

Financial support for asylum seekers



Hafsa Masood

Section 95 IAA 1999

S.95 – power to provide or arrange for the provision of “**support**” for asylum seekers (and dependants) who appear to be or are likely to become destitute.

(S.95(3) – 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 and the means of obtaining it but cannot meet his other essential living needs.”)

Ways in which “support” may be provided

s.96 -

“(1) Support may be provided under section 95:

*(a) **by providing accommodation** appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);*

*(b) **by providing what appear to the Secretary of State to be essential living needs** of the supported person and his dependants (if any);’*

(2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.”

- Reg 10 of the Asylum Support Regulations 2000 (“ASR”) (as amended):
 - “(1) *This regulation applies where the Secretary of State has decided that asylum support should be provided in respect of the essential living needs of a person.*
 - (2) As a general rule, asylum support in respect of the essential living needs of that person may be expected to be provided weekly in the form of a weekly cash payment of £39.63.**
 - (3) Where the Secretary of State has decided that accommodation should be provided for a person by way of asylum support, and accommodation is provided in a form which also meets other essential living needs (such as bed and breakfast, or half or full board), the amount specified in paragraph (2) shall be treated as reduced accordingly.**”
- Reg 12(3) ASR: appropriate deduction can be made if asylum seeker has income or assets.
- NB: those supported under s.4(2) also receive weekly allowance to cover essential living needs.

“Essential living needs” - what are they?

- **Reg 9(4) of the ASR** – cost of faxes, computers and cost of computer facilities, cost of photocopying, travel expenses (subject to certain exceptions), toys and other recreational activities, and entertainment expenses are not essential living needs.
- **Otherwise, for SSHD to decide (subject to minimum required by Reception Directive) (Refugee Action [2014] EWHC 1033 (Admin), paras 90-91, JK (Burundi) [2017] EWCA Civ 433, para 87)**
- **Home Office ‘Report on the allowances paid to asylum seekers and failed asylum seekers: 2020’ (2020 Review)** – identifies “all needs that are considered “essential” for average, able-bodied asylum seeker and their dependents and which are not covered through other arrangements” and assesses cost of meeting each need.

“Essential living needs” – what are they?

- **Food and drink**
- **Clothing and footwear**
- **Toiletries**
- **Laundry and toilet paper**
- **Healthcare** (generic non-prescription medication e.g. painkillers)
- **Travel and communication** – not considered essential needs in themselves, but “*may be necessary in limited circumstances to enable other needs to be met, including those related to maintaining interpersonal relationships and a minimum level of participation in social, cultural and religious life*” (2020 Review; *Refugee Action*, para 115)

“Essential living needs” – level of support

Categories of need	Sum allowed per week (2018 Review)	Sum allowed per week (2020 Review)
Food and drink	£24.70	£26.49
<i>Adjustment for CPI</i>		£0.40
Toiletries	£1.05	£0.69
Healthcare	£0.95	£0.35
Household cleaning items (changed to 'Laundry/toilet paper' in the 2020 Review)	£0.95	£0.43
Clothing and footwear	£2.80	£3.01
Travel	£4.30	£4.70
Communications	£3.00	£3.56
Total	£37.75	£39.63

“Essential living needs” – support in full board initial accommodation

- Remember Reg 10(3) of ASR?
- SSHD’s longstanding approach – weekly cash allowance not paid to those in full-board initial accommodation (“IA”) because: essential living needs either met through support package provided in full board IA, or they did not arise on a short-term basis. Only paid on dispersal to self-catered accommodation.
- Pandemic (and pause on cessation of support accounted on 27 March 2020) resulted in: (i) greater use of contingency hotels and (ii) people spending significantly longer in IA (for summary, see *R (JM) v SSHD*, paras 35ff).
- Resulted in departure from longstanding approach...

“Essential living needs” - support in full board initial accommodation

27 October 2020 – following decision announced by SSHD:

- A weekly payment of **£8** would be made for: **cost of clothing** (c.£3), **non-prescription medication** (£0.35) and **travel** (£4.70). Accommodation provider would continue to provide for other essential living needs.
- Backdated weekly payments of:
 - **£3** from 27 March 2020 until 30 June 2020 (for **cost of clothing**. Nothing for travel since travel “generally inappropriate” in this period due to COVID restrictions)
 - **£7.70** from 1 July 2020 till 27 October 2020 (for **cost of clothing** and **travel**).
 - Nothing for non-prescription medication.

R (JM) v SSHD [2021] EWHC 2514 (Admin)

C in full board IA (2 hotels) between 1 May 2020 – 1 Feb 2021. Claimed travel and communication needs of asylum seekers in C's position not sufficiently met.

Challenged following aspects of 27 Oct 2020 decision:

- (1) Travel:** decision not to make backdated payments for travel in respect of the period 27 Mar - 30 Jun 2020;
- (2) Communication:** decision not to include a sum for communication (on the basis that this would be met by accommodation providers).

R (JM) v SSHD [2021] EWHC 2514 (Admin)

Held:

(1) Travel: decision lawful.

(2) Communication: decision unlawful. SSHD failed to have proper regard to communication needs of asylum seekers in full board IA (during the pandemic). Made declaration, but left it to the SSHD to decide what needed to be done to address unlawfulness found.

(See also general observations re nature of SSHD duty under s.95 to meet “essential living needs”: paras 102-107).

R (AXG) v SSHD [2022] EWHC 56 (Admin)

C and her daughter in full board IA (various hotels) between early Nov 2019 – Jun 2021.

In addition to pursuing the same challenge re communication and travel as in JM, C challenged the following aspects of the 27 Oct 2020 decision:

- (1) Non-prescription medication:** decision not to make backdated payments for non-prescription medication.
- (2) Imposition of a long-stop date of 27 March 2020** for backdated payments.

R (AXG) v SSHD [2022] EWHC 56 (Admin)

Held:

- (1) Non-prescription medication:** decision unlawful. There was no evidence that could rationally form the basis for the conclusion that this need was being met by full board accommodation providers or otherwise. As in JM, left it to SSHD to decide how to address unlawfulness found.
- (2) Imposition of long-stop date of 27 March 2020:** decision lawful. Rational not to extend scheme to period before 27 March 2020.

Additional financial support available

- **Additional weekly payments for pregnant women (£3), child under 1 (£5), child between 1 and 3 (£3):** Reg10A of ASR (s.95 supported); Reg 7 of Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 (s.4 supported).
- **One-off maternity grant (£250) for pregnant women/new mothers** payable in period 8 weeks before expected date of birth or 6 weeks after birth.
- **Exceptional circumstances** – if additional support required because of an individual's exceptional circumstances this can be provided under s.96(2) IAA 1999.

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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