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54. Delegated authority and designated Inspectors

54.1. Illegal entry case

(See also 47.1.) The normal level of authority required for the removal of an illegal entrant is Inspector or Senior Case-worker. Such authority will come from the relevant casework section except for those cases where enforcement Inspectors have delegated authority (see 54.2 below) or those requiring ministerial authority (see 47.4).

54.2. Scope of delegated authority – illegal entry cases

All enforcement Inspectors may authorise the removal of illegal entrants where:

- ◆ the offender's length of stay is under ten years;
- ◆ the immigration history is not complicated;
- ◆ there are no known ties in the UK ;
- ◆ the spouse and children are not settled in the UK;
- ◆ there are no known compelling or compassionate circumstances; and
- ◆ The factors set out in paragraphs 364-367 of the Immigration Rules have been taken into account (these are outlined in 53.2).

In all other cases, the removal of an illegal entrant must be authorised by the relevant casework section.

54.3. Cases where delegated authority does not apply

- ◆ Where the person's home country is or is suspected of being a place of upheaval, report the circumstances to the relevant casework section;
- ◆ In cases where an offender is married with a spouse who is settled in the UK and the marriage is genuine and subsisting, report the circumstances to the relevant casework section;
- ◆ In cases where the offender has one or more children here who are settled or have the right of abode in the UK, report the circumstances to the relevant casework section;
- ◆ In cases where the illegal entrant has been in the UK for more than 10 years and the immigration history is not straightforward, report the circumstances to the relevant casework section;
- ◆ In cases where the offender is under 16, report the circumstances to the relevant casework section;

54.4. Section 10 Administrative removal cases – levels of authority

Although the authority to remove a person under section 10 of the 1999 Act rests with an IO, in practice the levels of authority to be used in administrative removal cases reflect those set out for authorising the removal of illegal entrants. The guidance set out in 54.1 above should therefore be applied in all administrative removal cases.

54.5. Devolved authority Deportation Cases (pre October 2000)

In 1990, the House of Lords decided that members of the Immigration Service could take decisions on behalf of the Secretary of State in what was then section 3(5) (a) deportation cases

– i.e. overstayers and workers in breach. An Immigration Service instruction which followed allowed for the Deputy Chief Inspector - Enforcement (a post which no longer exists) and certain designated Inspectors to make the following decisions:

- ◆ the service of a notice of intention to deport
- ◆ the detention or restriction of a person served with a notice of intention to deport
- ◆ the supervised departure of a person served with a notice of intention to deport.

Decisions could only be taken under devolved authority where there was clear evidence of overstaying or working in breach of conditions, there was no lengthy or complicated immigration history and there were no significant compassionate circumstances.

On 2 October 2000, administrative removal (section 10 of the 1999 Act) replaced deportation in all circumstances where Inspectors had devolved authority to serve an APP104 (now ICD 1070 series forms). Therefore, enforcement offices will now only serve a notice of intention to deport when requested to do so by the relevant casework section following a decision taken in the relevant casework section.

There may still be circumstances where decisions relating to the detention or restriction, or supervised departure of a person served with an APP104 under devolved authority can still be taken by designated Inspectors, and they are listed at 54.6. In addition to the designated Inspectors, such decisions may also be taken by Immigration Service Directors, Deputy Directors and Assistant Directors responsible for enforcement issues.

54.6. Designated Enforcement Inspectors

MR Terry DUFFY (Becket House)

MR Bob BENTLEY (Harwich)

MR Tony McCORMACK (Portsmouth)

Ministers have agreed that additional HMIs with a minimum of 12 months operational experience and suitable relevant training (to be arranged by the Border and Immigration Agency College) can also take decisions relating to the detention or restriction, or supervised departure of a person served with a notice of intention to deport.