

# **Moving Service Users off Section 4 Support who are supported under Regulation 3(2)(c) (no viable route of return)**

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## Introduction

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The regulations made under section 4(5) of the Immigration and Asylum Act 1999 (“the 1999 Act”) at regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 state that the Secretary of State may provide support under section 4 of the 1999 Act to a failed asylum seeker who appears to be destitute (regulation 3(1)(a)) and who satisfies one or more of certain conditions (see [Section 4 Support](#) for the full list of conditions). One of these conditions, regulation 3(2)(c), is that:

“The person is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available.”

There are no countries to which the Secretary of State considers there is currently no viable route of return available. There are, however, some Service Users who remain incorrectly supported (*ultra vires*) under regulation 3(2)(c).

Support under regulation 3(2)(c) which is being provided *ultra vires* must be discontinued. This Asylum Instruction instructs staff in how they should discontinue section 4 support under this condition.

### **Application of this instruction in respect of children and those with children**

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.

## **Confirming that the Service User is supported under 3(2)(c)**

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Before any action is taken, ASYS should be checked to confirm that the Service User (SU) is supported under 3(2)(c). Particular attention should be paid to the Minute tab 5 and Correspondence tab 9 where information on pre-ASYS section 4 cases is logged.

If the SU is not supported under 3(2)(c), no further action will be necessary in relation to this Instruction.

If the SU is supported under 3(2)(c), go to Issuing the letter to warn of discontinuing support under 3(2)(c).

## Issuing the letter to warn of discontinuing support under 3(2)(c)

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Once it has been confirmed that the Service User (SU) is supported under 3(2)(c) *ultra vires*, the letter to warn of discontinuing support under 3(2)(c) should be prepared and issued.

The letter states that support under section 4 will be discontinued in 21 calendar days plus 2 calendar days to allow for posting, unless the SU can demonstrate that he remains destitute, and is eligible for support under one or more of the other conditions. These conditions are:

- The person is taking all reasonable steps to leave the UK or is placing himself in a position in which he is able to leave the UK. This could include complying with attempts to obtain a travel document to facilitate departure.
- The person is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason.
- The person has made an application in Scotland for judicial review of a decision in relation to his asylum claim or, in England and Wales or Northern Ireland, has applied for such a judicial review and been granted permission or leave to proceed.
- The provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

The reply must be received within 21 calendar days plus 2 calendar days to allow for posting, or support under section 4 will be discontinued.

Upon forwarding the letter to the SU, the officer must ensure that all internal records relating to the applicant's section 4 support are correct and up-to-date. In particular, the officer must ensure consistency between the applicant's records on CID and ASYS and make every effort to rectify any discrepancies.

## Service User actions

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### Reply received from Service User

The reply from the Service User (SU) must be received by the date shown on the letter, which is 21 calendar days plus 2 calendar days to allow for posting from the date the letter was sent.

The reply must contain evidence that:

- The SU has made an application to the International Organization for Migration (IOM) for the Voluntary Assisted Returns and Reintegration Programme (VARRP) to facilitate return to their country of origin; or
- The SU is taking all reasonable steps to leave the United Kingdom or is placing himself (and any dependant) in a position in which he is able to do so by some other means; or
- The SU is otherwise eligible for continued accommodation under section 4.

For further guidance on what constitutes satisfactory evidence, see [Section 4 Support](#).

### Satisfactory evidence

If a reply is received containing satisfactory evidence that the SU remains eligible for section 4 support under a different condition, see Changing the regulation under which the Service User is eligible for section 4 support.

### Unsatisfactory evidence

If a reply is received which does not contain satisfactory evidence that the SU remains eligible for section 4 support under a different condition, they should be given a final chance to provide that evidence and should be issued with a Section 4 Application Form. Upon return, this form must include any information that demonstrates the SU's eligibility. If the information received still fails to provide satisfactory evidence of eligibility for support, go to Discontinuing support.

### No reply received from Service User

If no reply is received from the SU, go to Discontinuing support.

## Changing the regulation under which the Service User is eligible for section 4 support

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If the Service User (SU) provides satisfactory evidence that he is eligible for section 4 support under another one of the conditions, then support must not be discontinued. Instead, the SU's section 4 support must be updated to reflect the appropriate condition. The appropriate review timescale must be set in accordance with [Section 4 Support](#).

In practical terms, this means that support under 3(2)(c) will be discontinued, and support will then be reinstated under the correct condition. There should be no break in support for the SU, and there will be no need for him (and any dependant) to change accommodation.

ASYS must be updated to reflect that support under 3(2)(c) has been discontinued, and an 'application' for section 4 support under the new condition has been granted. It may be helpful to add a case minute to the new 'application' explaining that it is as a consequence of moving the SU off support provided under 3(2)(c) *ultra vires*.

The SU must be sent an acceptance letter under the new condition. See [Section 4 Support](#) for further instructions and grant letters.

## Discontinuing support

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If the Service User (SU) fails to provide evidence that he is eligible for continued section 4 support under another one of the conditions, then support must be discontinued.

See the section 'Discontinue Support' within [Section 4 Support](#).

Where support is discontinued, the applicant has a right of appeal under section 103 of the 1999 Act to the Asylum Support Tribunal (AST). See the AI on [Section 4 Support](#) and the Asylum Support Policy Bulletin on [Asylum Support Appeals](#) for further information on section 4 appeal rights.

### Discontinuation of support to families with children

When considering whether to discontinue the provision of support under section 4 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.

If a decision is being made as to whether it is appropriate to discontinue support to a family with children due to no longer satisfying the eligibility criteria for support under section 4 of the Immigration & Asylum Act 1999 (1999 Act), who have not been granted any form of leave, and are not eligible for support under section 95 of the 1999 Act, 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.

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.

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
1.0	CC	14/04/08	New Instruction
2.0	SM	10/11/08	Re-branding
3.0	BF	15/10/09	Children's duty paragraph added