

SECTION 4 SUPPORT AND BREACH OF CONDITIONS

Breach of Conditions and Section 4 Support

When a person is provided with Section 4 support they have to follow certain conditions. If these conditions are breached, then BIA may withdraw that person's support.

Where are the conditions for Section 4 support?

The conditions for support under Section 4 are found in the Asylum Support (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005. These are special regulations that only deal with Section 4 support. People who are still asylum seekers and receiving full asylum support (Section 95 support) also have their support provided subject to conditions but these are listed in the Asylum Support Regulations 2000.

The two sets of Regulations are very different. It is important to remember that the Asylum Support Regulations 2000 only apply to asylum seekers receiving full asylum support (Section 95) and the Asylum Support (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 apply to failed asylum seekers who are accessing Section 4 support.

The Asylum Support (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005

These Regulations list all the law that relates to Section 4 support. The criteria for Section 4 support are listed here namely that the person has to be destitute and meet one of the following criteria:

- That they are taking all reasonable steps to leave the UK
 - That they are unable to leave the UK on account of a physical impediment to travel or for some other medical reason
 - That in the opinion of the Secretary of State there is no viable route of return to the person's country of origin
 - That the person has made an application for Judicial Review in relation to their asylum claim and has been granted permission to proceed
- That the provision of support is necessary to avoid a breach of the person's human rights (note, this is usually because they have made a fresh claim for asylum).

What are the conditions of Section 4 support?

The conditions of Section 4 support which the supported person has to follow are found in Regulation 6 of the Asylum Support (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005.

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The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact ASAP.

Regulation 6 says:

“6. - (1) The continued provision of accommodation to a person falling within section 4(2) or (3) of the 1999 Act is to be subject to such other conditions falling within paragraph (2) as-

- (a) the Secretary of State may from time to time determine, and**
- (b) are set out in a notice to that person in writing.**
- (2) A condition falls within this paragraph to the extent that it relates to-**
 - (a) complying with specified standards of behaviour,**
 - (b) complying with a reporting requirement,**
 - (c) complying with a requirement-**
 - (i) to reside at an authorised address, or**
 - (ii) if he is absent from an authorised address without the permission of the Secretary of State, to ensure that that absence is for no more than seven consecutive days and nights or for no more than a total of fourteen days and nights in any six month period, or;**
 - (d) complying with specified steps to facilitate his departure from the United Kingdom.”**

There are 4 conditions which are expressly allowed for in Regulation 6:

- **Complying with specified standards of behaviour:**

This usually means complying with any rules that the accommodation provider may set. For example it could be refraining from anti-social behaviour or complying with a tenancy agreement.

The supported person needs to be made aware of the standards of behaviour which are expected of them. This is because the law says that these standards have to be specified. When a person is granted Section 4 support they should be informed in writing of all of the standards of behaviour that are expected of them.

- **Complying with a reporting requirement**

If a person has reporting requirements support may be withdrawn if they do not meet those requirements.

- **Residing at the authorised address**

This is the address provided by BIA. The support person must not be absent without permission for more than seven consecutive days and nights or for more than a total of 14 days and nights in a six-month period.

- **The person is complying with specified steps to leave the UK**

This is only likely to apply to those people who have been awarded support because they have agreed to take all reasonable steps to leave the UK. If they do not do what is asked of them either by the International Organisation for Migration (IOM) or the immigration services support may be withdrawn.

Additionally, the law says that support can be made subject to other conditions which are not specified and that the Secretary of State (the Border and Immigration Agency) can determine them as they see fit. If this happens the supported person must be advised what the conditions are.

What happens if a supported person is thought to have breached their conditions of support?

According to the BIA guidance on Section 4 support, the person must be given an opportunity to explain the alleged breach of conditions before support is discontinued. If they can provide a reasonable explanation for any breach (or show that no breach has taken place) support should not be withdrawn.

BIA must have evidence before they withdraw support. For example, if the supported person has allegedly abandoned their accommodation the accommodation provider will have to provide evidence that the person has been away from their accommodation.

If it is thought that a person has breached their conditions then they should receive a letter which warns them they may be in breach of conditions and invites them to contact BIA and explain why they have breached the conditions or provide evidence that shows they have not breached conditions.

For example, if someone has been away from their accommodation but they have been temporarily staying with a friend because their friend was ill, they should provide evidence of this as this can be a reasonable explanation for not being in their accommodation.

What happens if support is withdrawn because of an alleged breach of conditions?

If support is withdrawn the person must be informed in writing. They will have a right to appeal against the decision to the Asylum Support Tribunal (AST). For information about appealing to the AST contact ASAP.

For more information and factsheets, visit www.asaproject.org.uk

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ASAP Factsheets:

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No 2: Section 4 Support for Failed Asylum Seekers

No 3: What to Bring to the AST

No 4: Proving Destitution

No 5: After a Negative Decision at the AST

No 6: Section 9 Withdrawal of Support for Failed Asylum Seeker Families

No 7: Introduction to Community Care

No 8: Introduction to Judicial Review

No 9: The European Convention on Human Rights and The Human Rights Act 1998

No 10: Medical Briefing

No 11: Section 4 Breach of Conditions

No 12: Section 4: New Ways to Apply