# POLICY BULLETIN 75

## SECTION 55 GUIDANCE

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## 2. SCOPE OF THE DOCUMENT

2.1 This document provides guidance on section 55 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act), which came into force on 8 January 2003.

2.2 For the purposes of simplicity, and unless otherwise stated, the use of 'he' and 'him' will apply equally to both genders.

## 3. APPLICATION OF THIS INSTRUCTION IN RESPECT OF CHILDREN AND THOSE WITH CHILDREN

3.1 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.

## 4. SUMMARY

4.1 The provision of asylum support under sections 4, 95 and 98 of the Immigration and Asylum Act 1999 is limited by the provisions in section 55 of the 2002 Act. Section 55 also places restrictions on the provision of support under section 2 of the Local Government Act 2000 and under certain sections of the Housing Act 1996 and Housing (Scotland) Act 1987 (see part 10 for further information on the restrictions placed on the provision of support by local authorities). The full text of section 55 is set out at Annex A.

**4.2 A summary of the process to be followed when making a section 55 decision, including a flowchart, may be found in part 5.**

4.3 A section 55 decision is needed in all cases where an adult asylum seeker or failed asylum seeker (and/or his adult dependant(s)) who claimed asylum on or after 8th January 2003 makes an application for asylum support, has no dependants under the age of 18 and does not have a need for care and attention under section 21 of the National Assistance Act 1948 (referred to in this bulletin as a 'care need'). (See part 5 for further information on determining when a section 55 decision is needed. See parts 9 and 11 respectively for further information on families with dependent children, and those who have care needs.)

4.4 A section 55 decision should, wherever possible, be made on the basis of the information contained in the asylum support application form and other available written information, including the Screening Interview and Case Information Database (CID) records. However, no decision to refuse support in reliance on section 55 (a "negative section 55 decision") should be made unless the individual concerned has been invited to attend a section 55 interview.

4.5 Section 55(1) 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. However, there will be some exceptions: the three-day time frame is only a guideline, subject to any particular circumstances of an individual's case which might indicate that he could not have claimed within that period – or indeed that he could and should have claimed earlier. (See part 7 for further information on the application of the section 55(1) "as soon as reasonably practicable" test.)

4.6 Even in cases where a negative section 55(1) decision is made, the Secretary of State may still provide asylum support in certain circumstances. Section 55(5)(a) provides that the Secretary of State is not prevented from exercising his power to provide support to the extent necessary for the purpose of avoiding a breach of a person's rights under the European Convention on Human Rights. This means that even when an asylum applicant has not satisfied the Secretary of State that he applied for asylum as soon as reasonably practicable after arrival in the UK, the Secretary of State should consider whether it is necessary to provide support in order to avoid a breach of Convention rights. Decisions must be made on a case by case basis but, in general terms, support

should be provided under section 55(5)(a) when an applicant (or his adult dependant(s)) faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life. (See part 8 for further information on section 55(5)(a) ECHR considerations.)

## 5. IDENTIFYING WHEN A SECTION 55 DECISION IS NEEDED

5.1 A section 55 decision is required in all cases where an asylum applicant or a failed asylum applicant (and/or his adult dependant(s)) requests support under sections 4, 95, or 98 of the Immigration and Asylum Act 1999, with the following exceptions:

- section 55 does not apply to those who claimed asylum on or before 7 January 2003;
- unaccompanied asylum seeking children[1] are supported by local authority social services departments under the Children Act 1989, the Children (Scotland) Act 1995 or the Children (Northern Ireland) Order 1995, which are unaffected by section 55. (Information on applications for support from unaccompanied asylum seeking children turning 18 can be found in Policy Bulletin 29: Transition at Age 18);
- asylum applicants and/or their dependants who have a care need are supported by a local authority under the National Assistance Act 1948 or the Social Work (Scotland) Act 1968, which are unaffected by section 55 (see part 11 of this Policy Bulletin for further information); and

- section 55 does not prevent the provision of support to an asylum applicant and his household if he is aged under 18, or has one or more dependants who are aged under 18 in his household (see part 9 of this Policy Bulletin for further information).

<u>Age dispute cases</u>

5.2 An application for asylum support from a person whose claim to be under 18 is disputed should be considered under section 55 in the same way as an application from an adult. If such an application is refused under section 55, the caseworker should inform the individual that it is open to him to approach the local authority for support under the Children Act 1989. Such support will only be provided by the local authority if it accepts that the individual is under 18.

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1 An unaccompanied asylum seeking child is a person aged under 18 who applies for asylum and has no responsible adult to care for him in the UK.

Provision of section 98 support pending a section 55 decision

5.3 Until a decision has been made under section 55, temporary support may be provided to the applicant under section 98 of the Immigration and Asylum Act 1999.

Reconsiderations of section 55 decisions

5.4 It is open to any applicant who has had a negative section 55 decision to ask that his case be reconsidered if he has additional information that he wishes to be taken into account, or if he claims that the original decision was unlawful. It is also open to any applicant who has had a negative section 55 decision to ask that his case be reconsidered because there has been a change of circumstances. This will usually be on the basis that is it alleged that support is necessary to avoid a breach of Convention rights. If such 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 has an outstanding asylum claim and appears to be destitute.

5.5 It will not normally be necessary to review or reconsider a positive section 55 decision (i.e. a decision that section 55 does not prevent the provision of support) unless either new evidence comes to light which potentially undermines the original decision, or the positive decision was made under section 55(5)(a) and the circumstances which led to that decision later change (see paragraph 8.14 for further information).

## 6. SECTION 55 DECISION MAKING PROCESS

6.1 Wherever possible the section 55(1) decision should be made on the basis of the asylum support application form which is completed and submitted by the applicant (often with the assistance of voluntary sector organisations), and any other information already available such as Case Information Database (CID) records and the record of the Screening Interview. For the purposes of this Policy Bulletin, decisions made on this basis (i.e. without a section 55 interview), are described as decisions “on the papers”.

6.2 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.

