

WITHDRAWAL OF ASYLUM SUPPORT WHERE A BREACH OF CONDITIONS HAS OCCURRED.

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Introduction

This section gives guidance to Case Owners in the decision making process on how to determine whether a breach of the conditions of asylum support has occurred and it is appropriate to discontinue asylum support.

Application of this instruction in respect of children and those with children

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

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

Our statutory duty to children includes the need to demonstrate:

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

Existing Asylum Support Guidance

Supplementary guidance on using ASYS can be found in the ASYS User Manuals.

Guidance on asylum support policies can be found in [Asylum Support Policy Bulletins](#).

Background

Asylum support is provided on the basis a supported person and/or his dependant(s) adheres to the terms and conditions attached to it. The conditions are outlined to the supported person in the Asylum Support agreement. A breach of the conditions of support may lead to an early suspension or discontinuation of support. A supported person has the right of appeal against a decision to discontinue asylum support.

Conditions of Support

Under [regulation 20 of The Asylum Support Regulations 2000](#) as amended in 2005 asylum support for a supported person or a dependant of his may be suspended or discontinued if:

- there are reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has committed a serious breach of the rules of his accommodation (provided he is housed in collective accommodation);
- there are reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has committed an act of seriously violent behaviour, either in asylum support accommodation, at the authorised address or elsewhere;
- the supported person or any dependant of his for whom support is being provided has committed an offence under Part VI of the Immigration and Asylum Act 1999;
- there are reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has abandoned the authorised address without permission;
- the supported person has not complied with a request for information relating to:
 - his asylum support (within 5 days of receipt); or
 - his asylum claim (within 10 days of receipt);
- fails without reasonable excuse to attend an interview relating to his asylum support;
- there are reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has concealed financial resources such that the supported person or a dependant of his has unduly benefited from asylum support;
- the supported person or any dependant of his for whom support is being provided has not complied with a reporting requirement;
- there are reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has made a claim for asylum and before it has been determined makes or seeks to make a further and separate claim in the same or different name; or
- the supported person or any dependant of his for whom support is being provided has failed without reasonable excuse to comply with a reporting restriction.

Case Owners should be aware that in the event of a judicial challenge a court is unlikely to be satisfied that a person has committed an offence under Part VI of the Immigration and Nationality Act 1999, unless he has been convicted of that offence.

Further information can be obtained from [Regulations 19 and 20 of the Asylum Support Regulations 2000](#) as amended, and the [Asylum Support Policy Bulletin 83: Duty to offer support, Family unity, Vulnerable persons, Withdrawing support](#).

Asylum Support Agreement

The Asylum Support agreement outlines the terms and conditions that are applied in the provision of asylum support. The agreement states that reporting a change of circumstances is a condition of support.

For further information on the Asylum Support Agreement, see the Asylum Instruction Eligibility and Assessment of Asylum Support.

Right of Appeal

A supported person has the right of appeal under section 103 of the Immigration and Asylum Act 1999 against a decision to discontinue asylum support before that support would otherwise have come to an end. The supported person will appeal to the Tribunals Service – Asylum Support and is informed of this right when his support claim for accommodation, subsistence or both has been set to ‘In Termination.’

For further information on asylum support appeals refer to the [Asylum Support Policy Bulletin 23: Appeals Process](#) and for further guidance on Appeals refer to [Section 103 of The Immigration and Asylum Act 1999](#).

Change of Circumstances

A supported person must inform the UK Border Agency of any significant change in his 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](#). There is no clear definition of 'reasonable excuse' and staff should seek policy and legal advice if considering a prosecution.

A supported person should notify the UK Border Agency of a change of circumstances in a signed written declaration. The Case Owner must attach a copy of the declaration to the supported person's file.

The level and type of support provided must be reassessed following a change of circumstances. Case Owners should consider any change of circumstances on its own merits and 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 asylum support.

Where a Case Owner learns of an apparent change of circumstances which has not been notified to the UK Border Agency, he should in the first instance inform the supported person that he should make a declaration without delay or run the risk of support being discontinued.

