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### 53 Extenuating Circumstances

It is the policy of the Agency to remove illegal migrants from the United Kingdom unless it would be a breach of the Refugee Convention or ECHR, or there are exceptional circumstances for not doing so in an individual case.

When considering cases involving children regard must be given to the duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 with respect to safeguarding and promoting the welfare of children. This is set out in [Chapter 45](#) of the Enforcement

Instructions and Guidance on family cases and further guidance on the children's duty is available.

## **53.1 When to Consider Exceptional Circumstances**

Illegal migrants may put forward submissions that exceptional circumstances apply in their case such that they should not be removed. These submissions may be made:

- By application for leave to remain using form FLR(O);
- At interview following arrest as a result of an enforcement operation;
- While in detention;
- At a reporting centre;
- In the course of litigation;
- As a further submission following an unsuccessful human rights or asylum claim.

Where exceptional circumstances are claimed, they must be considered in accordance with this guidance.

Exceptional circumstances should be considered in cases where an asylum or human rights claim has been refused, appeal rights have been exhausted and no further submissions exist, as part of the process of asylum case owners keeping their cases under review. In these cases paragraph 353B of the rules is to be applied.

In all other cases where exceptional circumstances are claimed, officers must consider any representations submitted and have regard to the factors outlined in paragraph [353B](#) of the Immigration Rules

Where the migrant has previously made a human rights or asylum claim any further submissions must be considered in accordance with paragraph 353 of the Immigration Rules and the asylum instruction on [Further Submissions](#).

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### 53.1.1 Exceptional Circumstances - Relevant Factors

Relevant factors are set out below, but this list is not exhaustive.

The consideration of relevant factors needs to be taken **as a whole** rather than individually. When determining whether or not exceptional circumstances exist, consideration of the relevant factors in 353B needs to be taken as a whole. Discretion not to remove on the basis of exceptional circumstances will not be exercised on the basis of one factor alone.

**(i) Character, conduct and associations including any previous criminal record and the nature of any offence of which the applicant has been convicted**

When considering an individual's character and conduct, regard must be given to whether;

- There is evidence of criminality that meets the Criminal Casework Directorate (CCD) threshold; or
- The individual has been convicted of a particularly serious crime (below the CCD threshold) involving violence, a sexual offence, offences against children or a serious drug offence; or
- There are serious reasons for considering that the individual falls within the asylum exclusion clauses; or
- It is considered undesirable to permit the individual to remain in the UK in light of exceptional circumstances, or in light of their character, conduct or associations, or the fact that they represent a threat to national security

Evidence of criminality or conduct meeting the criteria above will normally mean that an individual cannot benefit from exceptional circumstances.

**(ii) Compliance with any conditions attached to any previous grant of leave to enter or remain and compliance with any conditions of temporary admission or immigration bail where applicable**

Where there is evidence of an attempt by the individual to delay or frustrate the decision making process, frustrate removal, or otherwise not comply with any requirements imposed upon them, then this will weigh against the individual.

Caseworkers must also take account of:

- Evidence of deception practised at any stage in the process;
- Failure to attend interviews as requested;
- Failure to supply information as requested (e.g. for re-documentation);
- Failure to comply with reporting conditions;
- Whether they have worked illegally;
- Any other type of fraud or deception, such as benefit fraud or NHS debt;
- An individual's lawful employment history and how they have supported themselves and/or their family;
- A sustained history of compliance with every requirement UKBA has made of them, including providing full information in their application, attending interviews, compliance with reporting requirements

Caseworkers must assess all evidence of compliance and non-compliance in the round, but repeated non-compliance and/or lengthy periods of absconding will generally mean that an individual cannot benefit from exceptional circumstances, unless there are strong countervailing reasons in their favour.

**(iii) Length of time in the United Kingdom accrued for reasons beyond the migrant's control after their human rights or asylum claim has been submitted or refused;**

The length of residence in the UK is a factor to be considered where residence has been accrued by an unreasonable delay which is not attributable to the migrant. Periods of residence which are caused by actions of non-compliance attributable to the migrant will not count in the migrant's favour. More weight should be attached to the length of time a child has spent in the UK compared to an adult.

