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Introduction

Asylum seekers who qualify for s95 and s4¹ support are entitled to apply for, and (if the applicable conditions are met), receive support for their 'dependants'. Similarly, where a dependant joins a person already receiving asylum support in the UK, they can apply to receive asylum support as a dependant of the supported person. This factsheet explains who is considered a 'dependant' for asylum support purposes and the conditions they must satisfy to be eligible.

HO guidance on asylum support dependants

HO guidance to caseworkers considering whether a person is a dependant for asylum support purposes and requests for a dependant to be added to the main applicant's support application is entitled '[Dependants on an asylum support application](#)' (version 8).

Definition of an asylum support dependant

The definition of a dependant is set out in section 94(1) of the Immigration and Asylum Act 1999, and regulation 2(4) of the Asylum Support Regulations 2000 (which have been updated to reflect the Civil Partnership Act 2004).

The headings below list the various categories of dependants, with a brief explanation for each. **Note** that a person can be a dependant of more than one person for asylum support purposes, if they satisfy the definition of a dependant under more than one category (eg it is possible at the same time to be a dependant of (a) a parent, (b) another close family member such as an uncle or aunt, and (c) an unrelated member of the household).

A dependant of an asylum seeker's asylum claim

A person will automatically be treated as a dependant of a person's asylum support claim if they are a dependant of that person's asylum claim.² If the dependant has arrived in the UK separately from the main applicant, evidence will need to be provided to show that the HO has been asked to include the would-be asylum support dependant as a dependant on the main applicant's asylum claim. Evidence could include a copy of their screening interview

notes or letters, or correspondence from the HO confirming they are being treated as a dependant of the main applicant's asylum claim.

Whether a person is a dependant of an asylum claim is an immigration law question, and specialist immigration advice should be taken before any request is made to add a dependant to an asylum application. The rules on who can be considered a dependant on an asylum application are set out in Immigration Rule 349, and guidance to HO caseworkers can be found in the Asylum Policy Instruction: [Dependants and former dependants](#).

A spouse (husband, wife) or civil partner

A person will automatically be treated as a dependant of an asylum seeker for asylum support purposes if s/he is married to the asylum seeker. As a general rule, only certain types of marriages that take place in the UK are recognised as valid:³ 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 member of an unmarried couple

An asylum seeker can apply for asylum support for their unmarried partner as their dependant, if they can provide evidence that they have been living together as an unmarried couple for 2 out of the last 3 years before the support application was made (or where the asylum seeker is already receiving asylum support, for at least 2 of the 3 years before the dependant joined the asylum seeker in the UK). **Note** that even close and committed longstanding couples may not be able to meet this condition if they have been separated for more than a year out of the last 3 years whether because of circumstances out of their control, perhaps arising out of the asylum seeker's asylum claim, or for another reason that is not indicative of a weak relationship.

The High Court considered and approved the lawfulness of the HO's unmarried couples' policy in *R (Chen) v SSHD* [2012] EWHC 2531 (Admin). However, the court made it clear that the HO (and the Asylum Support Tribunal) must ensure that decisions on asylum support applications do not breach the right to respect for family life in Article 8 of the European Convention on Human Rights. This is a fact sensitive issue. Where it is particularly important for an unmarried family to live together, but the unmarried couple cannot show that they

¹ The rules for dependants on asylum support claims are the same for s95 and s4 cases. For that reason, where appropriate in this factsheet, the term 'asylum seeker' should be understood to include 'refused asylum seeker' for the purposes of s4 cases

² **Note** that the converse is not true – the dependant of a person who is receiving asylum support is not necessarily entitled to be treated by the HO as a dependant on the supported person's asylum claim.

³ However, in some cases it may be necessary to argue that a wider definition of 'married' should apply for asylum support purposes. This is because of restrictions in the unmarried couples rules (considered below), in particular the requirement that the couple must have lived together as an unmarried couple for 2 of the previous 3 years.

have lived together for at least 2 of the last 3 years condition, you should take specialist advice. In such cases, please contact ASAP's advice line.

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. 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 government website at: <https://www.gov.uk/marriages-civil-partnerships>.

