

Article 8 – the right to respect for private and family life

This fact sheet provides an overview of the right to respect for private and family life under Article 8 of the European Convention on Human Rights. This fact sheet is intended to provide general information on Article 8. For more information on private life and long residence under Article 8 or the right to family life under Article 8, please see fact sheets available at

www.coramchildrenslegalcentre.com/resources.

If you have any questions about this issue relating to a refugee or migrant child, young person or family, you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

What is Article 8?

Article 8 of the European Convention on Human Rights (ECHR) protects a person's right to respect for their private and family life. Article 8 is a right that is concerned with an individual's need to live and develop in a social environment and to maintain relationships with others. It is enshrined in UK law by the Human Rights Act 1998.

It is important to note that the European Convention on Human Rights is not the same as the European Union. Leaving the European Union will not mean that the UK stops being a signatory to the European Convention on Human Rights. For further information see the Rights Info website. [1]

Article 8 is a qualified right, which means that it can be interfered with by a public authority, such as the Home Office, in certain circumstances. Article 8(2) provides that:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Any interference with a person's Article 8 rights must therefore be:

- lawful and be undertaken in a lawful way;
- undertaken for one of the reasons specified in the convention; and
- 'necessary' to achieve the purpose.

Immigration control is generally accepted to fall within the reasons specified in the convention. However, a public authority may only interfere with a person's right to respect for private and family life if the interference is proportionate.

When is Article 8 relevant?

Article 8 is relevant to many immigration cases. A decision by the Home Office may impact a person's Article 8 rights to respect for private or family life in many situations but is likely to be of particular importance in cases where:

- a person has been in the UK for a long time;
- a person has family in the UK; or
- a person is a British citizen or someone with settled status (indefinite leave to remain) who is entitled to be joined in the UK by their family.

Article 8 has particular significance in cases involving children because of the importance of family life to a child's development and welfare. Article 8 will be particularly relevant where a child has grown up or spent most of their life in the UK. Children and young people who were not born in the UK but who have been in the UK for many years may have developed family and private life ties in the UK that mean they would face particular difficulties adjusting to life abroad. To send them back to their country of origin would disproportionately breach their right to private and/or family life under Article 8.

Article 8 may be the sole basis of someone's case to enter or remain in the UK but it may also form just a part of someone's case, raised alongside other issues.

Article 8 is frequently considered alongside an asylum or protection application, as well as being raised in the appeals and removal/deportation processes.

What is the law on Article 8?

The government established how it interprets Article 8 within the Immigration Rules in 2012. The Immigration Rules set out what the Home Office believes are the parameters of an Article 8 claim. The Rules also set out the process applicants must follow and the requirements that the Home Office will apply when it makes decisions on applications under Article 8. The main provisions in relation to Article 8 are contained in Part 7 (private life) and Part 8 or Appendix FM (family life) of the Immigration Rules. [2]

However, it is important to note that the Immigration Rules only reflect the UK government's interpretation and do not reflect the established case law on Article 8. Over many years, domestic and the courts have made clear in various judgments that the introduction of the new rules does not affect the previously established principles on Article 8, which still apply. [3] The new rules and applications within or outside the Immigration Rules continue to be the subject of litigation and it is important that anyone considering making an application under Article 8 obtains legal advice on their rights and prospects. [4]

People making applications based on Article 8 should not necessarily be deterred if they do not meet the requirements of the Immigration Rules. The Home Office decision affecting them may still amount to a disproportionate breach of their Article 8 rights and it is possible to succeed in an initial decision or appeal in a case even if they do not meet the requirements of the Immigration Rules. It is very important to seek quality legal advice in each individual case.

Is legal aid available for legal representation in Article 8 cases?

As of 1 April 2013, legal aid is not available in most immigration cases, unlike asylum or protection cases where it is still available. Immigration cases include those based on Article 8 of the European Convention on Human Rights.

Where someone has an asylum or other kind of protection claim (i.e. they fear return) they may raise Article 8 alongside this protection claim. They will still be eligible for asylum legal aid. However, that person may have to pay the fees to an immigration solicitor or adviser to advise and represent in relation to the Article 8 arguments in the claim. Many unaccompanied children will have protection claims and will therefore still be eligible for asylum legal aid. In the case of a child looked after by a local authority or a care leaver with a pure immigration case, the responsibility for securing legal representation will fall to the local authority, which will have to pay for legal representation for the child or young person.

NOTES

[1] Rights Info, Spot the Difference: The EU or ECHR, June 2016 <https://rightsinfo.org/whats-difference-european-union-european-convention-human-rights/>

[2] Part 7,8 & Appendix FM of the Immigration Rules <https://www.gov.uk/guidance/immigration-rules>

[3] *Ogundimu (Article 8 – new rules) Nigeria* [2013] UKUT 00060 (IAC), *Izuazu (Article 8 – new rules)* [2013] UKUT 45 (IAC), and *MF (Article 8 – new rules) Nigeria* [2012] UKUT 00393 (IAC) - see the [MCP information note on these cases](http://bit.ly/Z2vtOr) at <http://bit.ly/Z2vtOr>

[4] *MM (Lebanon)* [2014] EWCA Civ 985 *Edgehill v SSHD* [2014] EWCA Civ 402, *Haleemudeen v SSHD* [2014] EWCA Civ 558, *Singh and Khalid v SSHD* [2015] EWCA Civ 74, *The Secretary of State for the Home Department v SS (Congo) & Ors* [2015] EWCA Civ 38

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.