

# POLICY BULLETIN 83

## DUTY TO OFFER SUPPORT, FAMILY UNITY, VULNERABLE PERSONS, WITHDRAWING SUPPORT

### 1. SCOPE OF THE DOCUMENT

1.1 To implement the European Council Directive laying down minimum standards for the reception of asylum seekers, a number of changes have been made to domestic legislation.

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

1.3 This instruction provides guidance to UK Border Agency caseworkers about the amended regulations and how they should be applied.

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

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

2.1 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.

### 3. DUTY TO OFFER SUPPORT

3.1 Regulation 5 of the 2005 Regulations imposes two new duties:

- If the UK Border Agency thinks that an asylum seeker or his family member is eligible for support under section 98 of the Immigration and Asylum Act 1999 ("the 1999 Act") (temporary support) then it must offer to provide support to them.
- If an asylum seeker or his family member makes an application for asylum support under section 95 [of the 1999 Act] (asylum support) and the UK Border Agency thinks that the applicant is eligible for support under that section then the asylum seeker or his family member must be offered the provision of support.

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

### 4. MAINTAINING FAMILY UNITY

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

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

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

### 5. VULNERABLE PERSONS

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

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

- (a) a minor;
- (b) a disabled person;
- (c) an elderly person;
- (d) a pregnant person;
- (e) a lone parent with a minor child; or
- (f) a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence

who has had an individual evaluation of his situation that confirms he has special needs.

5.3 There is no obligation on the UK Border Agency to carry out or arrange for the carrying out of an individual evaluation of a person's situation to determine whether he or his family members have special needs.

5.4 However, the UK Border Agency will take account of any evidence of an individual evaluation supplied that confirms that a vulnerable person has special needs. Examples of an individual evaluation which the UK Border Agency will accept include an assessment from the Medical Foundation confirming that an asylum seeker has been accepted for further treatment (see Policy Bulletin 19) or a Community Care Assessment undertaken by a Social Services Department (see Policy Bulletin 82). When such information is presented the UK Border Agency caseworkers should have regard to the evidence supplied, considering the applicant's (or their dependant's) special needs (if any) when providing or considering whether to provide support.

## **6. WITHDRAWING SUPPORT**

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

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

- (i) commits a serious breach of the rules of their accommodation (provided they are housed in collective accommodation);
- (ii) commits an act of seriously violent behaviour, either in UK Border Agency accommodation, at the authorised address or elsewhere;
- (iii) commits an offence under Part VI of the 1999 Act;
- (iv) abandons the authorised address without permission;
- (v) does not comply with a request for information relating to:
  - his asylum support (within 5 days of receipt)
  - his asylum claim (within 10 days of receipt);
- (vi) fails without reasonable excuse to attend a UK Border Agency interview relating to his asylum support;
- (vii) conceals financial resources such that they have unduly benefited from asylum support;
- (viii) does not comply with a reporting requirement;
- (ix) makes a claim for asylum and before it has been determined makes or seeks to make a further and separate claim in the same or a different name;

- (x) fails without a reasonable excuse to comply with a relevant condition.

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

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

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

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

6.6 If a decision is being made as to whether it is appropriate to discontinue support to a family with children under [regulation 20 of the Asylum Support Regulations 2000](#), if the family are assessed as being destitute if it were not for the provision of the aforesaid support, the UK Border Agency must take in to account the impact of any decision on the family before proceeding.

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

6.8 If the discontinuation of support is appropriate, the Case Owners should take appropriate steps to safeguard and promote the welfare of the children. Before any action is taken to begin the process to discontinue support, the Case Owner should liaise with the local authority, notifying them that the UK Border Agency plans to discontinue support from the family, and request that the local authority provides alternative support. If the local authority makes an offer of support, the provision of support under section 95 should be discontinued as soon as the family transfers in to local authority care.

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

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

## DOCUMENT CONTROL

### Change Record

Version	Authors	Date	Change Reference
3.0	BF	14/11/08	Update branding only
4.0	BF	14/10/09	Children's Duty paragraphs added