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**What is section 98 support?**

People seeking asylum in the UK, who lack the means to support themselves, are entitled to support while the Home Office (HO) is processing their asylum application. This support is called s95 support (see Factsheet 1 for more information). Asylum-seekers must apply for s95 support using the Asylum Support Application Form (ASF1) and it can take several weeks for the HO to process this request.

Section 98<sup>1</sup> support is a form of temporary support that is provided to asylum-seekers who appear to be destitute and who have applied for s95 support and are awaiting a decision. It is also available to those who require support in advance of having been able to submit an ASF1.

Section 98 support is supposed to be provided for a short period. Generally it is a full-board HO hostel. However, in some locations, it is self-catering and cash is given to the asylum-seeker, in order to buy food. In both situations, it is referred to as initial accommodation (or IA).

**Who is eligible for section 98 support?**

Asylum-seekers and their dependants who appear to be destitute can access s98 support. Those who apply for asylum at port (at a point of entry to the UK) may be taken to IA immediately, if they lack the means to support themselves in the UK. For those already in the UK, they generally can only access s98 support after they have been to the Asylum Screening Unit (ASU) in Croydon, to lodge their asylum claim. This is known as the screening interview. There are some exceptions to this rule for those who are particularly vulnerable (see below). HO practices change over time, and s98 applications may be accepted from those who have an ASU appointment and a reference number.

For more information on the definition of an 'asylum-seeker' for support purposes see Factsheet 1.

Those who access s98 support will be required to apply for s95 support.

Refused asylum-seekers cannot apply for s98 support while they are awaiting a decision on their s4 support applications.

<sup>1</sup> Immigration and Asylum Act (IAA) 1999

### What is the destitution test?

Destitution is a prerequisite for accessing all types of asylum support in the UK. The test for destitution for s98 support is the same as that used to determine s95 applications, and is set out in s95(3) of the 1999 Act:-

*... a person is destitute if:*

- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or*
- (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs*

While the burden of proof is on the applicant to demonstrate destitution, the evidential requirements should be less than those in the s95 application. This is reflected in the wording of the 1999 Act where it states that s98 support should be provided to those 'who it appears to the Secretary of State may be destitute', while s95 support is provided to asylum seekers 'who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed'.

When applying the destitution test in s95 and s4 applications, it is necessary for the applicant to be destitute within 14 days.<sup>2</sup> However, with regard to s98 applications there is no specified time period. Therefore, the person must appear to be destitute at the point of application; not now or within the next 14 days.

Asylum-seekers may sometimes be advised that they must be street homeless to access s98 support. This is not the legal test and what constitutes adequate accommodation and essential living needs will vary depending on the particular circumstances of the individual. For more information on proving destitution see Factsheet 5.

### How can you access s98 support?

#### At the ASU

Asylum-seekers can request s98 support at their screening interview. If they intend to do that, it is essential to bring evidence of destitution, particularly if they have been supporting themselves in the UK for a significant period prior to claiming asylum.

An asylum-seeker does not need an appointment to go to the ASU if they are homeless. The HO website states: 'You don't need to make an appointment if you have nowhere to live - you can go to the screening unit from 7:30am to 4pm, Monday to Friday. Arrive early to make sure there's enough time to complete your screening.'<sup>3</sup> However, it is strongly recommended that the asylum-seeker brings

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<sup>2</sup> IAA 1999 s95(1) and Asylum Support Regs 2000 reg 7(a)

<sup>3</sup> <https://www.gov.uk/claim-asylum/screening> [accessed 23/11/18]

evidence of being street homeless (eg letter from a charity), to avoid the risk of being turned away.

### **Prior to the ASU appointment**

HO policy allows for the provision of s98 support for vulnerable destitute individuals, prior to their asylum claim being recorded, if they present to the HO 'out of normal office hours (17.30 to 09.00, and weekends and public holidays)'.<sup>4</sup> The HO policy states that they must then attend the ASU the next working day.