6.3 When assessing an application for support under section 55, the caseworker should, in the first instance, decide which of the following options apply:

- a positive decision (i.e. that the Secretary of State is satisfied that asylum claim was made as soon as reasonably practicable) can be made under section 55(1) on the basis of information provided on the papers;
- a positive decision can be made under section 55(5)(a) to avoid a breach of Article 3 on the basis of the information provided on the papers; or
- a section 55 interview is necessary to explore further the facts of the case and assess the applicant’s credibility because it is not possible to reach either a positive section 55(1) or a positive section 55(5)(a) decision on the papers.

6.4 Any letter on behalf of the Secretary of State stating that the applicant is refused support because the Secretary of State is not satisfied that he claimed asylum as soon as reasonably practicable after arrival in the UK must give appropriate reasons for that decision. There is no right of appeal against such a decision, but it will be susceptible to judicial review.

6.5 If the person fails to attend the interview with no reasonable explanation then the Secretary of State will not be satisfied that he claimed asylum as soon as reasonably practicable after his arrival in the United Kingdom and he will not have demonstrated that support is necessary to avoid a breach of Convention rights. There is no right of appeal to an Asylum Support Adjudicator because support cannot be provided as a result of the negative section 55(1) decision. If the person provides a reasonable explanation for his failure to attend then the interview should be rebooked promptly.

## Section 55 decision-making process:

**Step one – if a section 55 decision is required, consider whether you are able to make a positive section 55(1) decision on the papers (NB there can be no negative section 55 decision without the opportunity for an interview).**

Is it clear from the asylum support application form, screening interview and other information available that the person claimed asylum as soon as reasonably practicable after his arrival in the UK?

*Important considerations:*

- *Whether the applicant claimed asylum within three days.*
- *If not, whether he has a reasonable and credible explanation for the delay.*
- *Whether there is any reason to doubt the applicant's account e.g. whether the claimed journey details are credible and consistent with information on CID, flight checks etc.*

**YES** →

**POSITIVE S55(1) DECISION:**

- S55(1) does not prevent the provision of support
- No need for s55(5)(a) decision
- No interview required

**NO** ↓

**Step two – consider whether you are able to make a positive section 55(5)(a) decision on the papers.**

Is it clear from the asylum support application form, screening interview and other information available that denying the applicant support will lead to a breach of Convention rights?

*Important considerations:*

- *Whether the applicant faces an imminent prospect of serious suffering in the absence of support, evidenced by whether the person is applying for subsistence* ***and*** *accommodation, and whether the person is pregnant or particularly vulnerable.*
- *Whether it is clear that no other sources of support which include overnight accommodation, food and sanitary facilities are available to the person.*
- *Whether it is reasonable to expect the person to leave the UK [only relevant when considering section 4 applications].*

**YES** →

**POSITIVE S55(5)(a) DECISION:**

- Support is necessary under s55(5)(a) to prevent a breach of the applicant's Convention rights.
- No s55(1) decision made at present. No interview required at this stage.
- S55(5)(a) decision may need to be reviewed at a later date if there is a change in the person's circumstances, e.g. if he later applies for subsistence only.

**NO** ↓

**Step three – where you are not able to make a positive decision on the papers, invite applicant to interview.**

During the interview, first explore s55(1) considerations. [Ask standard questions and supplementary ones where appropriate to assess credibility.]If you are not satisfied that the applicant claimed asylum as soon as reasonably practicable, extend interview to include s55(5)(a) questions. The interviewee should be given a copy of his interview notes at the end of the interview.

**Possible outcomes:**

**POSITIVE S55(1) DECISION:**

- S55(1) does not prevent the provision of support
- No need for s55(5)(a) decision

**POSITIVE S55(5)(a) DECISION:**

- Negative s55(1) decision
- But support is necessary under s55(5)(a) to prevent a breach of Convention rights.

**REFUSE SUPPORT:**

- Refuse under s55(1) and s55(5)(a) giving full reasons for the decision
- No right of appeal to the Tribunal Service - Asylum Support

## 7. SECTION 55(1): THE "AS SOON AS REASONABLY PRACTICABLE" TEST

7.1 Section 55(1) of the 2002 Act prevents the Secretary of State from providing support to an asylum applicant or a failed asylum applicant unless he is satisfied that the applicant claimed asylum as soon as reasonably practicable after his arrival in the UK.

7.2 Section 55(1) provides as follows:

"The Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) if
(a) the person makes a claim for asylum which is recorded by the Secretary of State, and
(b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom"

Determining whether an applicant claimed asylum "as soon as reasonably practicable"

7.3 The burden is on the applicant to satisfy the Secretary of State that he claimed asylum as soon as reasonably practicable after his arrival in the United Kingdom.

7.4 The test to be applied in determining this was set out by the Court of Appeal in the case of *Q*[2] to be:

*"On the premise that the purpose of coming to this country was to claim asylum, and having regard both to the practical opportunity of claiming asylum and to the asylum seeker's personal circumstances, could the asylum seeker reasonably have been expected to claim asylum earlier than he or she did?"* (See paragraph 37 of the judgment.)

7.5 In accordance with *Q*, caseworkers should consider whether an asylum applicant could, as a matter of fact, have claimed asylum earlier than he did and, if he could have claimed earlier, whether it was reasonable for him not to have done so. Each case must be considered on its own merits, taking into account the information provided by the applicant and his particular circumstances, including his state of mind and the effect of any instructions given by third parties, for example an agent who facilitated his entry into the UK (see paragraphs 7.23-7.24 for further guidance on considering the involvement of an agent or facilitator).

7.6 Bearing this in mind, if a person can demonstrate that he claimed asylum within three days of arrival in the UK, it should usually be accepted that

2 R(oao Q and others) –v- SSHD [2003] EWCA Civ 364

he did so as soon as reasonably practicable if the person has given a credible account, although there will be exceptions to this, for example in the circumstances outlined in paragraphs 7.10 and 7.11.

7.7 Three days will normally mean three calendar (rather than working) days, but this should be interpreted flexibly taking into account the opportunity to claim. The circumstances on the date the applicant arrived in the UK will clearly be a relevant consideration. For example, it will normally be reasonable, and may be unavoidable, for a person who arrived after business hours on a Friday night before a Bank Holiday weekend not to claim asylum until the following Tuesday as the Asylum Screening Units (ASUs) are closed at the weekends and on Bank Holidays.

