - a valid passport;
 - a valid biometric immigration document, commonly known as a “biometric residence permit”, issued in accordance with regulations made under section 5 of the UK Borders Act 2007;
 - a valid driving licence; or
 - a birth certificate.
4. Original document(s) must be provided.

Table 6: Evidence of familial relationship to a member of Her Majesty’s UK armed forces (required in addition to evidence in table 5 above)

Acceptable forms of evidence
A marriage certificate showing that the individual is married to the individual who is a member of Her Majesty’s United Kingdom forces
A civil partnership certificate showing that the individual is a civil partner of the individual who is a member of Her Majesty’s United Kingdom forces
A birth certificate or adoption certificate showing that the individual is a child of a member of Her Majesty’s United Kingdom forces
A parental responsibility agreement signed and witnessed by the court showing that the individual is a child of a member of Her Majesty’s United Kingdom forces. Evidence that indicate parental responsibility include: <ul style="list-style-type: none"> • Guardianship order • Child Arrangement Orders - (effective from April 2014). • Special guardianship order • Appointment of guardian under section 5 of the Children’s Act 1989 (CA 1989) • Parental Responsibility order made under Section 4, 4ZA, 4A of the CA 1989 • Parental Agreement under Section 4, 4ZA, 4A of the CA 1989
A court order for parental responsibility showing that the individual is a child of a member of Her Majesty’s United Kingdom forces. Evidence that indicate parental responsibility include: <ul style="list-style-type: none"> • Guardianship order • Child Arrangement Orders - (effective from April 2014). • Special guardianship order • Appointment of guardian under section 5 of the Children’s Act 1989 (CA 1989) • Parental Responsibility order made under Section 4, 4ZA, 4A of the CA 1989 • Parental Agreement under Section 4, 4ZA, 4A of the CA 1989
Evidence ⁷ of living together in a relationship similar to a marriage or civil partnership for two years or more to an individual who is a member of Her Majesty’s United Kingdom forces.

⁷ The Home Office require 6 items of correspondence addressed to the applicant and their unmarried or same-sex partner at the same address as evidence that they have been living together during the past 2 years. See page 44 of the following guidance.

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Notes

1. Evidential requirements for this part of the test will be set out by way of amendment to the Civil Legal Aid (Procedure) Regulations 2012, by way of a further Statutory Instrument amending those Regulations.
2. Further guidance will be provided by the DLAC.
3. Children of members of the armed forces can be of any age in order to qualify under this exception.
4. Original document(s) must be provided.

Table 7: Evidence of being under 12 months at the time of application for civil legal services

Type of evidence
Birth certificate or adoption certificate confirming individual's full name and birth date.

Notes

1. Evidential requirements for this part of the test will be set out by way of amendment to the Civil Legal Aid (Procedure) Regulations 2012, by way of a further Statutory Instrument amending those Regulations.
2. Further guidance will be provided by the DLAC.
3. The child does not need to have been born in the UK, Crown Dependencies or British Overseas Territories in order to qualify under this exemption, but will need to be lawfully resident at time an application is made.
4. Original document(s) must be provided.

<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/formflrm1020091.pdf>