

30/07/2021

Factsheet 6

## In this Factsheet:

- What are the s4 criteria?
- Balance of Probabilities
- Evidence For Destitution
- Evidence For All Reasonable Steps
- Evidence For Medical Impediment to Travel
- Evidence For Judicial Review
- Evidence For Human Rights

This Factsheet gives guidance on the evidence an applicant may be expected to provide to the Home Office or the First-tier Tribunal (Asylum Support) in order to prove they are eligible for s4 support.

### What are the s4 criteria?

Section 4 support is aimed at certain groups of “refused” asylum-seekers (i.e. people whose claim for asylum or humanitarian protection has been refused and exhausted their appeal rights). To qualify for s4 support, the refused asylum-seeker has to meet certain conditions. These conditions can be found in the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 ([www.opsi.gov.uk/si/si2005/20050930.htm](http://www.opsi.gov.uk/si/si2005/20050930.htm)).

Regulation 3 sets out the criteria. The refused asylum-seeker must:

1. be **destitute**, or likely to be destitute within the next 14 days (or 56 days if they are already receiving support); and
2. satisfy one of five conditions set out in regulation 3(2)(a)-(e):
  - a) That they are taking **all reasonable steps** to leave the UK;
  - b) That they are **unable to leave the UK** on account of a **physical impediment to travel** or some other **medical reason**;
  - c) That in the opinion of the Secretary of State there is **no viable route of return** to the person’s country of origin (currently this doesn’t apply to any country);
  - d) That the person has **made an application for Judicial Review** in relation to their asylum claim and, in England and Wales only, has been granted **permission to proceed**; or
  - e) That the provision of support is **necessary to avoid a breach of the person’s human rights** (this is usually, but not always, because they have made a fresh claim for asylum).

For more information on the criteria, please see *Factsheet 2 – Section 4 Support*.

### Balance of probabilities

In asylum support applications the burden of proof is on the applicant, to show that they meet the s4 criteria **on the balance of probabilities** (i.e. there is more than a 50% chance).

ASAP

Factsheet 6

Section 4

Evidence

## Suggested Evidence for Different Criteria

An appellant may submit evidence at various stages of the s4 process: with their s4 application, with the Notice of Appeal, in response to Tribunal Directions or in person on the day of the hearing or by email prior to a remote hearing. All evidence provided must be **consistent** and not contradict the appellant's oral account given in the hearing. Please note that the guidance below is not exhaustive; it may be necessary to provide more or less evidence, depending on the circumstances of a specific case.

### Regulation 3(1): Destitution

Please see *Factsheet 5 – Proving Destitution*.

### Regulation 3(2)(a): All reasonable steps

To qualify under this condition, a person must show they are taking **all** reasonable steps to leave the UK or place themselves in a position in which they are able to leave the UK. This means the Home Office may refuse support if they can point to a single reasonable step which has not been taken. Whether or not a particular step is "reasonable" will depend on individual circumstances.

Reasonable steps might involve:

- applying to the Home Office for voluntary departure;
- complying with the Home Office's re-documentation process (e.g. providing bio-data or attending an interview);
- asking the Home Office for assistance in obtaining a travel document;
- asking Immigration Services for assistance with returning when the person reports to the Home Office;
- contacting the relevant embassy (or embassies if nationality is disputed) to request a travel document;
- attending the embassy in person and requesting a travel document;
- completing an application form for a travel document;
- contacting the authorities or family members in their home country for help in obtaining identification documents;
- attempting to track down family members or friends in the country of origin who could help with the process of re-documentation.

**Evidence of Steps Taken:** Applicants must retain written evidence of all the steps they have taken to leave the UK. This could include copies of letters/faxes they have sent to their embassy, an inventory of calls they have made (e.g. to their embassy, the Home Office, advice agencies etc.), notes of conversations they have had (e.g. with their embassy, voluntary departure team, immigration services etc.), notes of any visit to their embassy or Home Office interview and copies of travel tickets.

**Three Month Rule:** As a general rule, the Home Office expects a person receiving

## ASAP

### Factsheet 6

#### Section 4

#### Evidence

support under reg 3(2)(a) to leave the UK within 3 months. Therefore the policy provides that support should be discontinued after 3 months unless the person provides satisfactory evidence why they have not left the UK (p.10 [Asylum support, s4\(2\): policy and process](#)). Certain nationalities may be required to follow more complex or time-consuming procedures (for example see [AS/12/11/29199](#) for the Principal Judge's guidance on what steps a Palestinian can reasonably be expected to take) which can be evidenced if eligibility is reviewed. However, irrespective of what country a person is from, support should always be re-instated on appeal if they can show they are currently taking all reasonable steps to leave the UK, regardless of how long they have been on support.

