

Changes to the Immigration Contract Specification

Changes to the Immigration Specification take effect today, 1st July 2022. It is important that Immigration legal aid Providers are fully aware of the changes and understand what they are entitled to claim and how they can bill for this work.

Section 12 of the Nationality & Borders Act 2022, which came into effect on 28th June 2022, introduces the differential treatment of refugees by allowing different classifications for those seeking asylum in the UK. Those arriving in the UK to claim asylum will now be classified as either Group 1 or Group 2 Refugees.

The relevant section of the Act provides as follows;

'12 Differential treatment of refugees

(1) For the purposes of this section—

(a) a refugee is a Group 1 refugee if they have complied with both of the requirements set out in subsection (2) and, where applicable, the additional requirement in subsection (3);

(b) otherwise, a refugee is a Group 2 refugee.

(2) The requirements in this subsection are that—

(a) they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention), and

(b) they have presented themselves without delay to the authorities.

Subsections (1) to (3) of section 37 apply in relation to the interpretation of paragraphs (a) and (b) as they apply in relation to the interpretation of those requirements in Article 31(1) of the Refugee Convention.

(3) Where a refugee has entered or is present in the United Kingdom unlawfully, the additional requirement is that they can show good cause for their unlawful entry or presence.

(4) For the purposes of subsection (3), a person's entry into or presence in the United Kingdom is unlawful if they require leave to enter or remain and do not have it.

(5) The Secretary of State or an immigration officer may treat Group 1 and Group 2 refugees differently, for example in respect of—

(a) the length of any period of limited leave to enter or remain which is given to the refugee;

(b) the requirements that the refugee must meet in order to be given indefinite leave to remain;

(c) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the refugee;

(d) whether leave to enter or remain is given to members of the refugee's family.

(6) The Secretary of State or an immigration officer may also treat the family members of Group 1 and Group 2 refugees differently, for example in respect of—

(a) whether to give the person leave to enter or remain;

(b) the length of any period of limited leave to enter or remain which is given to the person;

(c) the requirements that the person must meet in order to be given indefinite leave to remain;

(d) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the person.

(7) But subsection (6) does not apply to family members who are refugees themselves.

(8) Immigration rules may include provision for the differential treatment allowed for by subsections (5) and (6).

(9) In this section—

- “limited leave” and “indefinite leave” have the same meaning as in the Immigration Act 1971 (see section 33 of that Act);*
- “refugee” has the same meaning as in the Refugee Convention.’*

Group 1

Group 1 refugees are defined as those who meet the terms of Article 31, i.e. they have;

- Travelled to the UK directly from a country or territory where their life or freedom was threatened;
- Presented themselves without delay to the authorities; and where applicable,
- Shown good cause for any illegal entry or presence in the UK.

Group 1 refugees will usually be granted permission to stay in the UK for 5 years after which they can apply for further leave to remain.

Group 2

Group 2 refugees are defined as those who do not meet the terms of Article 31. For example, they did not travel directly to the UK from a country or territory where their life or freedom was threatened.

Group 2 refugees will usually be granted temporary permission to stay in the UK for 30 months.

Rebuttal Mechanism

Where the SSHD places a refugee in Group 2, there will be an opportunity for the refugee to rebut that provisional grouping by submitting a statement, representations or evidence in support of their arguments as to why they should be placed in Group 1 instead. There are obvious advantages to being placed in Group 1 as opposed to Group 2 and it is anticipated that any Group 2 refugees will wish to challenge this with the assistance of the legal representative.

The MoJ has confirmed that legal aid will be available for Providers assisting Group 2 refugees who wish to challenge or rebut their grouping. This is sometimes referred to as ‘the rebuttal mechanism/process’

Funding

As of 1st July 2022, the Immigration specification has been amended to reflect that a claim can now be made for this rebuttal work. The MoJ has confirmed that they will fund this work at hourly rates for a period of time so that they may gather data on the average time being spent by Providers on the rebuttal mechanism. It is therefore an opportunity to ensure that detailed and thorough advice and representation is provided to any Group 2 refugees to support them in challenging a Group 2 classification.

Paragraphs 8.26 and 8.27 of the Specification provide that;

‘8.26 An application to rebut a provisional decision to recognise an individual as a Group 2 Refugee by the Home Office made prior to a final decision on the asylum application will constitute one Matter.’

‘8.27 A Matter Start under Paragraph 8.26 is a separate Matter Start to the original Asylum application and a separate Claim may be submitted for this work.’

This means that a Provider acting for a client in relation to their asylum claim who also wishes to rebut their Group 2 classification, would be entitled to open a standard asylum matter, usually funded as a fixed fee, and also a matter for the rebuttal work, funded at hourly rates.

As with other hourly rates matters, these new matters will be subject to the usual costs and disbursements limits of £800 and £400¹ respectively, both of which are extendable upon application to the LAA.

The amended paragraph 8.86 of the Specification confirms that the payment for this work will be at hourly rates;

‘8.86 Immigration and Asylum Controlled Work contained in the following list is remunerated through Hourly Rates:

.....

¹ 8.90 (c), 8.92, 8.94 and 8.95 Immigration Specification

(q) advice on an application to rebut Group 2 Refugee status pursuant to Paragraph 8.26.'

Billing

The MoJ has also introduced new billing codes for claiming the rebuttal work.

This should be claimed using the following codes:

Matter Type 1	IAXL
Matter Type 2	IDIF

Successful Outcome

Where the work undertaken to challenge the client's Group classification is successful and the SSHD agrees that the classification decision should be withdrawn, Outcome Code '**IG**' should be recorded when billing the file.

Unsuccessful Outcome

Where the Asylum Grouping is maintained, Outcome Code '**IH**' should be used.

See the updated Guidance for Reporting Controlled Work and Controlled Work Matters for further details

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085225/Guidance_for_Reporting_Controlled_Work_June_2022_V31.pdf

As always, if you have any queries or require any further clarification, please do not hesitate to contact us.