



## Asylum Support and Section 17

**Section 17 support** (accommodation and subsistence) is available from the local authority to families with children in need.

**Section 95 support** (accommodation and subsistence) is available from the Home Office for destitute asylum seekers with ongoing claims and their dependents.

**Section 4 support** (accommodation and subsistence) is also available from the Home Office for some destitute refused asylum seekers who have come to the end of their appeals process, are Appeal Rights Exhausted (ARE) and meet the narrow criteria set by the Home Office.

For destitute families with NRPF who have been, or are going through the asylum process, it is not always clear whether they are eligible for support under Section 17 or from the Home Office. This factsheet will explain how Section 17 interacts with asylum support and whether Section 17 is available to those who may also be eligible for asylum support.

To find out more about eligibility for Asylum Support please see factsheets produced by Asylum Support Appeals Project.<sup>1</sup>

### Section 95 Asylum Support.

**If a family is entitled to support under section 95 Immigration and Asylum Act 1999, then they are excluded from accessing support under section 17 Children Act 1989.**

Section 122 of the Immigration and Asylum Act 1999 prohibits social services from providing accommodation and financial subsistence to those who are entitled to section 95 asylum support.

Section (5): No local authority may provide assistance under any of the child welfare provisions in respect of a dependant under the age of 18, or any member of his family, at any time when—

- (a) the Secretary of State is complying with this section in relation to him; or
- (b) there are reasonable grounds for believing that—
  - (i) the person concerned is a person for whom support may be provided under section 95; and
  - (ii) the Secretary of State would be required to comply with this section if that person had made an application under section 95.<sup>2</sup>

If a family is already in section 17 support and makes an asylum application, social services should not consider terminating support until an individual has officially lodged their asylum claim at their initial

<sup>1</sup> <https://www.asaproject.org/resources/library/support-for-asylum-seekers>

<sup>2</sup> Section 122 of the Immigration and Asylum Act 1999

screening interview. In practice, however, social services may still attempt to discharge duty before they have claimed asylum. But if a lawful section 17 assessment concludes that the children are in need then the local authority should continue supporting the family until they are eligible to claim section 95 support.

Social services can discharge their duty once someone has lodged their asylum claim and becomes eligible for section 95. It's important to collect evidence from the local authority providing section 17 which supports the section 95 application. The local authority should state that they intend to discontinue support on the basis that the family meet section 95 eligibility and not because the family are no longer destitute. This is important as the Asylum Support Regulations 2000 requires decision makers to consider any support that is available.<sup>3</sup>

An asylum-seeker can also apply for section 98 temporary support. This is usually full board accommodation provided on the same day. More information on this can be found on the Asylum Support Appeals Project<sup>4</sup> website or the Right to Remain toolkit.<sup>5</sup>

## Section 4 Asylum Support.

**If a family is entitled to support under section 4 Immigration and Asylum Act 1999, then they can either access section 4 or section 17 support.**

A refused asylum seeker can still choose to access support under section 17 despite the possible availability of section 4 support. The High Court held that a local authority must undertake an assessment even if section 4 support may be available.<sup>6</sup>

*R (VC) v Newcastle*, describes what would need to be shown to justify the non-provision of section 17 support on the basis that section 4 is available:

- Section 4 support will/could be provided, and;
- That support is sufficient to meet the child's assessed needs.

The Judge in this case stated that "section 4 is a residuary power and [...] the mere fact that support is or may be available under section 4 does not of itself exonerate a local authority from what would otherwise be its powers and duties under section 17."<sup>7</sup>

Support provided under section 4 is, in most cases, unlikely to meet a child's assessed needs. Section 4 is intended to provide the bare minimum level of support to prevent destitution and is not provided in cash limiting access to some items and services. Whilst section 17 is intended to promote the

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<sup>3</sup> See reg 6(4)(b) of the Asylum Support Regulations 2000

<sup>4</sup> [https://www.asaproject.org/uploads/Factsheet\\_17\\_-\\_s98\\_Support\\_Nov\\_18.pdf](https://www.asaproject.org/uploads/Factsheet_17_-_s98_Support_Nov_18.pdf)

<sup>5</sup> <https://righttoremain.org.uk/toolkit/asylum-support/>

<sup>6</sup> See Para 91 *R (VC) v Newcastle CC* [2011] EWHC 2673 (Admin) and *R(SO) v Barking & Dagenham LBC* [2010] EWCA 1101

<sup>7</sup> See para 86 and 93 of *R (VC) v Newcastle CC* [2011] EWHC 2673 (Admin)

welfare and best interests of the child and is therefore able to provide a much higher standard of support focused upon the individual needs of the child.<sup>8</sup>

Many local authorities continue to refer refused asylum seekers to the Home Office rather than undertaking an assessment, but this approach may not be lawful. More recently the court held that a local authority should not delay conducting an assessment pending provision of section 4 support.<sup>9</sup> As a minimum, social services should undertake an assessment if the family wishes to access section 17 support rather than section 4 asylum support.

Refused asylum seekers who have failed to cooperate with removal directions are still excluded from accessing support under section 17 by schedule 3 Nationality, Immigration and Asylum Act 1999, unless the situation is so serious it would constitute a breach of ECHR rights. Therefore, failed asylum seekers who approach for section 17 will be subject to a human rights assessment.

### **S94 (5) Immigration and Asylum Act 1999.**

**If an asylum seeker has a dependent under 18 in the household at the time of becoming Appeal Rights Exhausted, then they remain eligible for section 95 support until the child is 18, or they get leave to remain, or leave the UK. This means that some families are still eligible for section 95 despite being Appeals Rights Exhausted.**

Section 94 (5) states: If an asylum-seeker's household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—

- (a) the child is under 18; and
- (b) he and the child remain in the United Kingdom.<sup>10</sup>

Section 94(1) Immigration and Asylum Act 1999 defines an asylum seeker as “a person who is not under eighteen and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined.” If an individual met the definition of an asylum seeker at the time of their child's birth, then they continue to be eligible for support under s94(5). Eligibility via s94(5) does not depend on whether the application was previously in receipt of section 95.<sup>11</sup>

If a family is in receipt or has been awarded section 4 support but is eligible for section 95 through s94(5), they could potentially still access section 17 despite the possibility of transferring to section 95. Once in section 95 support, through s94(5), a family is no longer able to access section 17.

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<sup>8</sup> See *R (VC) v Newcastle CC* [2011] EWHC 2673 (Admin); *R (C & others) v London Borough of Southwark* [2016] EWCA Civ 707

<sup>9</sup> See *R (ES) v LB Barking and Dagenham* [2013] EWHC 691 (Admin)

<sup>10</sup> See section S94(5) of the Immigration and Asylum Act 1999

<sup>11</sup> See Asylum Support Tribunal decision AS/18/12/39001, Asylum Support Tribunal decision AS/18/08/38542 and Para 19 of the Asylum Support Tribunal decision AS/18/08/38542

# Section 17 or asylum support?

Families with a child 'in need' or at risk of destitution who need assistance with money, housing, or both.

