

DEPENDANTS ON AN ASYLUM SUPPORT APPLICATION

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Introduction

This is an instruction on determining whether a person is a dependant for asylum support purposes. It also includes guidance on adding dependants to, and removing dependants from, an asylum support application. The principles set out in this instruction apply irrespective of whether the application for support is under section 4, 95 or 98 of the Immigration and Asylum Act 1999.

Case Owners should note that the definition of a dependant for asylum support is different to that for asylum purposes.

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.

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Definition of “Dependant”

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, (see Extract).

Dependants Included on the Initial Support Application

When an application for a dependant to be included in a support application is received, Case Owners should ensure that they search ASYS and CID for any existing asylum or asylum support applications for the person.

Persons who are already a dependant on the asylum claim

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.

Persons who are not a dependant on the asylum claim

If an application for support includes a person who is not an asylum seeker or not a dependant of an asylum seeker 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 (see Extract) (e.g. if they are the spouse of an asylum-seeker, a supported person or an applicant for asylum support). 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 Immigration Service screening interview may be important when it comes to assessing credibility. Forgery checks should be conducted on any documentary evidence wherever possible.

If, after considering the evidence provided, the Case Owner is not satisfied that the purported dependant should be included in the support application, the main applicant and dependant should be advised of this in writing including the full reasons for the decision. Case Owners should refer to ASYS User Manual: Producing a Generic ASYS Letter and use the template provided. This decision will attract a right of appeal under Section 103(1) of the Immigration and Asylum Act 1999 to an Asylum Support Adjudicator. The letter should enclose the Tribunals Service – Asylum Support Notice of Appeal Form and envelope.

(See Asylum Related Documents – Asylum Support – Dependents on a Support App' – Asylum Appeal Support Form.doc)

Applications to add Dependants after Support has been Allocated

A request for a prospective dependant to be added to a support application should be made in writing. Evidence must be provided to show that the person meets the requirements of a dependant as set out in regulation 2 of the Asylum Support Regulations 2000 (see Extract).

It is not necessary for dependants to submit a new asylum support application form when applying to be added as a dependant to an Asylum Support claim.

If a failed asylum seeker is still being treated as an asylum seeker for support purposes because they had a dependent child under the age of 18 at the point appeal rights have been exhausted, additional dependants may be added to the section 95 application (providing they meet the definition of a dependant (see Extract)).

The level of evidence that is acceptable to show that a relationship between the main applicant and the dependant is credible 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 that marriage has taken place since they arrived in the UK. Factors such as whether the alleged dependant was mentioned during the initial Immigration Service screening interview may be important when it comes to assessing credibility. Forgery checks should be conducted on any documentary evidence wherever possible.

Where appropriate evidence has not been supplied Case Owners should write to the applicant requesting further information using the template at Letters.

Where the appropriate evidence has been received Case Owners should proceed with the request.

If, after considering the evidence provided, the Case Owner is not satisfied that the purported dependant should be included in the support application, the main applicant and dependant should be advised of this in writing including the full reasons for the decision. Case Owners should refer to ASYS User Manual: Producing a Generic ASYS Letter and use the template provided. This decision will attract a right of appeal to an Asylum Support Adjudicator. The letter should enclose the Tribunals Service – Asylum Support Notice of Appeal Form and envelope.

If it is decided that the applicant should be added to the support application, Case Owners should follow the instructions in the ASYS User Manual: Adding/Removing a Dependand.

The applicant should be advised of the decision in writing. Case Owners will need to produce a generic ASYS letter - see ASYS User Manual: Producing a Generic ASYS Letter and enter the text provided at Letters.

Whenever a dependant is added to the support application then the level of support provided to the family will need to be adjusted to reflect the additional dependant.

In cases where the applicant is residing in support accommodation Case Owners need to assess whether the current accommodation remains suitable. This is essential in cases where a dependant has been added. Case Owners should check whether the current accommodation remains suitable.

