

Asylum Support Policy Bulletin 4

Determining whether persons who apply for asylum support are destitute

Contents

1. Background and scope
2. The destitution test
3. Persons who have been without support for a prolonged period
4. Guide to the destitution threshold table
5. Using the destitution threshold table to determine whether a person is destitute in subsistence only cases
6. Using the destitution threshold table to determine whether a person is destitute in accommodation and subsistence cases

Annex A Destitution threshold table

Annex B Finding out the local reference rate for board and lodgings

Annex C Examples of applying the destitution threshold table

Annex D Section 95 of Immigration and Asylum Act 1999

Annex E Sections 5-9 of Asylum Support Regulations 2000

1. Background and scope

1.1 This policy bulletin provides guidance for case workers on determining whether persons applying for support under section 4(2) or section 95 of the Immigration and Asylum Act 1999 are destitute.

1.2 A destitution threshold table is included at Annex A for case workers to use as a guide to the level of assets and income (known throughout this Policy Bulletin as “funds”) which we expect would meet accommodation costs and essential living needs for relevant time periods. Accommodation costs vary across the UK and Annex B directs case workers to local information sources that can assist in calculating thresholds for support applications that include an accommodation element. Annex C provides some practical examples to illustrate how the threshold table can be used in subsistence only cases (the variations in local reference rates do not allow examples to be set out in the same way for cases with an accommodation element but the same principles apply).

1.3 For the purposes of simplicity, and unless otherwise stated, the use of ‘he’ and ‘him’ will apply equally to both genders in this Policy Bulletin.

2. The destitution test

2.1 Asylum support under sections 4(2) or 95 may be provided only to asylum seekers or eligible failed asylum seekers and their dependants who appear to the Secretary of State to be destitute or to be likely to become destitute within a specified time.

2.2 Section 95(3) provides that a person is destitute if he either does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met), or he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs (the full text of section 95 (as amended) can be found at Annex D). Regulation 2(1) 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) as well as under section 95.

2.3 Regulations 5 to 9 of the Asylum Support Regulations 2000 set out the matters to be considered when determining whether persons are destitute:

- a. regulation 5 provides that where an application is for support for an applicant and one or more dependants, a determination is needed on whether the main applicant and all his dependants taken together are destitute or likely to become destitute;
- b. regulation 6 sets out the income and assets to be taken into account when determining whether an applicant is (and, if applicable, his dependants are) destitute;
- c. regulation 7 prescribes the period within which an applicant is or is likely to become destitute (see paragraph 4.2 below);
- d. regulation 8 sets out the matters to be taken into account when determining the adequacy of existing accommodation; and

- e. regulation 9 refers to essential living needs and includes a list of examples of items and expenses which should not be defined as essential for the purposes of asylum support.

2.4 A copy of regulations 5 to 9 is included with this Policy Bulletin at Annex E.

3. Persons who have been without support for a prolonged period

3.1 If a person has been without support for a prolonged period, then it would be reasonable for the case worker 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 worker 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 any means of support.

4. Guide to the destitution threshold table

4.1 The destitution threshold table at Annex A is a guide to the level of funds which we expect would meet a person's accommodation costs and essential living needs for the specified time frames.

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

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

4.4 A support applicant with funds available to him in excess of the relevant threshold in the table 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.

4.5 Where 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.

4.6 The table is intended as a guideline 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 clothing or luggage 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. The threshold table is therefore a starting point to deciding a reasonable level of expenditure but there are other factors to be considered.

5. Using the destitution threshold table to determine whether an asylum seeker is destitute in section 95 subsistence only cases

5.1 When a person requests subsistence only support under section 95, the case worker 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 threshold table at Annex A reflect the amounts as a general rule which we consider will meet his essential living needs.

5.2 Column 1 details the thresholds applicable to a new applicant for asylum support. It gives the levels of funds sufficient to meet essential living needs for 14 days (starting from the date the application form is signed). Column 2 details the thresholds applicable to supported persons who acquire additional funds. It gives the level of funds sufficient to meet essential living needs for 56 days (starting from the date he acquires the funds).

5.3 Special considerations apply where an asylum support applicant's partner, civil partner or spouse with whom he is cohabiting is a British citizen or has been granted status (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 income-based Jobseeker'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 thresholds accordingly. Further information on mixed household cases can be found in Asylum Support Policy Bulletin 11.

6. Using the destitution threshold table to determine whether a person is destitute in section 4 cases and in section 95 accommodation and subsistence cases

6.1 In cases where a person requests section 4 support or accommodation and subsistence support under section 95 and does not have adequate accommodation available to him, the case worker 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 reflect the amounts as a general rule which we consider will meet essential living needs. The subsistence element is based upon the asylum support rates but a small deduction is made to take account of the breakfast which it is assumed will be supplied under the board and lodging rate. An element to reflect the variable cost of accommodation across the UK must also be added (see Annex B).

