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**This Factsheet looks at s4 support for refused asylum-seekers – those who have come to the end of the asylum process, been refused asylum and exhausted all appeal rights.**

**What is s4 support?**

Section 4(2) of the Immigration and Asylum Act 1999 (the 'IAA 1999') allows for the provision of support to refused asylum-seekers. The Home Office gives support to refused asylum-seekers who are destitute and meet a narrow set of criteria (outlined below). The support consists of accommodation and £35.39 a week via a payment card. In contrast to s95 support, there are no cash payments.

Dependants of refused asylum-seekers may also qualify for s4 support (see Factsheet 13 – Getting support for dependants under s95 and s4 support). For dependants of refused asylum-seekers aged under 18, a key fact to check is whether they were born before the asylum-seeker had exhausted all their appeal rights. If so, the refused asylum-seeker should still qualify for s95 support until their youngest child turns 18 (see s94(5), IAA 1999).

**The eligibility criteria**

To qualify for s4 support, a refused asylum-seeker has to meet certain conditions found in the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 [www.opsi.gov.uk/si/si2005/20050930.htm](http://www.opsi.gov.uk/si/si2005/20050930.htm) (the 'Regulations').

They must:

- be destitute, or be likely to become 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 (see below).

**Burden of Proof**

The burden is on the applicant to prove "on the balance of probabilities" (i.e. more likely than not) that they qualify for support. Therefore the Home Office will require evidence of destitution and that one of the conditions in regulation 3(2) is met. Refused applicants (or people notified that their support will be terminated) can normally appeal to the First-tier Tribunal (Asylum Support) (the 'Tribunal') (see Factsheet 3 - Appealing to the Support Tribunal).

## The destitution test

An applicant for s4 support must show that they are destitute or are likely to become destitute within 14 days. A person is “**destitute**” if they do not have adequate accommodation or do not have enough money to meet essential living expenses for themselves and any dependants (see Factsheet 5 - Proving Destitution).

### Regulation 3(2) criteria

In addition to establishing their destitution, an applicant must also show they meet one of the five conditions in Regulation 3(2)(a)-(e):

- S/he is taking all reasonable steps to leave the UK or place her/himself in a position in which s/he is able to leave the UK
- S/he is unable to leave the UK because of a physical impediment to travel or for some other medical reason
- S/he is unable to leave the UK because in the opinion of the Secretary of State there is no viable route of return
- S/he has applied for judicial review of the decision on her/his asylum claim and has been granted permission to proceed
- The provision of accommodation is necessary to avoid breaching a person’s human rights

### 3(2)(a) All Reasonable Steps

To qualify under this condition, a refused asylum-seeker must show they are taking **all** reasonable steps to leave the UK. This means the Home Office is likely to refuse support if it identifies one outstanding step which it considers reasonable for the applicant to take. Whether or not a particular step is objectively reasonable will depend on the applicant’s circumstances (for example, whether they have valid identity and/or travel documents). Applicants are expected to demonstrate that they are pursuing the relevant steps proactively (and continue to do so after support has been granted). Each case will depend on its specific facts, but two examples include applying to the Home Office’s voluntary departure service or seeking assistance from the Embassy of their country of origin.

**Important note:** Refused asylum-seekers should be advised that making an application to return voluntarily could negatively impact on any future fresh asylum claims. For this reason, they should seek independent legal advice before making this type of application.

### 3(2)(b) Physical Impediment to Travel

A destitute refused asylum-seeker will qualify under this condition if they can show that they are unable to travel due to a physical or mental health problem. It is **not** enough for the applicant to show s/he is receiving treatment in the UK or to

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have a doctor's opinion that it would be preferable if they did not travel. They must have a medical condition which makes them **unable** to travel. Evidence is required so written documentation should be obtained from a medical practitioner specifically stating the individual is unable to travel (also giving the reason why) and when they are likely to be able to travel. The medical adviser should complete the "Section 4 Medical Declaration" form on the Home Office's website. The Home Office will reimburse doctors for completing a Medical Declaration (see s4 Instructions, para 1.11.2). The completed invoice and form should be sent to [Section4nationalteam@homeoffice.gsi.gov.uk](mailto:Section4nationalteam@homeoffice.gsi.gov.uk) (marked for the attention of Steve Smyth).

