

## Asylum Seekers with Permission to Work in the Scotland

Information for asylum seekers in Scotland who have permission to carry out paid work while they wait for a decision on their asylum claim

### Permission to work

If you have made a claim for asylum in the UK, usually you will not have permission to carry out paid work. However, there are a few situations where you may have permission to do paid work while you wait for a decision on your claim for asylum:

1. You made a successful application for permission to work to UK Visas & Immigration at the Home Office on the basis that you have not received an initial decision on your claim within 12 months of claiming asylum and this delay was not your fault.
2. You have been refused asylum and have made a successful application for permission to work to UK Visas & Immigration at the Home Office on the basis that you have made further submissions ('fresh claim for asylum') and you have not had a decision on these submissions within one year of when they were recorded by UK Visas & Immigration, and this delay is not your fault.

If you are applying for permission to work as an asylum seeker/refused asylum seeker who has been waiting for more than 6 months, dependants on your claim for asylum (e.g. spouse/partner/children) are not eligible to apply for permission to work.

**REMEMBER:** You are only eligible to apply for permission to work; there is no guarantee that you will be successful. Each application will be considered individually by UK Visas & Immigration.

3. You were in the UK under a different visa which gave you permission to work (e.g. a student visa), and you made a claim for asylum before that visa expired, therefore you can carry on working under the same conditions as allowed in that visa.

This is under Section 3C of the Immigration Act 1971, which automatically extends the leave of a person who applies for further leave to remain (e.g., asylum) providing they have existing leave to enter or remain when they lodge the application. In this situation, a claim for asylum is seen as an application to change the type of leave you have in the UK rather than a new application for leave to remain. This should also apply to your dependants (e.g., spouse/partner/ children) who are in the UK as dependants on your original visa and are now dependants on your claim for asylum. If your dependants were not part

of your original visa application before being added as a dependant to your asylum claim, they will not be able to benefit from this.

More information on applying for permission to work as an asylum seeker is available here: [Home Office website \(www.gov.uk/government/publications/handling-applications-for-permission-to-take-employment-instruction/permission-to-work-and-volunteering-for-asylum-seekers-accessible-version\)](http://www.gov.uk/government/publications/handling-applications-for-permission-to-take-employment-instruction/permission-to-work-and-volunteering-for-asylum-seekers-accessible-version)

and here: [Immigration Rules part 11B \(https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b\)](https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b)

## **FREQUENTLY ASKED QUESTIONS**

### **Will applying for permission to work affect my asylum claim?**

Before applying for permission to work, it is important to think about the basis for your asylum claim. For example, if you have told the Home Office that you will not be able to support yourself in your country of origin because you cannot work because of health reasons, the Home Office may think that applying for permission to work in the UK contradicts this claim. Therefore, it is very important to get legal advice on how an application for permission to work may impact on your claim for asylum.

### **What work can I do?**

The type of work you can do depends on how you were granted permission to work.

#### **1. If you have permission to work as an asylum seeker/refused asylum seeker on the basis of delay:**

The jobs you are permitted to do are limited to the Shortage Occupation List (SOL). The list can be found here: [Shortage Occupation List](#). You cannot be self-employed, you cannot employ others and you cannot open a business. If you start working in a job not on the Shortage Occupation List, you will be working illegally. Any work undertaken outside of what you are permitted to do may impact your asylum claim and you should seek legal advice immediately.

If you are found to be employed to do a job not on the Shortage Occupation List your employer may also be fined.

#### **2. If you have permission to work because you had a valid visa to be in the UK before you applied for asylum and the conditions of that visa are continued to your asylum claim (3C leave – see above):**

You can work under the same conditions as the previous visa. For example, if you previously had a student visa, you will be able to work the same hours you were allowed to work as a student.

## **How long does my permission to work last?**

Your permission to work will end when your asylum claim or further submission has been refused and any appeal rights against refusal are exhausted.

## **If I am working, will I keep getting asylum support/Can I apply for asylum support if I am working?**

Asylum support (Section 95 and Section 4) is usually provided in the form of furnished accommodation, with utilities such as gas, electricity and water also provided free, and a weekly cash or cash card amount to pay for essential living needs like food, clothes, toiletries and travel costs.

This support is provided on the basis that you are 'destitute'. Destitute means:

- you do not have adequate accommodation or any means of obtaining it (whether or not your other essential living needs. OR
- you have adequate accommodation or the means of obtaining it but cannot meet your essential living needs.

