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Factsheet 1

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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 dependants.

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 an Asylum Screening Unit, then the claim will usually be recorded by the Home Office immediately.

ASAP

Factsheet 1

Section 95

Support

If a person has made a previous claim which was refused or withdrawn and is making a fresh asylum claim they will not usually be entitled to s95 support but may be eligible for Section 4 support (s4 support) or Schedule 10 support (sch 10 support)(see ASAP Factsheet 2, Factsheet 10 and ASAP briefings on claims that have been withdrawn and sch 10 support).

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 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') they will not be eligible for s95 support, but they may be eligible for s4 support (see ASAP Factsheets 2 and 12).

Whilst the Home Office is deciding whether to admit the person's asylum claim to the UK system under the inadmissibility rules¹, they remain an asylum seeker and may be entitled to s95 support. Their asylum claim is 'determined' if the Home Office 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 Home Office 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. 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 essential living needs 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 Home Office 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.

¹ See Immigration Rule 345A-D and s16 Nationality and Borders Act 22 which will come into force on 28 June 2022.

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Asylum seekers who are accommodated in self-catered dispersal accommodation are accommodated outside of London and the South East of England under the Home Office's dispersal policy². Accommodation can be provided in London in exceptional circumstances. For those in this type of accommodation the level of cash support provided is currently £40.85 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).

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 individuals 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 £8.24 per person for clothing and travel needs provided through the ASPEN card. Full board accommodation can either be in hotels or in larger "accommodation centres"³.

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 dependent 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.

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

² In April 2022, the Home Office announced a move to a "full dispersal model". At the time of writing it is unclear whether this means a reversal of the long-standing position regarding dispersing asylum seekers away from London and the South East of England.

³ At the time of writing this sort of support is provided at Napier Barracks, with a second site being prepared at Linton-on-Ouse.

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.