



Section 55 guidance

This document replaces Policy Bulletin 75 in providing guidance on Section 55 of the Nationality, Immigration and Asylum Act 2002

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

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

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

Chapter 1 - Background

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 also: [As soon as reasonably practicable test.](#))

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 also: [Local Authorities](#)). The full text of section 55 is set out at [Annex A](#).

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 and Part 1 of the Care Act 2015 in England..

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 Home Office electronic databases. However, no decision to refuse support in reliance on Section 55 should be made unless the individual concerned has been invited to attend a Section 55 interview.

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. See also: 3.9 Section 55(5) (a): [ECHR considerations](#)

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 support.

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Chapter 2 - Identifying when a Section 55 decision is needed

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:

- asylum was claimed on or before 7 January 2003;
- an unaccompanied asylum seeking child is supported by a local authority social services departments under the Children Act 1989, the Children (Scotland) Act 1995 or the Children (Northern Ireland) Order 1995. 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.;
- An asylum applicant and/or this dependants who have a care need are supported by a local authority under the National Assistance Act 1948 (Part 1 of the Care Act 2015 in England) or the Social Work (Scotland) Act 1968.

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.

2.1 Age dispute cases

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 years of age.

2.2 Provision of Section 98 support pending a Section 55 decision

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.

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Chapter 3 - Section 55 decision making considerations

3.1 Making decisions from the application form

Wherever possible the Section 55(1) decision should be made on the basis of the asylum support application form submitted by the applicant (often with the assistance of voluntary sector organisations), and any other information already available from Home Office systems. No refusal should be made without interviewing the applicant. Where an interview is required, the Section 55 decision should, wherever possible, be made by the same person who conducted that interview.

Caseworkers should therefore initially decide whether:

- a positive decision can be made under Section 55(1) on the basis of the available information;
- 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.

Decision letters must contain reasons for the decision. There is no right of appeal against such a decision, but it can be tested by way of judicial review. 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

3.1.1 Failure to comply with a Section 55 interview request

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 nor that support is necessary to avoid a breach of Convention rights. If the person provides a reasonable explanation for his failure to attend then the interview should be rebooked promptly.

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3.2 Section 55(1): The 'as soon as reasonably practicable' test

Section 55(1) of the 2002 Act 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

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.

The test to be applied in determining this was set out by the Court of Appeal in the case of Q2 to be: R (oao Q and others) –v- SSHD [2003] EWCA Civ 364 “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 also: paragraph 37 of the judgment.)

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 .

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 he did so as soon as reasonably practicable if the person has given a credible account. For instance,

- Although three days will normally mean three calendar (rather than working) days, 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.
- 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 (that 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.

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.

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.

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3.2.1 Verifying claimed arrival date

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.

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 for further information on victims of torture or rape and traumatised applicants.

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

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. .

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3.3 The involvement of an agent or facilitator

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.

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.

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3.4 Victims of torture or rape and traumatised applicants

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

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.

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; each case must still be determined on its individual facts and having regard to whether the applicant's account is credible. 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.

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

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. See also: Applicant's with care needs.

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3.5 In country asylum applications made following a change of circumstances

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.

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.

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3.6 Fresh asylum applications made in country following a substantive asylum refusal

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.

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

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.

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.

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.

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3.8 Reconsiderations of Section 55 decisions

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 it is 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.

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.

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3.9 Section 55(5) (a): ECHR considerations

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](#)). 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)),"

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.

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

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

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 foreseeably finite period, or was seriously hungry, or unable to satisfy the most basic requirements of hygiene, the [Article 3] threshold would, in the ordinary way, be crossed (paragraph 9).

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 also: [section 3.12](#) 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. 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.

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. Follow up enquiries should be made where appropriate to consider the veracity of evidence.

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3.10 Particular vulnerabilities

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.

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.

3.10.1 Pregnancy

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.

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

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

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 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.

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](#).

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

When considering an application for support under Section 4, caseworkers should decide whether it is reasonable to expect the person to immediately 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.

3.13. Dependants

3.13.1 Dependants aged under 18

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. 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.

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.

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.

3.13.2 Dependants turning 18

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 guidance on dependants who turn 18 and subsequently claim asylum in their own right).

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3.13.3 Adult dependants

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 a dependent child enables support to be provided to all adults who are also dependants of the asylum applicant as part of the household.

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).

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

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 Home Office 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.

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Chapter 4 - Local Authorities

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.

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4.1 Care needs

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 (Part 1 of the Care Act 2015 in England), 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.

4.1.1 When to make a Section 55 decision in care needs cases

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.

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. In these cases, no Section 55 decision should be made until the outcome of the CCA is known.

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 chapter 3.

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 Home Office for support and a Section 55 decision must be made at that stage.

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Annex A - Extract from the Nationality, Immigration and Asylum Act 2002

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 asylumll 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).

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Annex B - Extract from the Asylum Support Regulations 2000 (as amended)

Interpretation

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. 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.

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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

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

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.

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Chapter 5 - Document Control

5.1 Change Record

Version	Author	Date	Change made
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'
11.0	GL	06/07/14	Branding and reformatting
12.0	GL	01/06/15	Replaced Policy Bulletin, and sharpen the language.

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