A dependent child under 18

A child under 18 is entitled to be treated as the dependant of an asylum seeker⁴ for asylum support purposes if the child:

- is a child of the asylum seeker, or the asylum seeker's spouse,⁵ and is dependent on the asylum seeker, or the asylum seeker's spouse. Being dependent (with an 'e') on an asylum seeker or their spouse is a matter of evidence in each particular case. If there is no dependency relationship between the child and the asylum seeker (or the asylum seeker's spouse) – for example, if the asylum seeker is an absent parent who plays no role in the child's life - the child will not be a dependant on the asylum seeker for asylum support purposes.
- is a close family member of the asylum seeker, or of the asylum seeker's spouse (eg a sibling).
- has been living as part of the asylum seeker's household either (a) since birth; or (b) for at least 6 of the 12 months before an asylum support application was made on behalf of the child; or (c) where the asylum seeker is already receiving asylum support, for at least 6 of the 12 months before the child joined the asylum seeker in the UK.

A dependent child who has turned 18

Provided a child is under 18, either:

- (1) when an asylum support application is made on their behalf; or (if the asylum seeker is already receiving asylum support)
- (2) when the child joins the asylum seeker

the child will remain a dependant on the asylum seeker's asylum support claim after they turn 18. HO guidance⁶ 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

⁴ Or of a refused asylum seeker in section 4 cases – see footnote 1

⁵ References to 'spouse' in this section of the factsheet include 'civil partner'.

⁶ [Dependants On An Asylum Support Application](#) (version 8.0), section 6

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the main applicant's asylum application is pending, or if it is refused, while there are other dependent children under 18 in the household.⁷

However, once the main applicant becomes ineligible for support (eg where the asylum claim is refused, and the refused asylum seeker's youngest child turns 18) the asylum seeker's adult children will also cease to be eligible.

If the now-refused asylum seeker proceeds to make further submissions in support of their asylum claim, and thereby becomes eligible for s4 support, the adult child will not generally continue to be considered a dependant for support purposes, unless they were under 18 at the time the further submissions were made. If they were, HO guidance⁸ states that they should 'normally continue to be treated as a dependant for the purposes of the further submissions application'. If the child was over 18 when the further submissions were made then the adult child will generally need to be eligible for support in their own right, and so should seek immigration advice about a potential asylum claim.

The HO's Family Asylum Claims Policy

The HO's Family Asylum Claim policy states that there are 3 ways that a dependant child's claim can be decided:

- (1) If they have independent protection needs (ie independent of their parent(s)), the child will have an independent asylum claim. If it is refused, the child will generally be given an independent right of appeal against the refusal of asylum.
- (2) If they have no protection needs they will be a dependent on their parent(s)' asylum claim under Immigration Rule 349.⁹ If the asylum claim is refused, the child dependant will not be given an independent right of appeal, but will remain a dependant on their parent(s) for the purposes of any appeal.
- (3) If the child's protection needs are the same as the applicant parent(s), the HO will treat all the family members as having made a family asylum claim, and will issue a collective decision to all the family members often based on the interview of the main applicant. If the claim is refused, each child and the parent(s) will generally be given a right of appeal, and the appeals will be heard together.

The Family Asylum Claim Policy applies to asylum claims made after the 2 August 2021. It represents a significant change, with implications for dependent children's eligibility for asylum support after they turn 18, in scenarios 1 and 3 above.

In scenarios 1 and 3 above, children's asylum claims may be finally determined while they are still children. In such cases, a dependent child, upon turning 18, will be a refused asylum

⁷ During which time the family will remain supported under s95 because of s94(5) – see ASAP's [Family Support Briefing](#), at p3

⁸ Asylum Policy Instruction: [Dependants and former dependants](#) (version 2.0), section 3.8

⁹ Prior to Family Asylum Claims Policy, the majority of dependent children were treated as a dependant under [IR 349](#)

seeker for immigration law purposes, and will need to make in further submissions to seek to re-open their asylum claim.

However, their position is different for asylum support purposes. That is because in order to be eligible for s95 (and s4) support in their own right (as opposed to as a dependant), an asylum-seeker has to be over 18. So if your asylum claim was refused and any appeal against the refusal was dismissed when you were under 18 (because either scenario 1 or 3 applied), the position in law is that you were never 'an asylum seeker' for s95 purposes, nor are you now a refused 'asylum seeker' for s4 purposes.