7.8 There will be cases where a person did not claim within three days but still claimed as soon as reasonably practicable: if a person did not claim asylum within three calendar days, the caseworker must consider the applicant's reasons for not claiming sooner and determine on that basis whether nevertheless he can be said to have claimed as soon as reasonably practicable. Such reasons may include having suffered physical or mental health problems (which should normally be supported by documentary evidence) or having had to travel long distances to reach an ASU or having no money to travel. All such claims should be considered on their merits.

7.9 In some cases the interviewing officer will conclude that the applicant could and should have applied for asylum earlier, even though the application was made within three days of arrival. Such cases might include port arrivals where the applicant spoke to an Immigration Officer and knew that he could claim asylum on entry but nevertheless claimed later at an ASU.

7.10 Similarly, where a person has been given leave to enter or temporary admission by an immigration officer and then subsequently applies for asylum, a caseworker may decide that the individual could reasonably have been expected to claim sooner. This will include cases where a passenger is refused leave to enter as a visitor, student etc, but then claims asylum on learning that removal is imminent.

7.11 Caseworkers must in all cases give consideration to whether the claimed date of arrival is likely to be truthful. Wherever possible, caseworkers should attempt to obtain and verify evidence of the date of arrival, for example by checking timetables to ascertain whether a particular journey took place, and carrying out checks with airlines, other carriers, the police, Immigration Officers and others as appropriate. In the absence of any such verifiable evidence, the credibility of the applicant's account, including the level and consistency of detail he is able to provide will be important. If an applicant gives differing accounts of his arrival in different statements (i.e. at the screening interview, on the asylum support application form or at any subsequent interview), this will be relevant in deciding whether the applicant is telling the truth. Examples 4 and 5

below are cases where an assessment of the applicant's credibility would be particularly important.

7.12 When assessing credibility, caseworkers should be alert to any exceptional circumstances which might make it difficult or impossible for an applicant to recall clearly the details of his journey to the UK. Where there are any such circumstances, it may not be appropriate to assume that the applicant is not credible because of inconsistencies in his account. Elderly applicants, or those who can show that they are severely traumatised by their recent experiences, might fall into this category (see paragraphs 7.15 - 7.20 below for further information on victims of torture or rape and traumatised applicants).

The involvement of an agent or facilitator

7.13 If an applicant claims that he delayed making his asylum claim because he had been advised by an agent or facilitator not to claim, or only to claim at a particular time, then the caseworker should consider whether it was reasonable for him to follow that instruction.

7.14 The involvement of an agent or facilitator will not in itself normally be considered a reasonable explanation for any delay in making the asylum claim, unless in all the circumstances it would be unreasonable to expect the applicant not to comply with the agent's instructions. This may include, for example, cases where the applicant can show that the agent threatened or intimidated him to the extent that he could not have been expected to disregard those instructions.

Victims of torture or rape and traumatised applicants

7.15 Cases involving victims of torture or rape, and potential or purported victims of torture or rape, should be treated with particular care and sensitivity.

7.16 Where the caseworker is satisfied that any delay in claiming asylum can be attributed to the fact that the person is a victim of torture or rape and/or is traumatised , and this adversely affected the person's ability to think clearly or disclose information, this may be considered an adequate explanation for the delay. In these cases a positive section 55(1) decision can be made.

7.17 This does not mean that a positive decision should always be made in relation to those who claim to have been a victim of torture or rape and as a result could not reasonably have claimed earlier: each case must still be determined on its individual facts and having regard to whether the applicant's account is credible. Evidence such as supporting letters from Freedom from Torture will be important factors to take into account, as well as the applicant's responses to questions during the section 55 interview, if appropriate. (See Policy Bulletin 19 for further information on the arrangements for asylum support applicants receiving services from Freedom from Torture.)

Advice should be sought from the asylum support medical adviser where necessary.

7.18 A person who was tortured or raped many years ago may no longer be in a traumatised state, and the fact that he was a victim of such an incident will not necessarily, in itself, give him sufficient reason for delaying his asylum claim.

7.19 In some cases a victim of torture or rape may have care needs and will be eligible for support from the local authority and as such may be exempt from a section 55(1) decision. For example the applicant may have a mental illness or other disability. (Further information on dealing with applications from those with care needs is included in part 10 of this Policy Bulletin and in Policy Bulletin 82).

7.20 Examples 6 and 7 illustrate how a caseworker may consider applications from victims of torture or rape and traumatised individuals.

Asylum applications made after a person leaves but subsequently returns to the United Kingdom

7.21 If a person leaves the United Kingdom but returns at a later date and makes a claim for asylum, the caseworker should take into account only the most recent date of arrival into the country when assessing whether that person claimed asylum as soon as reasonably practicable. Any previous time spent in the UK should be disregarded even if the person could reasonably have been expected to have claimed asylum during that time. Example 8 illustrates how a caseworker may consider this type of scenario.

In country asylum applications made following a change of circumstances

7. 22 Those who claim asylum after having entered the United Kingdom, where the claim is based on a significant change of circumstances in their country of origin (such as a military coup), should have a positive section 55(1) decision provided they make their asylum claim as soon as reasonably practicable following that change of circumstances.

7.23 In these cases, caseworkers should first decide whether the change that has triggered the application and the reasons for the timing are relevant to the asylum claim, although this should not include an assessment of the merits of the asylum claim itself. If the change is relevant, the caseworker should ascertain whether the change in circumstances has actually occurred. Caseworkers may need to refer to the most up to date information provided by the Country of Origin Information Service (COIS) and refer the case to a senior officer. In cases where a significant incident such as a military coup has taken place very recently it may be necessary to liaise directly with COIS country officers. Caseworkers should then ascertain when the change of circumstances occurred, and consider

whether the asylum claim was made as soon as reasonably practicable after that date.

7.24 Caseworkers may find it useful to refer to example 9 when making a decision in a case where it is alleged that there has been a change of circumstances in the country of origin.

