

## Chapter 51 – Index

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### 51. Administrative removal

Administrative removal refers to individuals who are liable to removal under section 10 of the [Immigration & Asylum Act 1999](#) or section 47 of the [Immigration, Asylum and Nationality Act 2006](#). This guidance describes the process for, and the effect of, serving administrative removal decisions on those that have:

For Section 10:

- Overstayed;
- Breached a condition of leave to enter or remain;
- Sought or obtained leave to remain by deception;
- Indefinite leave revoked because they have ceased to be a refugee;
- Family members of the above;

For Section 47

- Had a decision to refuse to vary or to curtail leave, and a decision is being made to administratively remove when statutorily extended leave comes to an end.

See Chapter 50 for further information on who section 10 decisions can be applied to.

See Chapter 7 for guidance on serving removal decisions on Illegal Entrants.

See Chapter 50 (EEA) for guidance on the administrative removal of EEA Nationals or their family members.

## 51.1 Notice of liability (section 10)

The IS151A Part 1 (Notice that a person is to be treated as an illegal entrant/a person liable to administrative removal under section 10 of the Immigration & Asylum Act 1999) can be served on those liable to administrative removal (as outlined in the first five bullet points above).

The Notice of Liability is not an appealable immigration decision. It informs the individual they are an illegal entrant/immigration offender and they are liable to detention and removal. It also allows reporting restrictions to be placed on the individual. See [Section 51.5](#) below.

### Statement of reasons

To comply with the spirit of regulation 5(1) (a) of the Immigration (Notices) Regulations 2003, the IS.151A Part 1 must contain a statement of reason(s). A non-exhaustive list of paragraphs that could be copied and pasted into the IS151A Part 1 is listed below. The wording should then be amended to fit the individual circumstances of the case:

#### ◆ Home Office records show overstayed

You are specifically considered a person who has overstayed their period of granted leave because landing card records show that on **(insert date)** you were granted leave to enter as a visitor for six months by an Immigration Officer at **(insert Port)**. It was only in **(insert date)** that you applied to regularise your stay here.

#### ◆ Passport shows overstayed

You are specifically considered a person who has overstayed their period of granted leave because your passport shows you were given leave to enter as a visitor for six months by an Immigration Officer at **(insert Port)** on **(insert date)** and it was only in **(insert date)** that you applied to regularise your stay here.

#### ◆ Visa shows overstayed

You are specifically considered a person who has overstayed their period of granted leave because you were issued with a visit visa on **(insert date)** which was valid until **(insert date)**. Holders of visit visas may only remain in the United Kingdom for a maximum of six months on any one visit, or until the visa expires if less than six months. You arrived in the United Kingdom on **(insert date)** and were landed in line with the visa (for example, until **(insert**

**date**). You did not however seek to regularise your position in the United Kingdom until **(insert date)**.

♦ **No passport but applicant admits to being an overstayer**

You are specifically considered a person who has overstayed their period of granted leave because you admit to having arrived in the United Kingdom on **(insert date)** when you were permitted to enter as a visitor for six months. It was only in **(insert date)** that you applied to regularise your stay here.

♦ **Working in breach**

You are specifically considered a person who has failed to observe a condition of leave to enter or remain as you were admitted to the United Kingdom on **(insert date)** as a visitor on a condition that prohibited you from taking employment but on **(insert date)** you were observed to be working for **(insert employer)** who have confirmed that you were in full time employment with them.

♦ **Spouse/Family member**

You are specifically considered a person who is liable to administrative removal because you are the spouse/ son/daughter of **(insert relation)** who is being administratively removed

**Levels of authority**

The Notice of liability must be completed/authorised by an executive officer/immigration officer or above, in overstayer, breach, family member, deception or revocation cases (i.e. where this may lead to a decision under section 10(1)(a), 10(1)(b), 10(1)(ba) or 10(1)(c)).

However, where the Notice of Liability is served during an enforcement encounter, a decision **must** also be made as to whether to detain or place on reporting restrictions. This may require authorisation from a higher grade (see [51.5 below](#)).

**Service**

The Notice of Liability can be served in person or by post. However, in deception cases an interview under caution by an immigration officer may be required first. See Chapter 37 for further details on enforcement interviews.

The service of the IS151A Part 1 must be recorded on CID.

## **CID updates**

- Access ICID and enter the Home Office/Port Reference.
- Create a new case type for the individual and select one of the following case types:
  - ‘Admin Removal: Breach of Employment Restrictions’
  - ‘Admin Removal: Breach of Restrictions to Public Funds’
  - ‘Admin Removal: Leave to Remain by Deception’
  - ‘Admin Removal: Overstayer’
  - ‘Admin Removal: Spouse of a Person Liable to Admin Removal’
  - ‘Admin Removal: Dependant Children of a Person Liable to Ad Removal’
- The application raised date should be the date that consideration of admin removal began.
- Click ‘Save/Exit’.
- The case must then be outcomed with ‘Served with IS151A’.
- Click ‘Save/Exit’.
- The date and method of service must also be updated, click ‘Key Document Tracking’.
- Under ‘Document Type’ select ‘IS151A’, move to ‘Document Event Type’ and select ‘Served’, and complete the data/time fields with the date of service.
- Select the method of service under ‘Despatch Method’ and who the decision was served to under ‘Despatched Address’.
- Click ‘Save/Exit’.