If the current accommodation is unsuitable, the details of the case should be referred to the Accommodation Booking Team (ABT). If the current accommodation is suitable, Case Owners should assess the level of support and allocate support, see the ASYS User Manuals: Using the Automated Assessment Tool and Using the Subsistence Allocation Calculator.

If the applicant is living in asylum support accommodation which, following the addition of another dependant is not adequate, new accommodation may need to be found. Case Owners should refer to the Asylum Instruction Change of Address for guidance.

Where a dependant has been added, Case Owners must place a minute in the ASYS Minute Sheet. The minute must include the name of applicant who has been added or removed, any changes in the level of support the applicant will receive, the date the new level of support will commence and details of any emergency support generated.

Removing a Dependant after Support has been Allocated

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

If Case Owners are concerned about the welfare of a child dependant they should, in the first instance, contact Social Services. If Social Services are unable to help, Case Owners should contact the Child Protection Officer in the Asylum Screening Unit

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. Case Owners 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 then 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 not suitable, new accommodation may need to be found. Case Owners should refer to the Asylum Instruction Change of Address for guidance.

Case Owners 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, the Case Owner will need to review the position if the child is no longer regarded as a dependant.

Case Owners may be notified by the police, the accommodation provider, the main applicant or dependant that they wish to be removed from the asylum support application because of incident(s) of domestic violence. Case Owners should refer to [Asylum Support Policy Bulletin 70: Domestic Violence](#) and the Asylum Instruction titled Change of Address.

If it is decided that the applicant should be removed from the support application, Case Owners should follow the instructions in the ASYS User Manual: Adding/Removing a Dependant.

The applicant should be advised of the decision in writing. Case Owners will need to produce a generic ASYS letter- see ASYS User Manual Producing a Generic ASYS Letter and enter the text provided at Letters.

In cases where the applicant is residing in support accommodation Case Owners need to assess whether the current accommodation remains suitable. Case Owners should check whether the current accommodation remains suitable.

If the current accommodation is unsuitable, the details of the case should be referred to the Accommodation Booking Team (ABT). If the current accommodation is suitable, Case Owners should assess the level of support and allocate support, see the ASYS User Manuals: Using the Automated Assessment Tool and Using the Subsistence Allocation Calculator.

Where a dependant has been removed, Case Owners must place a minute in the ASYS Minute Sheet. The minute must include the name of the dependant who has been removed, any changes in the level of support the applicant will receive, the date the new level of support will commence and details of any emergency support generated if appropriate.

Non-Dependants who Request to be Accommodated Together

Applicants who are eligible for asylum support but are not dependants of each other (e.g. adult siblings) may request to be accommodated together. When considering requests for separate support applications to be 'linked together' in this way, case owners should take into account the wishes of all parties, the availability of suitable accommodation, Article 8 ECHR considerations (right to respect for private and family life), and any restrictions on who may be accommodated together. The criteria on who may be accommodated together are set out in Annex C of the National Asylum Support Service Accommodation 2005 Project – Schedule 3 to the Target Contract.

The Case Owner should advise the applicants of the decision in writing. Case Owners should refer to ASYS User Manual: Producing a Generic ASYS Letter and use the template provided. There is not a right of appeal against this decision.

Child Dependants Turning 18

Children who have been accepted as a dependant on an asylum support application should not be expected to apply for support in their own right on turning 18 unless the main applicant is a failed asylum seeker who has exhausted appeal rights and has no other child dependants. Their support will continue until such time as the main applicant becomes ineligible for support.

Extract from the Asylum Support Regulations 2000 (regulation 2)

2.

(1) In these Regulations -

"the Act" means the Immigration and Asylum Act 1999;

"asylum support" means support provided under section 95 of the Act;

"dependant" has the meaning given by paragraphs (4) and (5);

"the interim Regulations" means the Asylum Support (Interim Provisions) Regulations 1999^[2];

"married couple" means a man and woman who are married to each other and are members of the same household; and

"unmarried couple" means a man and woman who, though not married to each other, are living together as if married.

