

ASSESSING DESTITUTION

Table of Contents

Introduction

Application of this Instruction in Respect of Children and Those with Children

Section 95

Section 98

Section 4

Type of Application

Information Provided to UK Border Agency about an Applicant's Assets and Income

Assets and Income to be taken into Account

Determining Assets

Calculating the Value of an Asset

Intentional Deprivation of Capital

Determining Income

Information Provided to UK Border Agency about the Income Received by an Applicant

Other Income

Income Reviews

Persons who have been without support for a prolonged period

Calculating the Destitution Threshold

Using the Destitution Threshold Tables to Determine Whether an Asylum Seeker is Destitute in Section 95 Subsistence only Cases and Section 4 cases that already have adequate accommodation

Using the Destitution Threshold Tables to Determine Whether a Person is Destitute in Section 95 Accommodation and Subsistence Cases and Section 4 Cases where the person does not already have adequate accommodation

Calculating the Local Rate for Board and Lodgings

Destitution Threshold Tables

Calculating the Appropriate Level of Subsistence

Introduction

This instruction provides guidance to asylum Case Owners on determining whether a person applying for support under either section 98, 95 or 4 of the [Immigration and Asylum Act 1999](#) ("the 1999 Act") is destitute for the purposes of asylum support.

N.B. Although the Asylum Support Team will carry out most, if not all, of the support functions on behalf of the Asylum Case Owner, it is the Asylum Case Owner who retains overall responsibility for ensuring these functions are carried out.

Support under sections 98, 95 or 4 of the 1999 Act may be allocated to applicants whose assets, income and other available support fall below the prescribed threshold required for their essential living needs and adequate accommodation. In the event that either or all the assets, income and other support are above the threshold for the applicants' circumstances, support should be refused.

The UK Border Agency has clear objectives in devising the test of 'destitution'. The test has to strike the balance between being:

- fair and reasonable, given the requirement to fulfil the UK's international obligations to asylum seekers/failed asylum seekers;
- firm given the requirement to make best use of taxpayers money and minimise incentives for economic migration; and
- fast, in that it is quick to administer so that no delay is incurred in delivery of the safety net of support to those in genuine need.

Application of this Instruction in Respect of Children and Those with Children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

Section 95

Part VI of the Immigration and Asylum Act 1999 outlines the asylum support provisions under section 95 and 98 of the 1999 Act. Section 95 of the 1999 Act states the Secretary of State may provide support for (a) asylum seekers or (b) dependants of asylum seekers, who appear to be destitute or likely to become destitute within a prescribed period. Regulation 7 of the [Asylum Support Regulations 2000](#) defines that prescribed period as 14 calendar days beginning with the day on which that question falls to be determined.

The Secretary of State may provide or arrange for the provision of support for asylum seekers or dependants of asylum seekers, who appear to be destitute or are likely to become destitute within a 14 calendar day period. Applicants are deemed to appear destitute if:

- they and their dependants do not have adequate accommodation or any means of obtaining it (irrespective of whether other essential living needs are met); or
- they and their dependants have adequate accommodation or the means of obtaining it, but cannot meet essential living needs.

Subsequently, support can be provided in three different ways under section 95 of the 1999 Act:

- Accommodation only, or
- subsistence only (regular cash payments), or
- both accommodation and subsistence

[Back to contents](#)

Section 98

Section 98 of the 1999 Act provides that the Secretary of State may provide or arrange for the provision of support for asylum seekers or dependants of asylum seekers who it appears to the Secretary of State may be destitute pending the consideration of their support application under section 95 of the 1999 Act.

The test for destitution for section 98 support is the same as that used to determine section 95 applications under [section 95\(3\) of the 1999 Act](#):

“... a person is destitute if:

- a. he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or*
- b. he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs”*

Section 98 support is intended for short term use and is provided in the form of temporary full board or self catering accommodation.

For further information please see Policy Bulletin 73 [PB73: Provision of Initial Accommodation](#) and the Asylum Support Instruction [Eligibility and Assessment](#)

[Back to contents](#)

Section 4

To be eligible for support under section 4 of the 1999 Act an applicant must appear to the Secretary of State to be destitute or is likely to become destitute within a 14 calendar day period. To determine whether the applicant is destitute, Case Owners must have regard to the applicant's current circumstances and to those prior to making the section 4 application. In the case of applications for support under section 4(2) or 4(3) the destitution test must be applied before considering the section 4 application under the other criteria for support to be provided in regulation 3(2) of the [Immigration and Asylum \(Provision of Accommodation to Failed Asylum-Seekers\) Regulations 2005](#) ("the 2005 Regulations").

The test for destitution for section 4 support is the same as that used to determine section 95 applications under [section 95\(3\) of the 1999 Act](#):

"... a person is destitute if:

a. he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

b. he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs"

Regulation 2 of [The Immigration and Asylum \(Provision of Accommodation to Failed Asylum-Seekers\) Regulations 2005](#) provides that this definition applies for the purpose of establishing eligibility for support under section 4(2) and 4(3) as well as under section 95 and section 98.

[Back to contents](#)

Type of Application

For section 95 support applications, Case Owners must establish from the [Asylum Support Application Form \(ASY1\)](#) whether the applicant has applied for accommodation only, subsistence only or both and update ASYS accordingly.

Section 4 support can only be granted through the provision of accommodation so the Case Owner will not need to consider what type of support is being applied for.

