



# UK Visas & Immigration

This document is currently under review.

## Asylum Support: Policy Bulletins Instruction

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This document brings together information from Support Policy Bulletins (PB's), not already incorporated into standing instructions. Clarifying answers to commonly asked questions, by subject area, are also included. The PB's replaced by this instruction are:

V10.0

Policy Bulletin	Title
23	<a href="#">Asylum Support Appeals Process</a>
37	<a href="#">Maternity payments</a>
47	<a href="#">Judicial Review</a>
59	<a href="#">Help with the cost of funerals</a>
72	<a href="#">Employment and Voluntary Activity</a>
73	<a href="#">Provision of Initial Accommodation</a>
76	<a href="#">Asylum support applications from nationals of a European Economic Area State or from persons who have refugee status abroad</a>
78	<a href="#">Additional payments to pregnant women and children aged under 3</a>
79	<a href="#">Section 57 (application for support: false or incomplete information) 2002 Act</a>
80	<a href="#">Overpayment of Asylum Support Policy</a>
83	<a href="#">Duty to Offer Support</a>
84	<a href="#">Entertaining a Further Application for Support</a>
86	<a href="#">Possessions</a>
87	<a href="#">The Civil Partnership Act 2004</a>

## **Application in Respect of Children and Those with Children**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office 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 Home Office instruction 'Arrangements to Safeguard and Promote Children's Welfare in the Home Office' sets out the key principles to take into account in all activities where a child /children are involved.

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.

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# Chapter 1 - Section 98 Support

## Q1. What is Section 98 support?

Section 98 of the 1999 Act provides that the Secretary of State may provide or arrange for the provision of support for asylum seekers or dependants of asylum seekers who appear to the Secretary of State to be destitute or likely to become destitute pending the consideration of their support application under Section 95 of the 1999 Act.

It is temporary full board or self catering accommodation and is intended for short term use (full board former and operating hotels, houses in multiple occupation, hostels and self – contained self – catering properties).

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### 1.1 Provision of initial accommodation

The provision of initial accommodation is a temporary arrangement for asylum seekers who would otherwise be destitute and:

- are supported under Section 98 of the Immigration and Asylum Act 1999 and awaiting a decision from the Secretary of State on whether he may provide asylum support under Section 95 of that act; or he may provide asylum support under Section 95 of that act; or
- are supported under Section 95 and are awaiting transportation to their dispersal accommodation.

#### 1.1.1 Provision of initial accommodation under Section 98

A voluntary sector agency may admit an asylum seeker (and any dependants) to initial accommodation if s/he wishes to apply for asylum support from the Home Office and presents

- a valid “IS 96” temporary admission form date-stamped by an Immigration Officer and bearing an “applied for asylum on arrival” endorsement; or
- a valid NEAT01 letter issued on behalf of the Eligibility and Assessment Team (NEAT) authorising access to initial accommodation.

Once an asylum seeker has been admitted to initial accommodation,

- **Submitting an application**

Voluntary sector agency must ensure that a completed Asylum Support application form is submitted to the Home Office on behalf of the asylum seeker within two working days.

Where an application form cannot be presented authorisation must be obtained from a designated Home Office official before initial accommodation can be provided.

- **Consideration, including those considered vulnerable**



The designated Home Office official will respond to a request to admit an asylum seeker to initial accommodation before the end of the working day on which the application is received.

A refusal by the Home Office to grant access to initial accommodation will outline the reasons for the applicant's ineligibility.

Out of normal office hours (17.30 to 09.00, and weekends and public holidays) admission to initial accommodation until the next working day only may be authorised by a Home Office regional manager or duty officer for an individual whose claim for asylum has not yet been recorded, providing that s/he falls within one of the categories of particularly vulnerable applicants. Those applicants regarded to be particularly vulnerable are:

- families with a dependent child or children aged under 18 years;
- visibly pregnant women, or women able to prove that they are pregnant; (A 'MAT B1' form, other medical documentation or appropriate letter from a doctor will be accepted as proof of pregnancy.)
- asylum seekers who are disabled but are not considered to have clear and urgent care needs (see: Asylum seekers with care needs)
- asylum seekers whose individual needs appear to require special consideration.

The asylum seeker must then attend an Asylum Screening Unit on the next working day to have his/her claim recorded.

- **Satisfying Bail conditions**

The Home Office will authorise admission to initial accommodation in order to satisfy a bail condition for an asylum seeker who is currently held in police custody or a detention centre, and is eligible for support. In such circumstances the individual's representative should request accommodation from a voluntary sector agency for the Home Office to approve.

### **1.1.2 Ending provision of initial accommodation under Section 98**

If a decision is taken not to provide S95 support, or because of Section 55 exclusion, initial accommodation to those supported under Section 98 must end as soon as is reasonable; ordinarily the next working day. Exceptionally this may be extended to 7 working days, but no longer. Exactly when Initial accommodation ends will depend on the individual case, for instance:

#### **The asylum seeker is supported under Section 98 and his claim for asylum has been determined in his favour.**

If granted leave to enter or remain, 28 days after receipt by the asylum seeker of that decision (subject to Section 94(9) of the Immigration and Asylum Act 1999);

If granted leave to enter or remain following an appeal, 28 days after the day on which the appeal is

#### **The asylum seeker, without dependants, is supported under Section 98 and his claim for asylum has been determined.**

If refused leave to enter or remain, 21 days after receipt by the asylum seeker of that decision (subject to Section 94(9) of the Immigration and Asylum Act 1999); or  
In the case of an unsuccessful appeal, 21 days after the appeal is disposed of.

**The asylum seeker, with a dependant aged under 18 years, is refused leave to enter or remain, or has had an unsuccessful appeal against the decision, which may be withdrawn:**

- no later than 7 days after his/her youngest dependant reaches 18 years of age; or
- 14 days after receipt by the asylum seeker of a certificate made under Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

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### **1.1.3 Provision of initial accommodation under Section 95**

A supported person under Section 95 in initial, dispersal or private accommodation, may only be admitted to initial accommodation with authorisation from the designated Home Office official. .

An asylum seeker in receipt of subsistence-only support from the Home office who submits a change of circumstances notification, and applies for accommodation and subsistence, may be admitted to initial accommodation while this application is considered if it appears to the designated official that s/he does not have adequate accommodation or the means of obtaining it.

An asylum seeker previously supported by the Home Office may be admitted to initial accommodation if s/he has been released from hospital, police custody or a detention centre and his/her previous accommodation is no longer available and s/he remains otherwise eligible to receive asylum support.

An asylum seeker receiving support from the Home Office may in exceptionally be admitted to initial accommodation in the region in which s/he has been living if his/her present accommodation is no longer adequate as a result of

- domestic violence; (Chapter 25 of the Asylum Support Compliance SOPS
- a racist incident or racial harassment; ([see also: Racist Incidents](#))
- a serious incident; or
- a significant property defect.

In such cases, admission to initial accommodation must be authorised beforehand by the designated Home office official on a recommendation from regional staff. If the asylum seeker is currently residing in dispersal accommodation, then admission to initial accommodation should only be authorised where the accommodation provider and regional staff cannot arrange safe temporary housing or a permanent transfer. Initial accommodation should only be provided in another region if this is necessary to ensure the asylum seeker's safety, or if initial accommodation is not available locally.

An asylum seeker resident in dispersal accommodation may not be admitted to initial accommodation if the designated Home Office official considers his/her current

accommodation to be adequate. The asylum seeker should be advised by the voluntary sector agency to return to his/her dispersal accommodation.

An asylum seeker, whose support from the Home Office was terminated under regulation 20 of the Asylum Support Regulations 2000, should not be provided with initial accommodation unless the Secretary of State has decided to entertain a subsequent application for asylum support. For further guidance on the entertaining of further applications for support, see [Applicants who have Previously Breached the Conditions of Their Support](#)

#### **1.1.4 Ending provision of initial accommodation under Section 95**

The provision of initial accommodation to an asylum seeker who is supported under Section 95 shall end on the day on which the asylum seeker travels to dispersal accommodation. See also: Access to initial accommodation for an [asylum seeker who fails to travel](#)

The provision of initial accommodation to an asylum seeker who is supported under Section 95, and who the Secretary of State has adjudged to have breached a condition of this support, shall end following notification of the Secretary of State's decision and the issue of a notice to quit by the accommodation provider. This notice to quit should allow a period of not less than seven calendar days for the asylum seeker to vacate the accommodation, except in exceptional circumstances where a shorter period of notice may be appropriate. There would normally need to be exceptional circumstances to necessitate a notice to quit allowing a period greater than seven calendar days for the asylum seeker to vacate the accommodation.

The provision of initial accommodation to an asylum seeker who is supported under Section 95 and whose claim for asylum has been determined shall end 7 days following the issue of a notice to quit, except in exceptional circumstances.

Asylum support shall continue for an asylum seeker with a dependant aged under 18 years following a decision by the Secretary of State to refuse leave to enter or remain, or the individual's unsuccessful appeal against this decision, but may be withdrawn

- no later than 7 days following his/her youngest dependant reaching 18 years of age; or
- 14 days following receipt by the asylum seeker of a certificate made under Section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.Claimants, etc.) Act 2004

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## **Q2. What is the process when an applicant arrives at Initial accommodation with a medical condition?**

Most regional Initial Accommodation locations have onsite Medical Teams known as the Initial Accommodation Healthcare Teams who are available to perform and offer health checks to new arrivals. If an applicant informed the Home Office of a pre-existing medical condition or the applicant requires non-urgent medical attention, the relevant Primary Care Trust (PCT) or equivalent will be notified of their presence in the region. For further guidance please see:

- Eligibility and Assessment
- Healthcare Needs and Pregnancy Dispersal Guidance

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## Chapter 2 - Eligibility for Section 95 Support

### Q3. What are the eligibility criteria for s95 support?

Section 95 of the 1999 Act enables the provision of support to asylum-seekers or dependants of asylum-seekers who appear to the Secretary of State to be destitute or be likely to become destitute within 14 days. An asylum seeker is defined as a person who has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined.

For further information see: Eligibility and Assessment

### Q4. What type of support is provided?

Applicants can apply to receive both accommodation and subsistence, or accommodation or subsistence only.

Applicants who are granted subsistence or subsistence and accommodation support receive regular cash payments.

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## Chapter 3 - Dependants

### Q5. How do I add a dependant to a Section 95 asylum support application?

A request for a prospective dependant to be added to a support application should be made in writing. No application form is required. Evidence must be provided to show that the person meets the requirements of a dependant as set out in [regulation 2\(4\) of the Asylum Support Regulations 2000](#).

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### Q6. When can I add a dependant to a Section 95 asylum support case?

If an application for support includes a person who is not an asylum seeker or not a dependant on the asylum seekers asylum claim then the person should only be accepted as a dependant for support purposes if they meet one of the criteria set out in [regulation 2 of the Asylum Support Regulations 2000](#) (e.g. if they are the spouse of an asylum-seeker). The prospective dependant will be expected to provide evidence to show that their relationship with the main applicant is credible. The level of evidence that is acceptable to demonstrate such a relationship will vary according to the circumstances of the particular case. For example, it may not always be reasonable to expect a couple who have fled persecution to be able to provide a marriage certificate unless the marriage has taken place since they arrived in the UK. Factors such as whether the alleged dependant was mentioned during the initial asylum screening interview may be important when it comes to assessing credibility. Forgery checks should be conducted on any documentary evidence wherever possible.