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## 51.2 Immigration Decision (section 10)

Following the service of an IS151A Part 1, an immigration decision should be served. It is best practice that the IS151A Part 1 and the immigration decision are served together, but there may be situations where this is not appropriate.

The immigration decision will trigger a right of appeal under Section 82 (2) (g) of the Nationality, Immigration and Asylum Act 2002. This will be either an in country or an out of country right of appeal:

- ♦ **Out of Country Right of Appeal (IS151A Part 2)** - This should be served where there has been no protection or human rights claim. It informs the individual that a decision has been made to remove them from the UK and that they can appeal against this decision but only from outside the UK.

If a protection or human rights claim is made **after** serving the IS151A Part 2, and removal directions are in place, then the case must be referred to OSCU. In all other cases, the decision should be withdrawn so that the claim can be considered.

- ♦ **In Country Right of Appeal (IS151B)** – This should be served where a protection or human rights claim has been made and refused. It informs the individual that a decision has been made to remove them from the UK and that their asylum/human rights claim has also been refused. It notifies them that they have an “in-country” right of appeal against the decision.

Where the immigration decision (IS151A Part 2 or IS151B) is taken on or after 16 June 2006, any leave to enter or remain is **invalidated** at the point of service.

The immigration decision (IS151A Part 2 or IS151B) must specify the country/territory to which the individual will be removed. Where the nationality of the individual is disputed, doubtful, they are a dual national, or where they are

removable to more than one country/territory, more than one country/territory can be specified on the decision. See the Instruction on Nationality: Doubtful, Disputed and Other Cases for further information.

### **Family members**

Section 10 immigration decisions must be served on any family members that will be removed at the same time as the main applicant. For guidance on decision notices that should be served on family members, see Chapters 50 and 45.

### **Levels of authority**

The IS151A Part 2 or IS151B must be completed/authorised by a Executive Officer/Immigration Officer or above, in overstayer, breach, family member, deception or revocation cases (i.e. where it contains notice of a decision under section 10 (1) (a), 10 (1) (b), 10 (1) (ba), or 10 (1) (c)).

However, where the decision is served during an enforcement encounter, a decision **must** also be made as to whether to detain or place on reporting restrictions. This may require authorisation from a higher grade (see [51.5 below](#)).

### **Service**

The decision can be served in person or by post (where delivery or receipt is recorded). The service of these immigration decisions, and the method of service, should be recorded on CID.

<ul style="list-style-type: none"><li>• <b>CID Updates</b></li></ul>
<ul style="list-style-type: none"><li>• Access ICID and enter the Home Office/Port Reference.</li><li>• Access the case type that has been outcomed with 'Served IS151A'.</li><li>• Click 'Key Document Tracking'.</li><li>• Under 'Document Type' select 'IS151A Part 2' or 'IS151B', move to 'Document Event Type' and select 'Served', and complete the data/time fields with the date of service.</li></ul>

- Select the method of service under 'Despatch Method' and who the decision was served to under 'Despatched Address'.
- Click 'Save/Exit'.

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### **51.3 Immigration Decision (section 47 taken on or after 8 May 2013)**

Section 51(3) of the Crime and Courts Act 2013 amended section 47 of the Immigration, Asylum and Nationality Act 2006 and allows for a decision to remove to be made where an individual has continuing leave during a period in which an appeal could be brought (statutorily extended leave under sections 3C(2)(b) or 3D(2)(a)). This means that a decision to administratively remove is made at the same time as a variation or curtailment decision. The section 47 decision should be included in the decision letter curtailing or refusing to vary leave.

Where it is not included in the decision letter the ICD4547 decision notice can be used. The section 47 decision must specify the country/territory which the individual will be removed to. Where the nationality of the individual is disputed, doubtful, they are a dual national, or where they are removable to more than one country/territory, more than one country/territory can be specified on the decision. A section 47 decision cannot be made once an appeal has been lodged.

A section 47 decision will trigger an additional right of appeal under section 82 (2) (ha) of the Nationality, Immigration and Asylum Act 2002. However, where an appeal is lodged, the issues arising from the two decisions (e.g. refusal to vary leave and the removal decision) will be dealt with in a single in-country appeal.