Recognised Changes of Circumstances

Regulation 15(2) of the [Asylum Support Regulations 2000](#) states that a relevant change of circumstances occurs where a supported person or a dependant of his-

- (a) is joined in the United Kingdom by a dependant, or as the case may be, another dependant, of the supported person;
- (b) receives or gains access to any money, or other asset mentioned in regulation 6(5), that has not previously been declared to the Secretary of State;
- (c) becomes employed;
- (d) becomes unemployed;
- (e) changes his name;
- (f) gets married;
- (ff) forms a civil partnership;
- (g) starts living with a person as if married to that person;
- (gg) starts living with a person as if a civil partner of that person
- (h) gets divorced;
- (hh) becomes a former civil partner on the dissolution of his civil partnership;
- (i) separates from a spouse, or from a person with whom he has been living as if married to that person;
- (ii) separates from his civil partner or from the person with whom he has been living as if a civil partner of that person;
- (j) becomes pregnant;
- (k) has a child;
- (l) leaves school;
- (m) starts to share his accommodation with another person;
- (n) moves to a different address, or otherwise leaves his accommodation;
- (o) goes into hospital;
- (p) goes to prison or is otherwise held in custody;
- (q) leaves the United Kingdom; or
- (r) dies.

For further guidance refer to Regulation 15 of the [Asylum Support Regulations 2000](#).

No Longer Destitute

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

Section 95(3) of the Immigration and Asylum Act 1999 states that a person is destitute if:

- he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
- he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

For further guidance on destitution and the destitution test, see the Asylum Instruction on Eligibility and Assessment of Asylum Support.

A supported person may inform a Case Owner that he will not be destitute for a specific period of time. In such cases, support may be suspended. Case Owners 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 Case Owner should inform a designated Investigating Officer in their asylum team.

Ceases to Reside

Where a supported person has ceased to reside at his authorised address his support may be discontinued under section 20(1)(d) of the Asylum Support regulations 2000. However, under regulation 20(1)(a), a reasonableness test is used and where the reason for leaving the authorised address involves a matter which the UK Border Agency is investigating, regulation 20(1)(a) may be used.

Reasonable Excuse

A supported person may contact the Case Owner to give an explanation for a breach of conditions. Should the explanation lead a Case Owner to believe that the breach of condition was unavoidable the explanation may be deemed a 'Reasonable Excuse'. If this explanation is provided before support is fully discontinued the Case Owner should take action to ensure that support continues without interruption.

The Case Owner should also consider whether the 'Reasonable Excuse' indicates that there has been a change of circumstances and if appropriate reassess the person's entitlement to support. For example, if a supported person explains she has given birth, the Case Owner should consider whether the person qualifies for a maternity benefit, and should reassess the level of support to include the new dependant. If the supported person leaves asylum support accommodation and requests subsistence only support, the Case Owner should consider whether the person is entitled to that support.

Investigating a Breach of Conditions

Where there is a suspicion of fraud or a failure to report changes in the circumstances relating to asylum support, Case Owners should report this to the team's designated Investigation Officer. Suspicion of the following should be investigated:

- paid employment
- ownership of a motor vehicle
- undisclosed assets
- voucher fraud/fraudulent asylum support claim/multiple asylum support claims
- claiming of benefits
- overpayments
- cohabiting or sub letting of beds in asylum support accommodation
- unexplained absence from an asylum support address
- vandalised/damaged asylum support accommodation
- possession of forged documents
- stealing or selling of stolen goods
- abusing or dealing in illicit drugs
- possession of an offensive weapon
- the applicant being verbally/physically threatening or assaulting others
- anti-social behaviour
- public harassment
- domestic violence
- child protection issues.

The Case Owner should arrange for an investigation to take place so that evidence can be gathered. An investigation may include home visits, interviews with the supported person, consultation with other government departments and other methods of examination.

Investigations into anti-social behaviour, public harassment, domestic violence, child protection and minor fraud should be conducted only by a trained Investigations Officer in the Asylum Team. However cases involving serious fraud fall outside the remit of Asylum Teams and should be referred by completing the Investigations Referral form. Guidance on the finances involved in minor fraud and serious fraud can be found in the Asylum Support Deterrent Policy. In the event a Case Owner is unsure they should contact an Investigations Officer.

Further guidance on what should be investigated can be found in Chapters 8 – 12 in Part 1 and chapters 16 – 18 in Part 2 of Asylum Support Investigation Standard Operating Procedures (SOPs)Version 2.

Rep ARC

In the event that a supported person reports a denial of support payments as a result of a failure to report, the Case Owners should instruct him to return to his designated reporting centre and inform him that further failure to comply with reporting requirements will result in discontinuation of support.

In the event that a supported person fails to comply with 3 consecutive reporting requirement events the Case Owner should follow the guidance in Rep ARC Desk Instructions. The warning and discontinuation letters can be found in Annex A: Rep ARC Letters within the Rep ARC Desk Instructions. For guidance on the Rep ARC appeals process see section 10 of the instructions.