In line with regulation 2(4)(i) of the Asylum Support Regulations 2000, a person should always be regarded as a dependant for support purposes if they are being treated as a dependant on an asylum claim. In this scenario, the dependant is not expected to provide any additional evidence of their relationship to the principal applicant. See also: Dependants on an Asylum Support Application and [Section 94\(5\) of the Immigration and Asylum Act 1999](#).

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### Q7. What is the definition of a dependant for support purposes?

For support purposes, the term "dependant", in relation to an asylum-seeker, a supported person or an applicant for asylum support is defined in [regulation 2 of the Asylum Support Regulations 2000](#).

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### Q8. How do I remove a dependant from a support case?

A request for a dependant to be removed from a support application should be made in writing.

Where a dependant wishes to be removed from a main applicant's asylum support application, the main applicant should be informed that the person no longer wants to be supported as his

dependant. Caseworkers should be aware that it may not be reasonable to expect confirmation from the main applicant in some circumstances and should pay particular attention to the circumstances of the case. For example, if the dependant is subject to domestic violence, it would not be reasonable to expect signed confirmation.

Whenever a dependant is removed from a support application the level of support provided will need to be adjusted to reflect the reduction in people on the application. If the applicant is living in asylum support accommodation which, following the removal of a dependant is too large or not suitable, new accommodation may need to be found.

Caseworkers should also be aware that removing a dependant from a support application may have implications for the support arrangements for the main applicant. For example, if the main applicant is a failed asylum seeker who was only receiving Section 95 support because he has a child under 18 in his household, the caseworker will need to review the position if the child is no longer regarded as a dependant.

For further instruction please read the Asylum Support Instruction; Dependants on an Asylum Support Application

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### **Q9. Can I add UK born dependants to a support case?**

The Home Office definition of dependant for support purposes does not distinguish on grounds of nationality. If the child is a UK citizen they can be added to the support application if the officer is satisfied that the child is dependent on the asylum-seeking parent. When considering the amount of subsistence that will be paid, Officers must take into account any other support which is available to the child, for example, enquiries should be made about whether the other parent is paying maintenance, is working or claiming child benefit.

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### **Q10. Can a failed asylum seeker be added as the dependant of someone receiving Section 95 support?**

A failed asylum seeker can be added as the dependant of someone in receipt of Section 95 support. The only requirement is that they are both destitute and meet the definition of a 'dependant' as outlined in [regulation 2 of the Asylum Support Regulations 2000](#).

A failed asylum seeker in receipt of Section 4 support may request that they be accommodated with a person in receipt of Section 95 support even if they do not meet the definition of a dependant under the 2000 Regulations. Such requests should be refused unless failure to accommodate the request would result in a breach of that person's rights under the European Convention of Human Rights (ECHR). When such a breach would occur (most such requests will involve a claim that failure to accommodate a couple together would interfere with their Article

8 right to a private and family life) the two supported people can be accommodated together in a Section 95 and Section 4 mix.

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## Chapter 4 - Healthcare and Pregnancy

### Q11. What additional payments are available to pregnant asylum seekers?

The [Asylum Support \(Amendment\) Regulations 2003](#) allows for additional payments to be made to supported women who are pregnant and to children under the age of 3. These payments may be made to those already supported under Section 95 and to those who have made an application for support where they have been assessed as eligible for support under Section 95.

Expectant women and young children between 1 and 3 years old are eligible to receive an additional £3 per person, per week. Children under the age of 1 will receive an additional £5 each per week. These payments are intended to allow supported asylum seekers to purchase healthy food such as fruit and vegetables.

To help with the costs arising from the birth of a child, pregnant asylum seekers or new mothers may also be eligible for a one off payment of £300 per child. For example, if the mother is expecting or gives birth to twins, she will receive £600. This support is available to applicants supported under Section 95 and those who have been assessed as eligible for Section 95 support whilst receiving Section 98 support. The payment will be made if the applicant meets certain criteria or if the case is exceptional. The application for the maternity payment must be lodged in writing and signed by the father or mother of the child.

For further instruction please see: Maternity payments and additional support

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### Q12. What happens to regular support if an applicant is hospitalised?

If an applicant is hospitalised for more than one week and can demonstrate that neither they nor an adult dependant is able to go to their designated Post Office with their ARC to collect their weekly payments, the remaining dependants may be eligible to receive their support via an Emergency Support Token (EST) or an Interim Support Token (IST) until such time as the applicant is able to collect their support.

The weekly support payment for an individual in hospital is £10 per person, per week and is applied to the person in hospital only. This support is for the purchase of essential toiletries and sundries that the hospital may not provide. N.B. Whilst in hospital, individuals are not entitled to their regular support because their accommodation and nutritional needs are being met by the hospital. The level of support is set at £10 to reflect this.

The amount of cash support for other family members included in the asylum support application remains the same.

In some cases an applicant may not be able to go to the Post Office at all and in these cases an adult dependant can be made the main applicant.

For further instruction please see: Asylum Support instructions



### **Q13. What health care are supported asylum seekers entitled to?**

Like other UK residents, persons with an outstanding application for asylum in the UK are entitled to use primary and secondary NHS services without charge.

The HC2 certificate is issued by the Home Office on behalf of the Department of Health and allows asylum supported applicants and their dependants to receive free prescription medication and help with other health costs. The HC2 is valid for 6 months.

The HC2 entitles the applicant to:

- Free NHS prescriptions;
- Free NHS dental treatment;
- Free NHS wigs and fabric supports;
- Free NHS eye sight tests;
- Vouchers towards the cost of spectacles and
- Refunds of necessary travel costs to and from hospital for NHS treatment under the care of a consultant.

For further instruction please see: HC2 Certificates in Asylum Support instructions

For further guidance on healthcare entitlement please refer to the NHS guidance on entitlements to NHS care:

<http://www.dh.gov.uk/en/Healthcare/Asylumseekersandrefugees/index.htm>

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## Chapter 5 - Section 55

### Q14. When is a Section 55 decision required?

Under Section 55 of the Nationality, Immigration and Asylum Act 2002 (“2002 Act”) applicants may not be provided with support if they fail to claim asylum as soon as reasonably practicable after arriving in the UK, unless providing support is necessary to avoid a breach of a person’s rights under the European Convention of Human Rights.

A Section 55 decision is always required where an asylum applicant or a failed asylum applicant applies for support under Sections 98, 95 or 4 of the 1999 Act, except when:

- The asylum claim was made on or before 7 January 2003;
- The applicant is an unaccompanied asylum seeking child who is seeking support from a Local Authority;
- The asylum applicant, or any of his dependants has been assessed by a Local Authority as having a care need;
- The asylum applicant is under 18 or has a dependant who is aged under 18 and living in his household.

For further instruction please see: Asylum Support instructions

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### Q15. Should families automatically be granted asylum support?

No. Support should only be allocated to destitute applicants whose assets, income and other available support falls below the prescribed threshold required for their essential needs.

However, support should not be denied to families with dependant minors on account of the main applicant not claiming asylum as soon as was reasonably practical.

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### Q16. In what circumstances should we grant/refuse support after a Section 55 interview?

Section 55(1) of the 2002 Act prevents the Secretary of State from providing asylum support unless he is satisfied that an applicant's claim for asylum was made as soon as reasonably practicable after his arrival in the United Kingdom. It should generally be accepted that a person claimed asylum as soon as reasonably practicable if it is accepted that he claimed within three days of arriving in the UK. Therefore, if the applicant's account that he arrived in the UK within the three calendar days (including weekends and public holidays) preceding his asylum claim is credible, in most cases he will normally be considered to have made his claim as soon as reasonably practicable, and will be able to access asylum support, provided he is otherwise eligible.

No asylum applicant should be refused support under Section 55 without first being invited to attend a Section 55 interview. Where an interview is required, the Section 55 decision should, wherever possible, be made by the same person who conducted that interview.

If the applicant fails to attend the interview without a reasonable explanation, the Home Office will not be satisfied that the applicant claimed asylum as soon as was reasonably practicable or that he has demonstrated that support is necessary to avoid a breach of Convention rights. In such case, Officers should refuse support using the Section 55 refusal letter (NASS75). There is no right of appeal to the First-Tier Tribunal - Asylum Support against a negative Section 55(1) decision.

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### **Q17. Why is it necessary for Section 55 refusal letters to be quality checked?**

As there is no right of appeal to First-Tier Tribunal - Asylum Support, it is important that refusal letters are quality checked.

It is open to any applicant who has been refused support under Section 55 to request a reconsideration of that decision if they have additional information that they wish to be taken into account, or if they claim that the original decision was unlawful. If representations are received they should be considered promptly. Access to Initial Accommodation should be granted under Section 98 in cases that cannot be decided on the same day if the person appears to be destitute.

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### **Q18. When can support be refused if someone currently provided with both accommodation and subsistence support applies to switch to receive subsistence only?**

Decisions to provide support under Section 55(5)(a) to avoid a breach of a person's Convention rights in cases where a person has not received a positive Section 55(1) decision should be reviewed following any significant change in the person's circumstances. In particular, Section 55(5)(a) decisions should always be reviewed in cases where an applicant who initially applied for, and was granted, accommodation and subsistence support to avoid a breach of his Convention rights subsequently informs the Home Office that he no longer requires accommodation. In this situation, the applicant should be invited to an interview to explore whether support is still necessary in order to prevent a breach of Convention rights.

At the interview, if it has been established that asylum was not claimed within three days of arriving in the UK, the supported person should be asked if he can access food and other basic living essentials from the person he is living with or from other sources such as charities. If the applicant has access to food, sleeping quarters, washing and sanitary facilities support can be refused because the person no longer appears to face an imminent prospect of serious suffering if he is denied access to asylum support. Requests for subsistence only support, to enable supported persons to obtain non essential items such as travel tickets and new clothes, should also be refused. [Back to contents](#)

## Chapter 6 - Asylum Support Appeals

The Tribunal Procedure (1st Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (2008 Rules) set out the overriding objectives and obligations to the Tribunal. The overriding objective is to enable the Tribunal to deal with cases fairly and justly.

### 6.1 Powers of the Asylum Support Tribunal

The rules provide powers to the Asylum Support Tribunal Judges that include:

- Duty to hold an oral hearing unless each party consents or does not object to a paper determination and the Tribunal considers a hearing is not required (Rule 27);
- Power to exclude evidence if not provided within the time directed, or which would otherwise be admissible where it would be unfair to admit it or where the evidence was provided in a manner that did not comply with a direction or a practice direction (Rule 15);
- Power to issue summonses for witness attendance, the production of a document by a witness and to order a witness to answer questions (Rule 16);
- Power to automatically strike-out the proceedings or the appropriate part of them if the appellant fails to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them (Rule 8(1));
- The Tribunal must strike out the whole or a part of the proceedings if the Tribunal (Rule 8(2)):
  - 1) Does not have jurisdiction in relation to the proceedings or that part of them; and,
  - 2) Does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them. Additionally the Tribunal may strike out the whole or a part of the proceedings if (Rule 8(3)):
    1. the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
    2. the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
    3. The Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.
- Power to make an order prohibiting disclosure of information likely to cause serious harm where it is proportionate to do so (Rule 14);
- Power to correct accidental clerical slips or omissions in written decisions (Rule 36);
- Power to set-aside and re-make final decisions in certain circumstances (Rule 37).

