

FACTSHEET 15

Section 4 support and families with dependant children

The UK Border Agency (UKBA) has adopted an 'interim position' of not withdrawing Section 4 support from families with children even when they longer meet the criteria under which Section 4 support was originally granted. This factsheet provides more details of the UKBA's policy towards families with dependent children on Section 4 support. It also provides details of the UKBA's policy on families who have their Section 4 support discontinued when they are considered no longer destitute, or when there has been a serious breach of the support conditions.

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Non-discontinuance of Section 4 support to families

In May 2012, in a High Court hearing concerning Section 4 delays, the UKBA disclosed a copy of its internal Section 4 instructions. These instructions are very similar to those provided on the UKBA's website except that they include some additional guidance to staff who are reviewing or considering applications for Section 4 support from families with dependent children.

The additional guidelines reflect the UKBA's obligations to have due regard to the need to safeguard and promote the welfare of children in the UK under Section 55 of the Borders, Citizenship and Immigration Act 2009.

In relation to reviewing Section 4 support for families with dependent children who no longer meet the criteria, the guidelines state:

"An interim position has been taken not to discontinue support for destitute families with children assessed as no longer being eligible for support under Section 4 of the Immigration and Asylum Act 1999. This does not apply to families (who):

- *Are assessed as being no longer destitute*
- *Who have departed the UK, or*
- *Who are now in receipt of alternative support and Section 4 support is no longer required, or*
- *Who are having their support discontinued as a result of a serious breach of the conditions of support as set out in regulation 6 of the 2005 Regulations."*

So, for example, if a woman is awarded support because she is in the late stage of pregnancy, UKBA policy is not to stop support after the child is born except in the above circumstances.

The policy that has been adopted by the UKBA towards families does not apply to those in receipt of Section 4 who do not have dependent children. This group may still have their support withdrawn if they cease to meet the criteria.

For more information on Section 4 support see ASAP factsheet 2, which can be downloaded at:

www.tinyurl.com/6xa4buq

Discontinuance of support to families in limited circumstances

As the above section advises, support to families can be discontinued under limited circumstances. This includes situations when the UKBA receive information which suggests that the family is not destitute as they have access to additional support they have failed to declare.

Support can also been withdrawn where there has been a serious breach of conditions. When individuals and families are awarded Section 4 support they agree to comply with a series of conditions. Among others this includes a requirement to reside at the accommodation provided (some absences are permitted) and to comply with standards of behaviour specified by the accommodation provider. This would include issues related to damaging the property.





If the UKBA discontinues support because there has been a serious breach in conditions, or the family is no longer destitute, the family will have a right of appeal to the Asylum Support Tribunal. The tribunal will then determine whether it considers the breach to be serious by looking at issues such as the evidence available to prove a breach has occurred, how often the breach occurred and whether there was a reasonable excuse for the breach of conditions.

For more information on appealing to the Asylum Support Tribunal see ASAP factsheet 3, which can be downloaded at: www.tinyurl.com/64uhval

Before discontinuing support, the UKBA is obliged to follow a set procedure before removing support from families. This procedure is set out in UKBA Section 4 review guidance instructions, available at: www.tinyurl.com/9hsytsl

On page 17 of the guidance it is stated:

"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 4 should be discontinued as soon as the family transfers in to local authority care.

"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."

This again reflects the UKBA's obligations to safeguard the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009.

Applications for Section 4 support for families who don't meet the criteria

Families with dependent children who have been refused asylum will continue to be entitled to receive Section 95 support so long as they had children in their household before that become fully refused on their originally asylum claim. They will continue to qualify for Section 95 support for as long as they remain in the UK or until the youngest turned 18.

For more information on Section 95 support see ASAP factsheet 2, which can be downloaded at: www.tinyurl.com/6xa4buq

Refused asylum-seeking families whose children are born after they are received a final refusal on their original asylum claim can apply for Section 4 support but they will only qualify for support if they meet one or more of the criteria governing support. When refusing Section 4 to families, UKBA internal guidelines to staff advise that:

"Where applicant with a dependent child under 18 in their household (who is not eligible for support under Section 95) fails to meet the eligibility criteria for Section 4 support, Case Owners must consider whether the family should be signposted to the relevant local authority. Local authorities have duties towards children in need under the Children Act 1989 ..."

Those refused support have a right to appeal that decision at the Asylum Support Tribunal.

For more information on the contents of this factsheet or a copy of the UKBA's Internal Section 4 Instruction please contact our advice line on 020 7729 3042. The line is open Monday, Wednesday and Fridays between 2-4pm.

ASYLUM SUPPORT APPEALS PROJECT ADVICE LINE

For more information about Section 4 and legacy, or for advice on other asylum support or asylum support appeals issues, please call our advice line on Monday, Wednesday and Friday between 2-4 pm:

020 7729 3042

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