[Back to contents](#)

Information Provided to UK Border Agency about an Applicant's Assets and Income

In the majority of support applications, the applicant has no family to support them in the UK, no special needs, no assets, no income, and no accommodation. In these cases the Case Owner can go straight to the Eligibility Threshold Tables and work out the level of funds the applicant and any of his dependants would need over a 14 calendar day period.

However, if applicants do have assets they are told to declare these on their application form and provide relevant documentary evidence. Section 6 of the [Asylum Support Form \(ASF1\)](#) asks the applicant to declare his assets and income. The information contained therein should be entered into ASYS under "Assets/Income". Case Owners must first indicate whether or not the applicant or his dependants have declared any assets/income, and, if so, proceed to detail them. It is necessary to state the type and value (in £s and pence) in respect of assets; and the amount (in £s and pence) and frequency of payment in respect of any income, together with the name of the employer. Comments may be added at this stage, and Case Owners should enter any relevant details giving consideration to the information required in any subsequent investigation or appeal against the discontinuation of support.

Question 58 of the [Asylum Support Form \(ASF1\)](#) requires the applicant to declare whether he or his dependants are, or have been, in receipt of any state benefits, i.e. mainstream benefits such as Child Benefit. The information provided should be entered on to ASYS tab entitled "**State Benefits**". The Case Owner must first indicate whether the applicant or his dependants are, or have been, in receipt of any state benefits, and, if so, proceed to detail them. It is necessary to state only the type of benefit if that benefit is no longer received; whereas, if the benefit is current, its type, amount (in £s and pence) and frequency of payment must be stated. In both respects the Case Owner has the facility to add comments.

Detailed guidance as to the type of information that should be declared by the applicant is provided within the [guidance note](#) that accompanies the application form. The information given by an applicant is initially accepted at face value unless the information is either inconsistent or inherently improbable. Information provided by the applicant may be subject to checks made through Fraud Detection Agencies.

The information provided by the applicant on their application form may be subject to random checks at a point sometime after UK Border Agency support has been granted or possibly in response to information received from the public. It is an offence under Part VI of the 1999 Act punishable by up to six months imprisonment if, with a view to obtaining any benefit or other payment or advantage, an applicant knowingly makes a dishonest representation.

[Back to contents](#)

Assets and Income to be taken into Account

Regulations 5 to 9 of the [Asylum Support Regulations](#) 2000 set out the matters to be considered when determining whether persons are destitute.

Regulation 6 outlines the different kinds of income and assets which must be taken into account by the UK Border Agency in determining whether someone is destitute or not for the purposes of asylum support.

Although the Case Owner should ignore any previous support the applicant has received or is receiving under section 98, 95 or 4 of [the 1999 Act](#), any other income which the principal applicant or a dependent of his has must be taken into account.

Other forms of support, including forms of support available from Other Government Departments must also be taken into account. For instance, support under section 21 of the National Assistance Act 1948 or under section 12 of the [Social Work \(Scotland\) Act 1968](#) for individuals who have care needs above and beyond destitution or support for children provided under either section 17 or 20 of the Children Act 1989, by the Local Authority.

The assets which must be taken into account in determining destitution are listed at Regulation 6(5) of the [Asylum Support Regulations](#). Those assets are –

- (a) cash;
- (b) savings;
- (c) investments;
- (d) land;
- (e) cars or other vehicles; and
- (f) goods held for the purpose of a trade or other business

Any assets not mentioned above must be ignored. However, jewellery and other personal possessions are usually excluded from the consideration of assets unless they are collectively worth £1000 or more.

For further information on the definition of assets for asylum support purposes, refer to [Determining Assets](#).

The assessment of an applicant's eligibility for support is primarily based upon the information provided in the application form in respect of assets and income, set against prescribed thresholds that relate to the level of resources expected to meet an applicant's essential living needs, both including and excluding the cost of accommodation, over a 14-day period. The thresholds are outlined in further detail later on in this instruction in the chapter [Calculating the Destitution Threshold](#).

If an applicant's assets and income (excluding those that are to be disregarded or temporarily disregarded) are equal to or are above the threshold for the applicant's particular circumstances (this does not apply to section 4 support which is at a set level for every type of applicant), support should be refused on the grounds that the applicant does not appear likely to become destitute within the 14 calendar day period. However, support should be allocated if an applicant's resources fall below the threshold.

Applicants are required to provide details of their assets and resources, whether their own or belonging to their dependants, and whether it is in the UK or elsewhere. An indication

must be given as to the location and availability (i.e. liquidity) of the assets or resources together with an explanation if the applicant claims that he cannot avail himself of them. It is for the applicant to state the value of items. Applicants are also required to state on their application form, whether or not they have friends or family in the UK who are able and willing to offer them support. If there is such an offer of support, the applicant must provide a statement detailing the nature of that support, and an explanation if that support is of a limited duration.

[Back to contents](#)

Determining Assets

An “Asset”, otherwise known as “Capital”, is a resource that tends not to be received regularly and is received without reference to any timeframe. Resources that are received regularly and in respect of a particular timeframe tend to constitute an income.

“Assets”, for the purposes of asylum support includes the following (the list is not exhaustive):

Savings

- Cash,
- Current, deposit and saving bank accounts,
- Building society accounts,
- Post office savings accounts,
- National Savings Premium Bonds
- Save As You Earn (SAYE) scheme.