It follows that if a family becomes ARE before the children turn 18, the children will not be eligible for asylum support when the youngest child turns 18 (until then, the HO's policy is to maintain support for the family including older children pursuant to s94(5) of the Immigration and Asylum Act 1999¹⁰). Upon the youngest child of the family reaching 18, children of refused asylum seekers may therefore need to apply for Schedule 10 support.¹¹

A disabled family member over 18

A person aged over 18 will qualify for support as a dependant of an asylum seeker if they are in need of care and attention from the asylum seeker or a member of the asylum seeker's household, by reason of a disability (whether physical or mental health-related) and the person:

- is a close family member of the asylum seeker, or of the asylum seeker's spouse (eg a sibling); and
- has been living as part of the asylum seeker's household either (a) since birth; or (b) for at least 6 of the 12 months before an asylum support application was made on behalf of the dependant; or (c) where the asylum seeker is already receiving asylum support, for at least 6 of the 12 months before the dependant joined the asylum seeker in the UK.

If a disabled adult or child is being cared for in the asylum seeker's household, a community care assessment, and a carer's assessment, should be requested urgently from the local authority at the earliest opportunity. The HO's support duties depend on the outcome of these assessments. HO guidance: [Asylum seekers with care needs](#) (version 2) states:¹²

'The Care Act gives local authorities a duty to carry out a needs assessment to determine whether an adult has needs for care and support. For supported persons, the local authority duty includes:

- doing the needs assessment and any carer's assessment, in the same way they would for a British citizen in the same circumstances

¹⁰ See ASAP's [Family support briefing](#), at p2

¹¹ See ASAP's [Factsheet 10](#)

¹² At p7

- providing residential care if that is assessed as appropriate. The decision must be made according to the same criteria they would normally use
- assessing what the person does need (both in terms of care services and any specific accommodation needs) if residential care is not assessed as appropriate
- making appropriate provision for any care services that have been assessed as necessary, in the event the person is, or is going to be, accommodated in their area (regardless of who is providing the accommodation)
- in the event the person is going to be accommodated outside of the assessment area assisting with maintaining continuity of care by providing a copy of the person's care and support plan to the receiving authority (the LA in whose area the new accommodation is situated)
- considering whether to exercise their power to meet urgent needs under s.19(3) of the Care Act 2014, including needs for accommodation, until their assessment is complete if they are unable to conduct a prompt assessment.'

Possible outcomes following the needs assessments, are that the disabled person may require residential care, care in a particular type of accommodation or care at home with support from members of the asylum seeker's household.

If residential support is needed, the local authority is under a duty to provide it, and the HO is absolved of any duty to provide asylum support. However, if the disabled person can be cared for at home by the carer, perhaps with local authority support, the HO will be under a duty to provide asylum support, having regard to the local authority's needs assessments. In that scenario, any member of the asylum seeker's household caring for the disabled person may be a dependant on the asylum seeker's asylum support claim. This is a complicated area, and specialist advice should be sought where necessary.¹³

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. **Note** that in addition to the main applicant, dependants also need to show that they are destitute. For more information about who is considered destitute for support purposes, see ASAP Factsheet 5 – Proving Destitution

Adding a dependant to an ongoing asylum support claim

If a supported person wishes to add a dependant to their asylum support claim, they do not have to complete a new application form. Instead, they need to write to the HO (via Migrant Help) giving details of the dependant they wish to add and provide proof that they meet the

¹³ For example, the [Care Rights Project](#) has useful information on its website

relevant definition (as outlined above). However, in practice, it is advisable to use the ASF1. This will hopefully ensure that the HO correctly process the request and if they make a decision to refuse, do so in writing with confirmation of the would be dependant's right to appeal to the Asylum Support Tribunal (see below).

HO policy¹⁴ states that support should be backdated to commence the date that the HO received sufficient supporting evidence of the dependant's eligibility. This policy does not apply to new born children, as to which, see below.

Adding a new born child to existing support

If a supported person has a new baby they should write to the HO notifying them of the birth of the child. HO policy states that if evidence of birth is provided within 14 calendar days, then subsistence payments should be backdated to date of birth. If a request to add a dependent is provided after 14 days, the HO 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 HO within 49 days of birth. It is not necessary to wait for the birth to be registered to add a child as a dependant.

A refusal by the HO to add a dependant to an ongoing asylum support claim

A refusal by the HO to add a dependant to an ongoing claim carries a right of appeal to the Asylum Support Tribunal. 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 by the would-be dependant, 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 also be appealed. For more information on how to appeal see ASAP [Factsheet 3 – Appealing to the Support Tribunal](#) and our [how to appeal guide](#).
<https://www.asaproject.org/resources/asap-guide-to-appealing-at-the-ast>.

March 2023

¹⁴ [Dependants on an asylum support application](#), section 3.2