

## In this Factsheet:

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**Individuals who qualify for s95 and s4 support are entitled to receive support for their dependants. This factsheet explains who is considered a dependant for support purposes and the conditions they must satisfy to be eligible.**

### Definition of a dependant

The definition of a dependant is set out in regulation 2(4) of the Asylum Support Regulations 2000 (which have been updated to reflect the Civil Partnership Act 2004). The definition is the same for s95 and s4 support. The headings below list the various categories of dependants, with a brief explanation for each.

### A spouse (husband, wife) or civil partner

A person will automatically be accepted as being a dependant if s/he is married to the main applicant. However, only certain types of marriages that take place in the UK are recognised as valid. Ceremonies held in a registry office and in certain religious buildings registered for marriages are recognised, but those that take place in the majority of UK mosques are not (for more information see the Marriage Act 1949). If the marriage took place in the applicant's country of origin/previous residence the marriage should also be recognised as valid in the UK, providing it was recognised as valid in that country at the time it took place.

### A dependent child under 18

This can either be a child of the main applicant or the child of their spouse/civil partner. Children who are close family members (e.g. nieces, nephews) are also eligible if they have been part of the applicant's household either since birth or for 6 of the 12 months before the date of the application for support.

### When a dependent child turns 18

Home Office guidance states that if a child has been accepted as a dependant for support purposes, on turning 18, they are not expected to apply for support in their own right while the main applicant's asylum application is pending or if there are other dependent children under 18 in the household.<sup>1</sup> However, once the main applicant becomes ineligible for support they

<sup>1</sup> See section 6 of the Home Office Policy 'Dependants On An Asylum Support Application', version 8.

too will cease to be eligible. If that applicant then goes on to become eligible for s4 support, because they have submitted further representations, the child will not continue to be considered a dependant for support purposes, unless they were under 18 at the time when the submissions were made. If they were over 18 when the further submissions were made they will need to be eligible for support, in their own right and so should seek immigration advice.

<b>Table on support for dependent children who turn 18</b>			
	Dependant on Parent's S95 support	Dependant on Parent's S4 support	Not considered a dependant for asylum support <sup>2</sup>
Parent's asylum application pending	✓		
Parent ARE			✓
Parent ARE, however there is another dependent child (under 18) in the household	✓		
Parent submits further subs when dependant was under 18		✓	
Parent submits further subs after dependant has turned 18			✓

### A disabled family member over 18

A person will qualify for support as a dependant if they are in need of care and attention due to a physical or mental health problem. In this context 'care and attention' means 'looking after' (unlike the higher threshold required for community care support from the local authority). This applies to members of the applicant's family as well as members of their spouse or partner's family. The close family members must have been living as part of the applicant's household either since birth or for 6 of the last 12 months before the application for support is made.

If there is a disabled adult or child in the household a community care assessment should be carried out by the local authority and support may be provided by the local authority for that family member and possibly for their main carer.

### A member of an unmarried couple

<sup>2</sup> Persons in this position will not be able to access support on the basis that they are a dependant on their parents support. They will need to be eligible for support, in their own right and so should seek immigration advice.

The main applicant can apply to have their partner supported if they can show they have been living together for 2 out of the last 3 years (before the support application was made). However, this can be a difficult condition for an unmarried couple to satisfy for several reasons (see below for more information).

### A person who has made an application to enter or remain in the UK on the basis that they are a dependant on the main applicant's asylum claim

A person who is treated as a dependant on the main applicant's asylum claim or fresh claim should automatically be considered as meeting the definition of a dependant for support purposes. If the person has arrived in the UK separately from the main applicant they will need to provide proof they have requested the Home Office to include them as a dependant on the main applicant's asylum claim. This could include a copy of their screening interview notes or letters, or correspondence from the Home Office confirming they are being treated as a dependant of the main applicant's asylum claim/fresh claim. The dependant and the applicant should take immigration advice first before requesting to be added as a dependant to an asylum application. Guidance on who can be considered a dependant on an asylum application can be found [here](#).

### Conditions dependants must meet in order to be added to a support application

The dependant's immigration status is not relevant when considering whether they are entitled to support as a dependant of the main applicant. This means, for example, that an asylum seeker can receive s95 support for his/her British child, or his/her spouse who is a refused asylum seeker. However, along with the main applicant, dependants also need to be considered destitute. For more information about who is considered destitute for support purposes, see ASAP Factsheet 5 – Proving Destitution

In s4 cases, dependants will also need to show that they meet the other relevant eligibility criteria set out in regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (for example, taking all reasonable steps to leave the UK or suffering from a physical impediment to travel). However, in most cases dependants will satisfy regulation 3(2)(e) because it would not be reasonable for them to leave the UK without their family members, as this would result in them being separated from a parent, carer, spouse or partner. For more information on the criteria for s4 support, see ASAP Factsheet 2 – Section 4 support.

