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Factsheet 6

## In this Factsheet:

- What are the s4 criteria?
- Balance of Probabilities
- Evidence For Destitution
- Evidence For All Reasonable Steps
- Evidence For Medical Impediment to Travel
- Evidence For Judicial Review
- Evidence For Human Rights

This Factsheet gives guidance on the evidence an applicant may be expected to provide to the Home Office or the First-Tier Tribunal (Asylum Support) in order to prove they are eligible for s4 support.

### What are S4 criteria?

Section 4 support is aimed at certain groups of “refused” asylum seekers, i.e. people whose claim for asylum or humanitarian protection has been refused and who have exhausted all of their appeal rights. To qualify for s4 support, the refused asylum seeker has to meet certain conditions. These conditions can be 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)).

Regulation 3 sets out the criteria. The refused asylum seeker must:

1. be **destitute**, or be likely to be destitute within the next 14 days (or 56 days if they are already receiving support); and
2. satisfy one of five conditions set out in regulation 3(2)(a)-(e):
  - a) That they are taking **all reasonable steps** to leave the UK;
  - b) That they are **unable to leave the UK** on account of a physical impediment to travel or some other medical reason;
  - c) That in the opinion of the Secretary of State there is no viable route of return to the person’s country of origin (this currently doesn’t apply to any country);
  - d) That the person has **made an application for Judicial Review** in relation to their asylum claim and, in England and Wales only, has been granted **permission to proceed**; or
  - e) That the provision of support is **necessary to avoid a breach of the person’s human rights** (this is usually, but not always, because they have made a fresh claim for asylum).

For more information on the s4 criteria, please see Factsheet 2.

### Balance of probabilities

In asylum support applications the burden of proof is on the applicant, to show that they meet the s4 criteria **on the balance of probabilities**. This means support will be granted if it appears more likely than not that they are eligible (i.e. there is more than a 50% chance).

## Suggested Evidence for Different Criteria

Evidence may be provided by the appellant with their s4 application, with the Notice of Appeal, in response to Directions from the Tribunal or in person on the day of the hearing. It is important that the evidence provided is consistent and does not contradict the appellant's own account given in the hearing, as this could affect the outcome of the appeal. The list below is not a comprehensive list and it may be necessary to provide more or less evidence depending on the circumstances.

### Regulation 3(1): Destitution

Please see Factsheet 5 – Proving Destitution.

### Regulation 3(2)(a): All reasonable steps

To qualify under this condition, the person must show they are taking **all** reasonable steps to leave the UK or place themselves in a position in which they are able to leave the UK. This means the Home Office can refuse support if they can point to one step the applicant is not taking that it would be reasonable for them to take. Whether or not a particular step is "reasonable" will depend on individual circumstances.

Reasonable steps might include:

- applying to the Home Office for voluntary departure;
- complying with the Home Office's re-documentation process (e.g. providing bio-data or attending an interview);
- asking the Home Office for assistance in obtaining a travel document;
- asking Immigration Services for assistance with returning when the person reports to the Home Office;
- contacting the relevant embassy (or embassies if nationality is disputed) to request a travel document;
- attending the embassy in person and requesting a travel document;
- completing an application form for a travel document;
- contacting the authorities or family members in their home country for help in obtaining identification documents
- attempting to track down family members or friends in the country of origin who could help with the process of re-documentation

**Evidence of Steps Taken:** It is very important for applicants to keep an account of all the steps they have taken to return. This could include copies of letters/faxes they have sent to their embassy, inventory of calls they have made to embassy, the Home Office, advice agencies, notes of conversations they had with immigration services, notes of visits to embassies and copies of travel tickets.

**Three Month Rule:** The Home Office have a policy of providing support for not

longer than three months under this condition. Support can be extended for another three months if the individual can show there is a 'barrier' to return. There is a special policy for Palestinians who, in many cases, can get support initially for six months with the possibility of a further six in 'exceptional' circumstances. However, support should always be re-instated on appeal if the person can show they are taking all reasonable steps, regardless of how long they have been on support.