6.2 Column 3 details the thresholds applicable to a new applicant for asylum support. It gives the levels of funds sufficient to meet essential living

needs and the cost of accommodation for 14 days. Column 4 details the thresholds applicable to an applicant who is already receiving asylum support. It gives the level of funds sufficient to meet essential living needs and the cost of accommodation for 56 days.

6.3 If 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 asylum support, they will be expected to make a contribution to the accommodation cost. Further information on mixed household cases can be found in Asylum Support Policy Bulletin 11.

Destitution Threshold Table

THRESHOLD TABLE SHOWING THE AMOUNTS EXPECTED TO MEET AN ASYLUM SEEKER'S ESSENTIAL LIVING NEEDS					
		Amounts applicable to cases requiring section 95 subsistence only support		Amounts applicable to cases requiring section 4 support or section 95 accommodation and subsistence	
		Column 1 – new applicants (amounts needed for 14 days)	Column 2 – applicants already receiving support (amounts needed for 56 days)	Column 3 – new applicants (amounts needed for 14 days)	Column 4 – applicants already receiving support (amounts needed for 56 days)
TYPE OF APPLICANT	Single person aged 25 or over	£82.82	£331.28	£ 67.00 + local reference rate for board and lodgings for 14 days	£ 268.00 + local reference rent rate for board and lodgings for 56 days
	Single person aged 18 to 24	£65.60	£262.40	£49.78 + local reference rate for board and lodgings for 14 days	£199.12 + local reference rent rate for board and lodgings for 56 days
	Qualifying Couple (as defined in regulation 10(4)(a) of the Asylum Support Regulations 2000)	£129.92	£519.68	£98.28 + local reference rate for board and lodgings for 14 days for a couple	£393.12 + local reference rent rate for board and lodgings for 56 days for a couple.
	Lone parent aged 18 or over	£82.82	£331.28	£67.00 + local reference rate for board and lodgings for 14 days	£268.00 + local reference rent rate for board and lodgings for 56 days
	Person aged 16-17 (except a member of a [qualifying] couple)	£71.30	£285.20	£55.48 + local reference rate for board and lodgings for 14 days	£221.92 + local reference rent rate for board and lodgings for 56 days
	Person under 16	£94.90	£379.60	£79.08 + local reference rate for board and lodgings for 14 days	£316.32 + local reference rent rate for board and lodgings for 56 days
	Mixed household – no rent liability/not in asylum accomm	£157.76 85% income support couple rate	£631.04	Non applicable	Non applicable
	Mixed household – rent liability	£176.32 95% income support couple rate	£705.28	£144.68 + local ref rate for Board & Lodgings for 2 people for 14 days	£578.72 + local ref rate for Board & Lodgings for 2 people for 56 days

Finding out the local reference rate for board and lodgings

- The local reference rate for board and lodgings for an appropriate sized property in England can be found out by contacting the local Rent Service office or the local authority in the location in which the household is based.

Contact details for the local Rent Office can be obtained from the Rent Service website:

https://ebusiness.therentservice.gov.uk/postcode/office_lookup.asp

- The local reference rate for board and lodgings for an appropriate sized property in Scotland, Wales or Northern Ireland can be found out by contacting the local authority in the location in which the household is based.

Examples of applying the Threshold Table

(a) Section 95 subsistence only cases (new applicants): Column 1

Example 1

An asylum seeker aged 20, living with a friend, has applied for subsistence only support under section 95. He declares cash of £60.00.

Column 1 of the threshold table indicates that, as a general rule, £65.60 will meet the essential living needs for 14 days of a single asylum seeker aged 18 to 24 who has applied for subsistence only support.

This figure is based on the weekly asylum support rate for a single 20 year old asylum seeker, £32.80, multiplied by 2 (because the person's funds must meet his essential living needs for 14 days) = £65.60.

In this case, the asylum seeker's funds are less than the threshold and so he cannot meet his essential living needs for 14 days and is therefore destitute. He will be given asylum support but payments will be reduced to take account of the £60.00 cash.

Example 2

An asylum seeker aged 26, living with a friend, has applied for subsistence only support under section 95. He declares cash of £150.00.

Column 1 of the threshold table indicates that, as a general rule, £82.82 will meet the essential living needs for 14 days of a single asylum seeker aged 25 or over who has applied for subsistence only support.

In this case, the asylum seeker's funds exceed the threshold and so he can meet his essential living needs for 14 days and is not destitute. Asylum support is therefore refused.