Investments

- Businesses,
- Capital Bonds,
- Income Bonds,
- Life insurance policies,
- National Savings Certificates,
- Personal Equity Plans (PEPs),
- Personal pension schemes,
- Premium Bonds,
- Stocks and shares,
- Unit trusts.

Property

- Land,
- Outbuildings,
- Garage,
- House,
- Vehicle,
- Business assets or goods.

Assets need not be in the UK, they can be overseas.

[Back to contents](#)

Calculating the Value of an Asset

The value of an asset must be the value that applies at the time the decision is taken on the application for section 95 or section 4 support.

The [Asylum Support Form \(ASF1\)](#) enables applicants to declare the value of any cash, savings or investments in the original currency: there is no requirement for an applicant to convert the currency to pounds sterling as Case Owners can achieve this relatively easily by using internet sites with current exchange rates for all the major currencies.

If an asset can be sold to release funds, the “current market value” is the price a willing buyer would pay for that asset in the market. Again, as market value changes, the price must be the price that applies at the time the decision is taken on the application for section 95 or section 4 support. The “market” is, of course, the appropriate market for the item that is for sale; for example, if the asset in question were a house, the “market” would be the property market.

It may be that in order to realise an asset, its value is necessarily diminished such as the cashing of an endowment policy before its maturity date. In such circumstances, the Case Owner must consider the “current surrender value” of the asset. This requires an examination of the terms of the applicant’s agreement with the holding financial organisation to establish:

- the date the applicant is due to realise the asset/capital under the terms of the agreement; and
- whether it allows for the withdrawal of the funds before the specified date.

Clearly, if the asset/capital is to be realised under the terms of the agreement, its value can be easily established. If the agreement does not permit the applicant to withdraw the funds prematurely, they must be disregarded when determining eligibility until such a time as they can be realised. In all other cases, the Case Owner must establish the funds that would be realised if the applicant were to withdraw the funds on a particular date – i.e. its “current surrender value”.

The value of an asset may be reduced as a result of the expense incurred in selling it, such as a stockbroker fee payable in respect of the sale of shares. However, expenses of sale will vary.

The value of an asset may be reduced because a third party has a right to the released funds, either in their entirety or in part, i.e. a debt of sorts. It may be that a third party has the right stop the asset from being sold and, therefore, to stop the funds from being realised. A mortgage is a good example of such an encumbrance secured on capital. The Case Owner must reduce the current market /surrender value of the asset to take full account of any encumbrances secured on capital.

An asset can be temporarily disregarded if it is clearly going to take time to realise, such as in certain cases the selling of a property. In determining whether to temporarily disregard the asset, the Case Owner must consider:

- the general state of the market in question (e.g. the property market);
- the personal circumstances of the applicant, or dependant if appropriate (e.g. ill health);

- the efforts made by the applicant or dependant to realise the asset.

Cash

If cash is declared on the application form, the Case Owner should accept the information at “face value”; unless there is very good cause not to do so. If the cash value is stated in a foreign currency, the Case Owner must first convert the value into £s sterling. Although commission or service can vary for the conversion of currency, UK Border Agency assumes a standard 2% commission or service charge (£3 minimum) irrespective of whether the applicant produces evidence demonstrating that the charge incurred was more/less than that calculated by UK Border Agency. Thus, the Case Owner must reduce the cash value by 2% (£3 minimum) to allow payment of the commission or service charge. The resultant figure is the one that should be applied to the relevant Eligibility Threshold.

For example: An applicant may declare that he has US\$150. Having converted the funds into £s sterling, for example, it amounted to £93, the Case Owner would then have to have deduct the standard 2% commission charge i.e.£1.86 from the cash value. But, there is a minimum commission or service charge of £3, the figure to set against the relevant Eligibility Threshold would be £93 - £3 = £90

Bank accounts

If an applicant declares on the application form that he has savings or funds held in a current, deposit, or some other standard type of savings account, he should provide documentary evidence (such as account books or most recent statements) to substantiate the level of funds held. That evidence is required only if the level of funds declared suggests that the applicant is eligible for UK Border Agency support. Clearly, there is no need to pursue such documentation if the level of funds declared exceeds the destitution threshold thereby demonstrating that the applicant is not entitled to UK Border Agency support.

For example: An applicant may declare that he has US\$430 in a deposit account with a particular bank. Having converted the funds into £s sterling, it for example, amounted to £268, the Case Owner would then have to deduct the standard 2% commission charge i.e. £5.36 from the value of the funds. Thus, the figure is set against the relevant Eligibility threshold would be £268 - £5.36 = £262.64

Income and capital bonds

If Income or Capital Bonds are declared they should be assessed on the basis of the Sterling equivalent of the income they raise/produce, and on the net realisable value they would have, less any costs of disposal.

National savings premium bonds

If an applicant declares on the application form that he has funds held in the form of Premium Bonds, he should provide documentary evidence (i.e. the bonds themselves) to substantiate the level of funds held. That evidence is required only if the level of funds declared suggests that the applicant is eligible for UK Border Agency support. Clearly there is no need to pursue such documentation if the level of funds declared demonstrates that

the applicant is not entitled to UK Border Agency support. As the funds paid to purchase Premium Bonds can be reclaimed at any time, at full purchase price and without incurring any charges, the declared /established value of the Premium Bonds can be reclaimed at any time, at full purchase price and without incurring any charges. The declared/established value of the Premium Bonds is the figure that should be applied to the relevant Eligibility Threshold.

