

24<sup>th</sup> June 2024

Factsheet 1

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**The information contained in this Factsheet is intended for guidance only.**

**While every effort is made to ensure it is correct at the time of publication, it should not be used as a substitute for legal advice. For client specific advice please contact ASAP**

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

**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 Mondays, Wednesdays and Fridays 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.

**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 (HO). 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 (s95) support allows asylum-seekers who are destitute or about to become destitute, and their dependants, to get support from the HO whilst their claim is ongoing.

**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 s95 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 HO 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 an Asylum Screening Unit, then the claim will usually be recorded by the HO 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 entitled to s95 support, but may be eligible for Section 4 support (s4 support) or Schedule 10 support (sch10 support)([see ASAP Factsheet 2 and Factsheet 10](#) and ASAP [briefings](#) on claims that have been withdrawn and sch10 support).

The claim must not have been 'determined'. So, when the person applies for s95 support, they must still be waiting for a final decision on their asylum claim either from the HO or the Asylum and 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') to the Asylum and Immigration Tribunal they will not be eligible for s95 support, but they may be eligible for s4 support (see [ASAP Factsheets 2 and 12](#)).

If the HO is in the process of deciding whether to admit the person's asylum claim to the UK system under the inadmissibility rules, they remain an asylum-seeker and may be entitled to s95 support. Their asylum claim is 'determined' if the HO decides to treat it as inadmissible so they will no longer be eligible for s95 support but may be eligible for s4 support (See [ASAP Factsheet 2 and 12](#)).

The HO must refuse support to applicants with no dependent children if they 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<sup>1</sup>. However, support must still be granted if it is needed to avoid a human rights breach. This will usually be the case if the person would be made destitute and street homeless without asylum support. Therefore, in practice, the HO does *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 for asylum support purposes if they do not have adequate accommodation or enough money to meet essential living needs for themselves and any dependants now or within the next 14 days. If someone is already receiving asylum support, the destitution test period is extended to 56 days. ([See ASAP Factsheet 5](#)).

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<sup>1</sup> Section 55 of Nationality, Immigration and Asylum Act 2002: caseworker guidance

## What form does s95 support take?

S95 support can take the form of subsistence only (i.e. cash only support) if the asylum-seeker has somewhere to stay while their asylum claim is being decided but needs financial support for essential living needs. Only a minority of people on s95 support apply for subsistence only support. S95 support can also be provided through accommodation *and* subsistence (cash) support.

Asylum-seekers who are accommodated in self-catered accommodation are generally housed outside of London and the South East of England under the Home Office's dispersal policy. Accommodation can be provided in London in exceptional circumstances, as set out in the [Allocation of accommodation policy](#). For people in self-catered accommodation, the level of cash support is currently £49.18 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 current rates of asylum support can be found on the gov.uk website [here](#).

S95 support can also be provided in full board accommodation. Partly due to the pandemic, there has been an increased and widespread use of full board facilities, with many people remaining in these facilities for long periods. Those that have been assessed as eligible to receive s95 support, who are being supported in full board accommodation, should receive £8.86 per week per person for clothing and travel needs provided through an ASPEN card. Full board accommodation is typically provided in hotels and sometimes in larger accommodation centres, such as ex-MOD sites and on a large barge..

At the time of writing, people who have successfully applied for s95 accommodation and subsistence from private accommodation are not actually moved to HO accommodation unless they make further contact with Migrant Help after the grant to request accommodation. Request urgent accommodation. The accommodation provided will likely be in hotel or hostel-style property in a range of areas across the UK and will generally be allocated on a 'no choice basis'.

If they are in private accommodation and have been granted s95 accommodation and subsistence, they should begin receiving subsistence payments upon grant, in advance of being moved into HO accommodation. In the past people were only given subsistence payments upon moving into dispersal accommodation. This policy change is outlined in the [Allocation of asylum accommodation policy](#). The HO have advised this policy change is an outcome of the pressures on asylum support accommodation and is under review.

## 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 generally no right of appeal to the Asylum

Support Tribunal (AST) in this circumstance<sup>2</sup>. However, it may be arguable that there is a right of appeal if their support has been terminated prematurely i.e. the HO has made a mistake and they still have an outstanding asylum appeal. If the asylum claim has been fully determined, they may become eligible for s4 support (see [ASAP Factsheet 2 and 12](#)).

The exception to this rule is when there is a dependent child(ren) under 18 living in the household when the asylum claim is fully determined<sup>3</sup>. In this circumstance, s95 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.

### **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. See our briefing the Effect of Income on asylum support for more information on working as asylum 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 HO 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 a person is refused asylum support they can appeal to the AST. If support is discontinued, the person can also appeal, unless the termination of support is because the person's asylum claim has been fully determined. See [ASAP factsheet 3 and 4](#).

If a person 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 person should seek urgent advice about a judicial review.

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<sup>2</sup> Immigration and Asylum Act 1999 s103

<sup>3</sup> Immigration and Asylum Act 1999 s94(5)