Fresh asylum applications made in country following a substantive asylum refusal

7.25 If a person is refused asylum but subsequently makes further submissions that are accepted as a fresh asylum claim (and recorded as such) following a decision under rule 353 of the Immigration Rules, the decision on whether the person claimed as soon as reasonably practicable should be based on the time between the events on which the new claim is based or any fresh evidence came to light, and the making of the further submissions. In these cases, the decision on whether the person claimed as soon as reasonably practicable should not be based on the time that has elapsed since the applicant first arrived in the country or the timeliness of his original asylum application. Example 10 may be helpful to caseworkers making a decision in this type of case.

Section 55 decisions for applicants who were formerly a dependant on another asylum claim

7.26 If a person who was previously a dependent child on another person's asylum claim later applies for asylum in his own right after turning 18, the caseworker should bear in mind that the applicant could have claimed asylum in his own right on entering the country, irrespective of his age. However, as with any other case, the caseworker should take into account the full circumstances of the individual when making a section 55(1) decision, including the person's reasons for not applying on arrival in the UK, the fact that he was a child at the time of arrival (and therefore potentially vulnerable) and a dependant on his parent's claim, and any changes of circumstances that have taken place since he first arrived in the UK. A section 55(1) refusal decision will not normally be appropriate if the dependant claims asylum in his own right on or soon after reaching the age of 18. Example 11 illustrates how a caseworker may consider this type of application.

7.27 Similarly, if a person who was previously a dependent adult on another person's asylum claim later applies for asylum in his own right, the caseworker should bear in mind that the applicant could have claimed asylum in his own right on entering the country. Indeed, the former dependant himself will normally have been asked during a screening interview whether he had a fear of return to his country of origin when the main applicant first applied for asylum. And he will normally have been issued with a One Stop Notice under section 120 of the 2002 Act asking for a formal statement about any other reasons why he should be

allowed to stay in the UK. Unless the circumstances of such an adult have changed, or there are other extenuating circumstances, it is likely that he will get a negative section 55(1) decision.

7.28 In some cases, former dependants – generally females – will claim asylum in their own right after alleging that they have been subjected to domestic violence. These cases should be handled with particular care and sensitivity. Caseworkers should consider whether the influence of the alleged abusive party may have contributed to any delay in claiming asylum, and on that basis whether the delay was reasonable. (Further information on Domestic Violence issues can be found in Policy Bulletin 70.)

Examples for caseworkers making section 55(1) decisions

7.29 The following are examples that may be useful for caseworkers when making section 55(1) decisions. These examples assume that it is not necessary to provide support to avoid a breach of a person's Convention rights. They do not purport to cover every type of case and they should not be seen as requiring the caseworker to reach a particular conclusion in the types of case they illustrate. Every case must be considered on its individual merits and facts. As with all section 55 cases, if on the basis of information already available, the caseworker is not able to make a positive section 55(1) decision on the papers, the issues should be explored fully at an interview.

**Example 1:**

An adult with no minor dependants applies for asylum to an Immigration Officer as he passed through a passport control desk, ten minutes after arriving at a UK airport by plane.

**The Secretary of State can be satisfied that the claim for asylum was made as soon as reasonably practicable after arrival in the UK. The applicant gets a positive section 55(1) decision and qualifies for support, providing he is otherwise eligible.**

**Example 2:**

An adult with no minor dependants claims asylum at an ASU and gives an account of arriving in the UK the previous week. His explanation for his delay in claiming asylum is that it took him a week to establish himself, to find a friend to stay with and to decide how to apply for asylum.

**The caseworker should seek to establish the full facts of the case including the applicant's condition on arrival in the UK. If there are no mitigating factors such as physical or mental health problems, or intimidation from an agent, the Secretary of State cannot be satisfied that the applicant applied**

**for asylum as soon as reasonably practicable. The applicant gets a negative section 55(1) decision.**

**Example 3:**

An adult with no minor dependants is refused entry by an Immigration Officer and granted temporary admission (TA) pending removal. The applicant complies with the conditions of TA and returns to the port (to be removed from the UK) as required two days later, at which point he applies for asylum.

**A positive section 55(1) decision cannot not be made on the papers. Before such a decision is made, the applicant should be asked about why he did not apply for asylum sooner. For example, did he come to the UK specifically to claim asylum? Was he influenced by an agent? Or has something changed (other than his imminent removal) which has meant that he needs to claim asylum now when he did not need to before? If he cannot give an adequate explanation for why he did not claim earlier, it is likely that he will not be able to satisfy the Secretary of State that he claimed as soon as reasonably practicable, and that he will get a negative section 55(1) decision.**

**Example 4:**

An adult with no minor dependants claims asylum on 12th February. He states on his asylum support application form that he arrived in the country on 11th February but in his Immigration Screening Interview he says that he arrived in the United Kingdom clandestinely in the back of a lorry on 6th January. There is no evidence available of his date of arrival (such as a police record).

**Since the person's account contradicts information already available, a positive section 55(1) decision cannot be made on the papers. The caseworker should interview and question him to explore these discrepancies. If he is unable to provide a reasonable explanation for the discrepancies or explain why he could not have claimed asylum earlier, he may not be able to satisfy the Secretary of State that he claimed as soon as reasonably practicable and gets a negative section 55(1) decision.**

**Example 5:**

An adult with no minor dependants claims asylum at an ASU. He says that he arrived in the UK that morning after spending two weeks inside a lorry and went directly to the ASU. His Application Registration Card (ARC) shows that at the time of claiming asylum he was well-presented and freshly shaven. He was taken to Oakington where a UK mobile phone was listed amongst his valuable possessions.