Unit trusts

Unit Trusts, where held by an applicant for support, should be assessed on the basis of their Sterling equivalent, less any costs of disposal. At the same time, note should be taken of any restriction imposed on access to those funds, for example in some instances access to the trust itself may be blocked until the passage of a specific event: reaching the age of 18, or retirement from employment are two possible conditions.

Stocks and shares

If stocks and shares are held by the asylum seeker, they must be assessed by the most current published value translated to pound Sterling less any costs of disposal.

Capital held in trust

Minors, i.e. those under the age of 18, can have vested interest in capital of which they are the beneficial owners, and which is being held for them until they reach the age of majority (18 years in England and Wales, and 16 years in Scotland).

The capital is held by “trustees”, who can be contacted to answer questions about the value of the trust and whether payments are made from the trust.

An assessment of value, where the applicant has immediate access to the funds, would be made on the basis of the Sterling equivalent (based on current value or net realisable value) less any costs of disposal or liquidation.

Land and property

Land or property may be assumed to be realisable until evidence is shown to the contrary. It should be valued, where it is declared, on the basis of the net realisable value translated into pounds Sterling, after costs of disposal are taken into account.

Overseas assets

Assets held outside the UK that are “reasonably” available and realisable should be taken into account when determining an applicant’s eligibility for UK Border Agency support. Applicants are instructed to state on the application form whether there is any reason why they cannot reasonably be expected to avail themselves of the asset. In response an applicant may claim that his assets in the country in question have, for whatever reason, been frozen; or it may be claimed that there is no one who is able or willing to obtain and forward the funds on the applicant’s behalf.

The term “reasonably available and realisable” is the fundamental issue. Many of the claims are difficult, if not impossible, to prove/disprove. Thus, asylum support caseworkers must

rely on their own judgement as to whether the applicant has presented a persuasive argument as to why he cannot “reasonably” avail himself of an overseas asset. Some matters can be confirmed: for example, the applicant may contend that the currency restrictions that apply in the country concerned prevent him from transferring funds to the UK.

Notional capital

Notional capital is an asset/capital that a person is deemed to possess, but does not actually do so. For instance an applicant may be eligible for funds if he applied for them, such as an unclaimed Premium Bond win; or, the funds are held by a third party on behalf of the applicant. Notional capital must be taken into account when determining an applicant’s eligibility for UK Border Agency support, but it is likely to feature only in respect of applications in which there is cause to doubt the veracity of an applicant’s declarations about his financial situation.

Intentional Deprivation of Capital

Applicants and their dependants may purposefully deprive themselves of funds in order to bolster their application for asylum support. For example, such intentional deprivation occurs if the applicant or his dependant(s):

- voluntarily gives funds away to a third party,
- pays debts before required to do so,
- pays more in response to a debt than is required;
- pays a debt that is not a “legal” debt and, therefore, capable of enforcement,
- buys a personal possession that is clearly not essential to his living needs, or
- spends extravagantly

Clearly, the spending of the applicant and his dependants should not be thrown into question if his funds diminish at a rate that is roughly in line to that suggested in the relevant Eligibility Threshold. But if funds diminish at a **significantly** faster rate asylum support caseworkers must consider the intention of the applicant and his dependants in ridding themselves of the funds. There are cases in which, for legitimate reasons, an applicant has spent/is spending money at a faster rate than envisaged under the threshold system. For example, a family may have to buy a significant amount of clothing having arrived in mid winter with inadequate clothing for the climate.

The asylum support caseworker must determine whether the primary concern was to improve eligibility for UK Border Agency support. The issues that need to be addressed, in addition to the juncture at which the funds were significantly depleted and the applicant’s support history, include whether the applicant (and/or his dependant):

- was mentally capable of making such decisions;
- had a choice not to spend the money as he did;
- understood the relevancy of assets/capital in connection with his eligibility for UK Border Agency support; and
- had said what he planned to do with the funds; and
- had planned how he was going to support himself after releasing the funds.

If the Case Owner considers there to be sufficient justification to contend that there has been intentional deprivation of funds and those funds can be recovered, the funds in question should be treated as notional capital – see paragraph entitled [Notional Capital](#).

For example: An applicant declares assets of only £50 and yet he was refused UK Border Agency support just one month earlier because he declared assets amounting to £3000. The marked reduction in assets is attributed by the applicant to his loan of £2650 to a relative in his native country, and produces a letter from his brother asking to borrow the money.

Given the previous refusal of UK Border Agency support, the applicant would have been clearly aware of the role played by assets in determining eligibility for UK Border Agency support.

A Case Owner would be justified in concluding that the applicant intentionally deprived himself of the funds to bolster his application for UK Border Agency support and that those funds are potentially still accessible to them. That being so, the £2650 should be treated as notional capital and, as such, the applicant should be deemed to have assets of the value £50 + £2650 = £2,700. He would again be refused UK Border Agency support.

It may be that there is good cause to doubt the veracity of the applicant's declarations in respect of the assets/capital held. There may be conflicting evidence or a significant difference in the value of his declared assets compared with a prior application for asylum support.