Example 3

An asylum seeker has a wife and two children aged under 16. They have applied for subsistence only support under section 95 and declare £300.00 cash.

Column 1 of the threshold table indicates that, as a general rule, £319.72 will meet the essential living needs for 14 days of a couple and two children under 16. (This figure is calculated by adding the qualifying couple rate to the rate for two children.)

The family's funds are less than the threshold and so they cannot meet their essential living needs for 14 days and are therefore destitute. Asylum support is granted but payments will be reduced to take account of the £300.00 cash.

(b) Section 95 subsistence only cases (already receiving support): Column 2

Example 4

An asylum seeker aged 20, living with a friend, is receiving subsistence only support under section 95. He is sent a birthday present of £200.00.

Column 2 of the threshold table indicates that, as a general rule, £262.40 will meet the essential living needs for 56 days of a single asylum seeker aged 18 to 24 who is receiving subsistence only support.

This figure is based on the weekly asylum support rate for a single 20 year old asylum seeker of £32.80 multiplied by 8 (because the person's funds must meet his essential living needs for 56 days) = £262.40.

In this case, the asylum seeker's funds are less than the threshold and so he cannot meet his essential living needs for 56 days and is therefore still destitute. His asylum support will continue but payments will be reduced to take account of the £200.00.

Example 5

An asylum seeker aged 26, living with a friend, is receiving subsistence only support under section 95. He wins £350.00 on the lottery.

Column 2 of the threshold table indicates that, as a general rule, £331.28 will meet the essential living needs for 56 days of a single asylum seeker aged 25 or over receiving subsistence only support.

In this case, the asylum seeker's funds exceed the threshold and so he can meet his essential living needs for 56 days and is not destitute. Asylum support is therefore discontinued.

Example 6

An asylum seeker has a wife and two children aged under 16. They are receiving subsistence only support under section 95. They are sent £1,000.00 from relatives abroad.

Column 2 of the threshold table indicates that, as a general rule, £1,278.88 will meet the essential living needs for 56 days of a couple and two children under 16.

The family's funds are less than the threshold and so they cannot meet their essential living needs for 56 days and are therefore still destitute. Their asylum support will continue but payments made will be reduced to take account of the £1,000.00 cash.

Section 95 of Immigration and Asylum Act 1999

Provision of support

Persons for whom support may be provided.

95. - (1) The Secretary of State may provide, or arrange for the provision of, support for-

- (a) asylum-seekers, or
- (b) dependants of asylum-seekers,

who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

(2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.

(3) For the purposes of this section, 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.

(4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.

(5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State-

- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
- (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).

(6) Those matters are-

- (a) the fact that the person concerned has no enforceable right to occupy the accommodation;
- (b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;
- (c) the fact that the accommodation is temporary;

(d) the location of the accommodation.

(7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State-

(a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but

(b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.

(8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.

(9) Support may be provided subject to conditions.

(9A) A condition imposed under subsection (9) may, in particular, relate to--

(a) any matter relating to the use of the support provided, or

(b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).

(10) The conditions must be set out in writing.

(11) A copy of the conditions must be given to the supported person.

(12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.

(13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

Regulations 5-9 of The Asylum Support Regulations 2000 – *Determining whether persons are destitute*

Determination where application relates to more than one person, etc.

5. - (1) Subject to paragraph (2), where an application in accordance with regulation 3(3) is for asylum support for the applicant and one or more dependants of his, in applying section 95(1) of the Act the Secretary of State must decide whether the applicant and all those dependants, taken together, are destitute or likely to become destitute within the period prescribed by regulation 7.

(2) Where a person is a supported person, and the question falls to be determined whether asylum support should in future be provided for him and one or more other persons who are his dependants and are -

(a) persons for whom asylum support is also being provided when that question falls to be determined; or

(b) persons for whom the Secretary of State is then considering whether asylum support should be provided,

in applying section 95(1) of the Act the Secretary of State must decide whether the supported person and all those dependants, taken together, are destitute or likely to become destitute within the period prescribed by regulation 7.

Income and assets to be taken into account

6. - (1) This regulation applies where it falls to the Secretary of State to determine for the purposes of section 95(1) of the Act whether -

(a) a person applying for asylum support, or such an applicant and any dependants of his, or

(b) a supported person, or such a person and any dependants of his,

is or are destitute or likely to become so within the period prescribed by regulation 7.

(2) In this regulation "the principal" means the applicant for asylum support (where paragraph (1)(a) applies) or the supported person (where paragraph (1)(b) applies).

(3) The Secretary of State must ignore -

(a) any asylum support, and

(b) any support under section 98 of the Act,

which the principal or any dependant of his is provided with or, where the question is whether destitution is likely within a particular period, might be provided with in that period.