### Adding dependants to existing support

If a supported person wishes to add a dependant to their support, they do not have to complete a new application form. Instead, they need to write to the Home Office giving details of the dependant they wish to add and provide proof that they meet the relevant definition (as outlined above). However, in practice, it is advisable to use the ASF1. This will hopefully ensure that the Home Office correctly process the request and if they make a decision to refuse they do so in writing and confirm client's right to appeal (see below).

The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct at the time of publication, it should not be used as a substitute for legal advice. For client specific advice please contact ASAP.

Home Office policy<sup>3</sup> states that support should be backdated to commence the date that the Home Office received sufficient supporting evidence of the dependant's eligibility (this policy excludes new born children, see next paragraph).

### Adding a new born child to existing support

If the supported person has a new baby they should write to the Home Office notifying them of the birth of the child. Home Office policy states that if evidence of birth is provided within 14 calendar days, then subsistence payments should be backdated to date of birth<sup>4</sup>. If a request to add a dependent is provided after 14 days, the Home Office will only backdate payments if there is a reasonable explanation for the delay. A letter from the hospital or the treating clinician recording the birth of the child should be accepted as interim evidence. The long birth certificate should then be sent to the Home Office within 49 days of birth. It is not necessary to wait for the birth to be registered to add a child as a dependant. The refusal to add a dependant carries an appeal right (see below).

### Difficulties experienced by unmarried couples

A member of an unmarried couple (including same sex couples) can experience problems getting support for their partner. As noted above, an unmarried partner can only apply for support as a dependant where the couple has been living together (as opposed to being in a subsisting relationship) for 2 out of the last 3 years before the application for support was made. However, an unmarried couple may have been forced to live apart as a result of homelessness, or due to the conditions of support which was originally provided to the main applicant.

The High Court ruling *R (on the application of Chen) v Secretary of State for the Home Department and Another* [2012] EWHC 2531 (Admin) clarified when unmarried partners of asylum seekers can access s95 support. The claimant and her partner, who had a child, did not meet the '2 out of 3 years' requirement. The High Court found that the refusal to provide support in that case did not breach Article 8 ECHR (which protects private and family life) or Article 14 (which prevents discrimination). However, it ruled that the First-tier Tribunal (Asylum Support) had made an error of law by failing to come to its own assessment of whether their human rights would be breached. This potentially leaves scope for other cases to succeed on more favourable facts. If you have a client who may be affected by the *Chen* ruling, please contact ASAP's advice line for further advice.

Notwithstanding the decision in *Chen*, when looking at applications for support from unmarried couples with children, the Home Office has a duty under s55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children. As a result, the Home Office should consider whether it is in the best interests of the child for the family to receive support as a unit.

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<sup>3</sup> See Para 3.2 of the Home Office Policy 'Dependants On An Asylum Support Application', version 8.

<sup>4</sup> See Para 3.3 of the Home Office Policy 'Dependants On An Asylum Support Application', version 8.

One possible solution open to couples who are unable to receive support as a family unit is to consider getting married in a registry office. Since May 2011, asylum seekers and refused asylum seekers no longer need to apply to the Home Office for a Certificate of Approval, which was a costly and lengthy process. They can now apply directly to their local register office to get married or register their civil partnership. However, there is a fee for getting married in a register office and this varies depending on where they live and the day of the week they choose to get married. More information on fees and required documents for foreign nationals can be found on the Home Office website at: <http://bit.ly/1Yi15jj>.

### **Refusal by the Home Office to add a dependant**

A refusal by the Home Office to add a dependant carries a right of appeal to the First-tier Tribunal (Asylum Support). This right of appeal exists irrespective of when the request to be considered a dependant is made. If an asylum seeker applies for support with a dependant listed on the ASF1 but support is only awarded to the main applicant, then decision can be appealed, even though support has been granted for the main applicant. Furthermore, if an asylum seeker already in receipt of asylum support requests a dependant to be added to their support and this request is refused, this decision can be appealed. For more information on how to appeal see ASAP Factsheet 3 – Appealing to the Support Tribunal.

### **Home Office instruction on dependants**

The Home Office has produced its own instructions for dealing with requests for a dependant to be added to the main applicant's support application. This is entitled 'Dependants on an asylum support application' and can be found on the Home Office website at: <http://bit.ly/1mFsLAb>