

Covid-19 and asylum support

27th March 2020

Factsheet 20

In this Factsheet:

- Eligibility for asylum support for current and refused asylum seekers due to the Covid-19 pandemic

This Factsheet cover the changes in eligibility for asylum support as a result of Covid-19. It aims to be up to date as of 27/3/20.

Please refer to Factsheet 1 regarding s95 support, and Factsheets 2 and 12 regarding s4 support. For those who have never applied for asylum please refer to ASAP's Briefings: *Support for people on immigration bail* June 2019 and *Abonders and withdrawn asylum claims* May 2019. These Briefings explain how some categories of people may be eligible for Immigration Act 2016 sch 10 para 9 support rather than rather than s95 or s4 support (see section on sch 10 below). You can find all our Factsheets and Briefings on our [website](#).

Our telephone advice line

If you still have questions or need further information and advice after reading this factsheet, please contact our advice line on 020 3716 0283. It is open on Monday, Wednesday and Friday from 2pm to 4pm. Please note, this is a second-tier advice line. This means that we can give advice to other advice workers but not to individual clients.

Current asylum-seekers

All destitute asylum-seekers who are currently in the asylum system, and are not yet appeals rights exhausted, are entitled to s95 support. Due to the current Covid-19 pandemic, there has been a pause in face to face substantive asylum interviews. There are likely to be delays in initial decision-making and in asylum appeals taking place. Therefore people may remain entitled to s95 support for longer. On the other hand, some positive grants may be made more quickly, triggering the end of eligibility for s95.

Asylum-seeker in the process of becoming refused asylum-seekers

Those that do lose their asylum appeals should remain on support as, due to the current Covid-19 pandemic, it is impossible for them to leave the UK. However, at the time of writing, we understand that some are still receiving s95 discontinuation letters, which also state there is no right of appeal. It is correct that, if a person is appeals rights exhausted (ARE), then there is no right of appeal regarding the decision to the end their s95 support (IAA 1999 s103(2)). However, if they are possibly not ARE (check with their immigration solicitor) an appeal to AST should be lodged.

If they definitely are ARE, and no arguments can be made regarding that, then the AST has no jurisdiction to hear the appeal, and is likely to strike it out. Therefore, applications for s4 should be made as soon as clients become refused asylum-seekers, and without waiting for the s95 discontinuation letter. This advice will of course change when, and if, the government announces that support will not be discontinued to asylum-seekers and refused asylum-seekers during this current crisis.

Refused asylum-seekers

Those with outstanding fresh claims

The majority of refused asylum-seekers on s4 support have outstanding fresh claims (known as 'further submissions') as it has long been established that it is not reasonable to be expected to leave the UK when waiting for a decision on a fresh claim. This cohort's eligibility for s4 support is under Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regs 2005 reg 3(2)(e): *'the provision of support is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998'*. The breach relied on is ECHR Article 3 *'inhuman or degrading treatment'*, and the breach would be to be left destitute whilst in the UK.

On 18/3/20, the Further Submissions Unit in Liverpool was closed to face to face further submissions appointments and it is now possible to send the further submissions to an email address : CSUEC@homeoffice.gov.uk

Therefore, s4 eligibility will be created once the further submissions have been sent. In some cases, (as in pre-Covid-19 days) it can be argued that there is eligibility prior to lodging a fresh claim, for example when an expert report is pending. Contact ASAP to discuss individual cases.

However, given the current Covid-19 pandemic, it is not necessary to have an outstanding fresh claim, or even one in preparation, in order to be eligible for s4 support.

Those who do not have fresh claims

There will be s4 eligibility on several grounds:

- Reg 3(2)(a) *'taking all reasonable steps to leave the United Kingdom'*. If there are currently no reasonable steps that can be taken, as there are no flights to the applicant's home country, then all reasonable steps have been taken. In the current crisis, it is extremely unlikely that the Home Office will request that applicants apply to the Voluntary Returns Service (VRS), in readiness for when flights do start again. The Home Office VRS

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Communications and Engagement team put out an email on 20/3/20, stating that they cannot currently do 'assisted voluntary returns'. Notwithstanding the current legal arguments regarding reg 3(2)(a), unless clients do want to leave the UK when the Covid-19 pandemic is over, and flights resume, there is no need to rely on this ground (see below).

- Reg 3(2)(b) '*he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason*'.

To date, this has been taken to mean a physical impediment particular to the appellant (eg late stages of pregnancy or TB), which prevents them from taking the specific journey which would be required (usually a long haul flight). In the current Covid-19 pandemic, it is not possible to leave due to the 'other medical reason', which covers Covid-19.

Alternatively, if there are no flights to the applicant's country, then there is a '*physical impediment to travel*'.

