

POLICY BULLETIN 79

SECTION 57 (Application for support: false or incomplete information) 2002 ACT GUIDANCE

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2. SCOPE OF THE DOCUMENT

2.1 This document provides guidance to NASS staff on the implementation of section 57 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") which comes into force on 8 January 2003. It is vital that case-workers apply the relevant statutory provisions and secondary legislation to the facts of the particular case before them and seek advice from senior officers (who in turn may seek legal advice) if they have any doubt about how to apply the provisions. Each case must be considered on its particular merits. The guidance is not intended to be comprehensive or a definitive checklist of matters which will necessarily be relevant in every case. There may be cases which are not addressed by this guidance or where the guidance does not provide the right answer on the facts of the particular case. This guidance supersedes the NASS instructions relating to the processes associated with 'Validation' (Version 7) which were circulated on 28 February 2000.

2.2 Application of this instruction in respect of children and those with children: Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

3. SUMMARY

3.1 Section 57 of the 2002 Act provides that regulations may provide that an application for NASS support shall not be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries. In practice, if an application is submitted in full and is deemed to be accurate, having taken into account information from other sources available to the Secretary of State, the application will proceed to be processed. If, however, the application is not complete or inaccuracies are identified the application cannot be entertained.

3.2 Section 57 applies to **all** applications for NASS support under section 95 of the Immigration and Asylum Act 1999 ("the 1999 Act")

3.3 There is no right of appeal against a decision to not entertain an application under section 57 of the 2002 Act.

4. COMPLETE INFORMATION

4.1 From 8 January 2003, the Asylum Support (Amendment) Regulations 2002 ("the 2002 Regulations") provide that an application for support under section 95 of the 1999 Act may not be entertained by the Secretary of State where he is not satisfied that the information provided is complete.

4.2 Additionally, from 8 January 2003 applications for NASS support must be submitted on the prescribed form (NASS 1), as amended by The Asylum Support (Amendment) (No.3) Regulations 2002, or a form to the like effect. Applications submitted in any other way will not be accepted, and will be returned to the applicant (or Voluntary Sector organisation if

appropriate), with an explanatory letter (**Annex C**). The applicant will be given 5 clear working days to submit the application on the correct form (although in exceptional cases an extension of this time-limit will be granted).

4.3 The prescribed NASS 1 application form must be completed in full. If NASS is not satisfied that the information is complete the form will be returned to the applicant (or Voluntary Sector organisation if appropriate) with an explanatory letter (**Annex D**). The applicant will be given 5 clear working days to submit the information previously omitted (subject to extensions in exceptional circumstances).

4.4 It will be made explicit in the letter that failure to supply the additional information within this specified period will normally result in the applicant having to vacate emergency accommodation (if applicable) and that the application for NASS support will not be entertained as the applicant is deemed not to have co-operated with enquiries as set out in section 57 of the Act. Voluntary Sector organisations will need to ensure that care is taken to ensure that all relevant information is recorded on the application form and thereby reduce any potential for delay.

4.5 If the information requested is provided within the time scale consideration will be given to the accuracy of the application (see section 5 of this form below).

4.6 If the applicant fails to provide the information requested the application will not be entertained on the grounds that the applicant is not co-operating with enquiries (see section 6 of this form below).

Example 1:

An adult with no dependants submits an application for section 95 NASS support, having applied for asylum on arrival at Port. The application is not however on the amended application form which must be used from 8 January 2003. The application form is returned to the Voluntary Sector organisation who assisted in the completion of the form. Immediately upon receipt the Voluntary Sector arrange for the amended NASS 1 to be completed and this is submitted to NASS 3 days after notification of the error.

In this example the second application form would be accepted, and provided the form is completed in full the application will progress to be considered for accuracy.

Example 2:

A single parent with 2 minor children submits an application for support on the correct application form. However, the applicant has not signed the application form (Section 13). The application form is returned to the Voluntary Sector organisation who assisted in the completion of the form, and a signed version of the form is returned to NASS immediately.

In this example the signed application form would be accepted and the application will progress to be considered for accuracy.

5. ACCURATE INFORMATION

5.1 From 8 January 2003, the 2002 Regulations provide that applications for support where the Secretary of State is not satisfied that the information submitted is accurate may not be entertained.

5.2 In determining whether the application is accurate NASS may make reference to other sources of information available to the Secretary of State. On the basis of the information available, NASS will determine whether the information appears to be accurate.

5.3 If the information from all sources is consistent, the application will proceed to be validated on the basis of eligibility.

5.4 If the information is not considered to be accurate NASS will write to the applicant detailing the anomalies and requesting an explanation. The applicant will be given 5 clear working days to respond (subject to an extension in exceptional circumstances).

5.5 It will be made explicit in the letter (**Annex E**) that failure to supply the additional information within this specified period will normally result in the applicant having to vacate emergency accommodation (if applicable) and that the application for NASS support will not be entertained as the applicant is deemed not to have co-operated with enquiries as set out in section 57 of the Act. Voluntary Sector organisations will need to ensure that care is taken to ensure that all relevant information is recorded accurately on the application form and thereby reduce any potential for delay.

5.6 If the applicant provides an explanation, or evidence, which satisfactorily addresses the anomaly the application will proceed to be validated on the basis of eligibility.

5.7 If the applicant fails to provide the information requested the application will not be entertained on the grounds that the applicant is not co-operating with enquiries (see Section 6).