For example, an applicant may previously have been refused asylum support on the basis that he had, as declared on his application form of the time, funds in excess of £12,000 from the sale of his business in Turkey; and yet, in his current application for asylum support made just three months later, he claims to have no savings. Whatever the reason for doubting the applicant, provided that there is a good reason for doing so, the asylum support caseworker should write to the applicant requesting an explanation in order to clarify his financial situation and that of any dependants.

[Back to contents](#)

Determining Income

An income usually takes the form of earnings gained from employment – such as wages, salaries, commission, retainers, luncheon vouchers and tips. But income is not exclusively linked to employment; there are other types of income such as pensions, student grants and any financial support provided by relatives or friends.

Information Provided to UK Border Agency about the Income Received by an Applicant

Applicants are told on the [application form](#) and accompanying [guidance notes](#) that income, gained from employment or any other source, will be taken into account when assessing eligibility for UK Border Agency support. That being so, applicants are instructed to detail any income they or their dependants receive. In particular, if there is an income gained from paid employment, the applicant is instructed to provide/state:

- The last five pay slips or individual pay slips as and when issued until UK Border Agency has received at least five consecutive pay slips, irrespective of the frequency with which they are issued (e.g. weekly/fortnightly/monthly);
- The employer's full address, postcode, telephone/fax number and e-mail address;
- The date employment started; and
- The date and frequency of payment (e.g. paid weekly on Mondays, or paid on the last working day of every month).

There should be sufficient information at this juncture to determine whether the pay is “**Constant**”, “**Cyclical**” or “**Irregular**”, and to make the necessary calculation for future subsistence payments.

In Section 95 cases a letter must go to the applicant that:

(a) Explains that a final calculation has been done on his eligibility for subsistence in the light of all the information now available and that it has been determined that he is eligible to receive £X weekly subsistence as from dd/mm/yy.

(b) Informs him that he should notify UK Border Agency immediately if there is a change to his or his dependants' income, or, indeed, any change of circumstances.

(c) Informs him that UK Border Agency will review his case at regular intervals to ensure that he is still eligible for UK Border Agency support and to ensure that he is receiving an appropriate level of support.

The final stage of the five-pay slip process is to set an income review date, which should be three months from receipt of the last pay slip. The process for setting an income review date is explained later in the document.

An applicant may be unable to produce a series of previous pay slips because their employment has just started or because previous pay slips may have been discarded for whatever reason. If this is the case, the applicant should submit individual payslips as and when they are issued. The Case Owner must review the case in response to each pay slip received. Deductions or additions may be made to the level of future support in order to redeem any overpayment of, or make up for any shortfall in, the allocated subsistence.

Provided sufficient information has been submitted with the application (which may amount to no more than one pay slip), the Case Owner must make an initial assessment of the applicant's eligibility for support on the basis of that information. It may be that two/three or four pay slips have been provided, while this would in most instances be sufficient to identify whether the income is "constant", it would not identify, with any certainty, whether the pay is "cyclical" or "irregular". Whatever the situation, the Case Owner must determine the average weekly pay figure as it is this pay figure, in addition to any other form of income and/or realisable assets, which must be used when determining eligibility for support.

In section 4 cases there is no variation on the amount of support received so the only assessment that needs to take place is whether or not as a result of employment, someone is still destitute. If someone is no longer destitute as a result of their earnings support should be discontinued. If despite their earnings a supported person would still be destitute without the provision of support, both accommodation and subsistence support should continue at the standard rate

Other Income

As stated previously, an income usually takes the form of earnings gained from employment and is evidenced by a salary or wages. But there are other forms of income. Whatever the type of income, the key question is whether it should be treated in the same way as a standard income (i.e. that gained from employment and evidenced by a salary or wages) or the same way as an asset.

Vouchers

An employee may receive vouchers instead of, or in addition to, his wages. These may include:

- Luncheon vouchers
- Childcare vouchers
- Childcare cheques

Vouchers should be regarded as income in kind and, as such, they must be taken into consideration as an income when assessing eligibility for UK Border Agency support.

Expenses

These can include payments for expenses paid by an employer which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

For example:

- Payment for travelling expenses between home and work;*
- Expenses for the care of a member of the applicant's family;*
- School fees for an applicant's child; or*
- Childcare costs when not paid in vouchers or cheques.*

Such expenses should be taken into account as an income when assessing eligibility for UK Border Agency support.

Expenses can also include payments for expenses paid by an employer which are wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

For example: Payment made for travelling expenses and overnight accommodation so that the employee can attend a meeting; or a mileage allowance to run a car for business purposes.

Such expenses should not be taken into account when assessing eligibility for UK Border Agency support.

If an employer pays for an expense from which the employee gets some private benefit, it is necessary to divide the payment into private use and business use. The latter, which is wholly, exclusively and necessarily incurred for business purposes, should be disregarded when assessing eligibility for UK Border Agency support.

Payments in kind

These should be disregarded unless the employer is, as a result, paying less than the normal rate of pay in which case the procedure in respect of notional earnings applies.

Notional earnings is an income that a person is deemed to receive, but does not actually do so. A person may perform a service, such as charitable work or caring for a relative, for which he is not paid or is paid less than the going rate.

Retainers

These are payments made to retain the services of an individual when their services are not required at that particular time. For example, retainers are paid to employees of school meal services during the course of the school holidays, and to childminders when a child is absent (possibly away on holiday or because of sickness) to ensure that a space is left open for that child. Such payments should be taken into account when assessing eligibility for UK Border Agency support.