**The person's appearance casts some doubt on his account of arriving in the UK and travelling directly to the ASU. An interview will be necessary to provide him with an opportunity to give an explanation for these and any other factors that call into question the veracity of his account. The interviewing officer should explore these issues fully and assess the credibility of his account. If the person cannot provide a reasonable explanation and cannot satisfy the interviewing officer that he is telling the truth more generally about the details of his arrival the Secretary of State will not be satisfied that he claimed as soon as reasonably practicable and he gets a negative section 55(1) decision.**

**Example 6:**

An adult with no minor dependants applies for asylum at an ASU. He states that he cannot remember the exact date of his arrival in the UK but that it was about a week ago. He says he was scared to approach Immigration Officers on arrival because he was tortured by state agents in his own country and thought he would be returned immediately if he spoke to an official in the UK. He states that he is a victim of torture, is suffering from an anxiety disorder and has an appointment with Freedom from Torture.

**There could be a positive section 55(1) decision; it may be accepted on these facts that the asylum applicant has provided a satisfactory explanation for why he did not claim asylum sooner than he did and it may therefore be concluded that he claimed as soon as reasonably practicable on arrival in the UK.**

**Example 7:**

An adult with no minor dependants applies for asylum after being arrested for entering the UK illegally. He says that he came to the UK several months ago to seek asylum but did not make his claim on arrival because he was scared and confused as a result of the torture he received in his home country. There is no medical evidence to support the applicant's claim to have been tortured, and he has displayed no signs of trauma.

**If the caseworker does not accept that there is sufficient evidence to show that he has been too traumatised to think clearly over the preceding months, it is likely that this applicant will get a negative section 55(1) decision because he cannot give an adequate explanation for why he did not claim asylum until after he was arrested by the police.**

**Example 8:**

An adult with no dependants claims asylum at a port of entry on arrival. His passport shows that he recently spent time in the UK as a visitor but returned to

his country of origin three weeks ago. His asylum claim is based on events that took place before his previous visit to the UK.

**In this example the applicant gets a positive section 55(1) decision because he claimed asylum as soon as reasonably practicable after his most recent arrival in the UK.**

**Example 9:**

An adult with no minor dependants applies for asylum at an ASU. A military coup took place in his home country the previous day and he now claims to have a fear of persecution in his country of origin. During the screening procedures the applicant states that he arrived in the UK as a student 5 months earlier. He has submitted his passport containing an Immigration Officer's leave to enter stamp which shows his date of arrival in the UK.

**The caseworker should refer to the most up-to-date information provided by the Country of Origin Information Service. If it is confirmed that a military coup took place the previous day, the applicant gets a positive section 55(1) decision, as the asylum claim was made as soon as reasonably practicable after the change of circumstances. The decision should be referred to a senior manager to approve.**

**Example 10:**

An adult with no dependants applies for asylum immediately on arrival at a port of entry. His asylum claim is subsequently refused. He remains in the UK and later receives new evidence of an arrest warrant against him in his country of origin. Two months after the new evidence comes to light, he makes further submissions. The representations are considered under rule 353 and accepted as a fresh asylum claim.

**Assuming that the applicant is unable to give a satisfactory reason for the delay in making his fresh submissions, he may get a negative section 55(1) decision. Regardless of the date he arrived in the United Kingdom or when he made his original asylum claim, this applicant waited two months before making a fresh asylum application.**

**Example 11:**

An adult with no minor dependants claims asylum at an ASU. Information on CID records indicates that the applicant arrived in the UK three years ago with his parents and was formerly a dependant on his father’s asylum claim, which was refused and finally determined two months ago. The applicant turned 18 six months ago. The applicant claims that he feared return to his country of origin when he first arrived in the UK but he did not claim asylum in his own right

because he was relying fully on his parents and did not want to be split from them.

**In view of the fact that when the applicant first arrived in the UK he was a child and a dependant on his father's claim, a caseworker may conclude that the fact that he did not apply for asylum on arrival into the UK does not in itself mean that he has not applied for asylum as soon as reasonably practicable. However, irrespective of the applicant's circumstances on arrival into the UK, he waited six months after he turned 18, and two months after his father's claim was fully determined, before claiming asylum. This means that, unless the applicant can satisfy the caseworker that his circumstances have changed such that he needs to claim asylum now when he did not need to before, or that there are any other reasons why it was not practicable for him to claim earlier, it is likely that he will get a negative section 55(1) decision because he is unable to satisfy the Secretary of State that he claimed asylum as soon as reasonably practicable.**

## 8. SECTION 55(5)(a): ECHR CONSIDERATIONS

8.1 Although section 55(1) prevents the Secretary of State from providing support to asylum applicants and failed asylum applicants who have not applied for asylum as soon as reasonably practicable after their arrival in the UK, support may nevertheless be provided if an applicant is able to satisfy the Secretary of State that support is necessary to avoid a breach of a person's rights under the European Convention on Human Rights (an extract of the ECHR is attached as Annex C).

8.2 Section 55(5)(a) provides as follows:

> "(5) This section [i.e. section 55] shall not prevent –
>
> "(a) the exercise of a power by the Secretary of State to the extent necessary for the purpose of avoiding a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998(c.42))),"

<u>Determining when asylum support is necessary under section 55(5)(a)</u>

8.3 A decision under section 55(5)(a) is only needed in cases where the caseworker is either not satisfied that, or is unable at the present time to make a determination on whether, the applicant applied for asylum as soon as reasonably practicable after arriving in the United Kingdom. The burden is on the applicant to satisfy the Secretary of State that support is necessary to avoid a breach of his Convention rights.

8.4 The test of when the Secretary of State's duty under section 55(5)(a) arises was most recently set out by the House of Lords in the case of *Limbuela*[3] to be:

> "*when it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life*" (paragraph 8).

8.5 The Law Lords went on to say that:

> "*if there were persuasive evidence that a late applicant was obliged to sleep in the street, save perhaps for a short and forseeably finite period, or was seriously hungry, or unable to satisfy the most basic requirements of*

3 R(oao Adam, Limbuela and Tesema) –v- SSHD [2005] UKHL 66

*hygiene, the [Article 3] threshold would, in the ordinary way, be crossed*" (paragraph 9).

8.6 It is vital that caseworkers assess each case individually, including via interview where necessary, and decide in accordance with this test whether it is necessary to grant support to avoid a breach of a person's Convention rights.