To decide whether you are destitute, the Home Office looks at the minimum amount of money needed to meet your essential living needs and accommodation costs.

The Home Office sets the minimum amount of money you need for your essential living needs at the weekly rate of asylum support [currently £40.85 per person in your household]. For accommodation, the minimum is the average price for bed and breakfast accommodation in your local area. More information can be found here:

[Home Office Assessing Destitution](#)

**You must tell the Home Office when you start working.** If you get Section 95 support and do not tell the Home Office that you are working, you may face criminal charges. If you are convicted and have a criminal record, this may have an impact on any current and future immigration applications.

Working without telling the Home Office can also lead to your asylum support being stopped. If you are receiving section 95 support, you may have to pay back any overpayment to the Home Office.

When you start working, any asylum support you receive may be changed as your income may mean you are no longer destitute. This means any income you have could lead to your asylum support and/or your accommodation being stopped. If the Home Office decide to stop your asylum support, they have to show that you are able to avoid destitution for the next 56 days.

It is important to know that the type of working contract you have may mean you are still entitled to asylum support e.g. part-time hours or a zero-hour contract. However, any extra hours you work outside your contracted hours may result in your earnings

going over the destitution threshold and end your asylum support. It is important that you get legal advice about these issues when applying for permission to work and also when you are offered a job and know what your salary and hours will be.

### **Can I reapply for asylum support if I stop working?**

If you stop earning and become destitute again, you may be able to apply for asylum support again. You will need to prove you do not have any money. If you have stopped working but have money saved, you may have to spend this money before you can apply for asylum support, or have this money deducted from the amount of asylum support the Home Office will provide you until the money is spent.

### **What happens if I earn over the destitution threshold?**

If you are earning more than the Home Office minimum cost for financial and accommodation support then you will no longer get asylum support. You will be responsible for finding and paying for accommodation, all utilities and bills including rent, electricity/gas, TV licence, and council tax.

If you do not pay your rent and bills, you may face penalties. If you fail to pay your rent you may be taken to court and/or evicted. This may have an impact on any future immigration applications or your eligibility to access utilities in the future.

## **Legal Aid**

If you cannot afford to pay for a lawyer, you may be eligible for legal aid. Legal aid in Scotland is provided by the Scottish Legal Aid Board. Legal aid is available regardless of your immigration status and is granted based on your income. Many asylum seekers' asylum claims are funded by legal aid.

However, if you are working and earn more than the minimum financial amount needed to qualify for legal aid, you will personally have to pay your legal fees. The fees you will be charged can vary for every solicitor.

Your lawyer has a duty to tell the Scottish Legal Aid Board if you no longer qualify for legal aid. If your legal fees have been covered by legal aid when you were no longer eligible, the Scottish Legal Aid Board may ask you to pay back any legal costs you were not eligible to receive.

You can check the Scottish Legal Aid Board website ([www.slab.org.uk](http://www.slab.org.uk)) to see if you can get legal aid. The Scottish Legal Aid Board has online estimators so you can check if you might be eligible:

- [Civil legal aid estimator](#)
- [Advice and Assistance legal aid estimator](#)

More information on conditions for getting legal aid can be found here: <https://www.slab.org.uk/new-to-legal-aid/leaflets/information-for-applicants-leaflet/>

## **Legal Advice**

If you have an issue with any of the areas mentioned in this factsheet, it is very important that you get legal advice from a lawyer.

If you do not have a lawyer, you can find one through the Law Society of Scotland website: [www.slab.org.uk/new-to-legal-aid/find-a-solicitor/](http://www.slab.org.uk/new-to-legal-aid/find-a-solicitor/)

## **Tax, National Insurance, and Welfare Benefits**

If you earn over a certain amount, you will have to pay tax and/or National insurance contributions. This should be deducted from your pay by your employer and sent to HMRC before you are paid.

Even though you may be paying tax and/or National Insurance, you will not be eligible to apply for benefits because of your immigration status.

## **Bank Accounts**

You may need to open a bank account to receive your pay into and/or pay your bills. As an asylum seeker you may have difficulties opening a current account as you may be a 'Disqualified Person' because of your immigration status. However, you may be able to open a basic bank account with some banks in the UK. You should check with your chosen bank if they are able to open an account for you.