### 6.2 The notification and submission time frame

Where an asylum seeker is notified of a decision against which they may appeal, he will be sent a notice of appeal with two copies of the decision letter. The decision letter, appeal forms etc are sent by first class recorded delivery. The asylum seeker will have been deemed to have received the decision on the second working day after it was sent, unless the contrary is proven.

The appellant then has three working days (rule 22) beginning with the date on which the appellant received written notice of the decision being challenged in which to submit an appeal to the Tribunal. This means the Tribunal must receive the appeal by midnight on day three.

An appeal must be sent to the Tribunal by the applicant or their representative by post, by fax or by hand.

The Tribunal may accept an out of time appeal (rule 5(3)(a)). The Tribunal's decision will be based on the overriding objectives (rule 2 of the Tribunal Procedure (1st Tier Tribunal) (Social Entitlement Chamber) Rules 2008).

## **The Appeal Time Frame**

### **Day One**

This is the day on which the decision, accompanied by the appeal form is received by the Tribunal. Tribunal staff will:

- check that the appeal form has been completed in full, in English or Welsh, and is signed and dated;
- Forward the form to the Appeals Monitoring Team (AMT) who will scan the documents onto the ASYS correspondence screen (Tab 9) and notify the section responsible by assigning the case on ASYS (BPM) and by email giving details of any relevant deadlines.

If it is not reasonably practicable for the Tribunal to fax a copy of the notice on the day it was received, they must fax the document as soon as possible on the next working day

### **Day two**

Case worker should:

- acknowledge the AMT email;
- update ASYS and flag the paper file to show that there is an appeal;
- include their telephone extension number when minuting ASYS, which will enable the AMT, if required, to promptly contact the Case worker as necessary;
- Accurately record the timetable on the minute sheet;
- Accurately update the Appeals Log (available on the F: drive) as the notifications are received.

## **6.3 Responding to the tribunal**

Following receipt of the email from AMT confirming that an appeal has been brought, the Home Office unit that took the decision to refuse or to terminate support must send or deliver a response (the appeal bundle) to the Tribunal by fax or hand so that it is received within 3 days after the date on which the Tribunal received the notice of appeal, and the appellant and their representative by first class post and fax.

The response must state:

- the name and address of the decision maker;
- The name and address of the decision maker's representative (if any);
- An address where documents for the decision maker may be sent or delivered;
- The names and addresses of any other respondents and their representatives (if any);

- Whether the decision maker opposes the appellant's case and, if so, any grounds for such opposition which are not set out in any documents which are before the Tribunal; and
- Any further information or documents required by a practice direction or direction.

On day four of the Appeals Process, the Tribunal Judge considers the appeal and sets the hearing date. The Tribunal must hold a hearing before making a decision unless each party consents to the matter being decided without a hearing or has not objected, and the Tribunal considers that it can decide the matter without a hearing [rule 27].

If the Tribunal Judge believes that more evidence is required (from either party), this will be requested in a Directions Order. The Directions Order will be sent to the AMT, who will scan the document onto the ASYS correspondence screen (Tab 9) and notify the section responsible by assigning the case on ASYS (BPM) and by email giving details of any relevant deadlines.

If there is to be an oral hearing, the Tribunal Judge must give notice to the appellant and the Secretary of State (i.e. Home Office) of the date on which it is to be held.

The respondent will be automatically prevented from taking further part in the proceedings if they fail to comply with a direction that stated that failure to comply would lead to this outcome.

Oral hearings are normally heard on day eight of the Appeals Process. The Tribunal must give 1-5 days notice of the hearing so the hearing may be heard earlier than day eight. In any case the hearing must be held and the appeal determined by day nine.

The Judge must send a Reasons Statement to the appellant or their representative and to the Secretary of State (i.e. Home Office) within three days of the hearing.

If the case is decided without a hearing, the appeal must be determined on the day that the decision is made, that is day four or as soon as possible thereafter, but in any event not later than 5 days after consideration day, i.e. by day nine. In such ("paper") cases, the Tribunal Judge's Reasons Statement will be sent on the day the determination is made.

## 6.4 Appeal outcomes

Adjudication is binding on the day the appeal is determined and must be actioned immediately.

The Tribunal Judge's determination may:

- 1) Substitute his decision for the Secretary of State's decision. Substituted decisions can be either conditional or unconditional. An unconditional substituted decision allows the appeal outright, and may include a requirement to make a back payment. This should be explained in the Tribunal Judge's decision. A conditional substituted decision does not allow the appeal outright. An example would include partial entitlement to support (subsistence but not accommodation). Again, this should be fully explained by the Tribunal Judge.

- 2) Remit for reconsideration. A Tribunal Judge may remit a case for reconsideration if new factors which may have a material effect on the decision to refuse support have emerged since the original Home Office refusal notice was issued. The Tribunal Judge's Reasons Statement should set out the specific matters to be reviewed during the reconsideration period. Pending reconsideration, the status quo should be restored, subject to any specific recommendation by the Tribunal Judge. Usually, therefore, if previously supported, support should be reinstated; if not, support need not be provided.
- 3) Dismiss the appeal.
- 4) Decide to strike out the case.

### **Further information**

See: Asylum Support instructions

## **6.5 Withdrawal of decision at the First-Tier Tribunal – Asylum Support Appeal stage by the Home Office**

If following a case review the caseworker concludes that the original decision was incorrect, the original decision must be withdrawn (Pursuant of rule 17 of the 2008 Rules) and replaced with a fresh decision.

Although the Home Office can and should withdraw an incorrect decision at the appeal stage, it is imperative that such courses of action are kept to a minimum. Caseworkers must be careful to ensure that the initial section 4/95 eligibility decision is correct and that the refusal/discontinuation letter refuses/discontinues support under the appropriate criteria.

### **6.5.1 Withdrawal of decision before 12am the day before the hearing**

When withdrawing a decision before 12 noon the day before the appeal hearing, caseworkers must immediately:

- Draft a fresh decision letter - This letter should clearly state that the original decision to refuse or discontinue support has been withdrawn and has been replaced by the contents of the fresh decision letter;
- Post (first class) and fax the fresh decision letter should to the appellant and/or their representative.
- Fax a withdrawal request to the First-Tier Tribunal – Asylum Support (Tribunal) and the Presenting Officers Unit (if there was to be an oral appeal) informing them that the Home Office's decision has been withdrawn, notifying them of the new decision. A copy of the decision letter should also be sent.
- Arrange / maintain support li the appellant is now assessed as eligible

### **6.5.2 Withdrawal of decision on day of appeal hearing or after 12am the day before the appeal hearing**

Unless an application to withdraw a decision at the appeal stage is received before 12 noon the day before the appeal hearing, the application for withdrawal must be made by the Home Office in person in open court to the Tribunal Judge.

The Tribunal will only grant the withdrawal application if either:

- The Home Office confirms in writing that the decision under appeal is being withdrawn and the appellant will be granted support immediately;
- The decision to be withdrawn is to be substituted with a fresh refusal/discontinuation decision which is available for service at the hearing, and the Home Office and the appellant or their representative agrees that the hearing can proceed against the fresh refusal/discontinuation decision; or
- The fresh refusal/discontinuation decision is available for service at the hearing but if the appellant or their representative is not ready to proceed, the Home Office consents to an adjournment of the appeal hearing (not exceeding 14 calendar days) against the new discontinuation decision and, if support was discontinued, confirms in writing that support will continue until the appeal has been heard and finally determined.

### **Tribunal Judge accepts the withdrawal**

If the Tribunal Judge accepts the withdrawal, the Tribunal will confirm the withdrawal of the appeal by faxing a Withdrawal Notice to the regional asylum support team. On receipt of the Withdrawal Notice the caseworker should scan the Withdrawal Notice on to ASYS.

### **6.5.3 Withdrawal of decision notifications**

#### **Support will be arranged**

"I write on behalf of the Secretary of State. Following a review of the appellant's case I have decided to withdraw the decision of (insert date) to refuse/discontinue (Delete as appropriate) support under section 4/95 (Delete as appropriate) of the Immigration and Asylum Act 1999. The Secretary of State will make immediate arrangements for support to be granted/re-instated (Delete as appropriate). Therefore the Secretary of State withdraws from the appeal. I enclose a copy of the fresh decision letter.

If you have any further queries, please do not hesitate to contact me on (insert telephone number).

#### **Support is still being refused or discontinued**

"I write on behalf of the Secretary of State. Following a review of the appellant's case, I have decided to withdraw the decision of (insert date) to refuse/discontinue (Delete as appropriate) support under section 4/95 (Delete as appropriate) of the Immigration and Asylum Act 1999. A new refusal/discontinuation (Delete as appropriate) decision has been issued. The Secretary of State intends to continue as a party in the appeal. I enclose a copy of the fresh decision letter.

If you have any further queries, please do not hesitate to contact me on (insert telephone number)



## 6.6 Section 4 appeals

A person whose application for support under Section 4 is rejected, or whose support under Section 4 is discontinued for a reason other than their departure from the UK, has a right of appeal to the First-tier Tribunal, Asylum Support (Tribunal) if the decision to refuse or discontinue support was taken on or after 31 March 2005.

Where a decision is taken to discontinue support under Section 4 and the supported person appeals to the Tribunal, as long as the Tribunal accept the appeal within the discontinuation period (the 14 day period after which the supported person must leave the Section 4 property) support should continue until the appeal has been heard. A fax should be sent to the accommodation provider informing them that an appeal is pending and that support will continue until the outcome of the appeal is known.

If support has already been discontinued and as a result the supported person has moved out of Section 4 accommodation, support will not be reinstated on the basis that the Tribunal have accepted a late appeal.

### 6.6.1 Appeal outcomes

If the outcome of an appeal to the Tribunal is for support to be granted or restarted, caseworkers must ensure that support is granted or restarted as soon as possible following receipt of the Tribunal determination (whether received at the hearing or by fax).

### **Q19. Is there a right of appeal against a refusal to grant support under s55**

There is no right of appeal to First-Tier Tribunal - Asylum Support against a negative Section 55(1) decision.

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### **Q20. Is there a right of appeal against a refusal to grant asylum support**

Where it is decided to refuse support for a reason other than Section 55 or Section 57, Officers should inform the applicant by letter, sending the 'Letter to be used where applicant is not eligible for Section 95 support (for a reason other than s55 or s57)' (NASS113). Applicants have the right of appeal to the First-Tier Tribunal Service – Asylum Support against an outright refusal to provide Section 95 support for a reason other than Section 55 or Section 57.

Only an outright refusal of support attracts a right of appeal under Section 103 of the Immigration and Asylum Act 1999. The applicant should appeal to the Tribunal Service Asylum Support within 3 days of receipt of the refusal decision. In cases where the applicant has appealed caseworker will be expected to prepare an appeal bundle. The bundle should include copies of documentation provided by the applicant in support of his application and the letter which set out the reasons for refusing support.

Applicants are not permitted to reside in IA pending the outcome of their appeal and should be issued with a Notice to quit the premises as soon as the refusal is received.