8.7 In practice, when an asylum applicant has no alternative means of support, including overnight shelter and basic provisions such as food and access to sanitary facilities, support should be provided under section 55(5)(a) (see paragraph 8.17 for other considerations that need to be taken into account when considering applications for section 4 support from failed asylum applicants). If a person applies for subsistence only support it is less likely that support is necessary to avoid a breach of Convention rights. This is because an applicant who applies for subsistence only either has or does not need accommodation and, therefore, shelter and access to sanitary facilities. Where the accommodation provider is not providing other facilities such as food, it may be possible for the applicant to obtain these from other sources such as charitable organisations.

8.8 However, this does not mean that support is necessary to avoid a breach of Convention rights in all cases where an applicant applies for accommodation and support. If, for example, an applicant applies for accommodation while living in private accommodation; after having previously applied for subsistence only support; or after living in the UK for several months, it may be that he does in fact have alternative accommodation and other facilities available. In common with the section 55(1) considerations, caseworkers should consider the full individual circumstances of the applicant as well as his credibility when making a determination on whether support is necessary to avoid a breach of Convention rights.

8.9 When making a decision about whether support is necessary to avoid a breach of a person's Convention rights, caseworkers should give due consideration to all the evidence available. This might include correspondence such as a letter from a landlord stating that the applicant must leave his current accommodation, or a statement from a voluntary sector organisation stating that it is unable to provide him with alternative support. Follow up enquiries should be made where appropriate to consider the veracity of evidence of this kind. While such evidence may not in itself constitute definitive proof that no other means of support is available to the individual, it is relevant and should be given appropriate weight when considering whether the person faces an imminent prospect of serious suffering if he is denied asylum support.

8.10 Examples 12, 13 and 14 illustrate how caseworkers might apply the section 55(5)(a) test in particular contexts.

Particular vulnerabilities

8.11 Caseworkers must be alert to any health or other relevant factors which might be material to, say, an Article 3 issue, even if the applicant has not raised the issue himself. An applicant may have a particular vulnerability, such as age or illness, which may make it impossible for him to access food and other basic amenities from sources such as charitable organisations.

8.12 Some applicants will submit that they are suffering from a serious illness such as HIV or diabetes. Caseworkers should consider whether denial of asylum support would cause the illness to worsen to the extent that it would cause the individual serious suffering. If this is the case, the applicant can be expected to submit medical evidence of his condition. Where appropriate, caseworkers should seek advice from the asylum support medical adviser on whether the denial of support in a particular case may lead to serious suffering due to the person having a medical condition. Examples 15 and 16 may be helpful to caseworkers considering this type of application.

Pregnancy

8.13 Applicants who are visibly pregnant, or who can produce evidence that they are pregnant (for example, a letter from a doctor or a maternity certificate (form MATB1)), are particularly vulnerable and should normally receive a positive decision under section 55(5)(a) to avoid a breach of their Convention rights. Similarly, a principal applicant whose household includes a pregnant woman should receive a positive decision.

Reviewing section 55(5)(a) decisions in the event of a change of circumstances

8.14 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 UK Border Agency 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.

8.15 In the above situation, the applicant should be provided with subsistence only support until the section 55 decision, or until the date of the section 55 interview. If the person fails to attend the interview with no reasonable explanation then the Secretary of State will not be satisfied that he claimed asylum as soon as reasonably practicable after his arrival in the United Kingdom and he will not have demonstrated that support is necessary to avoid a breach of

Convention rights. Therefore, if at this stage the caseworker's decision is that section 55(1) prevents the provision of support under section 95 of the 1999 Act, no further support should be provided. There is no right of appeal to an Asylum Support Adjudicator because support cannot be provided as a result of the negative section 55(1) decision. Example 17 below illustrates how a caseworker might consider a case where an applicant seeks to switch from accommodation and subsistence to subsistence only.

8.16 If an applicant applies for, and is refused, subsistence only support under section 55, but he subsequently requests accommodation and subsistence, the section 55(5)(a) refusal decision should be reconsidered in accordance with the reconsideration guidelines in paragraph 5.4 of this Policy Bulletin.

Additional considerations when determining whether section 4 support should be provided to a failed asylum applicant under section 55(5)(a)

8.17 When considering an application for support under section 4, caseworkers should decide whether it is reasonable to expect the person to leave the UK (see Policy Bulletin 71 for further information on when it is reasonable to expect a person to leave the UK). Where it is reasonable to expect a failed asylum applicant to leave the United Kingdom, then support under section 55(5)(a) is not normally necessary to avoid a breach of a person's Convention rights.

Examples for caseworkers making section 55(5)(a) decisions

8.18 The following are examples that may be useful for caseworkers when making section 55(5)(a) decisions. They do not purport to cover every type of case and they should not be seen as requiring the caseworker to reach a particular conclusion in the types of case they illustrate. Every case must be considered on its individual merits and facts. These examples assume that the person has not applied for asylum as soon as reasonably practicable on arrival in the UK. As with all section 55 cases, if on the basis of information already available, the caseworker is not satisfied that to deny support would lead to a breach of the applicant's Convention rights, or there is insufficient evidence to make a decision on the papers, these issues should be explored fully at an interview before the caseworker makes the section 55(5)(a) decision.

**Example 12:**

An adult with no minor dependants applies for asylum at an ASU and subsequently applies for accommodation and subsistence support. During the screening procedures the applicant says that he is sleeping rough, because he has no form of support available to him. There is no reason to believe that he has any other support available to him from friends or family.

**The Secretary of State can provide support under section 55(5)(a) because the person faces an imminent prospect of serious suffering if he is not provided with asylum support, including accommodation.**

**Example 13:**

An adult with no minor dependants applies for asylum at an ASU and applies for accommodation and subsistence support. During the screening procedures, he states that he arrived in the UK more than a month ago, and initially stayed with a friend. However, he has produced credible evidence to show that his friend is leaving the country and will no longer be able to assist him, and it is clear that he has no other avenue of support or accommodation available to him in the UK.