**Important note: Pregnancy** – the Home Office's policy is that women in the late stages of pregnancy (around six weeks before their expected due date, or earlier if there have been complications), or those with a baby under six weeks old, are accepted as being unable to travel. In some cases the Tribunal has awarded support to a pregnant woman earlier than six weeks before her due date (see Factsheet 9 – Support for Pregnant Refused Asylum-Seekers).

### 3(2)(c) No Viable Route of Return

This condition only applies to a country for which the Home Secretary has stated there is no viable route of return. At the time of writing no such statements have been issued, therefore no applicant can currently qualify under this condition.

### 3(2)(d) Permission granted to proceed with Judicial Review

If a person wishes to judicially review a decision on their asylum claim they must first apply to the High Court for permission to proceed. Once the High Court has granted permission, the applicant will be eligible for s4 support under this condition. If an applicant has started the judicial review process (for example by sending a pre-action protocol letter or issuing a claim form) but is waiting to learn whether permission will be granted, they will not qualify under this condition. However, they may still qualify on human rights grounds under regulation 3(2)(e).

### 3(2)(e) Human Rights Breach

Support must be provided if the refused asylum-seeker's rights under the European Convention on Human Rights (the 'ECHR') would otherwise be breached. In s4 cases, the two provisions that are most likely to be relevant are Article 3 (prohibiting torture and inhuman and degrading treatment) and Article 8 (protecting private and family life). Article 5 (right to liberty) and Article 6 (right to a fair trial) may also be relevant.

The courts have found that denying support to street homeless asylum-seekers with outstanding claims would constitute "inhuman and degrading treatment" and therefore prohibited under Article 3 of the ECHR. Separating a family by denying some members support could also breach Article 8. These principles also apply to refused asylum-seekers, provided they cannot reasonably be expected to leave

the UK. For advice on whether it is reasonable to expect a s4 applicant to leave the UK contact ASAP's Advice Line.

**Important note: Further submissions** - Many refused asylum-seekers qualify for Section 4 support under regulation 3(2)(e) because they have further submissions outstanding. This is when a refused asylum-seeker has new evidence or arguments they would like the Home Office to consider as part of a fresh claim for asylum or humanitarian protection, or when they have applied to be recognised as a stateless person. Once these are submitted to the Home Office, they may be entitled to s4 support on human rights grounds.

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

- they have submitted further representations;
- the Home Office has not yet decided on whether to record the representations as a fresh claim; and
- the representations “do not simply rehearse previously considered material or contain no detail whatsoever”.

If an appellant submits a copy of further submissions and evidence of an imminent FSU appointment, the Tribunal may even accept support entitlement notwithstanding that the further submissions have yet to be lodged.

**Important note: Home Office Further Submissions Policy** – subject to exceptional circumstances (see Further Submissions Instruction, para 3.3), all further submissions made on protection grounds following the refusal of asylum or humanitarian protection must be made in person at the Further Submissions Unit (FSU) in Liverpool (see Further Submissions Instruction, para 3.1).

Following the High Court decision of *R(MK and AH) v SSHD* [2012] EWHC 1896 (Admin) the Home Office amended its policy on dealing with applications for s4 accommodation on the basis of outstanding further submissions. All such applications must be decided within **5 working days**. Priority decisions must be decided within **2 working days**. The Home Office policy provides a non-exhaustive list of priority cases which includes: street homeless people; families with minors; disabled people; elderly people; pregnant women; people who have been subjected to torture, rape or other forms of serious sexual violence; potential victims of trafficking. If your client suffers a delay of longer than 5 working days (or 2 days in priority cases) you should consider making a complaint to the Home Office and/or to the Parliamentary Ombudsman and/or bringing judicial review proceedings.

**For further information on where someone might qualify for s4 support under regulation 3(2)(e) see Factsheet 12 – Section 4 and Human Rights.**