For further instruction please see: [S103 of the Immigration and Asylum Act 1999](#) and Eligibility and Assessment

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## **Q21. Is an applicant eligible for Section 95 support after they have been served with a refusal decision or dismissed appeal on their asylum claim?**

When an applicant receives notification that they have been refused asylum (or they have appealed against that refusal and had their appeal dismissed), they are entitled to receive asylum support for 21 calendar days (plus 2 days for postage) referred to as the grace period. To note: The grace period starts from the date of notification of the decision on the asylum claim or appeal determination. This gives applicants the opportunity to make alternative arrangements for their temporary accommodation and support or to make arrangements for their voluntary departure from the UK e.g. by submitting an application for an Assisted Voluntary Return. For support purposes, an applicant ceases to be an asylum seeker after the prescribed period ends.

The prescribed period is defined by regulation 3 of the Asylum Support (Amendment) Regulations 2002. The prescribed periods are:

- 28 calendar days when the Secretary of State notifies the claimant of the decision to accept the asylum claim and grant leave or the appeal is disposed of by being allowed (30 calendar days if the decision is served by post).
- 21 calendar days in any other case.

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## **Q22. If a late asylum appeal is submitted, should support continue?**

If an asylum appeal is submitted after support is ceased and it is accepted as “in time” then the applicant is entitled to have their Section 95 support re-instated.

If, at this time, support has been fully terminated because no appeal was received, then a new application for support may have to be made.

If support has not been fully terminated then support should continue until the applicant becomes Appeal Rights Exhausted or is granted some form of leave. Caseworkers must take the following action:

- Post a letter on to the Collaborative Business Portal informing the accommodation provider that the applicant is eligible to remain in their accommodation.
- Delete the accommodation end date from ASYS.
- Change the support type to Allocated.

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# Chapter 7 - Assets and Additional Income

## 7.1 Permission to work and vocational training

As part of the implementation of the EU Reception Conditions Directive, Paragraph 360 of the Immigration Rules was amended to reflect that from 5 February 2005 asylum applicants who have been waiting for more than 12 months for an initial decision may apply for permission to work.

Asylum support caseworkers are not responsible for granting permission to work or permission to undertake voluntary activity or vocational training. Responsibility for dealing with these applications rests with caseworkers dealing with asylum casework;

Asylum seekers who contact asylum support caseworkers requesting permission to work should be directed to the first instance to the general inquiry line.

Asylum Support caseworkers do have responsibility for reassessing eligibility for support to take account of earnings. See: Assessing Destitution and paragraph 360 of the Immigration Rules at: <https://www.gov.uk/government/collections/immigration-rules>

### Vocational training

Supported asylum seekers accepted by a college on a vocational course which includes unpaid employment must notify the Home Office in order that support can be reassessed and any training allowance taken into account.

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### **Q23. What do I do if a Section 95 support applicant appears to have assets, income or an alternative means of support?**

Support should be allocated to applicants whose assets, income and other available support fall below the prescribed threshold required for their accommodation and essential living needs over the prescribed 14 calendar day period. The amount required to meet the applicant and their household's essential living needs should be calculated by adding the total amount the household would receive if it was receiving subsistence only asylum support to the household's reasonable board and lodgings costs over 14 calendar days. Where the assets, income and other support are above the threshold for the applicants' circumstances, support should be refused.

If the applicant is not destitute, Section 95 support should be refused using the 'Letter to be used where applicant is not eligible for Section 95 support (for a reason other than s55 or s57)' (NASS113).

For further instruction please see: Assessing Destitution

### **Q24. What should I do if I discover that a supported person has additional income or assets, after Section 95 support has been granted?**

Information may indicate a supported person is no longer in need of Section 95 support, or that the supported person is no longer destitute and therefore no longer entitled to Section 95 support.

A supported person may inform a caseworker that he will not be destitute for a specific period of time. In such cases, support may be suspended. Caseworkers should reassess the support for the period specified, the ASYS status should be changed to 'Allocation Review' reflecting there has been a 'change of circumstances' or 'allocation on hold'.

In cases where a supported person indicates that they are no longer destitute or no longer require asylum support the caseworker should inform a designated Investigating Officer in their asylum team.

A supported person must inform the Home Office of any significant change in his material circumstances as stated in regulation 15 (1) of the [Asylum Support Regulations 2000](#). Failure to do so without reasonable excuse is an offence under [Section 105\(1\) \(c\) of the Immigration and Asylum Act 1999](#).

The level and type of support provided must be reassessed following a change of material circumstances. Caseworkers should consider any change of circumstances on their individual merits and may decide upon the best course of action so as not to leave the supported person destitute for any period of time unless the change of circumstance indicates the supported person no longer requires Section 95 support.

In the event that a caseworker learns of a material change of circumstances which has not been notified to the Home Office, they should in the first instance inform the supported person that they should make a declaration confirming that they do/do not require support without delay or run the risk of support being discontinued.

For further instruction please see: Breach of Conditions

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## **Q25. What do I do if the applicant is married to or lives with someone that has permission to work?**

If the applicant is married to or in a relationship with someone that has permission to work their spouse or partner would not be eligible to receive any subsistence support from the Home Office and would be expected to contribute towards the cost of accommodating the supported person.

The amount the spouse/partner contributes will vary on their income. If the income is above the amount, he/she would receive from the Home Office, taking into account other expenses he/she may have, the Home Office could ask the spouse/partner to contribute towards the cost of the accommodation.

For information on how to consider an application for asylum support from an applicant who is married to or lives with someone claiming state benefits please see also: [Mixed Households](#)

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## 7.2 Mixed Households

"Mixed Households, for asylum support purposes contain persons who are already in receipt of Social Security or other support.

As a general rule applicants should access other support if it is available. This will result in either refusal of support or, exclusion, depending on the particular circumstances of the case (subject to consideration of available accommodation). Examples:

### **Non-Asylum Seeker Social Security Mixed Household**

(A) cannot increase his social security allowances to provide support for (B).

- The Home Office take into account the social security benefit.
- The Home Office may provide a top up of subsistence payments.

### **Non-asylum seeker (A) in receipt of social security benefits and asylum seeker (B) is spouse (or partner if they are living together as man and wife).**

If (A) has a priority need in his own right (e.g. he has dependant children) and the local authority consider he is homeless, the authority would have a duty to secure accommodation for him and his whole household (i.e. (A) and (B)). However in assessing whether he is homeless, the authority cannot take account of (B) (e.g. in assessing if the household are living in overcrowded conditions), unless they arrived before 3 April 2000.

If (A) is not owed a duty to secure accommodation under the homelessness legislation, and the household does not have adequate accommodation it is open to them to seek accommodation themselves in the private rented sector. Housing benefit and council tax benefit are available to support those costs of accommodation, subject to normal DWP rules. The local housing authority will have a duty to provide advice and assistance if the household has been assessed as homeless but not in priority need.

If the accommodation is not adequate and the household have not been able to obtain alternative accommodation despite taking reasonable steps, then the Home Office may provide accommodation; when it is not reasonable to expect a person to access social security benefits through their spouse/partner's Income Support claim.

If an asylum seeker claims that they are estranged from their partner and do not want to access support via his/her social security benefits then this may be accepted on face value provided that they are not intending to continue to live with their partner. If eligible the woman should be offered subsistence payments and accommodation which are sufficient for her own essential living needs only (i.e. the spouse should not be supported).

Case-workers may write to the relevant Jobcentre Plus / social security office advising them of our decision (copied to the applicant).

### **Non-Asylum Seeker Social Security Mixed Household. Spouse / Partner is in**

## **Receipt of "Jobseeker's Allowance or Income Support"**

If the spouse or partner of such a person applies for support (they may also include their spouse) then consider the case in the normal way. This is because persons in receipt of Jobseeker's Allowance or Income Support do not receive an increased allowance if they are joined by an asylum seeker spouse and/or children, although housing benefit is available where there is a qualifying tenancy.

The level of Jobseeker's Allowance or Income Support which the spouse or partner is receiving should be taken into account when calculating the level of support.

## **Persons who have been recognised as refugees, granted exceptional leave or who are British Citizens are entitled to Jobseeker's Allowance or Income Support**

When an asylum seeker is eligible for support from the Home Office and their spouse or partner (i.e. person they have been living with for two out of the previous three years) is in receipt of Jobseeker's Allowance or Income Support and has their own accommodation and has a rent liability and utility costs to meet, the Home Office will provide a top up of cash support to the Home Office eligible person so that the couple will have 95% of the income-based Jobseeker's Allowance or Income Support couple rate, (but disregard any other payments the person receiving income based Jobseeker's Allowance or Income Support may receive, e.g. disability payments etc; as these payments are designed to meet the specific needs of the person receiving income-based Jobseeker's Allowance or Income Support) that they would have received, were the couple both eligible for income-based Jobseeker's Allowance or Income Support as non-asylum seekers. This top up reflects the fact that the status of the asylum seeker is temporary. It also enables the couple/family to meet utility costs from their pooled allowances and thus where they have existing adequate accommodation, will normally enable the couple/family to remain living together in their existing accommodation.

Case-workers will need to ensure that calculations are made using figures for income-based Jobseeker's Allowance or Income Support allowances which are up to date for the relevant periods.

In cases where the spouse or partner does not have a rent liability and does not need to contribute to utility costs of accommodation (for example this may occur when the person is living with a friend or relative), the Home Office top up will be to 85% of the income-based JSA or Income Support couple rate. In other words the level of support should be assessed by calculating the amount of support each member would receive as part of a couple under their respective support systems and allocating them a half of each couple rate.

In cases where the spouse or partner do not have a rent liability and the couple/family assert that they are required to contribute to utility costs of accommodation (for example the host may be unemployed and relying on benefits), the Home Office should offer a top up to 85% of the income-based JSA or Income Support couple rate. Alternatively, if the couple assert that this does not allow them sufficient funds to pay a contribution towards utility costs, the couple/family should be offered dispersal accommodation. It is also open to the couple to remain in receipt of cash support at this lower rate until they have found alternative accommodation and where the spouse/partner has a rent liability- the Home Office will then be able to review the level of support.

If the spouse or partner who is not eligible for Home Office support has income levels (less any additional benefit payments) which exceed the threshold levels for couples, enquiries should be made into his household expenditures. When there is evidence that the expenditure is essential, e.g. electricity and gas or a legal debt that arose before his wife joined him; consideration should be given to discounting part or all of the expenditure. He/she would need to show that his household bills have risen as a result of his spouse or partner joining him and the Home Office should consider discounting the difference. Once a legal debt has been repaid, caseworkers must reassess the case. Home Office case-workers should provide applicants with a letter setting out their decision and any calculation in writing

If an asylum seeker claims that they are estranged from their partner, and does not want to live with the person, then we may provide dispersed accommodation. The partner's income-based JSA or Income Support may be ignored in these circumstances.

If the applicant claims that their accommodation is not adequate (for example because it is overcrowded due to the arrival of the spouse) then it is not unreasonable to expect the household to find alternative accommodation in the private rented sector accommodation, the cost of which would be met by Housing Benefit (within local reference rent limits).