**The Secretary of State can provide support under section 55(5)(a) because even though the applicant has been able to meet his living needs previously, the caseworker can be satisfied that he no longer has access to shelter and other provisions. He therefore appears to face an imminent prospect of serious suffering if he is not provided with asylum support, including accommodation.**

**Example 14:**

An adult with no minor dependants claims asylum at an ASU and applies for subsistence only. He states that he arrived in the UK by air four months previously, since when he has been staying with his nephew and his family. He states that although his nephew will continue to allow him to live at his house he is not able to provide food unless the applicant can help pay for it.

**An interview is likely to be required. The caseworker should consider why the applicant's nephew is unable or unwilling to support him and whether there is any evidence to support this. It may be the case that something in the nephew's circumstances has changed, for example he is now unemployed, which means that he is no longer able or willing to provide the applicant with food, even though he can still provide overnight accommodation. If the caseworker is satisfied that this is the case, he should consider whether it would be possible for the applicant to obtain food from accessible charitable organisations. If the caseworker is satisfied that the applicant will still have access to food from one source or another, then support can be refused because he has not demonstrated that he faces an imminent prospect of serious suffering if he is not provided with asylum support. If the applicant cannot access support from another source, support should be given.**

**Example 15:**

An adult with no minor dependants applies for asylum at an ASU and applies for subsistence only. He is living with his sister who he says can continue to accommodate him but not provide him with food, and he has provided evidence of his sister's current financial problems. He is receiving anti-retroviral therapy and needs to take his food and medication at set times during the day. He has a letter from his doctor stating that he is being monitored regularly and has developed health complications in the past. Food is not available on prescription.

**If the applicant satisfies the caseworker that food is not available to him from his sister, support can be provided as although food may be available to him from other sources such as charities, he may not be able to access it at the specific times he needs it during the day. In addition, difficulties finding food may disrupt his medication regime such that his condition would deteriorate as a result. Denial of support might therefore cause his condition to worsen to the extent that he would face an imminent prospect of serious suffering.**

**Example 16:**

An adult with no minor dependants applies for asylum at an ASU and requests subsistence only asylum support. His friend has been providing him with accommodation and assistance with his basic living needs for several months. He was diagnosed as HIV positive two years ago and was initially prescribed multi-vitamins. He has a CD4 count of 679 – similar to that of a healthy person without HIV. He is not receiving any anti-retroviral treatment and is currently taking only iron tablets.

**If, following a section 55 interview, the applicant cannot satisfy the interviewing officer that his friend will not continue to provide him with food and other support, and/or that he is unable to access such support from other sources, the Secretary of State can refuse support. In this case, there appears to be nothing to suggest that denying support will cause his condition to worsen such that he faces an imminent prospect of serious suffering. As with any negative section 55(5)(a) decision, the case should be reviewed if he submits further representations showing that his circumstances have changed (e.g. for clinical reasons he now requires medication and food at set times of the day).**

**Example 17:**

An applicant with no minor dependants claims asylum at an ASU. He applies for accommodation and subsistence and is granted support in accordance with section 55(5)(a) on the basis that he does not appear to have any other sources of support available to him and thereby faces an imminent prospect of serious suffering. The applicant later changes his application to subsistence only because he can now live with his brother. He had not previously declared that he had any relatives in the UK.

**The caseworker should invite the applicant to an interview to consider whether he can obtain food and other basic living essentials from his brother or other sources. If the applicant has access to such provisions, 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.**

**Example 18:**

An adult with no minor dependants claims asylum after being arrested and applies for accommodation and subsistence support. He has been, and continues to be, living with an uncle who owns a two-bedroom house. He has provided no evidence that his uncle will not continue to provide him with accommodation, food and other basic amenities or that he has sought any assistance from a charitable organisation.

**The caseworker should interview the individual and examine the reasons why he now needs accommodation and other support when he did not before. If the applicant cannot satisfy the caseworker that he no longer has shelter available to him, and there is no reason to believe that he cannot access other basic amenities from his uncle and/or charitable organisations, support can be refused because the person has not demonstrated that he faces an imminent prospect of serious suffering if he is not provided with asylum support.**

## 9. DEPENDANTS

Dependants aged under 18

9.1 Section 55 does not prevent the provision of support to an asylum applicant if his household includes a dependant aged under 18 even if he did not apply for asylum as soon as reasonably practicable.

9.2 Section 55(5) provides as follows:

> "(5) This section shall not prevent –
>
> "(b) the provision of support under section 95 of the Immigration and Asylum Act 1999 or section 17 of this Act in accordance with section 122 of that Act (children), or
> "(c) the provision of support under section 98 of the Immigration and Asylum Act 1999 or section 23 of this Act (provisional support) to a person under the age of 18 and the household of which he forms part."

9.3 Section 122 of the 1999 Act concerns the provision of asylum support (both living expenses and accommodation) to households with dependent children. Dependants are defined in regulation 2 of the Asylum Support Regulations 2000 (see Annex B). The summaries given below are for ease of reference and guidance only – caseworkers should always refer to the original regulations.

9.4 In short, a person is a dependent child when he is under 18 and is one or more of the following:

- a son or daughter of the asylum seeker or of his spouse or civil partner;
- a close member of the asylum seeker's family;
- a person who has been living as part of the household for at least 6 out of the 12 months before screening or since birth; or
- a person who is included on the asylum application as a dependant.

Dependants turning 18

9.5 Where asylum support is provided to a family because it includes at least one child, a section 55(1) decision (and a section 55(5)(a) decision where appropriate) will need to be taken when the youngest child reaches 18 to determine whether support should continue to be provided. This will include an assessment of whether continued support is necessary to avoid a breach of a person's [in the household] Convention rights (See paragraph 7.23 for guidance on dependants who turn 18 and subsequently claim asylum in their own right).

Adult dependants

9.6 A negative section 55(1) decision may be made where a household includes adult dependants. However, the presence in the asylum support applicant's household of dependent child (such as the duty under section 122 arises) enables support to be provided to all adults who are also dependants of the asylum applicant as part of the household (see below).