Provided that the factors outlined in "Character" or "Compliance" do not weigh against the individual, then caseworkers should also consider where there has been significant delay by

UKBA, not attributable to the migrant, in deciding a valid application for leave to remain on **asylum or human rights grounds** or where there are reasons beyond the individual's control why they could not leave the UK after their application was refused. For example:

- 'Family' cases where delay by UKBA, or factors preventing departure, have contributed to a significant period of residence (for the purposes of this guidance, 'family' cases means parent as defined in the Immigration Rules and children who are emotionally and financially dependent on the parent, and under the age of 18 at the date of the decision). Following an individual assessment of the prospect of enforcing removal, and where the factors outlined in "Character" and "Compliance" do not weight against the individual, family cases may be also be considered exceptionally on grounds of delay where the dependent child has lived in the UK for more than 3 years or more whilst under the age of 18.
- Any other case where the length of delay by UKBA in deciding the application, or where there were factors preventing departure, the case worker following an individual assessment of the prospect of enforcing removal and where the factors outlined in "Character" and "Compliance" do not weight against the individual, concludes that the person will have been in the UK for more than 6 years.

(iv) **Any representations received on the persons behalf;**

These must always be considered and given due weight. Individuals may raise other relevant factors not listed above. These should be fully considered on a case-by-case basis.

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### **53.1.2 Grants of Leave to Remain in Exceptional Circumstances**

If having considered the factors set out in the guidance in 53.1.1 above removal is no longer considered appropriate then Discretionary Leave to Remain should be granted. For further guidance, see [Discretionary Leave](#) policy.

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### **53.1.3 Removal Decision following a previous refusal of leave to remain without a right of appeal**

Local Immigration Teams (LITs) need to be aware, when an overstayer has had an “out of time” application refused without a right of appeal, before enforcement action is taken that:

1. The LIT is still required to give full consideration to any raised or implied human rights issues (whether made now or in the earlier application) before any decision to remove is taken.
2. Whilst the previous decision may have been to refuse the application without a right of appeal, the individual may be entitled to an in-country right of appeal against any decision to remove them from the UK if that earlier application raised human rights issues.
3. LITs should look carefully at the earlier application and any other relevant exceptional factors before deciding whether it is appropriate to detain a person for removal.
4. In cases where it is not appropriate to serve an IS151B, LITs should make sure that the IS151A part 2 is served along with the ICD2163 appeal form. See Chapter 51 for further guidance on procedure for serving administrative removal decisions.

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#### **53.1.4 Relevant factors in Deportation cases**

There will be cases where the person is liable to deportation where:

- a) A decision to make a deportation order against him was taken before 2 October 2000; or
- b) A valid application under the Immigration (Regularisation Period for Overstayers) Regulations 2000 has been made.
- c) The person is a spouse/ civil partners or child under 18 of a person ordered to be deported
- d) The Secretary of State deems the persons deportation to be conducive to the public good.
- e) A court recommends deportation in the case of a person over the age of 17 who has been convicted of an offence punishable with imprisonment.

#### **Decision to deport pre-19/07/06**

If the decision to deport was made on or before 19<sup>th</sup> July 2006 then case owners must seek to strike a balance between the public interest being served by deportation and any known relevant factors.

### **Decision to deport post-19/07/06**

For cases where the decision to deport has been made on or after 20<sup>th</sup> July 2006, the presumption is that the public interest is met by deportation, all relevant factors in each case must be considered to see whether this presumption is outweighed. However, it will only be in exceptional circumstances that the public interest in deportation will be outweighed.