In addition, if the husband had children already with him then they will have a "priority need" and it would not be unreasonable to expect him to approach the local authority that would be able to provide adequate accommodation under the homelessness legislation (a priority need is not conferred if the wife arrived with the children after 3 April 2000). However, if the only reason, that it was unreasonable to occupy the accommodation, was the arrival of the spouse, then the local authority would be unlikely to determine that the household is homeless. It may be necessary in some cases to obtain further information about the person's available accommodation.

If the household is accepted as homeless but not in priority need under the homelessness legislation, the local authority would have a duty to provide advice and assistance in any efforts they made to find themselves accommodation in the private rented sector.

If an applicant claims that their accommodation is not adequate, for example because it is overcrowded and they did not already have a priority need, and they have not been able to obtain alternative accommodation, then caseworkers should determine whether the accommodation is adequate as defined by Regulation 8 of the Asylum Support regulations 2000 .

If it is determined that the accommodation is not adequate, and the household have not been able to obtain alternative accommodation and they have taken reasonable steps to find alternative accommodation then the Home Office may provide the accommodation.

If the applicant has been staying in initial accommodation and has been refused support under Section 95, then the person is no longer entitled to support provided by grant funded voluntary sector organisations. This is because it is in breach of the terms of the grant agreements under which voluntary organisations provide temporary support.

It is for the applicant's spouse or partner to apply to the local authority for assistance. Caseworkers should not contact local authorities on behalf of the applicant.

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## Chapter 8 - Destitution

### **Q26. What evidence can we reasonably expect applicants to submit to demonstrate that they would be otherwise destitute?**

For full details on the destitution assessment process, including what the applicant must declare, determining assets and calculating their value, determining income, calculating the appropriate level of support, the prescribed thresholds and testing destitution see: Assessing Destitution

### **Q27. How do I calculate the local rate for board and lodgings?**

The regional rate for board and lodgings should generally be established by obtaining an average price for Bed and Breakfast in the local area. Bed and Breakfast establishments offer simple and easily accessible accommodation whilst also being relatively affordable compared to hotels. It is recognised that asylum seekers/failed asylum seekers will experience difficulties in trying to obtain rented accommodation as many private landlords will require prospective tenants to sign six month tenancy agreements and also pay substantial deposits. This might not present such a problem for asylum seekers or failed asylum seekers who have been given permission to work as they will be able to prove to a landlord that they have a regular income and will also be able to save for a deposit. In these cases, local rental rates for board and lodgings can also be used to assess destitution.

The regional rate for Bed and Breakfast can be determined by calculating an average nightly or weekly price from a sample of local businesses. The regions can establish their own methods for obtaining this sample. For example, an efficient and easy way of doing this is to search the internet for prices in the local area. The vast majority of Bed and Breakfast establishments will have their own websites containing price lists for varying types of room to suit singles, couples or families.

Once an average rate has been established this should be reviewed at regular intervals to confirm that prices have not changed and the threshold is still realistic.

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## Stopping Support

### Q28. What are the main reasons for why s95 support can be discontinued?

- Where there is a material change of circumstances resulting in the supported person being no longer destitute for support purposes;
- If there has been a breach of asylum support conditions, e.g. the applicant has failed to comply with their reporting conditions or the terms of their asylum support occupancy agreement;
- There has been a final determination of their asylum claim.

### Q29. If applicant has children, do they continue to get support once they become ARE?

If an asylum seeker's household includes a dependent child who is under 18 before the applicant became Appeal Rights Exhausted, they are to be treated (for asylum support purposes) as continuing to be an asylum seeker whilst the child is under 18 and both they and the child remain in the United Kingdom.

Support will not be discontinued in these cases unless:

- refugee status or other leave to remain is granted;
- they leave the UK voluntary or they are removed **or**
- They fail to comply with the conditions of Section 95 support, including that they are no longer destitute for support purposes.

Support will continue whilst:

- the [youngest] dependant is under 18; and
- the main applicant and the dependant remain in the United Kingdom; and
- the dependant continues to be dependent on the supported person; and
- The dependant continues to be part of the household.

A "bring forward" (BF) system must be used to ensure that the case is identified 4 weeks before the youngest child's 18<sup>th</sup> birthday in order that support can be ended on the birthday and 21 calendar days grace notice given.

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### Q30. What is a NASS 35?

The NASS35 is sent with the termination letter stating that Asylum Support is to be discontinued. The NASS35 outlines the details of the support that the supported person has received in the last four weeks prior to their support being discontinued. The supported person should present this document to the JobCentre Plus when applying for state benefits.

The NASS35 is generated by ASYS. The letter must include a photograph of the supported person. The photograph can either be the one submitted with the Section 95 Support application form or the electronic image captured when the ARC was prepared.

If no photograph is available, for example, when a dependent is granted status separately or the photograph is unusable, then the discontinuation letter must be sent with a request that photographs be submitted in order that a NASS35 may be issued.

### **Q31. Can support be restarted if it was ceased in error?**

Section 95 support ends when an applicant's asylum claim is fully determined and the appropriate prescribed grace period has ended. Applicants whose support has been discontinued before then are able to request that their support is reinstated.

Applications for support to be reinstated where support has been terminated for reasons such as failure to travel or breach of conditions will go to appeal at the First-Tier Tribunal - Asylum Support. Caseworkers should instigate investigations on their own cases where it is alleged that support has been incorrectly discontinued.

Applications for support to be reinstated should be considered and decisions served within three days of receiving the application.

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## Chapter 9 - Support for Unaccompanied Asylum Seeking Children

### **Q32. What support is available to Unaccompanied Asylum Seeking Children**

Unaccompanied Asylum Seeking Children (UASC) should be supported by the relevant Local Authority and are not eligible for asylum support. Information on applications for support from UASC turning 18 can be found in: Transition at Age 18. The Home Office funds Local Authorities for their costs in supporting UASC through Grant Agreements that are issued each year.

### **Q33. What happens when a UASC turns 18**

UASC that have been supported by a Local Authority Children's Services Department will only rarely be eligible for asylum support after they turn 18.

This is because most will continue to be eligible for assistance from their Local Authority under Leaving Care legislation. A person will usually be eligible to Leaving Care support if he/she has been supported by the Local Authority for more than 13 weeks before the 18th birthday under Section 20 of the Children Act. A person who is eligible to receive Leaving Care support is not eligible for asylum support.

A person not eligible for Leaving Care support and still has an outstanding asylum claim on reaching their 18<sup>th</sup> birthday will be eligible for support; the other requirements for Section 95 support.

Where support is provided to young asylum seekers and other irregular migrants turning 18 under Leaving Care legislation, the Home Office will fund Local Authorities for their costs in supporting persons turning 18 through Grant Agreements that are issued each year.

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## Chapter 10 - Incomplete Applications

Section 57 of the 2002 Act provides that regulations may provide that an application for asylum 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.

Section 57 applies to all applications for asylum support under Section 95 of the Immigration and Asylum Act 1999 (“the 1999 Act”)

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

### 10.1 Legislative provision and required actions

Since 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.

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.

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### 10.2 Determining what is accurate information

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

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

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

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 initial accommodation (if applicable) and that the application for asylum 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.

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.

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.

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).

### **10.3 Co-Operating with enquiries**

Where the applicant fails to provide a complete application, despite a request for this information 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).

Where the applicant fails to provide an accurate application despite a request for an explanation of the inaccuracies, 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).

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

### **10.4 Re- entertaining applications**

There may be instances when additional information requested by Asylum Support 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 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).

### **10.5 Initial accommodation**

All applicants who are admitted to initial accommodation must complete and submit a ASF 1 application form as soon as possible. When an application form is submitted and additional information has been sought, this must normally be provided to Asylum Support 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 initial accommodation within a specified period as they will have failed to co-operate with enquiries.

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### **10.6 Recording the information**

All applications for support will be registered on the asylum support 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.

If the applicant subsequently responds to the satisfaction of Asylum Support 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.

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'.

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.

## 10.7 The Children Act

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.

### Q34. What do I do if there isn't enough information on file to make a decision on an application?

[Section 57 of the Nationality, Immigration and Asylum Act 2002](#) provides that regulations may make provision as to the circumstances in which an application for support may not be entertained. [Regulation 3\(4\) of the 2000 Asylum Support Regulations](#) provides that an application for support under Section 95 may not be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate, or that the applicant does not co-operate with enquiries.

In order to carry out a Section 57 check Officers should:

- Check that the application has been submitted on the [correct form](#);
- Check that the application has been fully completed. For example, signed photographs of the applicant must have been provided. The applicant must have also signed the application form;
- Check that the application has been completed accurately. For example, the name on the photographs must correspond with the name on the [application form](#). Details, such as names and dates of birth of applicants and any dependants, must also correspond to those previously provided.

Where an application is incomplete or information is inaccurate, Officers may request further or accurate information by sending the 'Letter requesting further/accurate information to enable consideration of application for Section 95 support' (NASS20a). The status on ASYS should remain at 'In Validation' until the further/accurate information has been received.

If after consideration of this late receipt Officers decide to process the application for eligibility, a '002' file should be created on the 'invalid' case and assessment should continue as normal.

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### **Q35. Can I refuse a support application if inaccurate or incomplete information is provided?**

If upon request the applicant fails to provide the required information within the prescribed timescale of 5 working days, Officers should send the 'Letter refusing to entertain an application for Section 95 support on the basis that the applicant has failed to provide further information on request' (NASS77). Officers can, in exceptional cases, allow an extension on this time limit; however, a full explanation and written evidence to support this should be received.

In the event there is failure to supply the additional information within the specified period, or if Officers conclude that the application details are inaccurate after further queries, the application for Section 95 support should not be entertained as the applicant has not co-operated with enquiries as set out in Section 57 of the 1999 Act. If the applicant is in Initial Accommodation this must be vacated and the ASYS case should be set to 'Invalid'.

If Officers receive the further information requested after the 5 working days specified; or after any extension of time granted in exceptional circumstances, further consideration may be given as long as the requested information has been provided alongside a clear and coherent account of why delays have occurred in submitting the relevant information.

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### **Q36. Is there a right of appeal to the First-Tier Tribunal– Asylum Support against a refusal to grant support referencing S57 of the 2002 Act?**

There is no right of appeal to the Tribunal Service – Asylum Support against a decision to refuse to entertain an application under Section 57 of the 2002 Act.

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## Chapter 11 - Change of Address

### **Q37. What do I do if an applicant asks to change their address?**

Asylum applicants in private accommodation in receipt of subsistence only support, can apply to be housed in Home Office accommodation. All asylum applicants are required to keep the Home Office informed of any material change in their circumstances whether they are supported by the Home Office. Non-supported persons must inform the Home Office if they move to another private property. Applicants in support accommodation can request to be moved to different support accommodation or move into privately owned accommodation (if they confirm they no longer wish to be supported or wish to transfer to subsistence only support). A change of address or relocation request must be made in writing, signed by the applicant and submitted to their Case worker.

Asylum seekers accommodated in Section 95 support accommodation may ask to be moved to alternative accommodation. To qualify applicants must be residing in initial, dispersal or spot booked accommodation. The request must be made in writing, signed by the applicant and submitted to their Case worker. Relocation is not normally permitted except in exceptional circumstances.