### **After having claimed asylum**

Section 98 support can be accessed at any point during the asylum application and appeal process, provided the destitution requirements listed above are met. To apply, use the '**Initial Accommodation Referral Form**', which can be found on the [ASAP's Resources for Clients and Advisers webpage](#). It is currently not on the HO website.

It is recommended that it is completed by an organisation specialising in asylum support, and preferably the organisation which is already helping the asylum-seeker. ASAP's website contains details of organisations which provide assistance with asylum support. If there is no such organisation helping the asylum-seeker, then Migrant Help should be contacted for assistance. The form is not designed for self-referrals.

The form can be printed out, filled in by hand, attaching additional information and evidence, and sent to [RoutingIAValidation@homeoffice.gov.uk](mailto:RoutingIAValidation@homeoffice.gov.uk). This is the team that used to be called the Gatekeeping team, and is now known as the IA Validation team. The team can be reached on **T: 0208 196 0791**.

HO policy states that a decision on a request for s98 support should be made 'before the end of the working day on which the application is received'.<sup>5</sup> In practice, applications need to be made before 3pm, to get a same day (not necessarily within office hours) response, unless there are exceptional circumstances. The asylum-seeker will be picked up by the HO's contractors at the referrer's office, or, if necessary, at another public building such as a police station, council office or library.

### **What evidence should be provided in support of the form?**

The form asks similar questions to the ASF1, for example proof as to why the asylum-seeker has to leave their current accommodation, details of financial information contained in their visa application (if they arrived on a visa) and for bank account details (and 6 months of statements). While it is advisable to provide as much as information as possible, it is not realistic or reasonable for all of this information to be available at this stage, and so this can be explained (eg state that bank statements have been requested). Mini statements and internet

<sup>4</sup> See section 1.1.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 7

<sup>5</sup> See section 1.1.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 7

statements will be accepted. A detailed personal statement from the applicant is recommended.

### **What happens if s98 support is refused?**

HO policy states that a refusal to grant access to IA will outline the reasons for the applicant's ineligibility.<sup>6</sup> In contrast to a refusal of s95 or s4 support, there is no right of appeal to the Asylum Support Tribunal. However, a re-consideration should be requested, reminding the HO of the destitution test. Decisions can often be reversed. The HO may also have made a mistake regarding the definition of an asylum-seeker, for example refusing support for someone who has an outstanding asylum appeal or who has had their further submissions accepted as a fresh claim (see Factsheets 2 and 12).

If the HO refuses to reconsider, after having been provided with sufficient information and a reminder of the statutory destitution test, then consider referring the applicant to a community care or public law solicitor for a judicial review. Common reasons for refusals are information on visa application contradicting information on the form (without an accompanying explanation), reduction in the cash that the person was recorded as having on entry to the UK (without evidence of how it was spent), issues over whether they have to leave their accommodation and misunderstandings regarding the status of the applicant.

### **Reasons why s98 support might be terminated**

The provision of s98 support ends on the day the person travels to their s95 accommodation.<sup>7</sup> If an asylum seeker fails to travel to their s95 accommodation this may result in the termination of the s98 support. HO policy states that reasons as to why the applicant failed to travel should be sought and if there is a reasonable explanation then travel to the s95 accommodation should be rearranged promptly.<sup>8</sup>

Section 98 support will come to an end if the HO refuses the asylum-seeker's application for s95 support. They will have a right of appeal against the refusal of s95 support, and if they are vulnerable (eg there are dependent children) then s98 support is likely to continue pending that appeal.

If an asylum-seeker receives a final decision on their asylum application while they are in s98 support they will be given a notice period to vacate the IA. These notice periods are equivalent to those given to asylum-seekers on s95 support (21 days if appeals rights exhausted and 28 days if granted leave to remain in the UK).

<sup>6</sup> See section 1.1.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 7

<sup>7</sup> See section 1.1.4 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 7

<sup>8</sup> See section 19.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 7