### **Subject of a Deportation Order (DO)**

Where a person is subject to an extant DO, then the circumstances existing at the time the DO was signed must be taken into account. If it is considered that deportation is no longer appropriate, then the DO must be revoked before any grant of leave is made. Refer to IDI chap [13, section 5 – Revocation of a Deportation Order](#)

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### **53.1.5 Highly Skilled Migrant Programme (HSMP)**

In light of the HSMP Forum judgement of the 8<sup>th</sup> April 2008, Immigration Group staff must ensure that any Individuals currently being considered for removal and who fall within the scope of the judgement are **not removed** without their case being reconsidered under the terms of the judgement.

The judgement affects 3 groups of individuals already admitted to the HSMP as at 7<sup>th</sup> November 2006:-

- ◆ Those yet to apply for further leave.
- ◆ People who were refused an extension under the new rules.
- ◆ People who left the country rather than take the old test.

All cases which appear to fall into one of the above categories should be referred to HSMP and Employment LTR Casework Team in Sheffield for consideration.

## **53.2 Long residence**

Under the long residence rules, an individual must show continuous residence for either a period of 10 years lawful residence or a combination of 14 years lawful and unlawful or 14 years unlawful residence in the United Kingdom.

Applications for indefinite leave to remain under the long residence rules are charged applications. The onus is on the individual to apply on the correct application form and enclosing the required fee. A separate application and fee is required for each family member subject to immigration control.

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### **53.2.1 Procedures when detecting an individual who claims to have 14 years continuous residence in the United Kingdom**

If an individual is encountered during an operational visit an Interview under caution will be necessary in order to establish whether the person is an illegal entrant or subject to administrative removal action under section 10 of the Immigration and Asylum Act 1999.

If no papers have been served on the individual follow the instructions in Chapter 7 - service of notice of illegal entry or Chapter 51 - notice of administrative removal.

It has been established in the case of *Fadeyi v the Secretary of State* that the service of an illegal entry notice (IS151A) stops the individual accruing further time in the UK towards long residence. This is also known as “stopping the clock”. Any time accrued after the service of an enforcement notice does not count towards time taken into account for the purposes of the long residence rules. This also applies to section 10 and deportation notices. The length of residence is therefore calculated up to the date of service of any of the above mentioned notices.

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### **53.3 Procedures when a British spouse exercises Treaty rights in another EU country**

The European Court of Justice ruling in the case of *Akrich*, supports the UK's view that third country nationals who are illegally in the UK, and marry British citizens (who are not dual nationals of another EEA state), should not be able to use EC law to remain here. It will allow the UK to continue to apply its national immigration legislation in such cases.

If the British spouse of an offender states an intention to exercise EU Treaty rights in another Member State, and the offender intends to accompany them, they should be given every opportunity to apply for entry to that country. This may entail returning their passport and deferring removal directions.

Report the circumstances to the relevant casework section and monitor the progress of the visa application, which can take several months (although, in non-detained cases, removal directions should only be deferred for a month at a time).

Review detention, although the situation does not preclude detention. Each case should be assessed on its individual merits.

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#### **53.3.1 Non-EEA spouses of UK nationals who have exercised Treaty rights in another Member State**

As the result of the judgement of the European Court of Justice in the case of *Surinder Singh*, the non-EEA spouse (or other family member) of a British citizen who returns to the UK after exercising a Treaty right in another EEA state as a worker may be entitled to enter the UK under European Community law rather than the immigration rules. Non-EEA applicants who benefit from *Surinder Singh* are issued with a family permit endorsed "Family member of EEA national", valid for 12 months and their passport endorsed with an open date stamp. They are then advised to apply to the relevant casework section for a residence document.

If such a person is encountered and there are doubts as to their status, refer to the European casework group.

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## 53.4 Marriage to an EEA national

The EEA consists of the following countries:

Austria, Ireland (Eire), Belgium, Luxembourg, Denmark, the Netherlands, Finland, Portugal, France, Spain, Germany, Sweden, Greece, United Kingdom, Italy, Iceland, Norway, Liechtenstein, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Bulgaria, Romania, and Slovakia.

Marriage to an EEA national who is exercising Community rights gives a family member, such as a spouse, the same rights to live and work in the United Kingdom as the EEA national. This right to residence exists as a right; it is not necessary to hold a residence permit to prove this right.