Applications for both kinds of change of address should be assessed in accordance with the processes laid out in: Change of Address instruction

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### **Q38. What happens if an applicant changes their address but does not ask the Home Office for permission first?**

In the event that a supported person has not informed the Home Office of a change of address, their asylum support may be withdrawn for failing to report a significant change in their circumstances as stated in regulation 15 (1) of the [Asylum Support Regulations 2000](#). Further information can be found in Breach of conditions at: Asylum Support instructions

### **Q39. How long can someone be absent from their accommodation before support is discontinued?**

The supported person must reside at the authorised address to continue to receive Section 95 support. Additionally they must not be absent without case worker permission for more than seven consecutive days and nights, or for more than a total of 14 calendar days and nights in a six-month period. Caseworker must maintain close contact with the accommodation provider to ensure that the supported person is not in breach of this condition.

Before discontinuing support under this condition, caseworkers must give the supported person the opportunity to explain their absence. Caseworker must write to the supported person, setting out that:

- There is evidence to suggest that they are in breach of this condition, and any specific absences, with dates (where available).
- The supported person must explain why they were absent.
- Section 4 support may be discontinued if the supported person does not continue to reside at the authorised address, or fails to provide a reasonable explanation for their absence.
- The supported person will no longer be allowed to stay in the accommodation, if support is discontinued.
- The supported person has a right of appeal, should support be discontinued.
- A reminder of their duty to comply with any conditions placed on their continued stay in the UK.

Caseworkers must decide whether, in view of the supported person's explanation, it would be unreasonable to discontinue support. For example:

- **The supported person alleges that they have been subject to harassment, or other unacceptable behaviour**  
While caseworkers may require the supported person to provide evidence of this, it would be unreasonable to discontinue support in the meantime. Caseworkers may also consider finding alternative accommodation for the supported person, which may improve their circumstances.
- **The supported person has been staying with friends or family**  
Caseworkers must check whether there is a specific reason for the supported person staying with them – the supported person's ill-health, for example – or whether the friends or family can support the supported person. If the absence was temporary and intended to be temporary, it would be unreasonable for caseworkers to discontinue support. However, where friends or family have the capacity to support the supported person, they may not be destitute and caseworkers may discontinue Section 95 support.

Where the supported person has been absent from their designated address, other than whilst in hospital, it may be reasonable for caseworkers to assume that someone else has been supporting them. If caseworkers reasonably believe that this alternative support may continue, it would be reasonable to discontinue Section 95 support.

This list is not exhaustive and caseworkers must decide whether a supported person is in breach of this condition on a case-by-case basis.

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## Chapter 12 - Help with the Cost of Funerals

This chapter provides guidance on handling requests for information about meeting the cost of funerals for deceased asylum seekers.

All enquiries about funeral arrangements, and meeting the cost of funerals, should be handled with great sensitivity. See: [An outline letter for replying to an enquiry for help with funeral costs](#)

### 18.1 Background

Asylum seekers in receipt of Support are, by definition, destitute, and will not be able to pay for their relative's or friend's funeral costs. Single destitute asylum seekers may not have any family or friends to undertake the funeral arrangements.

#### **Q57. Does the Home Office contribute towards the cost of funerals or for repatriating bodies?**

The Home Office does not:

- make any contribution towards the costs of funerals of deceased asylum seekers;
- make any contribution towards the cost of repatriating the body.

Such payments do not fall within the relevant legislation that describes the ways in which support can be provided (Section 96 Immigration and Asylum Act 1999). See: [Assistance from other sources](#)

On receipt of notification that an asylum supported person has died, support for the deceased should be terminated; support for any remaining family members should be re-assessed.

#### **Social fund funeral payments**

Asylum seekers are not eligible to apply for a Social Fund payment to meet the cost of a funeral unless they are in receipt of one of the relevant social security benefits. Asylum seekers and refugees who are in receipt of Income Support, or Job Seeker's Allowance, or Housing Benefit, or Council Tax Benefit, or Working Families' Tax Credit, or Disabled Person's Tax Credit, are eligible to apply for a Funeral Payment from the Social Fund.

However, an application for a Social Fund payment to meet the funeral costs of an asylum seeker, whether or not supported by Support, who, for example, was given temporary admission, may be refused on the grounds that the deceased was not ordinarily resident.

The Funeral Payment is designed to cover the cost of a simple, respectful, low cost funeral within the UK. Payments are usually made in the form of a giro-cheque made payable to the funeral director.

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## **18.2 Assistance from other sources**

Assistance with funeral costs may be obtained from members of the deceased's family or friends, religious communities to which they belong, the NHS or the local council.

### **Assistance from the NHS**

If the death occurs in hospital, family and friends will be asked whether they wish to make their own funeral arrangements, for which they will be responsible financially, or whether they wish the NHS Trust to provide the funeral, free of charge. In such cases the NHS Trust retains the right to make a claim upon the deceased's estate.

NHS Trusts will take responsibility for making the funeral arrangements of a person who dies in hospital if no relatives can be traced, or if the relatives are not able to afford the cost themselves and do not qualify for Social Fund Funeral Payments.

The NHS Trust will be sensitive to the wishes of the family and friends, and will take account of any known cultural or religious beliefs of the deceased. The funeral arrangements will be made by a funeral director who will be responsible for the service, the burial or cremation, and for a memorial or plaque commemorating the deceased.

The funeral director will consult a minister of religion or appropriate religious representative of the deceased's faith about any special faith observances, and the minister or representative will be invited to the service. The location of the service and the burial place will also be appropriate to the deceased's faith.

### **Assistance from the local council**

If the death occurs other than in a hospital, then the local council (environmental health department) has a duty to ensure that the deceased is buried or cremated respectfully, where no other arrangements have been, or are being, made. The local council retains the right to make a claim for the costs from the deceased's estate.

If the local council has reason to believe that the deceased did not wish to be cremated, then they will make arrangements for the deceased to be buried.

### **Family and friends who have made or wish to make personal arrangements**

Family and friends may of course wish to make their own, personal, arrangements. However, they should be advised that unless they are eligible to apply for a Social Fund Funeral Payment, they will not be able to obtain any financial assistance with the cost from Asylum support, the NHS, or the local council.

Applications to Asylum Support to pay for funerals that have been arranged privately should be refused. Caseworkers should explain the reasons for the refusal in a letter to the applicant. The letter must be agreed by their line manager before issue.

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## Chapter 14 - Possessions

This chapter instructs caseworkers how to deal with queries about the transportation and storage of possessions belonging to asylum seekers supported by the Home Office.

Possessions may include clothing, furniture, electrical goods, toys, books, baby equipment, medical equipment and disability aids etc.

### 20.1 Accommodation Provider responsibilities

Under contract, accommodation providers now have responsibility for transporting possessions when asylum seekers are moved from one address to another. The quantity of baggage, possessions or personal effects that an asylum seeker is entitled to have transported is as follows:

**The asylum seeker is being dispersed from Initial Accommodation (IA) or private accommodation within 10 working days of arrival in the UK**

Two pieces of luggage per person, children's toys and other effects, baby care items, medical equipment, buggies and/or prams and disability aids as applicable to the asylum seeker and/or his/her dependants.

**The asylum seeker has been in IA, dispersal, Section 4 or private accommodation for longer than 10 working days or the asylum seeker is relocated at the request of the Home Office**

Same as above and a greater amount, including other personal effects and household items, following a reasonable request.

**The provider rejects any request made by an asylum seeker under the contract the provider shall inform the asylum seeker of the right to appeal to the Home Office.**

If the asylum seeker wishes to appeal to the Home Office, the provider will notify the Home Office of the appeal and of the provider's reason for rejecting the relevant request and will pass the appeal to the regional contract manager. The Home Office will then consider the reasonableness of the provider's refusal of the request in the light of available information, which would include any representations from the asylum seeker or their representative. The Home Office would either confirm the provider's decision or advise that it regarded the request as reasonable (in which case the provider would then be required to transport the relevant baggage).

**The asylum seeker is relocated at the request of the provider,**

Unlimited and the full cost will lie with the provider

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## **Q59. When might an asylum seeker be moved from his or her accommodation?**

- Community tensions, anti social behaviour (where the asylum seeker is the victim not perpetrator, and moved for own safety);
- Domestic violence (victim, not perpetrator, and moved for own safety)
- Major incident (fire, flood etc);
- The Home Office terminates contract with accommodation provider;
- Property in disrepair;
- Property unsuitable.

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## **Q60. What happens to possessions when an asylum seeker is detained?**

If an asylum seeker is detained from IA, dispersal accommodation or Section 4 accommodation and is complying with the detention process, he/she will be given time to pack his/her possessions.

Where an asylum seeker does not comply with the detention process he/she may be removed immediately from the property. In this situation his/her possessions will be left behind but a relative or friend may, on request, arrange for them to be transported to the Removal Centre.

If an asylum seeker has been detained at a Reporting Centre or Police Station and his/her possessions are left behind in his/her accommodation, he/she is given the opportunity to contact a relative or friend who may agree to transport the possessions to the Removal Centre. However this must be arranged in advance with the Removal Centre.

Asylum seekers are allowed to take most items into detention (once agreed) but they are not for example allowed to take animals, large furniture, food items or illegal goods. They will be allowed to keep some possessions with them but others will be logged, placed in security bags and kept in a property room at the removal centre and will be given back to the person on removal or release. Since most flights have a maximum 22 kilo luggage allowance it is advisable that the person makes arrangements to pay for excess luggage or have it shipped to his/her home address.

The Home Office does not currently arrange for possessions to be collected. (For further guidance please refer to Chapter 41 of the Enforcement Manual).

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## **Q61. What happens to possessions when an asylum seeker has been hospitalised?**

Where an asylum seeker has been hospitalised, the accommodation should remain allocated unless it is clear that the person will be in hospital for longer than three months, in which case the possessions should be inventoried and moved to a place of secure holding, allowing the accommodation to be freed for re-allocation.

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## **Q62. What happens to possessions when an asylum seeker has absconded, been evicted, imprisoned or has died?**

In these circumstances it is considered best practice for accommodation providers to adopt procedures which comply with the Torts (Interference with Goods) Act 1977, unless the terms of the occupancy agreement allow the provider to dispose of anything left behind without liability.

Under the Torts Act a landlord becomes an 'involuntary bailee'. This effectively means that although the abandoned possessions remain the property of the asylum seeker, the landlord assumes responsibility for them. The landlord is obliged to make every effort to contact the owner warning him/her that the property may be disposed of within a certain time unless it is collected. This is often a couple of weeks. If the landlord receives no communication from the owner he is at liberty to dispose of or sell the possessions, but is obliged to keep any proceeds from a sale for a certain length of time in case the person returns. The landlord is permitted to be reimbursed for any costs incurred from the proceeds of the sale.

Nothing in this paragraph should be construed as giving legal advice to caseworkers or accommodation providers.

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## Chapter 15 - The Civil Partnership Act 2004

This chapter gives guidance to asylum support caseworkers on dealing with asylum seekers who enter into a civil partnership in the UK or who are in an existing civil partnership undertaken in a country whose jurisdiction to conduct a civil partnership ceremony is recognised by the United Kingdom.

There is also guidance applicable to same sex couples who, although not civil partners are living together as if they were.

### 21.1 Background

The Civil Partnership Act 2004, came into force on 5 December 2005, giving same-sex couples the opportunity to enter into a legal relationship termed a civil partnership.

