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**This Factsheet deals with the support available to people whose claims for asylum are ongoing – Section 95 support (s95 support).**

### Background to s95 support

People seeking asylum are excluded from claiming mainstream welfare benefits and in most cases from working. They can access support in the form of housing and/or basic living expenses while in the UK through a scheme administered by the Home Office. This support scheme was set up by the Immigration and Asylum Act 1999 and provides two support packages – support for those whose asylum claims are ongoing and support for refused asylum seekers. Section 95 support is aimed at asylum seekers whose claims are ongoing, who are destitute or about to become destitute, and their dependents.

### Who is eligible for s95 support?

An 'asylum seeker', for support purposes, is a person who is over 18 years old who has made an asylum claim or a claim under Article 3 of the European Convention on Human Rights (ECHR). A person who has only made a claim for leave to remain on private or family life grounds (that is under Article 8 of the ECHR) will not be eligible for s 95 support, unless they have also made an asylum or Article 3 claim.

A 'dependant' can be a husband/wife/civil partner, an unmarried couple (if living together for more than 2 of the last 3 years), a child under 18, or a member of the household who is over 18 and is in need of care and attention due to disability (see ASAP Factsheet 11).

Asylum seekers who are under the age of 18 and arrive in the UK alone are not eligible for asylum support and should instead apply for support from Social Services.

### What is an ongoing asylum claim?

The claim must have been 'recorded'. This means the Home Office has recorded receipt of the asylum or human rights claim. If the claim is a first claim that is made at a point of entry to the UK (the airport or sea port for example) or at the Asylum Screening Unit in Croydon, then the claim will usually be recorded by the Home Office immediately. If a person has made a previous claim which was refused or withdrawn and is making a fresh asylum claim they will not usually be

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entitled to s95 support, but may be eligible for Section 4 support (s4 support) (see ASAP Factsheet 2 and 2 and ASAP briefing on claims that have been withdrawn).

The claim must not have been 'determined'. So, when the asylum seeker applies for s95 support, they must still be waiting for a final decision on their asylum claim either from the Home Office or the Immigration Tribunal (if they have appealed). If their claim has been refused and all appeals have been determined, they will not be eligible for s95 support, but they may be eligible for s4 support (see ASAP Factsheet 2 and 12). If an appeal is made late ('out of time') they will not be eligible for s95 support, but they may be eligible for s4 support (see ASAP Factsheets 2 and 12).

The Home Office must refuse support if the applicant did not claim asylum as soon as reasonably practical after their entry into the UK (usually 3 days). This is known as a 'Section 55' decision. However, support must still be granted if it is needed to avoid a human rights breach. This will usually be the case if the asylum seeker would be made destitute and street homeless without asylum support. Therefore, in practice, the Home Office do not make 'section 55' decisions when asylum seekers apply for both accommodation and financial support (see below).

#### What is the destitution test?

Asylum seekers are entitled to s95 support if they meet the destitution test. A person is 'destitute' if they do not have adequate accommodation or enough money to meet living expenses for themselves and any dependants now or within the next 14 days. The period of time is 56 days if the asylum seeker is already in receipt of support (See ASAP Factsheet 5).

#### What form does s95 support take?

Section 95 support can take the form of subsistence only (i.e. cash only support) or if the asylum seeker does have somewhere to stay pending their asylum claim, accommodation and subsistence support. Only a minority of people on s95 support apply for 'subsistence only' support. Asylum seekers are accommodated outside of London and the South East under the Home Office's dispersal policy. Accommodation can be provided in London in exceptional circumstances.

The level of cash support provided is a fixed rate which is significantly lower than income support levels. This is currently £37.75 per week per person (adults and children receive the same). Support is provided through a debit card called the ASPEN card. Additional payments are available in limited circumstances (see ASAP Factsheet 9).

The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct a time of publication, it should not be used as a substitute for legal advice. For client specific advice please contact ASAP

## What happens when the asylum claim is determined?

An asylum seeker will only be eligible for support whilst their asylum claim is being considered. If an asylum seeker's claim is refused and they have exhausted their appeal rights, s95 will stop after 21 days. There is no right of appeal to the Asylum Support Tribunal (AST) in this circumstance. However, they may become eligible for s4 support (see ASAP Factsheet 2 and 12).

The exception to this rule is when there is a dependant a child(ren) under 18 living in the household when the asylum claim is refused. In this circumstance, support will continue until the youngest child turns 18 or the family leave the UK. This exception does not apply to families whose first child is born after they exhaust their appeal rights.

If the asylum seeker has been granted leave to stay in the UK, their s95 support will end after 28 days. This is because they will usually become entitled to work and to claim mainstream benefits administered by the Department of Work and Pensions (DWP).

## Other reasons why support can be terminated

Support can be terminated while the asylum seeker is waiting for a decision on their asylum claim for a variety of reasons. This could be that the asylum seeker ceases to be destitute due to a new source of income or a change in circumstances which means that they no longer require support. But more commonly, support is withdrawn because an asylum seeker breaches the conditions of their support.

Some conditions are fixed by statute. For example support can be withdrawn for failing to provide information, abandoning accommodation without permission or concealing financial resources. In addition, each accommodation provider will have their own conditions or 'house rules'.

The conditions of support will be given to asylum seekers in writing when they get support. It is the asylum seeker's responsibility to get the conditions translated if necessary and ensure that they understand them.

## Appealing decisions to refuse or terminate support

If an asylum seeker is refused asylum support they can appeal to the AST. If support is discontinued, the asylum seeker can also appeal, unless the termination of support is because the asylum seeker's asylum case has been concluded.

If an asylum seeker does not wish to take up the offer of accommodation in a dispersal area, there is no right of appeal to the AST and the asylum seeker should seek urgent advice about a judicial review.

