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This Factsheet looks at situations where section 4 support may be available necessary to prevent a breach of human rights.

Section 4 Support and Human Rights

To qualify for section 4 support,¹ a refused asylum-seeker has to meet certain conditions found in the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005.

They must be:

- destitute, or be likely to be destitute within the next 14 days (or 56 days if they are already receiving support); and
- satisfy one of the five conditions set out in regulation 3(2)(a)-(e) of the Regulations

Regulation 3(2)(e) states that “the provision of accommodation is necessary for the purpose of avoiding a breach of a person’s Convention rights” and it is this condition which is examined here (for other conditions see Factsheet 2).

Breach of European Convention of Human Rights

Support must be provided if otherwise a person’s rights under the European Convention of Human Rights (ECHR) would be breached. Article 3 states “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. The courts have found that denying support to asylum-seekers whose claims are outstanding, given that they are not allowed to work and would be faced with street homelessness, constitutes “inhuman and degrading treatment”, in breach of Article 3.

Is it Reasonable to Expect Refused Asylum-Seekers to Leave the UK?

Refused asylum-seekers with no outstanding claims are expected to avoid a human rights breach by leaving the UK. The fact that, due to poverty, they may have to live in inhuman and degrading conditions in their own country is not relevant. However, if they have a further application, which is outstanding and not hopeless or abusive, then it would not be considered reasonable to leave. Once the refused asylum-seeker has no longer any outstanding applications, then they can ‘cure’ the breach of their Article 3 rights (eg street homelessness) by leaving the UK.

¹ Immigration and Asylum Act 1999, section 4(2)

Fears about how they will be treated in their home country are not usually considered to be relevant for s4 purposes. This is because such fears would have been addressed when their asylum claim was considered and refused, unless such fears have been raised in fresh representations (see further below).

The following are examples of circumstances where the Home Office or the First-tier Tribunal (Asylum Support) has provided support on human rights grounds. **This is for guidance only.** The Home Office and Tribunal Judges often have different approaches to when it would be unreasonable to expect an applicant to leave the UK. Sometimes even different judges take different views and they are not bound by each other's decisions. If you have any doubts about eligibility, contact ASAP.

Out of Time Appeals to the First-tier Tribunal (Immigration and Asylum)

Home Office guidance² states that support may be provided under regulation 3(2)(e) "where the applicant has submitted an out of time appeal against a refusal of asylum and the AIT is considering whether to allow the appeal to proceed out of time". If the appeal is allowed to proceed the person will then become eligible for section 95 support.

The Asylum-Seeker has Submitted Fresh Representations (referred to as 'further submissions' by the Home Office)

A refused asylum-seeker who has exhausted their appeal rights may have new evidence or arguments to put before the Home Office as part of a fresh claim for asylum or humanitarian protection. Once they have submitted these further submissions to the Home Office, there is likely to be a delay before the Home Office decides if these submissions constitute a fresh claim. During this period, the refused asylum seeker is not eligible for s95 support, but will be entitled to s4 support on human rights grounds.

The Home Office accept that it would not be reasonable to expect a refused asylum-seeker to leave the UK where:-

- a) They have lodged further submissions and
- b) The Home Office has not yet decided whether to record the submissions as a fresh claim or to refuse them; and
- c) The submissions "are not clearly abusive, manifestly unfounded or repetitious"³

Further Submissions not yet Submitted but Appointment booked

Since March 2015, further submissions have to be made in person at the Further Submission Unit (FSU) in Liverpool. An appointment needs to be booked, and there is no Home Office funding for travel to Liverpool. Those with particular difficulties in

² Asylum support, section 4 policy and process instruction, para 1.14

³ *Ibid*, para 1.15

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travelling, such as severe illness or disability, can apply, exceptionally, to lodge submissions by post. The Tribunal has been willing to grant support on human rights grounds where the person has prepared further submissions and has an appointment to attend the FSU to submit them. This is because the applicant has done all that s/he reasonably can, and it would not be reasonable to leave the UK at this stage in their case. However, the approach of the Judges varies and some may refuse support unless the submissions have already been submitted. If the applicant is particularly vulnerable, that may strengthen the case for support whilst waiting for the appointment at Liverpool.