The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (SI 2114) which also came into force on 5 December 2005 amended various legislative provisions. [Section 21.2](#) is the part of the Order relevant to asylum support caseworkers. It details the amendments made to the Asylum Support (Interim Provisions) Regulations 1999, the Asylum Support Regulations 2000 and the Withholding and Withdrawal of Support (Travel and Assistance and Temporary Accommodation) Regulations 2002.

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### Q63. What has changed?

- Civil partners have parity of treatment with those who enter into a marriage in a wide range of matters including recognition for immigration and nationality purposes. In effect, this means that existing provisions for spouses have been extended to civil partners who have registered their partnership in the UK or in countries specified under the 2004 Act.;
- The Immigration Rules have been amended to include provision for civil partners.

The cases most likely to be encountered are those where two people of the same sex are cohabiting and, although not civil partners, are living together as if they were. As with opposite-sex couples, if they have been living together for at least two of the last three years and qualify for asylum support it will be paid to them as a qualifying couple.

If an asylum seeker is in a civil partnership - or is living with their same-sex partner as if in a civil partnership - is part of a household where the partner is in receipt of funds other than asylum support, the case should be dealt with in line with Mixed Households; .applicant should be treated in line with the policy for dealing with spouses.

### Change of circumstances

An asylum seeker who:

- enters into a civil partnership;
- starts living with a person as if a civil partner of that person;

- becomes a former civil partner on the dissolution of his civil partnership; or
- Separates from his civil partner or from the person with whom he has been living as if a civil partner of that person whilst receiving support must, without delay, notify the Secretary of State of the change of circumstances. This is a legal requirement set out in paragraph 15 of the Asylum Support Regulations 2000.

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## 21.2. Schedule 1 article 2(13)

### Schedule 1 Article 2(13)

#### Amendments to subordinate legislation relating to immigration and nationality

##### Part 1

**Immigration Asylum Support (Interim Provisions) Regulations 1999** 1. In regulation 2 of the Asylum Support (Interim Provisions) Regulations 1999(1)—

- (a) in paragraph (1)(a), after “is his spouse” insert “or civil partner”;
- (b) in paragraph (1)(b), after “or of his spouse” insert “or civil partner”;
- (c) in paragraph (1)(c), after “or his spouse’s” insert “or civil partner’s”; and
- (d) after paragraph (1)(f) insert—

“(ff) had been living with him as a member of a same-sex couple for at least two of the three years before the day on which his claim for support was made;”.

##### **Asylum Support Regulations 2000**

2.—(1) Amend the Asylum Support Regulations 2000(2) as follows.

(2) In regulation 2(1)—

- (a) after the definition of “asylum support” insert ““civil partnership couple” means two people of the same sex who are civil partners of each other and who are members of the same household;”; and
- (b) after the definition of “married couple” insert ““same-sex couple” means two people of the same sex who, though not civil partners of each other, are living together as if they are;”.

(3) In regulation 2(4)—

- (a) in sub-paragraph (a), after “is his spouse” insert “or civil partner”;
- (b) in sub-paragraph (b), after “is a child of his or of his spouse” insert “or civil partner”;
- (c) in sub-paragraph (c), after “his spouse’s” insert “or civil partner’s”; and
- (d) after sub-paragraph (f) insert—

“(ff) had been living with him as a member of a same-sex couple for at least two of the three years before the relevant time;”.

(4) In regulation 10(4)—

(a) for sub-paragraph (a) substitute—

(1) S.I. 1999/3056, to which there are amendments not relevant to this Order.

(2) S.I. 2000/704, to which there are amendments not relevant to this Order.

“(a) “qualifying couple” means a married couple, an unmarried couple, a civil partnership couple or a same-sex couple, at least one of whom is aged 18 or over and neither of whom is aged under 16;” and

(b) for sub-paragraph (b) substitute—

“(b) “lone parent” means a parent who is not a member of a married couple, an unmarried couple, a civil partnership couple or a same-sex couple;”

(5) In regulation 15(2)—

(a) after sub-paragraph (f) insert:

“(ff) forms a civil partnership;”;

(b) after sub-paragraph (g) insert:

“(gg) starts living with a person as if a civil partner of that person;”;

(c) after sub-paragraph (h) insert:

“(hh) becomes a former civil partner on the dissolution of his civil partnership;” and

(d) after sub-paragraph (i) insert:

“(ii) separates from his civil partner or from the person with whom he has been living as if a civil partner of that person;”.

### **Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002**

**3.** In regulation 2 of the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002(3)—

(a) in paragraph (2)(a), after “his spouse” insert “or his civil partner”;

(b) in paragraph (2)(b), after “his spouse” insert “or of his civil partner”;

(c) in paragraph (2)(c), after “his spouse’s” insert “or his civil partner’s”;

(d) in paragraph (2)(f), for “an unmarried couple” substitute “a couple”; and

(e) in paragraph (3), for the definition of “unmarried couple” substitute—

“couple” means a man and woman who are not married to each other but are living together as if they are, or, two people of the same sex who are not civil partners of each other but are living together as if they are.”

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## **Q64. What are Rights and responsibilities of civil partners?**

The rights and responsibilities of civil partners include:

- A duty to provide reasonable maintenance for the civil partner and any children of the family;
- Ability to apply for parental responsibility for the civil partner's child;
- Equitable treatment for the purposes of assessment for child support; life assurance; tax, including inheritance tax; employment and pensions benefits; inheritance of a tenancy agreement;
- Recognition under intestacy rules;
- Access to fatal accidents compensation;
- Protection from domestic violence; and
- Recognition for immigration and nationality purposes.

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## Chapter 16 – Judicial Review

Please see chapter 27 of the IDIs on Horizon

Or, on the Gov. web-pages at:

<https://www.gov.uk/government/collections/chapter-27-judicial-review-immigration-directorate-instructions>

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# Chapter 17 - Maternity Payments and Additional Payments to Pregnant Women and Children Aged Under 3

## 24.1 Introduction

This chapter provides instructions for dealing with applications for maternity payments. It also instructs on the issues involved in making additional payments to pregnant women and children under the age of 3 who are in receipt of asylum support.

PB 37 (Maternity payments) and PB 78 (Additional payments to pregnant women and children aged under 3) have been amalgamated

## 24.2 Maternity payments

- A single one-off payment of £300 may be provided to those supported under Section 95 and to those whose applications have been assessed under Section 98 of the Immigration and Asylum Act 1999. This to help with the costs arising from the birth of a new baby;
- The payment of £300 must be made using the ARC or receipt book if applicable. For applicants who are in emergency accommodation payments may be made by way of ISTs (interim support tokens) or ESTs (emergency support tokens) to the value of £300 per child or if not yet born, per child due i.e. if twins are due, £600 will be paid;
- Applications for the maternity payment must be submitted in writing, signed by the applicant and include the appropriate documentary evidence. This may be an original full birth certificate, an original 'MAT B1' or original formal evidence.

See also: [Eligibility criteria for maternity payments](#)

## 24.3 Eligibility criteria for maternity payments

A maternity payment can only be paid in the following circumstances:

- The application for the maternity payment has been lodged in writing and signed by the father or mother of the child; and
- the application was received between eight weeks before the estimated date of delivery and six weeks after the birth ; and
- the birth is expected in eight weeks (or less) or the child is less than six weeks old ( or was six weeks old or less on the day the maternity application was received within the Home Office) ;and,
- the child was born to an Asylum supported person (or if not yet born, the expectant mother is an Asylum supported person); and,
- an original full birth certificate has been submitted (or original formal medical evidence of estimated date of delivery (EDD) such as an original 'MAT B1' if child not yet born).

## OR

- The application has been lodged in writing by the father or mother of the child; and
- the child was born outside the UK to a person who on application, qualifies for Asylum support; and
- the child is 3 months of age or less; and,
- formal credible evidence of the age of the child has been submitted.

## OR

- The child was born to an Asylum supported person and the case is an exceptional one.

### 24.3.1 Other considerations

If the child's mother (or expectant mother) or father is eligible for social security benefits, he/she is not eligible for an asylum support maternity payment.

If a social security Maternity Payment has been made from the Social Fund in respect of the relevant child or children then an Asylum Support Maternity payment must not be made.

If an asylum support maternity payment has already been made in respect of the relevant child or children then another maternity payment must never be made. This is particularly applicable to those who receive an asylum support maternity payment, leave the United Kingdom and subsequently return.

If the child is born outside the UK, credible evidence of the age of the child should be submitted. Evidence that may be accepted is:

- an original full birth certificate ( photocopies not acceptable); or,
- original passport ( the original passport will normally be held by the Immigration Service (port cases) or by the ICD (in-country cases) so in such circumstances case-workers will need to contact the relevant department to obtain a copy of the original passport); or,
- original medical evidence from a UK registered GP.

### 24.4 Casework processes

- Caseworkers should apply the rules strictly;
- Caseworker should minute ASYS, and the paper file if available, with a short recommendation; and clearly marking the reasons why the person meets/does not meet the criteria for payment. See: [Maternity payments checklist](#) and [Informing the applicant of the decision](#);
- In circumstances where a caseworker is minded to recommend that an exceptional payment is made, ASYS should be minuted and the fully reasoned recommendation passed to an EO or above for approval.
- Applications submitted more than eight weeks, but less than 10 weeks, before the estimated date of delivery (EDD) the application should be held and processed eight



weeks before the EDD (provided the criteria are still met at that point). Applications submitted more than ten weeks before the EDD should be returned (with a pre-paid envelope) and the applicant asked to re-apply eight weeks before the EDD.

- Caseworkers must ensure that the payment is a one-off payment per qualifying child, or per child due.

## **24.5 Additional payments to pregnant women and children aged under 3**

The Asylum Support (Amendment) Regulations 2003 allows for additional payments to be made to supported women who are pregnant and to children under the age of 3. The payment may be made both to those already supported under Section 95 and to those who have made an application for support where they have been assessed as eligible for support under Section 95.

The additional funding is intended to allow supported asylum seekers to purchase healthy foods.

Pregnant women and young children aged between 1 and 3 will each receive an additional £3 per week. Babies under 1 will receive an additional £5 per week.

Applications for additional payments received from fathers for their babies and children aged under 3 should be dealt with in the same way as those from mothers.

## **24.6 Making the application**

- Pregnant women who are supported under Section 95 should make an application for additional payment in writing, signed by the applicant and include original, credible written confirmation of pregnancy such as form MAT B1, a letter from a Community Midwife or a letter from a GP;
- Once a pregnant woman gives birth she or her representative should forward an original, full birth certificate to their support caseworker. When this information is received the child will be added as a dependant on the support application. The mother's additional support stops and additional support of £5 per week for the baby begins;
- Women who are in receipt of additional payments will not automatically receive a maternity payment and will therefore be required to apply separately. See: [Maternity payments](#);
- Where the application is from a newly arrived asylum seeker. Details of dependants under the age of 3 will be included in the application form. Additional payments will begin once eligibility is confirmed. Additional Payments will not be subject to back payment. See also: [Eligibility criteria for maternity payments](#)

## **24.7 Informing the applicant of the decision**

## 24.7.1 Grants – sample text

Decision letter granting a maternity payment (I)

Dear

You have applied for a payment to help with the costs arising from the arrival of your **(son/ daughter/ child etc) born/ due on (give birth date)**.