If an appeal is not made, or the appeal is unsuccessful, the individual is liable to detention, restrictions, and removal (see [Section 51.5](#) below). There is no

need to make a further administrative removal decision (i.e. the service of an IS151A) under section 10 in order to enforce removal. Although see below for section 47 decisions taken before 8 May 2013.

#### **51.4 Immigration Decision (section 47 before 8 May 2013)**

Although it was the intention of the original section 47 to allow for the service of a decision to remove to be made alongside a variation or curtailment decision the Courts found in Ahmadi that the wording of the Act was such that it did not allow for the decisions to be made at the same time. This was unsuccessfully challenged in the Court of Appeal with the result that Section 47 cases made before the Section 51(3) amendment on 8 May 2013 should be withdrawn when the matter proceeds to appeal.

An IS151A should be served where an appeal has not been made (and the period for lodging an appeal has passed) or where an appeal against the refusal to vary or the decision to curtail leave has been dismissed. In a similar way where the section 47 part of the decision was allowed on appeal but the refusal of leave part of the decision was dismissed then an IS151A will need to be served. See 51.1

#### **Family members**

Dependants should also be served with a section 47 notice if they are being refused in line with the main applicant. This includes where a child has been born in the UK. Where the main applicant is served with an IS151A then the dependant child can also be served with an IS151A

#### **Levels of authority and service**

A section 47 decision must be completed/authorised by an Administrative Officer or above, where the first decision is a decision to refuse to vary leave (an appealable decision under section 82 (2) (d)), or a decision to curtail leave (an appealable decision under 82 (2) (e)).

The decisions can be served in person or by post (where delivery or receipt is recorded). The application decision, the section 47 decision, and the method of service, should be recorded on CID.

<b>CID updates</b>
<ul style="list-style-type: none"><li>• Access ACID/GCID and enter the Home Office/Port Reference.</li><li>• Access the application under consideration.</li><li>• For non-asylum applications being refused - Outcome the decision with 'Refuse L.T.R. - Section 47 R.O.A.' or 'Refuse I.L.R. - Section 47 R.O.A.'.</li><li>• For asylum applications being refused - Outcome the decision with 'Refused Asylum – Section 47'.</li><li>• Click 'Key Document Tracking'.</li><li>• Under 'Document Type' select 'Decision Letter', move to 'Document Event Type' and select 'Served' (ACID/ICID users) or 'Despatched' (GCID users), and complete the data/time fields with the date of service.</li><li>• Select the method of service under 'Despatch Method' and who the decision was served to under 'Despatched Address'.</li><li>• Click 'Save/Exit'.</li></ul>

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#### **51.4 Retention of documents**

Where an individual is liable to removal, there is a power to retain documents which “may facilitate removal” under section 17 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004.

Where a notice of liability, section 10 decision or section 47 decision has been served, any travel document or passport that could facilitate the removal of the individual should be retained, unless there are no reasons to doubt that the individual genuinely intends to travel or there are other exceptional reasons why the documentation should be returned. For further guidance see Retention of valuable documents under Modernised Guidance.

## 51.5 Detention and restrictions

An individual subject to administrative removal under section 10 can only be detained or placed on restrictions where an IS151A Part 1 has been served.

Where a section 47 decision has been made, the individual can only be detained or placed on restrictions **once their statutorily extended leave comes to end** (i.e. they have exhausted their right of appeal).

### Family members

As mentioned at 51.1 above, the service of the IS151A on all family members subject to administrative removal under section 10 allows for each family member to be served with an IS96. However, whereas adults can (and should in some cases) receive both residence and reporting restrictions; children must **only** receive a residence restriction, in line with The Home Office's policy on children and reporting, which can be found in the Reporting - Standards of Operational Practice document.

Serving IS96s on all family members is important because, should they:

- fail to comply with a required, or invited, reporting or contact management event, and
- leave the address they are required to live at

they will have failed to comply with a condition of temporary release, resulting in quick and robust failure to report actions to regain contact with the family, as detailed in Chapter 19\_absconders.

## 51.6 Removal directions

After the service of the removal decision, an IS151D (Removal Directions) can be served on the individual. The IS151D informs the individual of the specific details of their removal from the UK. Only one country/territory can be specified on the IS.151D. It also informs the applicant that no appeal can be brought against Removal Directions.

Removal cannot take place when an appeal is pending or until the time limit for lodging such an appeal has expired. Therefore, following the service of the IS151B, you must allow **at least** 10 working days (or **at least** 5 working days in the case of an individual in detention) before serving the IS151D. There is no need to delay the service of an IS151D where the person has been served with an IS151A part 2 as the right of appeal can only be exercised from abroad. You would still need to provide the normal notice period for removal directions, usually at least 72 hours. For more details see Chapter 60

Removal Directions (IS151D) must be authorised at Senior Executive Officer/Her Majesty's Inspector or above. However, in some cases the level of authorisation may be higher, for example see Chapter 45 for the return process for families with children.

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