9.7 A person may be an adult dependant if he is one or more of the following:

- the asylum seeker's spouse or civil partner;
- a person aged 18 or over who is in need of care and attention from the asylum seeker or a member of his household by reason of a disability and is either a) a member of his close family, or b) has been living as part of the household for at least 6 of the previous 12 months or since birth;
- a person who has been living with the asylum seeker as a member of an unmarried couple or same sex couple for at least 2 of the 3 previous years; or
- a person who is included as a dependant on the asylum seeker's asylum application (e.g. aged parent).

Principal asylum applicants who are considered to be a dependant of another principal asylum applicant

9.8 If an asylum applicant is not able to satisfy the Secretary of State that he applied for asylum as soon as reasonably practicable and does not have a dependent child under 18, he may nevertheless be supported if he is considered by the UK Border Agency to be a dependant of another principal asylum applicant who is provided with or eligible for asylum support. Thus where a person makes a late claim for asylum in his own right but is, for example, the spouse of an asylum applicant who is eligible for asylum support, the person may be supported as his spouse's dependant provided all other relevant criteria are met.

## 10. LOCAL AUTHORITIES

10.1 Section 55(3) of the 2002 Act prevents local authorities from providing or arranging the provision of support under section 2 of the Local Government Act 2000 and under certain sections of the Housing Act 1996 and Housing (Scotland) Act 1987, to asylum applicants where the Secretary of State is not satisfied that they applied for asylum as soon as reasonably practicable. This is to ensure that authorities do not provide support to those asylum applicants who are not eligible for asylum support. Section 55(6) also imposes a reporting obligation on local authorities when they believe that a person to whom it is

proposed to provide or arrange for the provision of the support specified has made a claim for asylum. This helps the Home Office to maintain an up to date address of such individuals.

## 11. CARE NEEDS

11.1 Asylum applicants who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them and which has not arisen solely as a result of destitution may be owed a duty by a local authority under the National Assistance Act 1948 (the 1948 Act), or in Scotland the Social Work (Scotland) Act 1968 (the 1968 Act). Section 55 does not prevent local authorities from providing support on this basis.

11.2 For a full set of guidance on the treatment of asylum applicants with care needs, including the relevant extract from the National Assistance Act 1948, please refer to Policy Bulletin 82: Asylum Seekers with Care Needs.

When to make a section 55 decision in care needs cases

11.3 Local authorities determine whether an asylum applicant has a care need by conducting a Community Care Assessment (CCA). Once the local authority has determined that an asylum applicant has a care need, it has a duty to provide that person with accommodation (which includes related support). In these cases, the applicant is not eligible for asylum support from the Home Office, and a section 55 decision is not required.

11.4 If an asylum applicant has a clear and urgent need for care and attention, the relevant local authority will normally provide basic accommodation and support pending a CCA, which it will carry out as soon as possible (see paragraph 8.1 of Policy Bulletin 82 for an explanation of when a case is clear and urgent). In these cases, no section 55 decision should be made until the outcome of the CCA is known.

11.5 However, if an asylum applicant presents to a local authority with less clear or immediate needs, the authority may decline to provide accommodation until a CCA has been carried out. In these cases, where the caseworker eventually considering an application under section 55 believes that the applicant may qualify for support from his local authority, the caseworker should nevertheless proceed with the usual section 55 decision-making process outlined in this document.

11.6 If an asylum applicant who has been supported under section 21 is reassessed no longer to have a care need, for example he may have recovered from an illness which gave rise to the care need, he will no longer be eligible for support from the local authority. In such cases, the asylum applicant may apply

to the UK Border Agency for support and a section 55 decision must be made at that stage.

**ANNEX A**

## Extract from the Nationality, Immigration and Asylum Act 2002

### 55 Late claim for asylum: refusal of support

(1) The Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) if—

(a) the person makes a claim for asylum which is recorded by the Secretary of State, and

(b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom.

(2) The provisions are—

(a) sections 4, 95 and 98 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker, &c.), and

(b) sections 17 and 24 of this Act (accommodation centre).

(3) An authority may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (4) if—

(a) the person has made a claim for asylum, and

(b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom.

(4) The provisions are—

(a) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (accommodation pending review),

(b) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal), and

(c) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being).

(5) This section shall not prevent—

(a) the exercise of a power by the Secretary of State to the extent necessary for the purpose of avoiding a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)),

(b) the provision of support under section 95 of the Immigration and Asylum Act 1999 (c. 33) or section 17 of this Act in accordance with section 122 of that Act (children), or

(c) the provision of support under section 98 of the Immigration and Asylum Act 1999 or section 24 of this Act (provisional support) to a person under the age of 18 and the household of which he forms part.

(6) An authority which proposes to provide or arrange for the provision of support to a person under a provision mentioned in subsection (4)—

(a) must inform the Secretary of State if the authority believes that the person has made a claim for asylum,

(b) must act in accordance with any guidance issued by the Secretary of State to determine whether subsection (3) applies, and

(c) shall not be prohibited from providing or arranging for the provision of support if the authority has complied with paragraph (a) and (b) and concluded that subsection (3) does not apply.

(7) The Secretary of State may by order—

(a) add, remove or amend an entry in the list in subsection (4);

(b) provide for subsection (3) not to have effect in specified cases or circumstances.

(8) An order under subsection (7)—

(a) may include transitional, consequential or incidental provision,

(b) must be made by statutory instrument, and

(c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(9) For the purposes of this section “claim for asylum” has the same meaning as in section 18.

(10) A decision of the Secretary of State that this section prevents him from providing or arranging for the provision of support to a person is not a decision that the person does not qualify for support for the purpose of section 103 of the Immigration and Asylum Act 1999 (appeals).

(11) This section does not prevent a person’s compliance with a residence restriction imposed in reliance on section 70 (induction).

**ANNEX B**

**Extract from the Asylum Support Regulations 2000 (as amended)**
**Interpretation**

**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.

**ANNEX C**

## EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

### Article 3 - Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### Article 8 - Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

## Document Control

Change Record

| Version | Authors | Date | Change Reference |
|---|---|---|---|
| 8.0 | BF | 25/11/08 | Update branding only |
| 9.0 | BF | 28/09/09 | Children's duty paragraph |
| 10.0 | JL | 12/10/11 | References to 'Medical Foundation' changed to 'Freedom from Torture'. |