Accommodation provided by employer

The value of such free accommodation (for example, to a housekeeper or caretaker) should be disregarded if the applicant is only applying for subsistence only support.

Excess income

If an income of a supported person in receipt of section 95 support continually exceeds the UK Border Agency weekly subsistence rate as specified in the relevant Eligibility Threshold, but is still assessed as being destitute, the supported person would cease to be paid subsistence and although he may continue to be accommodated UK Border Agency, he would be liable to pay a contribution towards that accommodation.

Illegal working

If an individual declares on their application form that they are receiving income through working but they do not have permission to work from the UK Border Agency, any cash they have earned and are still in possession of will be deemed an asset when assessing eligibility for UK Border Agency support. The applicant should subsequently be asked to explain why they are working illegally and informed that through breaching the conditions of their temporary admission or temporary release they maybe committing a criminal offence and should cease working immediately.

Mainstream Benefits and Local Authority Support

Some asylum seekers and failed asylum seekers will have access to mainstream benefits provided by the Department for Work and Pensions or the Local Authority. Such support should be taken into consideration as an income when assessing eligibility for UK Border Agency support.

Income not to be taken into account

If a person is receiving support from an institution or charity to meet an essential need above the provision of accommodation and essential living needs (As defined for asylum support destitution assessment purposes), such support should not be taken into account when assessing destitution or the level of section 95 subsistence support. Examples of what would be considered essential needs for the purposes of the above are rare, but would include the provision of money to purchase facilities to travel to regular essential medical appointments, i.e. dialysis treatment.

Princes Trust Development Award

The Princess Trust can award one off grants of between £200 - £500 to individuals who apply for it and can show compelling reasons for needing the money for education or training needs. Asylum seekers and supported people are entitled to apply for this grant. If an asylum seeker or supported person is awarded a grant by the Princess Trust this should not be taken into account when assessing destitution or the level of section 95 subsistence support.

Income Reviews

Applicants are sent a letter at the end of the five-pay slip process informing them, among other matters, that their case will be reviewed at regular intervals to ensure:

- That they are still eligible for UK Border Agency support, and
- In the case of section 95 support, that the level of support remains appropriate

Case Owners must set income review dates three months from receipt of the last pay slip and every three months thereafter.

The review comprises checking the supported person's asylum status, and checking the level of his income and that received by any of his dependants.

- The Case Owner must instigate a validation check (by searching the CID database) to check that the supported person is still eligible for UK Border Agency support (insofar as he has an outstanding asylum application/appeal in the case of those in receipt of support under section 95). The Case Owner should proceed as described below while checks are made on the supported person's asylum status.
- The Case Owner must write to the supported person requesting the submission of the last two pay slips in respect of each income. In the event that only one pay slip is available, this single payslip should be used by the Case Owner to make an initial assessment of the applicant's eligibility for support on the basis of that information. Whatever the situation, the Case Owner must determine the average weekly pay figure as it is this pay figure, in

addition to any other form of income and/or realisable assets, which must be used when determining eligibility for support.

- The requested pay slips must be compared with those sent previously:

If the pay was deemed to be “Constant”, does the pay/pay period in the latest pay slip accord with that previously demonstrated? If not, an explanation and/or further documentary evidence is required.

If the pay was deemed “Cyclical”, does the pay/pay period in the latest pay slips fit in with the recognised cycle? If not, an explanation and/or further documentary evidence is required.

If the pay was deemed “Irregular”, does the pay/pay period fall within that which could be expected on the basis of the information previously available? If not, an explanation and/or further documentary evidence is required.

[Back to contents](#)

Persons who have been without support for a prolonged period

If a person has been without support for a prolonged period, then it would be reasonable for the Case Owner to assume that the person has had, and may continue to have, access to an alternative form of support, and therefore may not be destitute. The Case Owner shall not be satisfied that a person is destitute in such circumstances unless the person can demonstrate that his circumstances have changed and that he is now without means of support.

If the applicant does not provide this information with their application form they may be asked to provide further evidence supporting their claim that the support previously available to them is no longer. This may include requests for a signed declaration from the person(s) who previously supported the applicant explaining why they can no longer provide support.

[Back to contents](#)

Calculating the Destitution Threshold

The destitution threshold tables on pages 25 and 26 are a guide to the level of funds which the UK Border Agency expect would meet a person's accommodation costs and essential living needs for the specified time frames.

The specified time frames within which a person must be likely to become destitute vary depending on whether he is a new support applicant or a person already receiving support. The time frames, as defined by regulation 7 of the Asylum Support Regulations 2000, are as follows:

- 14 calendar days for a new applicant for asylum support (starting from the date his application form is signed); and
- 56 calendar days for a person already receiving asylum support (starting from the date he acquires the funds).

To reflect these varying time frames, the destitution threshold tables include separate columns for new applicants and those already receiving support.

A supported applicant with funds available to him in excess of the relevant threshold in the tables is unlikely to be destitute. An applicant with funds below the threshold cannot be expected to meet his essential living needs and is destitute, but any section 95 cash payments should be adjusted to take account of the funds that he has.

If there is a family group, the amounts applicable to each family member should be added together to give the total amount of support expected to meet the family's needs.

