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51. Administrative Removal Procedures (*Service of notices*)

When a decision that a person is liable to administrative removal under section 10 has been made, a notice will be given to the person concerned informing him of his immigration status (IS151A). Following the issue of such a notice, the Secretary of State may make a detention order, or any order restricting a person as to residence, employment or occupation and requiring him to report to the police/an Immigration Reporting Centre, pending removal. A subsequent decision must then be made whether to remove the person. A notice of this decision to remove will be given to the person informing him of his right of appeal. Removal Directions are set at the end of the process. The administrative removal process employs the same forms (IS151 series) as those for the removal of illegal entrants.

Following commencement of section 48 of the Immigration, Asylum and Nationality Act 2006, where a decision to remove under section 10 is taken on or after 16 June 2006 any leave to enter or remain **previously** given is invalidated at the point at which the person is served with the IS151A Part 2 or IS151B.

For decisions taken before 16 June 2006 invalidation of leave will only take effect with the giving of removal directions (to the carrier) under section 10.

The procedures to be followed are as follows:

1. Serve form IS151A (illegal entrants and section 10 cases)
2. Serve immigration decision to remove, either
 - IS151A part 2: or
 - IS151B (where asylum or Human Rights claim has been refused)
3. Serve form IS151D once removal has been set up

If the Individual then makes a Human Rights or asylum claim, suspend removal directions and refer to OSCU.

However, for de facto overstayers, where the facts of the case are not in dispute, service of notice may be made by post or fax in the absence of an interview under caution.

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51.1 Consideration of Administrative Removal

Before directions for removal under section 10 are given, regard will be had to any compassionate circumstances of the case, taking into account all the relevant factors known to the Secretary of State, as listed in paragraph 395C. In the case of family members, the factors listed in paragraph 365 – 368 will also be taken into account. See section 53.1.1

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51.2 Reason(s) for Decisions (IS151A) Admin Removal Cases

In order to ensure that UKBA complies with the requirement set out in regulation 5(1)(a) of the Immigration (Notices) Regulations 2003, Form IS151A must contain a statement of reason(s).

Dependent on the type of case, the relevant paragraph below should be copied and pasted into the IS151A. The wording should then be amended to fit the individual circumstances of the case.

UKBA 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 (i.e. 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/ removal as an illegal entrant because you are the spouse/ son/daughter of *(insert relation)* who is being administratively removed/removed as an illegal entrant.

51.3 Appeal rights for administrative removal cases

Part 5 of the Nationality, Immigration & Asylum Act 2002 was implemented on 1 April 2003. It simplified the appeals system by including almost all appeal rights into one section – section 82, and grounds of appeal into another – section 84. Appeal triggers are now ‘immigration decisions’.

The making, giving or serving of removal directions (RDs) is not considered to be an 'immigration decision'. A new notice of decision to remove (IS151A part 2 or IS151B) must be given following service of the IS151A and it is this which is considered the 'Immigration decision'.

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51.4 Levels of authority for removal

The power to remove a person under section 10 rests with an IO, but by virtue of section 10(7) it is extended to the Secretary of State. The levels of authority to be used in administrative removal cases reflect those set out in Chapter 54 for authorising the removal of illegal entrants.

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51.5 Detention/release of those liable to administrative removal

Section 10 extends to those in the categories listed at section 50.2 the same powers of removal, detention, temporary admission and bail as for illegal entrants.

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51.6 Procedures for removal under section 10

The powers to remove a person under section 10 are found in section 10(6) of the 1999 Act. The costs of complying with any directions under this section must be met by the Secretary of State. The procedures for administrative removal under section 10 are the same as those for paragraph 10 removals of illegal entrants (see section 47.6)

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