The *Diatta* judgement held that a family member only loses this right to residence if the EEA national leaves the country permanently, or the EEA national no longer has a right of residence in the United Kingdom, or on divorce (not just separation).

The *Baumbast* judgement found that where children of EEA nationals have a right to remain in the Member State for the purpose of continuing their education, their third country national parent/carer also has a right to remain, if that is necessary for the exercise by the children of their rights. This means that the third country national spouses of EEA national workers in the UK would have the right to remain here following their divorce from the EEA national or if the EEA national ceased work here, provided that they were the principal carer of the EEA national's children in education here. That right would last until the end of the children's studies at secondary level

A non-EEA spouse who is party to a marriage of convenience has no right to be treated as a family member. A marriage of convenience is a sham marriage undertaken solely for immigration purposes. The couple have no intention from the outset of the marriage of living together as man and wife in a settled and genuine relationship. It is not enough to say that the

couple are not living together at any given time; it must be proved that they never lived or intended to live together.

The right to residency should not be confused with leave to enter or remain. Residency is an automatic right upon marriage to an EEA national.

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### **53.4.1 Procedures when dealing with an offender who has married an EEA national**

If an offender who has already had notices served marries an EEA national, refer to the European casework group. Do not initiate removal action.

If it is suspected that the marriage is one of convenience, do not arrange a home visit or office interview unless requested by the European casework group.

The European casework group generally undertakes any marriage interview, but if a person attends an Enforcement Office for interview, or is encountered at a police station, marriage enquiries may be made of the person and the spouse, if present, if they are willing to be interviewed. (Notice of illegal entry/administrative removal may be served if the marriage is one of convenience, but always refer to the European casework group first).

We are unable to restrict the movement of the family member of a genuinely married EEA national by detaining them or requiring them to live at a given address.

In most cases it will be appropriate to release the subject from detention. Temporary release should not be authorised and reporting instructions should not be amended in this way unless we have seen:

- ◆ Evidence of the EEA sponsor's nationality
- ◆ Evidence of the relationship (e.g. marriage certificate, birth certificate etc)
- ◆ Evidence that the EEA sponsor is exercising a Treaty right

If any doubts exist as to what action to take, refer to the European casework Group.

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### **53.4.2 Procedures when dealing with an offender who has married a person with HP/DL/LOTR\*.**

- ◆ HP – Humanitarian Protection
- ◆ DL – Discretionary Leave
- ◆ LOTR – Leave Outside the Rules

There is a "family reunion" policy whereby an existing spouse can come to the United Kingdom to join his/her partner who is settled in the United Kingdom.

The "family reunion" policy does not apply to new spouses, i.e. the marriage must have taken place before the person granted asylum left the country of his/her former habitual residence in order to seek asylum. If the spouse of a person with leave is detected as a suspected illegal entrant or person subject to administrative removal action:

- ◆ Interview under caution. Serve notice if appropriate (IS151a);
- ◆ Establish when the couple met and when they married;
- ◆ Establish if there are any other compassionate circumstances to consider;
- ◆ Report the circumstances to the relevant casework section on form IS126e for authority to remove. Caseworkers will consider any Article 8 issues arising.

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### **53.5 DP2/93 & DP3/96**

**As from the 24 April 2008 the marriage policy DP3/96 and its related policy DP2/93 have been formally withdrawn.**

The following guidance will, however, still apply to;

- ◆ those enforcement cases where consideration under DP2/93 & DP3/96 had already been initiated prior to their withdrawal on the 24 April 2008.
- ◆ in appeal cases where the policies had already been applied and rejected prior to 24 April 2008.

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### **53.5.1 Procedures when dealing with an offender whose marriage (or common-law relationship akin to marriage) is considered under DP2/93**

The relationship must have been made known to the Department on or before 13 March 1996.

If the relationship pre-dates initial enforcement action, establish if it is genuine and subsisting, by way of a home visit or an interview. If satisfied that it is genuine and subsisting, it is not appropriate to serve notices. Report the circumstances on IS126e and send to the relevant casework section.

