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Factsheet 17

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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 looks at emergency temporary support for asylum-seekers who are destitute - Section 98 support (s98)

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.

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 Section 95 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, or sometimes months, for the HO to process this request.

Section 98¹ (s98) support is a form of temporary support that is provided to asylum-seekers who appear to be destitute and have either applied for s95 support and are awaiting a decision, or those who require support in advance of making a s95 application.

S98 support is supposed to be provided for a short period. Support is usually in the form of full-board at a Home Office hostel/hotel, and no financial support would be received. However, in some locations, it is self-catering and cash is given to the asylum-seeker in order to buy food.

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 s98 accommodation 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 had their screening interview (see below). This may be at Asylum Screening Unit (ASU) in Croydon or at a regional asylum registration location.

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 Section 4 (s4) support applications.

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.² 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.

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

¹ Immigration and Asylum Act 1999 s98

² Immigration and Asylum Act 1999 s95(1) and The Asylum Support Regulations 2000 reg 7(a)

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 always need an appointment to go to the ASU if they are homeless. The [Gov.uk website](#) states: 'If you have nowhere to live you'll still need to call the asylum intake unit appointments line. They'll call you back and you may be told to attend a screening appointment or to go to a 'walk-in' service at an asylum registration location'. It is strongly recommended that the asylum-seeker brings evidence of destitution to avoid the risk of being turned away from the "walk-in" service.

Prior to the ASU appointment

In general, it will be difficult for asylum-seekers to access s98 support prior to their screening interview. Most applicants will have their s98 application refused and be asked to attend their local screening unit or the ASU in Croydon. S98 applications may be accepted from those who have an ASU appointment and a reference number if there are additional vulnerabilities, and underlying circumstances, which HO are made aware through local authorities or other agencies prior to screening interview. Despite this, accessing s98 support prior to screening interview would require a huge amount of advocacy, and be accepted in very limited circumstances.

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)'³. The HO policy states that they must then attend the ASU the next working day.

After having claimed asylum

S98 support can be accessed at any point during the asylum application and appeal process, provided the destitution requirements listed above are met. To apply asylum-seekers should contact MH to apply for s98. This can be done by calling MH on 0808 8010 503 or via the webchat or online enquiry form.

An organisation helping an asylum-seeker apply for s98 can 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. This can be sent directly to the HO at

³ See section 1.1.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 10

RoutingIAValidation@homeoffice.gov.uk . Advisors can also contact MH via s98@migranthelpuk.org to request a call back to complete a s98 application.

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.

[HO policy](#) states that a decision of a request for s98 support should be made 'before the end of the working day on which the application is received'⁴. 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 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 ineligibility⁵. 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. If considering a judicial review, it will be important to have

⁴ See section 1.1.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 10

⁵ See section 1.1.1 of the Home Office Policy 'Asylum Support: Policy Bulletins Instructions', version 10



the decision in writing from Migrant Help. 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.