(4) But he must take into account -

- (a) any other income which the principal, or any dependant of his, has or might reasonably be expected to have in that period;
- (b) any other support which is available to the principal or any dependant of his, or might reasonably be expected to be so available in that period; and
- (c) any assets mentioned in paragraph (5) (whether held in the United Kingdom or elsewhere) which are available to the principal or any dependant of his otherwise than by way of asylum support or support under section 98, or might reasonably be expected to be so available in that period.

(5) 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.

(6) The Secretary of State must ignore any assets not mentioned in paragraph (5).

Period within which applicant must be likely to become destitute

7. The period prescribed for the purposes of section 95(1) of the Act is -

- (a) where the question whether a person or persons is or are destitute or likely to become so falls to be determined in relation to an application for asylum support and sub-paragraph (b) does not apply, 14 days beginning with the day on which that question falls to be determined;
- (b) where that question falls to be determined in relation to a supported person, or in relation to persons including a supported person, 56 days beginning with the day on which that question falls to be determined.

Adequacy of existing accommodation

8. - (1) Subject to paragraph (2), the matters mentioned in paragraph (3) are prescribed for the purposes of subsection (5)(a) of section 95 of the Act as matters to which the Secretary of State must have regard in determining for the purposes of that section whether the accommodation of -

- (a) a person applying for asylum support, or
- (b) a supported person for whom accommodation is not for the time being provided by way of asylum support,

is adequate.

(2) The matters mentioned in paragraph (3)(a) and (d) to (g) are not so prescribed for the purposes of a case where the person indicates to the Secretary of State that he wishes to remain in the accommodation.

(3) The matters referred to in paragraph (1) are -

- (a) whether it would be reasonable for the person to continue to occupy the accommodation;
- (b) whether the accommodation is affordable for him;
- (c) whether the accommodation is provided under section 98 of the Act, or otherwise on an emergency basis, only while the claim for asylum support is being determined;
- (d) whether the person can secure entry to the accommodation;
- (e) where the accommodation consists of a moveable structure, vehicle or vessel designed or adapted for human habitation, whether there is a place where the person is entitled or permitted both to place it and reside in it;
- (f) whether the accommodation is available for occupation by the person's dependants together with him;
- (g) whether it is probable that the person's continued occupation of the accommodation will lead to domestic violence against him or any of his dependants.

(4) In determining whether it would be reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority where the accommodation is.

(5) In determining whether a person's accommodation is affordable for him, the Secretary of State must have regard to -

- (a) any income, or any assets mentioned in regulation 6(5) (whether held in the United Kingdom or elsewhere), which is or are available to him or any dependant of his otherwise than by way of asylum support or support under section 98 of the Act, or might reasonably be expected to be so available;
- (b) the costs in respect of the accommodation; and
- (c) the person's other reasonable living expenses.

(6) In this regulation -

- (a) "domestic violence" means violence from a person who is or has been a close family member, or threats of violence from such a person which are likely to be carried out; and

(b) "district of the local housing authority" has the meaning given by section 217(3) of the Housing Act 1996.

(7) The reference in paragraph (1) to subsection (5)(a) of section 95 of the Act does not include a reference to that provision as applied by section 98(3) of the Act.

Essential living needs

9. - (1) The matter mentioned in paragraph (2) is prescribed for the purposes of subsection (7)(b) of section 95 of the Act as a matter to which the Secretary of State may not have regard in determining for the purposes of that section whether a person's essential living needs (other than accommodation) are met.

(2) That matter is his personal preference as to clothing (but this shall not be taken to prevent the Secretary of State from taking into account his individual circumstances as regards clothing).

(3) None of the items and expenses mentioned in paragraph (4) is to be treated as being an essential living need of a person for the purposes of Part VI of the Act.

(4) Those items and expenses are -

- (a) the cost of fares;
- (b) computers and the cost of computer facilities;
- (c) the cost of photocopying;
- (d) travel expenses, except the expense mentioned in paragraph (5);
- (e) toys and other recreational items;
- (f) entertainment expenses.

(5) The expense excepted from paragraph (4)(d) is the expense of an initial journey from a place in the United Kingdom to accommodation provided by way of asylum support or (where accommodation is not so provided) to an address in the United Kingdom which has been notified to the Secretary of State as the address where the person intends to live.

(6) Paragraph (3) shall not be taken to affect the question whether any item or expense not mentioned in paragraph (4) or (5) is, or is not, an essential living need.

(7) The reference in paragraph (1) to subsection (7)(b) of section 95 of the Act includes a reference to that provision as applied by section 98(3) of the Act and, accordingly, the reference in paragraph (1) to "that section" includes a reference to section 98.