Case Owners should provide support to applicants and liaise with the Reporting Centre. Despite this, these instructions should still be used as a basis for the reporting requirement discontinuation process and updating ASYS. Case Owners should also be aware that the Immigration Service (IS) information and warning letters should not be issued by Case Owners. Details of lost or stolen ARC details can be referred to Regional Casework Teams. In the event that a Case Owner is unsure of the circumstances of an individual case queries can be forwarded to the Rep ARC inbox. Please also note these instructions are in draft form and are subject to change.

In the event that an investigation is taking place Case Owners should make a note in the Minute Sheet of ASYS. ASYS will be updated during the course of the investigation and subsequent appeal. Letters, pro-formas and reports can be viewed on ASYS.

The Investigations Officer will identify the extent of any breach of conditions and discontinue support where appropriate. An email report of the outcome and action should be sent to the Case Owner and placed on the file.

Guidance on Investigating Officers and Investigations can be found in Chapters 1 – 7 in Part 1 and Part 2 of Asylum Support Investigation Standard Operating Procedures (SOPs) Version 2.

Discontinuation of support

Any decision to discontinue support in any of the circumstances outlined above must be taken individually, objectively and impartially, taking account of the degree of the breach or non-compliance. The decision should be based on the particular situation of the supported person concerned and particular attention should be given to whether the supported person is a vulnerable person as described by regulation 4 of the Asylum Seekers (Reception Conditions) Regulations 2005. The regulation states that a vulnerable person is –

- a minor
- a disabled person
- an elderly person
- a pregnant woman
- 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.

Reasons should be given for any discontinuation of asylum support.

Where asylum support is being withdrawn following a breach of conditions the ASYS support application record will be set to 'In Termination'. Where asylum support has been fully discontinued the Case Owner should ensure that the ASYS support application record is set to 'Terminated'.

For additional guidance on the discontinuation of support see the Asylum Support Policy Bulletin 83: Duty to offer support, Family unity, Vulnerable persons, Withdrawing support.

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 UK Border Agency'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 UK Border Agency must take in to account the impact of any decision on the family before proceeding.

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 Owners should consult their Senior Caseworker before proceeding.

If the discontinuation of support is appropriate, the Case Owners 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 Owner should liaise with the local authority, notifying them that the UK Border Agency 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 UK Border Agency 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 UK Border Agency's obligations under section 55 of the Borders, Citizenship and Immigration Act 2009.

Reinstatement of Support

When an asylum support application has been discontinued and the status of the supported person's application is recorded on ASYS as 'Terminated' reflecting 'applicant is in breach of conditions of Asylum Support' an asylum applicant wishing to receive support again must submit a new application for asylum support.

Where an asylum applicant submits a new application for Asylum Support and the asylum support for him or his dependant has previously been discontinued due to a breach of support conditions, the Case Owner should consider whether it is appropriate to reinstate support.

Where support has been suspended or discontinued under either regulation: regulation 20(1)(d) (abandoning an address without permission) or regulation 20(1)(i) (failing to comply with a reporting requirement) of the Asylum Support Regulations 2000 as amended regulation 20(5) of the Asylum Support Regulations 2000 applies. This regulation provides that if the supported person is traced or reports voluntarily and either he has not appealed against the previous suspension or discontinuation, or has appealed and that appeal is outstanding, a decision must be taken, based on the reasons for the disappearance, as to whether some or all of the supported person's (and/or his dependant's) support should be reinstated. In practice, the Case owner should take this decision.

In all other cases where support has been suspended or discontinued under regulation 20, regulation 21 of the Asylum Support Regulations 2000 applies. This regulation provides that the new application need not be entertained unless the Secretary of State considers that there are exceptional circumstances which justify its being entertained. A material change of circumstances is one which, if the applicant were a supported person, would have to be notified to the UK Border Agency under regulation 15 of the Asylum Support Regulations 2000 as amended.

Further guidance on regulation 20 of the Asylum Support Regulations 2000, including a flow chart of the decision making process for discontinuations of support, can be found in Asylum Support Policy Bulletins 83: Duty to offer support, Family unity, Vulnerable persons, Withdrawing support and 84: Entertaining a further application for support.

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	MM	01/12/2006	Approved draft
2.0	BF	22/02/07	Incorporating asylum support process instruction and implementing web format
3.0	BF	03/11/08	Update branding only
4.0	BF	14/10/09	Children's Duty Paragraph