The tables are intended as a guideline only and each case should be examined on its own merits. An asylum seeker may declare a factor on his application form which makes it clear that he may need to deplete his funds faster than would otherwise be the case. For example, he may declare that he has no winter clothing with him. In other cases it may be that an asylum seeker exhausts his funds and makes a fresh application for asylum support sooner than the threshold table would suggest was appropriate, otherwise known as [Intentional Deprivation of Capital](#). The threshold tables are therefore a starting point to deciding a reasonable level of expenditure but there are other factors to be considered.

Using the Destitution Threshold Tables to Determine Whether an Asylum Seeker is Destitute in Section 95 Subsistence only Cases and Section 4 cases that already have adequate accommodation

If a person requests subsistence only support under section 95 (or section 4 support when already in possession of adequate accommodation), the Case Owner needs to determine whether the total funds available to him are sufficient to meet his essential living needs excluding the cost of accommodation. Columns 1 and 2 of the section 95 threshold table and Column 1 of the section 4 threshold table reflect the amounts as a general rule which we consider will meet his essential living needs.

Column 1 of both threshold tables details the thresholds applicable to a new applicant for section 95 or section 4 support. It gives the levels of funds sufficient to meet essential living needs for 14 calendar days (starting from the date the application form is signed). Column 2

of the section 95 table details the thresholds applicable to persons currently in receipt of subsistence support. It gives the level of funds sufficient to meet essential living needs for 56 calendar days (starting from the date he acquires the funds).

Special considerations apply where a section 95 support applicant's partner, civil partner or spouse with whom he is cohabiting is a British citizen or has been granted status to remain in the UK ("mixed household cases"). For example, if the spouse or partner has his own accommodation and has a rent liability and utility costs to meet, the threshold for such couples is based on 95% of the Department of Work and Pensions (DWP) income-based Job Seeker's allowance or Income Support couple rate. This reflects the fact that the asylum support applicant's status remains temporary. If there are no utility bills to be met or no rent liability, the threshold is based on 85% of the income-based Jobseeker's Allowance or Income Support couple rate. With such cases, the caseworker must consider carefully evidence of additional expenditure and adjust the threshold accordingly. Further information on mixed household cases can be found in Asylum Support [Policy Bulletin 11 Mixed Households](#).

There is no row in the section 4 table for mixed household cases as legislation dictates that section 4 support can not be provided separately from accommodation.

Using the Destitution Threshold Tables to Determine Whether a Person is Destitute in Section 95 Accommodation and Subsistence Cases and Section 4 Cases where the person does not already have adequate accommodation

In cases where a person requests section 4 or 95 support and does not have adequate accommodation available to him, the Case Owner needs to determine whether the total funds available to the person are sufficient to meet his essential living needs and the cost of accommodation. Columns 3 and 4 of the Section 95 table and Column 2 and 3 of the section 4 table reflect the amounts as a general rule which we consider will meet essential living needs and accommodation costs. The subsistence element is based upon the standard section 95 and section 4 support rates but a small deduction (£1.22p a day) is made to take account of the breakfast which it is assumed will be supplied under the board and lodging rate. **N.B If the board and lodging rate does not include breakfast, no deduction should be made and the subsistence rate will be the same as in Column 1 of both tables.** An element to reflect the variable cost of accommodation across the UK must also be added. For guidance on how to calculate the cost of accommodation please see [Calculating the local rate for board and lodgings](#)

Column 3 of the section 95 table and Column 2 of the section 4 table detail the thresholds applicable to a new applicant for support. It gives the levels of funds sufficient to meet essential living needs and the cost of accommodation for 14 calendar days. Column 4 of the section 95 table and Column 3 of the section 4 table details the thresholds applicable to an applicant who is already receiving support. It gives the level of funds sufficient to meet essential living needs and the cost of accommodation for 56 calendar days.

If section 95 accommodation is required in a mixed household case, the threshold is based on 85% of the income based Jobseeker's Allowance or Income Support couple rate. If the applicants in the mixed household are assessed as eligible for UK Border Agency support, they will be expected to make a contribution to the accommodation cost. Further information on mixed household cases can be found in [Policy Bulletin 11 Mixed Households](#).

Calculating the Local Rate for Board and Lodgings

The Case Owner will need to find out the local rates for boarding and lodgings and use this to calculate how much the applicant would be expected to pay if he/she was in their own accommodation.

The regional rate for board and lodgings should generally be established by obtaining an average price for Bed and Breakfast in the local area. Bed and Breakfast establishments offer simple and easily accessible accommodation whilst also being relatively affordable compared to hotels. It is recognised that asylum seekers/failed asylum seekers will experience difficulties in trying to obtain rented accommodation as many private landlords will require prospective tenants to sign six month tenancy agreements and also pay substantial deposits. This might not present such a problem for asylum seekers or failed asylum seekers who have been given permission to work as they will more easily be able to prove to a landlord that they have a regular income and will also be able to save for a deposit. In these cases, local rental rates for board and lodgings can also be used to assess destitution.

The regional rate for Bed and Breakfast can be determined by calculating an average nightly or weekly price from a sample of local businesses. The regions can establish their own methods for obtaining this sample. For example, an efficient and easy way of doing this is to search the internet for prices in the local area. The vast majority of Bed and Breakfast establishments will have their own websites containing price lists for varying types of room to suit singles, couples or families.

Once an average rate has been established this should be reviewed at regular intervals to confirm that prices have not changed and the threshold is still realistic.

