

Covid-19 and asylum support

17th April 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 17/4/20.

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for asylum please refer to ASAP's Briefings: *Support for people on immigration bail* June 2019 and *Abonders and withdrawn asylum claims* May 2019.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. The situation is fast-changing. At the time of writing, the Home Office (HO) has agreed not to discontinue support to those on s95 and s4 support. The British Red Cross, the Refugee Council and Refugee Action all aim to have up to date information on, or via, their websites.

The HO has stated that newly refused asylum-seekers, whose eligibility for s95

support has therefore ceased, will be transferred to s4 support. Therefore, instead of receiving s95 discontinuation letters, this group should be informed that they are being transferred to s4 support. In the event that a discontinuation letter is sent out, consideration must urgently be given to whether an appeal should be lodged, in addition to challenging the HO on not following its stated policy.

Contact ASAP regarding appealing the s95 discontinuation decision, as this is not straightforward. Generally, there is no right of appeal if a person's appeals rights are exhausted (ARE) regarding the decision to the end of 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 may strike it out. Alternatively, given current circumstances, it may grant s4 support.

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'*.

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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 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. So far as ASAP is aware, the HO is no longer refusing s4 applications on the basis of no reg 3(2) eligibility. Almost all appeals currently listed at the AST are appeals of 'not destitute'

decisions. See below regarding destitution.

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. It is necessary to be unable to house and feed oneself for at least the next 14 days.¹

The HO continues to assess destitution on receiving new applications for s4 and s95 support, and is making a small number of 'not destitute' decisions. Therefore, it is important that ASF1s are completed as carefully and accurately as possible, with details and evidence of destitution attached.²

Under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 No 350³, reg 5(4)(a)(ii), hotels, hostels etc are able to stay open, and provide accommodation to those who use it 'as their main residence'. Therefore, if an asylum-seeker has sufficient resources and access to those resources, there is no legal barrier to going to a hotel. Under reg 6(1) 'no person may leave the place where they are living without reasonable excuse', but, this does not apply to the homeless (reg 6(4)). In any event, looking for somewhere to live would be a 'reasonable excuse'.

However, there are strong public health arguments as to why people should not be putting themselves and others at risk by seeking accommodation. This is particularly the case with the medically vulnerable. It is ASAP's understanding that, for the time being, the HO will not evict asylum-seekers from s98 accommodation,⁴ even if they lose their asylum support appeals. But it is preferable, for the asylum-seeker, to establish destitution and an entitlement to asylum support, separate from covid-19 arguments.

¹ See ASAP Factsheets 1,2 and 5

² See ASAP briefing, [Covid-19 AST procedure](#) 17/4/20

³ The equivalent regs for Scotland are no 103, and for Wales no 80. In Wales, there more restrictions on who hotels can remain open for.

⁴ See ASAP Factsheet 17



**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.