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7. Service of notice of illegal entry

Following the judgement in the case of *Uluyol & Cakmak*, it was necessary to introduce an additional procedure to be followed in **all** illegal entry cases.

Notwithstanding the fact that a person has been identified as an illegal entrant, as defined in the Immigration Act 1971 (as amended), there is nevertheless discretion as to whether such a person is actually treated as an illegal entrant.

The consideration of any additional factors, or representations, already forms part of the decision-making process followed by officers dealing with illegal entry cases. However, previously, this had not been demonstrably separated from the consideration of the illegal entry contention. The judgement referred to means that it is now necessary to do so and to record the fact that the discretion whether or not to serve papers has been considered. Officers not only have to do it; they have to be able to show they have done it.

The two stages

First and foremost, consideration has to be given to the question of whether the person is in fact an illegal entrant. It is imperative that the facts are examined so as to determine whether the strength of the evidence is such that a contention of illegal entry can be properly supported. If there are any doubts, then service of illegal entry notice should be deferred pending further enquiries. Once this consideration has been completed, the file should be noted to show the basis for concluding that the Individual is an illegal entrant, including brief details of how and where the person came to notice.

The next step is then to consider whether it would be fair in all the circumstances to treat the individual as an illegal entrant and serve a notice of illegal entry on them. The key question when making this decision is whether the service of a notice of illegal entry would disadvantage the individual in some way.

If it is concluded that prejudice would be caused, consideration should then be given as to whether or not there are any reasons why it is nevertheless fair and appropriate to serve papers. In doing so, account must be taken of any information and/or representations available. **The fact that service of illegal entry papers may disadvantage the Individual in some way does not automatically mean that they should not be served if it is concluded that it is appropriate to do so.**

It is **vital** that there is a written record showing consideration of the exercising of discretion not to serve the notice and that this issue has been addressed separately from the question of whether or not the Individual is an illegal entrant.

The authority to serve illegal entry notices rests with a CIO and this will be the appropriate grade to deal with this additional issue.

Suggested wording

“I have considered all the information available to me and I am satisfied that [name] is an illegal entrant as defined in section 33 (1) of the Immigration Act 1971 on the basis that [detail how and where the person was discovered and/or the basis for concluding that the person was an illegal entrant].

I have also considered whether it is appropriate to treat [name] as an illegal entrant and, having taken into account all of the facts available to me now, I am satisfied that

* The prejudice he may suffer is not such that is unfair to serve him with Form IS151A Notice to a Person Liable to Removal,

Or

* It is appropriate to exercise the discretion not to treat him / her as an illegal entrant for the following reasons

After papers have been served

In the course of enquiries, the level of information available to officer's changes - perhaps through interview, further interview, or representations received. Officers should note that they have a continuing discretion as to whether to maintain or withdraw the notice of illegal entry. If as a result of information obtained at a later stage or as a result of a change in circumstances, it becomes apparent that an individual is being prejudiced as a result of the notice of illegal entry and that it is unfair to maintain it, then the notice should be withdrawn.

Whenever a notice of illegal entry is withdrawn, the reasons for the decision must be recorded on file and all parties involved informed in writing as soon as is practicable.

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7.1. Service of notice after an interview under caution

- obtain authority for service of papers from a CIO;
- serve IS151A (notice that a person is to be treated as an illegal entrant/a person liable to administrative removal under section 10 of the 1999 Act);
- serve immigration decision to remove, either
- IS151A part 2 (where the appeal right is "out of country") ; or
- IS151B (where asylum or Human Rights claim has been refused)
- If asylum or HR is claimed after serving the IS151A part 2, withdraw this notice, prepare an undated IS151B for the file ready to be served with the RFRL if the claim is refused

If detention is appropriate:

- Serve detention forms IS91 and IS91R on the detaining agency and follow procedures for detention;
- Complete all sections of form IS93e (detention record) Pages 1 and 2, paying particular attention to whether or not a travel document is held, and if not, noting what arrangements will be made to document the individual.
- Complete IS126e;

- For identification purposes, take fingerprints, photograph and measure the person in accordance with paragraph 18(2) of Schedule 2 to the 1971 Act;

If temporary release is appropriate:

Serve IS 96 and inform the relevant enforcement office of reporting conditions.

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7.2. Service of notice in the absence of an interview under caution (including service by fax and post)

The service of illegal entry notices without an interview under caution (including by fax and post) should only be considered where there is clear evidence that an Individual has entered illegally and the facts of the case are not in dispute.

Interviews may also be dispensed with in cases where the Individual has given a statement either directly or through their representative to the effect that they have entered illegally. Evidence to support this would normally take the form of an admission in the SEF, the application letter on file, or during an asylum interview.

Service of illegal entry notice without an interview under caution is **not** appropriate in the following cases:

- where illegal entry by verbal deception is suspected; or
- where it is intended to prosecute the individual; or
- Where the circumstances of a person's arrival are uncertain.

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7.3 Reason(s) for Decisions (IS151A) Illegal Entry 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. See 51.2 of the EIG for Reason(s) for Decisions (IS151A) Admin Removal Cases.

Illegal Entry Cases

No credible account of entry

You are specifically considered a person who has entered the United Kingdom without leave because you are unable to give a credible account of your entry to the United Kingdom.

Entered with assistance of agent

You are specifically considered a person who has entered the United Kingdom without leave because you admit to having entered the United Kingdom unlawfully with the assistance of an agent.

Clandestine entry

You are specifically considered a person who has entered without leave because you have admitted to entering the United Kingdom hidden in a vehicle.

Entry by presenting false or forged British or EEA passports

You are specifically considered a person who has entered by documentary deception because record checks have shown that the passport you claimed to have used for your last entry was reported lost by its (*insert nationality*) owner. In addition fingerprint evidence strongly suggests that you are in fact an (*insert nationality*) national.

Unable to show evidence of lawful entry (NELE)

You are specifically considered a person who has been unable to show evidence of lawful entry because you cannot produce the passport on which you claim to have entered the UK and you have failed to complete/return a method of entry questionnaire when asked to do so.

or;

You are specifically considered a person who has been unable to show evidence of lawful entry because you cannot produce the passport on which you claim to have entered the United Kingdom.

Entered in breach of a deportation order

You are specifically considered a person who has entered in breach of a deportation order as you were removed from the United Kingdom on *(insert date)* after a deportation order was signed against you on *(insert date)*. That order has not been revoked and you returned to the United Kingdom on or around *(insert date)*.

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7.4 Detention and removal of offenders where no interview under caution has been conducted

In cases where a notice of illegal entry has been served without an interview under caution, provided that there is no dispute concerning the individual's mode of entry, it is not necessary to confirm the illegal entry contention under caution prior to detaining and removing the Individual. If the grounds for treating the Individual as an illegal entrant are however being challenged then an interview under caution should be conducted.

In all cases, prior to detaining a person a short (non-caution) interview should be conducted to establish the Individual's circumstances and any compassionate or other factors that might mitigate against detention/removal. There is no requirement for legal representation at this interview.

If new compassionate circumstances arise, these must be considered and authority to remove sought at the appropriate level before removal directions can be set.

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