### Regulation 3(2)(b): Physical Impediment to travel

The Home Office require medical evidence to show that a person is unable to travel. Normally, this would be a s4 Medical Declaration Form completed by a GP or NHS consultant. The form is available on the Home Office website at:

<https://www.gov.uk/government/collections/asylum-support-asylum-instructions>

The Home Office will reimburse up to £50 for the cost of completing the form. Invoices should be sent to the s4 team.

**AND/OR:** A recent letter on headed notepaper should be provided from the most relevant medical practitioner. The letter should cover the following:

- It is important that the practitioner states their name, qualifications and their involvement with the person applying for support. This will demonstrate that the person has assessed the person and is therefore able to decide whether they are able to travel.
- Details of the person's medical problems (physical or psychiatric).
- Whether these problems mean the person is unable to travel. This usually means whether the person is able to get on a plane. It is not enough to say that it is desirable that the person remains in the UK or that they need treatment. If a person is unable to travel this should be stated clearly i.e. "This person is unable to travel at this point because..."
- If relevant, a comment on whether a medical escort would make a difference to their ability to travel.
- Details of how long the person is likely to be unable to travel for.

### Regulation 3(2)(d): Judicial Review with permission

- A claim form, together with proof of issue; AND
- (In England and Wales) a copy of the High Court orders granting permission to proceed.
- **OR:** A letter or email from the solicitor explaining that the above steps were taken with relevant dates.
- Note that if a claim form has not yet been issued or permission granted, the applicant may still be eligible for s4 support under regulation 3(2) (e) – see below).

### Regulation 3(2)(e): Human Rights

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Under this condition, support can be provided where it can be shown that it is not reasonable to expect the individual to leave the UK and that they need support to avoid a breach of their human rights while they remain here. Refer to Factsheet 14 for more information on s4 human rights claims.

The following is a list of circumstances where the Home Office or the Tribunal have provided support on human rights grounds and suggestions for the evidence that could be submitted in such circumstances. **This is general guidance only:**

- Out of time appeals to the Asylum and Immigration Tribunal (AIT) (s4 is given until the AIT decide whether to admit the appeal or not). **Evidence:** Copy of Appeal Notice to the AIT and confirmation it has been submitted.
- Fresh representations have been submitted to the Home Office which contains some detail and don't simply repeat previously considered material. **Evidence:** Copy of fresh representations and evidence of submission e.g. confirmation that attended the Further Submissions Unit (FSU). Confirmation of an appointment to attend the FSU on a future date may be acceptable.
- The applicant is a failed asylum seeker who has an outstanding application for leave to remain under Article 8 (e.g. family in the UK, length of time in the UK or other ties to the UK) or an application to be recognised as a stateless person. **Evidence:** A copy of the application and proof it has been submitted or received by the Home Office.
- Judicial Review proceedings: Since late 2009, it is possible to get support if the applicant has started Judicial Review proceedings but has not yet got permission to proceed. **Evidence:** Copy of issued claim form or pre-action letter with proof of delivery or letter from solicitor.
- The applicant has a claim before the European Court of Human Rights (ECHR) relating to his/her right to remain in the United Kingdom. **Evidence:** Copy of application to the Court and any subsequent correspondence with the Court. Any Rule 39 requests or decisions. Evidence of exhaustion of domestic remedies, e.g. application to the High Court or letter from solicitor confirming remedy would have no prospects of success.
- The applicant needs to remain in the UK temporarily because of civil or criminal court proceedings or care proceedings. **Evidence:** Copy of court documents/solicitor's letter.
- The appellant has such serious psychological health problems that they are unable/lack the capacity to take the necessary steps to facilitate their departure from the UK. **Evidence:** Medical evidence of the condition and its impact on their lives and/or decision making.