(2) The period of 14 days is prescribed for the purposes of section 94(3) of the Act (day on which a claim for asylum is determined).

(3) Paragraph (2) does not apply in relation to a case to which the interim Regulations apply (for which case, provision corresponding to paragraph (2) is made by regulation 2(6) of those Regulations).

(4) In these Regulations "dependant", in relation to an asylum-seeker, a supported person or an applicant for asylum support, means, subject to paragraph (5), a person in the United Kingdom ("the relevant person") who -

(a) is his spouse;

(b) is a child of his or of his spouse, is dependant on him and is, or was at the relevant time, under 18;

(c) is a member of his or his spouse's close family and is, or was at the relevant time, under 18;

(d) had been living as part of his household -

(i) for at least six of the twelve months before the relevant time, or

(ii) since birth,

and is, or was at the relevant time, under 18;

(e) is in need of care and attention from him or a member of his household by reason of a disability and would fall within sub-paragraph (c) or (d) but for the fact that he is not, and was not at the relevant time, under 18;

(f) had been living with him as a member of an unmarried couple for at least two of the three years before the relevant time;

(g) is living as part of his household and was, immediately before 6th December 1999 (the date when the interim Regulations came into force), receiving assistance from a local authority under section 17 of the Children Act 1989^[3];

(h) is living as part of his household and was, immediately before the coming into force of these Regulations, receiving assistance from a local authority under -

(i) section 22 of the Children (Scotland) Act 1995^[4]; or

(ii) Article 18 of the Children (Northern Ireland) Order 1995^[5]; or

(i) has made a claim for leave to enter or remain in the United Kingdom, or for variation of any such leave, which is being considered on the basis that he is dependant on the asylum-seeker;

and in relation to a supported person, or an applicant for asylum support, who is himself a dependant of an asylum-seeker, also includes the asylum-seeker if in the United Kingdom.

- (5) Where a supported person or applicant for asylum support is himself a dependant of an asylum-seeker, a person who would otherwise be a dependant of the supported person, or of the applicant, for the purposes of these Regulations is not such a dependant unless he is also a dependant of the asylum-seeker or is the asylum-seeker.
- (6) In paragraph (4), "the relevant time", in relation to the relevant person, means -
- (a) the time when an application for asylum support for him was made in accordance with regulation 3(3); or
- (b) if he has joined a person who is already a supported person in the United Kingdom and sub-paragraph (a) does not apply, the time when he joined that person in the United Kingdom.
- (7) Where a person, by falling within a particular category in relation to an asylum-seeker or supported person, is by virtue of this regulation a dependant of the asylum-seeker or supported person for the purposes of these Regulations, that category is also a prescribed category for the purposes of paragraph (c) of the definition of "dependant" in section 94(1) of the Act and, accordingly, the person is a dependant of the asylum-seeker or supported person for the purposes of Part VI of the Act.
- (8) Paragraph (7) does not apply to a person who is already a dependant of the asylum-seeker or supported person for the purposes of Part VI of the Act because he falls within either of the categories mentioned in paragraphs (a) and (b) of the definition of "dependant" in section 94(1) of the Act.
- (9) Paragraph (7) does not apply for the purposes of any reference to a "dependant" in Schedule 9 to the Act.

Letters

Request for Further Evidence Letter

See Asylum Related Documents – Asylum Support – Dependents on a Support App’ – Further Information Letter.doc

Variation of Support Letter

See Asylum Related Documents – Asylum Support – Dependents on a Support App’ – Variation of Support Letter.doc

Glossary

Term	Meaning
Further Evidence Letter	Letter to Request further information or evidence
Variation of Support Letter	Letter informing applicant of changes in their regular support payments

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	BF	01/02/07	Formatting to website format and incorporating asylum support processes
		29/03/07	IND name change amendment
3.0	MM	17/04/07	Amendments for external website
4.0	CS	03/10/08	Re branding only
5.0	SM	11/09/09	Issuing of TSAS envelopes if right of appeal exists
6.0	SM	05/10/09	Children's Duty paragraph added.