### Regulation 3(2)(b): Physical Impediment to travel

The Home Office require medical evidence to show that a person is unable to travel. Normally, this is via a **s4 Medical Declaration Form** completed by a GP or NHS consultant. This is available here:

<https://www.gov.uk/government/publications/section-42-medical-declaration> The Home Office will reimburse up to £50 for the cost of completing the form<sup>1</sup>, and invoices should be sent to the s4 team.

**AND/OR:** A recent letter on headed notepaper should be provided from the most relevant medical practitioner. The letter should cover the following:

- The practitioner's name, qualifications and involvement with the patient (this will demonstrate that the practitioner has assessed the person and is well placed to determine if they are able to travel).
- Details of the person's medical problems (physical or psychiatric).
- Whether these problems make the person unable to travel (this usually means whether they are able to get on a plane; stating that it is desirable for a person to receive treatment in the UK is insufficient, and if a person is unable to travel this should be stated clearly i.e. *"This person is unable to travel at this point because..."*).
- If relevant, a comment on whether a medical escort would make a difference to their ability to travel.
- Details of how long the person is likely to be unable to travel for.

### Regulation 3(2)(d): Judicial Review with permission

- A claim form, together with proof of issue; AND
- (In England and Wales) a copy of the High Court order granting permission to proceed.
- **OR:** A letter or email from the solicitor explaining that the above steps were taken with relevant dates.
- If a claim form has not yet been issued or permission granted, the applicant

---

<sup>1</sup> The fee is only reimbursed after the form has been submitted.

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

may still be eligible for s4 support under regulation 3(2) (e) – see below).

### Regulation 3(2)(e): Human Rights

Support can be provided if it is unreasonable to expect the individual to leave the UK and that they need support to avoid a breach of their human rights while they remain here. For more information on s4 human rights claims see *Factsheet 12 – Breach of Human Rights and S4*.

The following is a list of circumstances where the Home Office or the Asylum Support Tribunal (AST) have provided support on human rights grounds and suggestions for the evidence that could be submitted in such circumstances. **This is general guidance only:**

- Out of time appeals to the Asylum and Immigration Tribunal (AIT) (s4 is given until the AIT decide whether to admit the appeal or not). **Evidence:** Copy of Appeal Notice to the AIT and confirmation it has been submitted.
- Fresh representations have been submitted/or will be imminently submitted to the Home Office which contains some detail and do not simply repeat previously considered material. **Evidence:** Copy of fresh representations and evidence of submission e.g. automatic response from CSUEC inbox or proof of postage. Evidence that an appointment at the Further Submissions Unit in Liverpool or Glasgow has been booked.<sup>2</sup> If the submission have not yet been lodged then evidence as to why the delay in submitting is outside the applicant's control, as well as evidence that the further representations will raise a new, relevant matter. For example evidence that a person is waiting for a medical or expert witness report to be completed; or for legal aid to be granted; where new evidence exists but covid restrictions or digital poverty prevent the person from getting that evidence (ie they cannot contact people for want to internet access/telephone credit, or movement restrictions prevent them/others from getting this evidence); where they have been unable to get legal representation to help them prepare a claim which otherwise exists. This is not an exhaustive list. However, in all cases people will need to show that their case has merit and provide evidence that these obstacles exist.
- The applicant is a failed asylum-seeker who has an outstanding application for leave to remain under Article 8 (e.g. family in the UK, length of time in the UK or other ties to the UK) or an application to be recognised as a stateless person. **Evidence:** A copy of the application and proof it has been submitted or received by the Home Office.
- Judicial Review proceedings: It is possible to get support if the applicant has started Judicial Review proceedings but has not yet got permission to proceed. **Evidence:** Copy of issued claim form or pre-action letter with proof

<sup>2</sup> From the 2nd August 2021 the Home Office will be reverting to the system whereby further submissions must be made in person at the Further Submissions Unit. The in-person requirement will only be waived in exceptional circumstances. For more details see Para 3.3 of the further submissions policy: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/502334/Further\\_Submissions\\_API\\_v9\\_0\\_EXT.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/502334/Further_Submissions_API_v9_0_EXT.pdf)



of delivery or letter from solicitor.

- The applicant has a claim before the European Court of Human Rights (ECHR) relating to his/her right to remain in the United Kingdom. **Evidence:** Copy of application (individuated and fully reasoned) to the Court and any subsequent correspondence with the Court. Any Rule 39 requests or decisions. Evidence of exhaustion of domestic remedies, e.g. application to the High Court or letter from solicitor confirming remedy would have no prospect of success. Indication of imminent risk of serious and irreparable damage if removed to country of origin (see [AS/11/04/26681](#)).
- The applicant needs to remain in the UK temporarily because of civil or criminal court proceedings or care proceedings. **Evidence:** Copy of court documents/solicitor's letter.
- The appellant has such serious psychological health problems that they are unable/lack the capacity to take the necessary steps to facilitate their departure from the UK. **Evidence:** Medical evidence of the condition and its impact on their lives and/or decision making.