If the relationship is not considered to be genuine and subsisting, interview the person under caution and serve notices, if appropriate. The settled partner should not be interviewed under caution unless suspected of an offence. Establish the circumstances, including any other compassionate factors to be considered and send a comprehensive report to the relevant casework section on form IS126e.

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### **53.5.2 Procedures when dealing with an offender whose marriage falls to be considered under DP3/96**

DP3/96 came into force on 13 March 1996. Unlike DP2/96 it does not provide for the consideration of common-law relationships akin to marriage.

In considering DP3/96;

- ◆ Establish if the marriage post-dates initial enforcement action. If it does, it should not in itself, and in the absence of the most exceptional compassionate circumstances, avail the offender. Report the circumstances on form IS126 and send to the relevant casework section for authority to remove;
- ◆ Where marriage pre-dates enforcement action, establish whether the marriage is genuine and subsisting;
- ◆ Establish the circumstances of the settled spouse, the length of time in the UK and any close ties (and whether undue hardship would be caused if they accompanied their spouse on removal);
- ◆ Establish the presence here of any children of either partner, their ages, the length of time they have lived in the UK and whether another parent has regular access to them;
- ◆ Take note of any other information that the couple provides as evidence of compassionate factors to be considered;
- ◆ Take note of any criminal convictions;
- ◆ If the relationship is not genuine and subsisting, interview under caution and serve notices, if appropriate. Report all the circumstances to the relevant casework section.

Where the person has a genuine and subsisting marriage with someone settled here and the couple have lived together in this country continuously since their marriage for at least two years before the commencement of enforcement action, and it is unreasonable to expect the settled spouse to accompany him/her on removal, the marriage may avail him/her, as may the presence of children with the right of abode, or serious health problems. Report the circumstances on IS126 and send to the relevant casework section.

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## 53.6 Children - Children as dependants

The presence in the United Kingdom (UK) of dependant children under 18 years of age must be taken into account when deciding whether removal of an immigration offender is the appropriate action to take.

In all cases involving the children of a family the following must be established and reported to the relevant casework section:

- ◆ the children's age;
- ◆ ties with the natural parent; how often the children see their natural parent; whether any maintenance is paid towards the children's upkeep;
- ◆ whether the children could easily adapt to a life abroad; whether such a move would cause hardship or put their health at risk;
- ◆ whether the children have the right of abode; the nationality of the children.

The above factors are balanced against the parents' immigration history and any criminal record.

When considering relevant factors in cases involving children regard must be given to the duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 with respect to safeguarding and promoting the welfare of children. This is set out in [chapter 45](#) of the Enforcement Instructions and Guidance on family cases and further guidance on the children's duty is available.

Cases involving children who are British or have the right of abode here require the authority of a senior caseworker or HEO/CIO manager in the relevant section when such children are accompanying parents voluntarily (this may be at public expense).

If a decision is taken to split the family, please refer to chapter 45 of the Enforcement Manual which deals with splitting families and the appropriate levels of authority.

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### **53.6.1 DP5/96 (Seven Year Child Concession)**

From the 09 December 2008 the discretionary enforcement policy DP5/96 (also known as the Seven Year Child Concession), is formally withdrawn. All cases involving families with dependant children with long residence will now be considered under the Immigration Rules and Article 8 of the European Convention on Human Rights (ECHR) pursuant to the Human Rights Act 1998.

#### **Transitional arrangements**

There are likely to be existing cases where DP5/96 will continue to apply despite its withdrawal. These types of cases are:

- ◆ current appeal cases where the policy has already been applied (before its withdrawal) and rejected by UKBA and the appeal is either still pending with the Asylum and Immigration Tribunal (AIT) or has been allowed;
- ◆ appeal cases where the policy was not applied by UKBA (before its withdrawal) and where the AIT directs UKBA to consider DP5/96 in the context of an allowed appeal
- ◆ cases where UKBA are challenging an allowed appeal by either the AIT or an upper Court;
- ◆ where UKBA have acknowledged in writing that they have received an application which relies on DP5/96;
- ◆ enforcement cases where UKBA have initiated the process of considering DP5/96 prior to its withdrawal on 09 December 2008. \*\*



**\*\*** Examples of such circumstances are where a caseworker has already considered DP5/96 prior to its withdrawal and has written to the individual **and** the representative requesting further information / evidence in relation to the child's length of residence.