[Back to contents](#)

Destitution Threshold Tables

The following tables show the amounts expected to meet an asylum seeker's and failed asylum seeker's essential living needs.

Section 95

	Column 1 - Amount applicable to new applicants applying for section 95 subsistence only support (Amounts needed for 14 calendar days).	Column 2 – Amount applicable to supported persons already in receipt of section 95 subsistence only support (Amounts needed for 56 calendar days).	Column 3 – Amounts applicable to new applicants requiring both accommodation and subsistence (Amounts needed for 14 calendar days).	Column 4 – Amounts applicable to supported persons already in receipt of both accommodation and subsistence (Amounts needed for 56 calendar days).
Single person aged 18 or over (excluding lone parent)	£73.24	£292.96	£56.16 + regional rate for board and lodgings for 14 calendar days	£224.64 + regional rate for board and lodgings for 56 calendar days
Single person aged 25 years or over (excluding lone parent), where the decision to provide cash support was made before 5 October 2009 and the person reached age 25 prior to that date.	£85.24	£340.96	£68.16 + regional rate for board and lodgings for 14 calendar days	£272.64 + regional rate for board and lodgings for 56 calendar days
Qualifying Couple (as defined in regulation 10(4)(a) of the Asylum Support Regulations 2000)	£145.04	£580.16	£127.96 + regional rate for board and lodgings for 14 calendar days	£511.84 + regional rate for board and lodgings for 56 calendar days
Lone parent aged 18 or over	£87.88	£351.52	£70.80 + regional rate for board and lodgings for 14 calendar days	£283.20 + regional rate for board and lodgings for 56 calendar days
Person aged 16-17 (except a member of a [qualifying couple])	£79.60	£318.40	£62.52	£250.08
Person under 16	£105.92	£423.68	£88.84	£355.36
Mixed Household – no rent liability/not in asylum accomm	£174.68	£698.70	non applicable	non applicable

Mixed household – rent liability	£195.23	£780.90	£161.07 + regional rate for Board & Lodgings for 2 people for 14 calendar days	£644.26 + regional rate for Board and Lodgings for 2 people for 56 calendar days
-------------------------------------	----------------	----------------	---	--

Section 4

	Column 1 - New section 4 applicants that have adequate private accommodation but no or not enough funds for essential living needs (amount needed for 14 calendar days)	Column 2 - New section 4 applicants that do not have adequate accommodation or funds for essential living needs (amount needed for 14 calendar days)	Column 3 - Cases already supported (amount needed for 56 calendar days)
All ages of section 4 applicants	£70.78	£53.70 + regional rate for board and lodgings for 14 calendar days	£214.80 + regional rate for board and lodgings for 14 calendar days

[Back to contents](#)

Calculating the Appropriate Level of Subsistence

The total value of all assets and income – excluding those that must be “disregarded” – must be set against the relevant Eligibility Threshold to determine whether the applicant and his dependants are eligible for support. If the applicant and his dependants are not considered to be destitute, the application must be refused. If, however, in section 95 cases, the applicant and his dependants are considered to be, or about to become destitute, the level of subsistence needs to be calculated, taking account of any deductions in lieu of the assets held. In section 4 cases there is no variation on the amount of support someone can receive so the only assessment that needs to take place is whether or not someone is destitute.

Example

An applicant (aged 30, with a wife aged 26, and two children aged seven and three) requesting both subsistence and accommodation declares on his application form that he and his dependants have cash totalling £20, travellers cheques to the value of US\$200 and a bank account with a balance of £150 (most recent bank statement provided).

The Case Owner must determine the value of each asset in £s sterling. It is only the travellers cheques that are held in a different currency. Using the exchange rates facility on the GSI website, the US\$200 can be converted to £s sterling: for the purpose of this example, we'll say it converts to £125, but the asylum support caseworker must deduct a commission charge. The commission charge is 2% of its value, with a minimum charge of £3. As 2% of £125 equals £2.50 which falls below the £3 minimum charge, the commission charge will be £3. The value of the assets held in travellers cheques is taken to be £125 - £3 = £122.

<i>The applicant and his dependants have assets totalling:</i>	<i>£20.00</i>	<i>Cash</i>
	<i>£150.00</i>	<i>Bank account</i>
	<i>+ £122.00</i>	<i>Travellers cheques</i>
	<i>£292.00</i>	

As the relevant section 95 Eligibility threshold shows that he requires assets of around **£1140.88** to meet the essential living needs, including accommodation (at £28 a night), of his family for the prescribed period of 14 calendar days and so avoid “destitution”, he is eligible for accommodation and subsistence support. Again with reference to the Eligibility Thresholds, he is entitled to receive weekly subsistence payments of £178.44.

That said, his first subsistence payment will be delayed by a week and will be subject to a deduction in lieu of the value of the assets already in his possession. The first payment is delayed by one week because he already has more than £178.44 (i.e. his weekly subsistence entitlement): applicants are obliged to look at their own means first before resorting to UK Border Agency support. And when payable, the first subsistence payment will be subject to a deduction that reflects the (theoretical) balance of his assets i.e. £292.00 - £178.44 = £113.56.

Thus, the first payment would be £178.44 - £113.56 = £64.88

In short, the applicant will receive nothing for the first week following the decision on his application, £64.88 the following week and thereafter, the full £178.44 subsistence.

[Back to contents](#)

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	JL	25/05/11	First version of instruction

[Back to contents](#)