- Reg 3(2)(c) '*he is unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available*'
Case law has established that, in order for this to apply, the Secretary of State has to have made a declaration. No such declaration has been made and therefore, currently, there is no eligibility under this ground.

- Reg 3(2)(e) '*the provision of support is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998*'.

This remains generally relevant, even if there is no outstanding fresh claim. Given that it is impossible to leave the UK, then to be denied support would be a breach of human rights.

ASAP suggests ticking the boxes relating to 3(2)(b) and 3(2)(e) on p25 of the ASF1 (the 2nd and the 5th box). Information relating to the individual's health (for example if they are high risk, should they catch Covid-19) can be added in the Additional Information section.

Directions Notice of the AST of 20/3/20

This Notice is attached to this Factsheet. The appeal did not proceed to a decision as the Home Office withdrew from the appeal. The appellant had applied for s4 support and did not have an outstanding fresh claim. ASAP is aware of another appeal, currently still outstanding, in which identical wording, regarding regs 3(2)(a), (b) and (e) has been used in the Directions Notice.

It is not yet known if this is the official position of all AST judges. However, in the meantime, appeal all negative decisions and make a referral to ASAP. And discuss with us on our advice line, or email us, if more urgent.

Schedule 10 support

The arguments regarding s4 eligibility equally apply to sch 10 applicants. The sch 10 application form (Bail 409) p23 reproduces the same five s4 eligibility criteria. Note that the ASAP briefings *Support for people on immigration bail June 2019* and *Absconders and withdrawn asylum claims May 2019* refer to the previous version of the Home Office's Immigration Bail policy. The latest version is 5.0, dated 28/2/20. Under this policy, those who can apply for s4 or s95 support *should not* apply for sch 10 support. The main groups who may be eligible for sch 10 are stateless applicants, Article 8 applicants and those with withdrawn asylum claims. The policy lists some of the relevant groups at p57.

The destitution test

It is necessary to be destitute, as defined by the statutory destitution test, to qualify for s4 or s95 support. In practice, the same test is used to qualify for sch 10 support. Due to the Covid-19 pandemic it is very likely to be the case that a much wider test should be used. There are clearly several very strong arguments regarding vulnerability (of everyone), the need to have a home, and public health.



**FIRST-TIER TRIBUNAL
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Appeal Number :
Home Office Ref. :
Appellant's Ref. :

Date:

IMMIGRATION AND ASYLUM ACT 1999
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(SOCIAL ENTITLEMENT CHAMBER) RULES 2008

Tribunal Judge _____
Appellant (s) _____
Respondent Secretary of State _____

DIRECTIONS NOTICE

In accordance with Rule 6 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the Rules) I direct as follows:

1. The Respondent is alerted that the preliminary issue of barring her from taking further part in these proceedings by application of Rules 8(3)(c) and 8(7)(a) will be considered by this Tribunal **on the papers** on the basis that she has no reasonable prospect of success by way of her decision of 10 March 2020 being upheld.
2. This is by application of Regulation 3(2) of the Immigration and Asylum (provision of accommodation to failed asylum seekers) Regulations 2005 during the current Covid-19 pandemic, namely
 - a. the appellant currently satisfies Regulation 3(2)(e). The denial of his support amounts to a breach of his ECHR rights as he cannot be expected to take steps to leave the UK to avoid his destitution: during the current Covid-19 pandemic international air travel is unavailable and social isolation has been imposed but for emergency services;
 - b. in the alternative, the appellant satisfies Regulation 3(2)(a): during the current Covid-19 pandemic there are no reasonable steps he can take to leave the United Kingdom;

- c. in the alternative, the appellant satisfies Regulation 3(2)(b): he is unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason namely the current Covid-19 pandemic.
3. The Respondent has a right to make representations on this subject and is accordingly invited to write to the Tribunal before **noon on Wednesday 25 March 2020** setting out her position, contrary to the preliminary assessment set out in paragraph 2 above.
4. The matter to be returned to a Tribunal Judge on or after noon on **Wednesday 25 March 2020** to determine the matter on the papers in accordance with Direction 1 above or to issue further directions for substantive determination of the matter.

Signed:
Tribunal Judge Asylum Support

Dated: 20.03.2020

Warning: any failure to comply with these directions may result in the case being struck out under Rule 8. However, directions are issued to assist the parties and, if you are unable to provide all of the evidence that has been asked for, you should still attend any listed hearing.

Any party is entitled to apply for directions, but must give reasons for doing so. They are also entitled to challenge any of these directions by applying for another direction which amends, suspends or sets them aside.

In considering requests for directions, the Tribunal will have regard to the overriding objective of dealing with cases fairly and justly as required by Rule 2. This includes the timely disposal of appeals.