Any information / evidence requested will need to be submitted within 28 days of the date of request, for the policy to continue to be applied to that case. The same factors contained within the withdrawn policy will still continue to apply when considering cases under DP5/96 .

From the 09 December 2008 consideration under Article 8 of the ECHR and the Immigration Rules will also be given to any outstanding further representations against removal which cite the withdrawn policy (for example pursuant to paragraph 353 of the Immigration Rules) which have not yet been considered.

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## **53.7 Elderly persons**

In terms of removal, Ministers have agreed that a person's age is not, by itself, a realistic or reliable indicator of a person's health, mobility or ability to care for himself/herself. Many older people are able to enjoy active and independent lives. Cases must be assessed on their individual merits.

The onus is on the applicant to show that there are extenuating circumstances, such as particularly poor health, close dependency on family members in the UK, coupled with a lack of family and care facilities in the country of origin, which might warrant a grant of leave.

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## **53.8 Medical problems**

If a person's medical condition is advanced as a reason for delaying or discontinuing removal:

- ♦ ascertain full details of the condition;

- ◆ obtain the person's signature on a ASL.3751 (DocGen) for access to his medical records, if necessary;
- ◆ obtain a medical certificate;
- ◆ obtain a doctor's or hospital letter outlining the condition;
- ◆ ascertain from a doctor whether the person is fit to travel, or when they will be fit;
- ◆ ascertain if the person has anyone in his home country to provide any necessary care;
- ◆ check with the relevant country officer in COIS the likelihood of treatment being available in the person's country of origin;
- ◆ refer to the relevant casework section.

Where a family member of an individual suffers from a medical condition and this is advanced as a reason for delaying or discontinuing with removal, ascertain the information above in respect of the family member.

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### **53.9.1 AIDS/HIV positive cases and other Article 3 (medical) claims**

Offenders may claim that they suffer from a serious medical condition and that their return and the consequent withdrawal of medical treatment being received in the UK would amount to inhuman or degrading treatment contrary to Article 3. Medical claims will only reach the threshold for Article 3 in rare and extreme circumstances. For further guidance see [Asylum Instructions](#).

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## 53.9.2 Inoculations and other preventative treatment (prophylaxis)

**See also:** IDI, chapter 1 General provisions, section 8 Medical, part 5.

If a person claims that it would be a breach of their human rights or simply unreasonable to return them to a particular country without access to preventive treatment of this kind, or attempts to delay their removal on these grounds, the general principle is that individuals are responsible for safeguarding their own health and that of their children.

When someone is informed that their appeal rights are exhausted and/or they are otherwise liable to be removed from the UK, you should:

- ◆ remind them at the same time of their responsibility for minimising any health risks to themselves or their dependants in the country of return;
- ◆ advise them to consult a general medical practitioner about any preventive treatment needed before travelling; and
- ◆ that they may have to pay for it and
- ◆ record that the advice has been given on CID notes screen and note any comments about the person's medical health.

The above medical advice must be given and recorded on CID at each stage that a person is informed of their liability for removal, voluntary departure or enforced departure.

Certain categories of people who are returning to malaria risk countries are entitled to be issued with **mosquito nets free of charge**.

- ◆ Children under the age of 18 years
- ◆ Pregnant women

- ◆ Adults who are particularly vulnerable (immuno compromised) and who are unable to make their own provisions to access medication or mosquito nets.

A limited number of people may be particularly vulnerable, e.g. immune deficient, pregnant women and children under 18, may be particularly vulnerable to infection and therefore may need inoculation or other prophylaxis in preparation for their return.

