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Factsheet 2

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**This Factsheet looks at Section 4 Support for Refused Asylum Seekers – those who have come to the end of the asylum process, have been refused asylum and exhausted all appeal rights.**

### What is Section 4 Support?

Section 4 of the Immigration and Asylum Act 1999, allows for the provision of support to refused asylum seekers. The UK Border Agency (UKBA) gives support to refused asylum seekers who are destitute and meet a narrow set of criteria outlined below. This support consists of accommodation and £35.39 a week via a payment card with no cash support.

Dependents of refused asylum seekers who are under 18 may also qualify for section 4 support if they were born after the asylum seeker had come to the end of the asylum process and exhausted all appeal rights. Refused asylum seekers with children born before their claim was fully determined continue to be considered as asylum seekers for support purposes until their youngest child turns 18, so qualify for section 95 support.

### What are the Eligibility Criteria for Section 4 Support?

To qualify for section 4 support, a former asylum seeker has to meet certain conditions 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) (the **Regulations**).

They must:

- be destitute, or be likely to be destitute within the next 14 days (or 56 days if they are already receiving support); and
- satisfy one of the five conditions set out in regulation 3(2) (a)-(e) of the Regulations (see below).

### Burden of Proof

The burden of proof is on the applicant to prove “on the balance of probabilities” that they qualify. This means the UKBA will usually require evidence of destitution and that the applicant satisfies one of the five conditions. Those refused support can appeal to the First Tier Tribunal (Asylum Support) (See Factsheet 3 Appealing to the Support Tribunal).

## What is the Destitution Test?

The applicant must first show that they are destitute or are likely to become destitute within 14 days. A person is “**destitute**” if they do not have adequate accommodation or do not have enough money to meet their living expenses for themselves and any dependants. See Factsheet 5 Proving Destitution.

## Second Stage Test for Section 4 Eligibility

Having established that they are destitute, a former asylum seeker must then show they meet one of the five conditions in Regulation 3(2)(a)-(e)

- S/he is taking all reasonable steps to leave the UK or place her/himself in a position in which s/he is able to leave the UK
- S/he is unable to leave the UK because of a physical impediment to travel or for some other medical reason
- No viable route of return
- S/he has applied for judicial review of the decision on her/his asylum claim and s/he has been granted permission to proceed
- The provision of accommodation is necessary to avoid breaching a person’s human rights

## 3(2)(a) All Reasonable Steps

To qualify under this condition, the refused asylum seeker must show they are taking **all** reasonable steps to leave the UK. This means the UKBA can refuse support if they can point to one step the appellant is not taking that it would be reasonable for them to take. Whether or not a particular step is “reasonable” will depend on the applicant’s circumstances. Usually, applicants will be expected to apply for voluntary return with Refugee Action – Choices.

**Important note:** Refused asylum seekers should be advised that making an application to return voluntarily could impact on any future fresh asylum claims. For this reason, they should seek independent advice before making an application to return voluntarily.

## 3(2)(b) Physical Impediment to Travel

A destitute former asylum seeker will qualify under this condition if they can show that they are unable to travel due to a physical or mental health problem. It is **not** enough for the applicant to show he/she is receiving treatment in the UK or to have a doctor’s opinion that it would be preferable if they did not travel. They must have a medical condition which makes them **unable** to travel. Evidence is required so written documentation should be obtained from a medical practitioner specifically stating the individual is unable to travel, the reason and when they are likely to be able to travel. The medical adviser should complete the “Section 4 Medical Declaration” form on the UKBA’s website.

### **Pregnancy**

UKBA's policy is that women in the late stages of pregnancy (around six weeks before their expected due date, or earlier if there have been complications), or those with a baby under six weeks old, are accepted as being unable to travel. In some cases the Tribunal has awarded support to a pregnant woman earlier than six weeks before her due date. Contact ASAP for further information.

### **3(2)(c) No Viable Route of Return**

This condition only applies to a country for which the Home Secretary has stated that she does not consider there to be a viable route of return. There is currently no country which this applies to.

### **3(2)(d) Application for Judicial Review**

If a person wishes to judicially review a decision on their asylum claim they must first apply to the High Court for permission to proceed. Once the High Court has granted them permission, they will be eligible for support under this condition. Where judicial review proceedings have been started (for example a pre-action protocol letter has been sent or a claim form has been issued) but the judge has not yet granted permission for the case to proceed, the applicant may still be eligible for support on human rights grounds under regulation 3(2)(e).

### **3(2)(e) Human Rights Breach**

Support must be provided if the refused asylum seeker's rights under the European Convention of Human Rights (ECHR) would be breached otherwise. In section 4 cases, the two provisions that are most likely to be relevant are: Article 3 (which prohibits torture and inhuman and degrading treatment), and Article 8 (which protects private and family life). Article 5 (right to liberty) and Article 6 (right to a fair trial) may also be relevant.

The courts have found that denying support to asylum seekers whose claims are outstanding, and would be faced with street homelessness, would constitute "inhuman and degrading treatment". This is prohibited under Article 3 of the ECHR. Separating a family by denying some members support could also breach Article 8, which protects private and family life. This also applies to refused asylum seekers, provided it would not be reasonable to expect them to leave the UK. For advice on whether it is reasonable to leave the UK, contact ASAP's Advice Line.

### **Fresh Representations**

Many former asylum seekers qualify for section 4 support under regulation 3(2)(e), because they have fresh claims outstanding. This is when a refused asylum seeker has new evidence or arguments they would like the UKBA to consider as part of a fresh claim for asylum or humanitarian protection. Once these are submitted to the UKBA, they may be entitled to section 4 support on human rights

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grounds.

The UKBA accept that it would not be reasonable to expect a refused asylum seeker to leave the UK where:

- they have submitted further representations;
- The UKBA have not yet decided on whether to record the representations as a fresh claim;
- The representations “do not simply rehearse previously considered material or contain no detail whatsoever”.

### New Policy on Fresh Representations

Since October 2009, the UKBA requires anyone wishing to make further submissions to book an appointment to visit UKBA in person to hand them in. Those who claimed asylum under the New Asylum Model (i.e. after 5 March 2007) must visit their local reporting centre. Those who claimed asylum before 5 March 2007 must book an appointment and travel in person to the Further Submissions Unit in Liverpool.

The UKBA has said that applications for section 4 support will not be considered until a decision had been made on those submissions. However, if the decision is delayed beyond 15 working days, the UKBA will process the section 4 application. This means that applicants who have submitted fresh representations in accordance with the new policy may have to wait three weeks before their section 4 application is processed. As an appeal can only be made to the Tribunal after the UKBA have made a decision on support, the only way to challenge this delay is by judicial review. For more information on judicial review, see Factsheet 9

The Tribunal has been willing to grant support on human rights grounds where the person has prepared fresh representations and has an appointment to attend the FRU and submit them on a future date. This is because the applicant has done all that s/he reasonably can to submit the fresh representations. **For other situations where someone might qualify for section 4 support under regulation 3(2)(e) see Factsheet 10.**