Refused Asylum-Seekers with Outstanding Applications for Leave to Remain Under ECHR Article 8

Individuals who have never claimed asylum but instead apply for leave to remain on Article 8 grounds (family and private life) are not eligible for asylum support under s95.

However, destitute refused asylum-seekers who have an outstanding Article 8 claim may be eligible for s4 support under regulation 3(2)(e). It would not be reasonable to expect such people to leave the UK until their Article 8 claim has been determined. In August 2015 the Principal Judge at the Tribunal found that Article 8 applicants are eligible for s4 support.⁴ This judgment is persuasive on other judges and the Home Office, and should be followed. However, Article 8 applicants should seek immigration advice before applying for s4 support. They will need to prove their destitution to be eligible and in doing so they should not put forward any information to the Home Office which could contradict or weaken their Article 8 application. ASAP can advise further and assist with any appeal.

Statelessness applicants

Since 2013 it has been possible to apply for leave to remain in the UK as a stateless person on a specified and detailed Home Office form. Once the application is lodged and whilst it is still outstanding, it is possible to apply for s4 support.

Potential Judicial Review Proceedings following the refusal of Further Submissions

Further submissions are usually refused, and the Home Office decides they do not meet the threshold of being a fresh claim. Therefore the applicant does not have a right of appeal to the First-tier Tribunal (Immigration and Asylum) and the only remedy is to challenge the decision by way of judicial review, on the basis that it is unlawful.

The First-tier Tribunal (Asylum Support) is likely to grant support on human rights grounds in the following circumstances:-

⁴ Case reference AS/14/11/32141, on ASAP's website

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- The appellant has started the judicial review proceedings and is waiting for a judge to decide whether to grant permission for the application to proceed.
- The appellant has sent a pre-action protocol (PAP) letter to the Home Office threatening judicial review proceedings but is waiting for the prescribed period to end before issuing court proceedings. The Protocol is a set of rules which should be followed by claimants before they start judicial review proceedings against a government body. They must send a 'pre-action letter' setting out their arguments and requesting a response within a deadline (usually 14 days). Tribunal Judges generally accept that it would not be reasonable to expect the appellant to leave the UK while they are waiting for a response to this letter. There can then be further (reasonable) delays after a negative Home Office response to the PAP letter, as the appellant waits to be granted legal aid, without which their solicitor cannot issue the judicial review. Again this is something some Tribunal Judges will take into account.

European Court Proceedings

Refused asylum-seekers who have exhausted all available appeals and remedies in the UK sometimes make applications to the European Court of Human Rights. In decision (AST/11/06/26857) the Principal Judge of the Tribunal set out guidance on when such applicants will be eligible for support.

Other Possible Human Rights Situations

There may be other situations where it is not currently reasonable, or possible, to leave the UK. Therefore, there may potentially be a breach of human rights if support is refused or withdrawn. For example the applicant needs to remain in the UK temporarily because of civil or criminal court proceedings or care proceedings. Or they suffer from serious mental health problems, such that the Asylum Support judge considers it would be a breach of regulation 3(2)(e) for their support to be discontinued whilst they are in the UK.

Delays in section 4 decision-making

As s4 contains no provision for temporary accommodation pending assessment, it is important that decisions are made quickly. The current policy is set out in the Home Office guidance.⁵ Decisions should be made in 5 working days, shortened to 2 working days if the applicant is in a vulnerable category.

If there is an unreasonable delay in making a decision, the only remedy is judicial review. See Factsheet 13 (Introduction to Judicial Review). An appeal can only be made to the Tribunal *after* the Home Office have made a decision on support.

⁵ Asylum support, section 4 policy and process and process instruction, para 1.15