The time between notification that their appeal rights are exhausted and final removal should normally allow sufficient time for people to take medical advice from a general medical practitioner and arrange for, and complete, any recommended treatment.

A person subject to removal cannot in principle claim any entitlement to remain in the UK to benefit from medical treatment. However, requests to delay removal for a short period to allow for preventive treatment should be considered on their merits in the light of medical advice and standard operational procedures before removal. This is particularly important when pregnant women, young children or unaccompanied minors are involved:

- ◆ Obtain a doctor's or hospital letter outlining the treatment required;
- ◆ Ascertain from a doctor why the treatment is necessary prior to removal;
- ◆ Ascertain the duration of the treatment; and
- ◆ Ascertain from the person why the treatment could not have been completed earlier.

The presumption should be that removal will not be delayed unless a doctor has confirmed that the treatment is necessary prior to removal and the person can show good reasons why it could not have been completed earlier.

Where there is clear medical advice recommending the use of malarial medication for children (generally the under 5s but also older children if medical advice dictates) but the family cannot afford to pay, (for example on NAS Support) reasonable cost of such treatment can be met by the Agency.

For others who present clear medical evidence to being particularly vulnerable and are unable to make their own provisions to access medication or mosquito nets, UKBA provide mosquito nets free of charge.

Mosquito nets should be obtained from the nearest Immigration Removal Centre.

### **Assisted Voluntary Return (AVR)**

If a person falling within the above vulnerable categories is due to leave the UK under an assisted voluntary removal scheme requests, with the support of a doctor's letter, that inoculation or malaria prophylaxis be provided, the request should normally be granted.

### **Detainees**

People detained prior to removal have access to medical care and advice from healthcare professionals in immigration removal centres. Detainees are not charged for treatment.

Medical advice on preventive measures, including advice leaflets, should be made available to detainees as soon as possible and should, if possible, be given as appropriate in the initial medical examination or screening which all detainees receive within 24 hours of detention, and in any case when removal directions are set.

Where removal centre medical staff consider that preventive treatment is necessary and can be completed without delay to planned removal, removal directions may be set but for a date after the treatment is completed.

When setting Removal Directions, officers should consult the health care professionals, via the UK Border Agency team at the centre, on the appropriate minimum time lag between administering medication and removal taking place.

Caseworkers, those responsible for setting Removal Directions and UK Border Agency teams at removal centres should document case histories as thoroughly as possible. This is because, if a JR is commenced, access to a claimant's medical records cannot be guaranteed. Accurate and up-to date minutes of treatment offered, taken or refused may make it easier to keep Removal Directions in place, and/or respond to any further representations.

### **Malaria Prophylaxis**

Preventive treatment for malaria is a special case in that medication must be taken shortly before travel. People detained prior to removal may not therefore be able to make the necessary arrangements for themselves.

Any malaria prophylaxis recommended as appropriate by the removal centre medical staff for pregnant women and children under 5 should normally be provided and **time allowed for it to take effect before removal.**

In the event of adverse side-effects, time should also be allowed to obtain and follow further medical advice.

Removal need not be deferred in any case where a detainee declines (on his or her own behalf or on behalf of a dependent child) to take malaria prophylaxis that has been provided on medical advice.

Further detailed information, including tables on **Countries and territories with malarious areas** and **Regimes for various types of treatment** can be found in IDI chapter 1, section 8, part 5.

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### **53.9.3 Tuberculosis (TB)**

The WHO guidelines “Tuberculosis and air travel: guidelines for prevention and control (second edition)” specify that “Physicians should inform all infectious TB patients that they must not travel by air until they have completed at least two weeks of adequate treatment. Patients with MDR-TB should be advised not to travel until proven by adequate laboratory confirmation (i.e. culture) to be non-infectious.”

Removal of those with TB should therefore not take place until these conditions have been fulfilled, but should not be delayed thereafter on medical grounds.

Caseworkers should bring this information to the attention of persons liable to removal at the earliest opportunity as well as of healthcare staff.

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