5.8 If the applicant responds, but fails to provide a coherent explanation of the anomaly the application will not be entertained on the basis that the Secretary of State is not satisfied that the application is accurate (**Annex F**).

Example 3:

An adult with no dependants submits an application for support however the date of birth on the application form does not correspond to the details on the Application Registration Card (ARC) which they also submitted. The applicant is given 5 working days to explain the anomaly. The applicant confirms that the information on the ARC is correct, and that the date was erroneously written on the application form.

In this example the application would be accepted as the anomaly has been clarified satisfactorily. The application will now proceed to be validated on the basis of eligibility.

Example 4:

A couple with 1 child apply for asylum at the Asylum Screening Unit in Croydon. However, when they submit their application for NASS support they provide details of 2 dependant children. Despite a request for an explanation the family are unable to provide a satisfactory explanation in respect of the second child.

In this example the application is not entertained on the basis that the Secretary of State is not satisfied that the information is accurate.

6. CO-OPERATING WITH ENQUIRIES

6.1 Where the applicant fails to provide a complete application, despite a request for this information (see section 4) the application for support will not be entertained on the basis that the Secretary of State is not satisfied that the information provided is complete or that the applicant is co-operating with enquiries (**Annex G**).

6.2 Where the applicant fails to provide an accurate application despite a request for an explanation of the inaccuracies (see section 5), the application for support will not be entertained on the basis that the Secretary of State is not satisfied that the information provided is accurate or that the applicant is co-operating with enquiries (**Annex H**).

6.3 If the applicant provides the information requested and the Secretary of State is now satisfied that the application is complete and accurate, the application will proceed to be validated on the basis of eligibility.

Example 5

A couple submit an application for support but have failed to provide photographs. The applicant is requested to provide this information within 5 working days. This letter warns the applicant that failure to respond within the time scale will normally result in the application not being entertained. The applicant fails to submit the photographs within the time scale.

In this example, the application would not be entertained as the Secretary of State is not satisfied that the application is complete and is not satisfied that the applicant has co-operated with enquiries and there are no exceptional circumstances to justify an extension of time.

Example 6

A single female submits an application for support which states that she is 25 years of age. An ACID (Asylum Casework Information Database) check indicates that the details provided on arrival show her to be only 24 years of age - thus not entitled to the same weekly subsistence support. The applicant is asked for an explanation of the discrepancy, but fails to provide any response within the time scale.

In this example, the application would not be entertained as the Secretary of State is not satisfied that the application is complete and is not satisfied that the applicant has co-operated with enquiries and there are no exceptional circumstances to justify an extension of time.

7. RE-ENTERTAINING APPLICATIONS

7.1 There may be instances when additional information requested by NASS is submitted after the specified period of 5 clear working days has lapsed or after any extension of time granted in exceptional circumstances. Further consideration may be given to such applications but only when accompanied by the information originally requested by NASS together with a clear and coherent account of why delays have occurred in resubmitting the relevant information. If, on the basis of the information submitted, the Secretary of State is not satisfied that the applicant for support is providing complete or accurate information or co-operating fully with his enquiries then the application will not be entertained. (**Annex I**).

8. EMERGENCY ACCOMMODATION

8.1 All applicants who are admitted to emergency accommodation must complete and submit a NASS application form as soon as possible. When an application form is submitted and additional information has been sought, this must normally be provided to NASS within 5 clear working days. The onus is on the applicant to ensure that the relevant information is submitted in a timely manner. Failure to do this will normally result in arrangements being made for the applicant(s) to vacate the emergency accommodation within a specified period as they will have failed to co-operate with enquiries.

9. RECORDING THE INFORMATION

9.1 All applications for support will be registered on the NASS case record database (ASYS). If the application is subsequently found to be incomplete, or if there is reason to believe that the application is not accurate, the case will be recorded as 'In Validation' until the time scale for providing an explanation has elapsed.

9.2 If the applicant subsequently responds to the satisfaction of NASS the case will proceed to be considered under the further validation criteria ('Eligibility'). Only once these checks are completed may the case be 'Validated' on ASYS.

9.3 If the applicant fails to respond to the further enquires, or has not responded within the 5 full working days timescale, the application will not be entertained (unless exceptionally further time has been given)and the case status on ASYS will show as 'Invalid'.

9.4 If a subsequent application is received on an 'Invalid' case, a new record (-/002) will be created on ASYS and consideration of the application will begin again.

10. THE CHILDREN ACT

10.1 Where a family fails to provide complete or accurate information or fails to cooperate with enquiries in circumstances where the Secretary of State would otherwise have been required to provide section 95 support by virtue of section 122 of the 1999 Act, then they will not be able to obtain support from their local authority.

ANNEX A

SECTION 57 OF THE NATIONALITY, IMMIGRATION & ASYLUM ACT 2002

Application for support: false or incomplete information

At the end of paragraph 12(c) of Schedule 8 to the Immigration and Asylum Act 1999 (c.33) (asylum seeker support : procedure: disregard of application) there shall be inserted “(which may, in particular, provide for an application not to be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries under paragraph (d))”.

PARAGRAPH 12 OF SCHEDULE 8 TO THE IMMIGRATION & ASYLUM ACT 1999

12. The Regulations may make provision in respect to procedural requirements including, in particular, provision as to -

(a) the procedure to be followed in making an application for support; (b) the information which must be provided by the applicant;

(c) the circumstances in which an application may not be entertained; (d) the making of further enquiries by the Secretary of State;

the circumstances in which, and person by whom, a change of circumstances of a prescribed description must be notified to the Secretary of State.