The Secretary of State has decided in your particular **(insert "exceptional" where applicable)** circumstances to provide you with a one-off additional single payment of ISTs (interim support tokens) to the value of **(insert amount)**. The tokens, which are enclosed, have an expiry date of 10 days from today. Please note they must be used before the expiry date.

**(Request original full birth certificate if paid on MAT B1 (EDD))**

Yours sincerely

Decision letter granting a maternity payment (II)

Dear

You have applied for a payment to help with the costs arising from the arrival of your **(son/daughter/ child etc) born/ due on [give birth date]**.

The Secretary of State has decided in your particular [insert "exceptional" where applicable] circumstances to provide you with a one-off additional single payment. This will be for £300 and you will be able to collect it from the post office using your ARC / receipt book between [insert dates].

**(Request original full birth certificate if paid on MAT B1 (EDD))**

Yours sincerely

#### **24.7.2 Applicant does not meet criteria – sample text**

Thank you for your application for a payment to help with the costs arising from the arrival of your child.

A maternity payment can only be paid in the following circumstances:

The application for the maternity payment has been lodged in writing by the father or mother of the child; and

the application was received between eight weeks before the estimated date of delivery and six weeks after the birth; and

the birth is expected in eight weeks (or less) or the child is less than six weeks old (or was six weeks old or less on the day the maternity application was received); and,

the child was born to a Asylum supported person (or if not yet born, the expectant mother is an Asylum supported person); and,

an original full birth certificate has been submitted (or original medical evidence of estimated date of delivery if child not yet born).

**Or**

The application has been lodged in writing by the father or mother of the child; and

the child was born outside the UK to a person who on application, qualifies for Asylum Support; and the child is 3 months of age or less; and original credible evidence of the age of the child has been submitted.

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**Or**

The child was born to an Asylum supported person and the case is an exceptional one.

Your application has been fully considered but the Secretary of State notes that **(give reasons for decision e.g. your child was born five months before you arrived in the UK and made your application)** and that your application does not meet the criteria set out above. He is also satisfied that your circumstances are not of sufficient merit to be considered exceptional. Your application for an extra payment is accordingly refused.

Yours sincerely

## 24.8 Maternity payment check list

Before completing this checklist ensure that the section "[Eligibility criteria for maternity payments](#)" has been read and id understood.

Application lodged by the child's father or mother?	Yes/No
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Either	
Application lodged in writing and received between eight weeks before the estimated date of delivery and six weeks after the birth?	Yes/No
The birth is expected in eight weeks (or less) or the child is less than six weeks old (or would have been six weeks old or less on the day of receipt of the maternity application)?	Yes/No
Child born to an asylum supported person, or if the child is not yet born is the expectant mother an asylum supported person?	Yes/No
Original full birth certificate been submitted or if the child is not yet born has evidence of the estimated date of delivery been submitted?	Yes/No
Based on the answers above is a maternity payment recommended a maternity payment?	Yes/No

Or	
Was the child born outside the UK to a person who on application, qualifies for asylum support?	Yes/No
Is the child 3 months of age or less?	Yes/No
Has credible evidence of the age of the child been submitted?	Yes/No
Based on the answers above is a maternity payment recommended a maternity payment?	Yes/No

Are there any exceptional circumstances?	Yes/No
If there are exceptional circumstances has the process in <a href="#">Casework Processes</a> been followed?	Yes/No

Number of applicable children e.g. one	
Level of maternity payment e.g. £300	
Caseworker name	
Payment confirmed (EO team leader)	

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## Chapter 18 – Duty to Offer Support

This chapter deals with the implementation and application of the European Council Directive laying down minimum standards for the reception of asylum seekers, which made a number of changes to domestic legislation.

The Asylum Seekers (Reception Conditions) Regulations 2005 (“the 2005 Regulations”) came into force on 5 February 2005. In addition the Asylum Support (Amendment) Regulations 2005, which make amendments to the Asylum Support Regulations 2000, came into force on the same day. References in this document to “the 2000 Regulations” mean the Asylum Support Regulations 2000 as amended by the Asylum Support (Amendment) Regulations 2005.

The 2005 Regulations only apply in respect of asylum seekers whose claims are made under the 1951 Refugee Convention and whose claims are recorded on or after 5 February 2005. They do not apply to asylum seekers whose claims are made (only) under Article 3 of the European Convention on Human Rights.

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### 25.1 Duty to offer support

Regulation 5 of the 2005 Regulations imposes two duties:

- If the Home Office thinks that an asylum seeker or his family member is eligible for support under Section 98 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (temporary support) then it must offer to provide support to them;
- If an asylum seeker or his family member makes an application for asylum support under Section 95(of the 1999 Act) (asylum support) and the Home Office thinks that the applicant is eligible for support under that section then the asylum seeker or his family member must be offered the provision of support.

In practise this should not make a difference to the way in which destitute asylum seekers and their dependants are currently offered temporary or asylum support.

#### 25.1.1 Maintaining family unity

Regulation 3 of the 2005 Regulations requires the Home Office to have regard to family unity when providing accommodation under Section 95 or 98 of the 1999 Act. Where possible, and providing the family agrees, family members should be accommodated together.

Family members are defined for the purposes of Regulation 3 to include a spouse or partner in a stable relationship and any unmarried dependent minor children of either the asylum seeker himself or of the couple. Although this is a narrower definition than that of dependant contained in the 2000 Regulations, it does not mean that you should not continue to apply that definition in all other circumstances.

Regulation 3 does not apply to families with children if the Home Office is providing or arranging for the provision of accommodation under Section 95 of the 1999 Act- for these cases the Home Office already has a duty under Section 122 of the 1999 Act to provide adequate accommodation for the child as part of the eligible person's household.

### **25.1.2 Vulnerable persons**

Regulation 4 of the 2005 Regulations applies to an asylum seeker or his family member as defined above. Under this regulation the Home Office must take into account the special needs of an asylum seeker or his family member who is a vulnerable person when providing or considering whether to provide support under Section 95 or 98 of the 1999 Act.

For the purposes of this regulation a vulnerable person is defined as:

- a minor;
- a disabled person;
- an elderly person; (d) a pregnant person;
- a lone parent with a minor child; or;
- a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence who has had an individual evaluation of his situation that confirms he has special needs.

There is no obligation on the Home Office to carry out or arrange for the carrying out of an individual evaluation of a person's situation to determine whether he or his family members have special needs. However, the Home Office will take account of any evidence of an individual evaluation supplied that confirms that a vulnerable person has special needs.

When evidence of a medical evaluation or ongoing treatment is presented the Home Office caseworkers should have regard to the evidence supplied, considering the applicant's (or their dependant's) special needs (if any) when providing or considering whether to provide support.

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## **25.2 Withdrawing support**

The Directive aims to establish minimum reception conditions for asylum seekers across Member States. In setting minimum conditions the Directive specifies the circumstances in which reception conditions (including asylum support) can be withdrawn or reduced.

Under regulation 20 of the 2000 Regulations support may be suspended or discontinued if a supported person or a dependant of his for whom support is being provided:

1. commits a serious breach of the rules of their accommodation (provided they are housed in collective accommodation);
2. commits an act of seriously violent behaviour, either in Home Office accommodation, at the authorised address or elsewhere;

3. commits an offence under Part VI of the 1999 Act;
4. abandons the authorised address without permission;
5. does not comply with a request for information relating to:
  - his asylum support (within 5 days of receipt)
  - his asylum claim (within 10 days of receipt);
6. fails without reasonable excuse to attend a Home Office interview relating to his asylum support;
7. conceals financial resources such that they have unduly benefited from asylum support;
8. does not comply with a reporting requirement;
9. makes a claim for asylum and before it has been determined makes or seeks to make a further and separate claim in the same or a different name;
10. fails without a reasonable excuse to comply with a relevant condition.

Any decision to discontinue support in any of the circumstances outlined above must be taken individually, objectively and impartially and reasons should be given. It should be based on the particular situation of the person concerned and particular regard should be had as to whether the person is a vulnerable person as described by regulation 4 of the 2005 Regulations.

If a decision is taken to discontinue Section 95 support under regulation 20 then the supported person will have a right of appeal under Section 103(2) of the Immigration and Asylum Act 1999 (appeal to the Tribunal Service – Asylum Support) in the usual way.

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### **25.2.1 Discontinuation of support to families with children**

When considering whether to discontinue the provision of support under Section 95 of the Immigration & Asylum Act 1999 to families with minors, the course of action taken must be consistent with the Home Office's obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009, to ensure that the decision has regard to the need to safeguard and promote the welfare of children who are in the UK.

If a decision is being made as to whether it is appropriate to discontinue support to a family with children under regulation 20 of the Asylum Support Regulations 2000, if the family are assessed as being destitute if it were not for the provision of the aforesaid support, the Home Office must take in to account the impact of any decision on the family.

Any decision as to whether it is appropriate to discontinue support must be proportionate to the situation. If the breach was minor, such as failing to report, it may not be appropriate to discontinue the provision of support. If however, the breach was extremely serious, such as extreme violence or vandalism, it may be appropriate to discontinue support. When making decisions as to whether it would be appropriate to discontinue support, Case workers should consult their Senior Caseworker before proceeding.

If the discontinuation of support is appropriate, the Case workers should take appropriate steps to safeguard and promote the welfare of the children. Before any action is taken to begin

the process to discontinue support, the Case worker should liaise with the local authority, notifying them that the Home Office plans to discontinue support from the family, and request that the local authority provides alternative support. If the local authority makes an offer of support, the provision of support under Section 95 should be discontinued as soon as the family transfers in to local authority care.

If the Home Office considers that the supported family are eligible for support provided by the local authority, but the local authority refuses to provide support, the provision of asylum support must be maintained until the local authority provides support.

If a decision is taken that it would be appropriate to discontinue the provision of support to a family with children, the discontinuation letter should explain why the decision is consistent with the Home Office's obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009.

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# Chapter 19 - Document Control

## Change Record

Version	Author	Date	Change made
1.0	GL	26/09/14	Changes have not been substantive since this instruction document, though reformatted and rebranded, merely rationalizes Policy Bulletins (PB's), in preparation for their removal, by adding their useful legacy content to the Section 95 Questions and Answers document. It has always been the intention to incorporate PB's into substantive instructions. This process is ongoing.
2.0	GL	23/10/14	Updated to include Domestic Violence and minor housekeeping
3.0	GL	14/01/15	Tidied up Backpayment of asylum support instruction and included it at chapter 24. Archived and removed from website.
4.0	GL	22/01/15	Added Maternity Payments chapter 25
5.0	GL	11/03/15	Inserted PB 83; amalgamated chapters 15 and 24 which both dealt with overpayments. Further clarified clawback details.
6.0	GL	17/04/15	Added Withdrawals to Bail section
7.0	GL	21/12/15	Updated for AVR being dealt with by the Home Office from 01/01/2016.
8.0	GRaFT	02/07/19	Chapter 23 'Domestic Violence' - Policy Bulletin 70 removed
9.0	NK	02/07/19	NK
10.0	JO	10/7/23	Changes being made in line with rules changes week commencing 10 July.

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