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### Note: Mandatory systems checks

For section 7.1, “...further checks need to be undertaken on internal databases to ascertain That appeal rights are exhausted...”, read:

## 7. Service of notice of illegal entry

Following the judgment 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 judgment 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

If, in the course of enquiries, the level of information available to officers 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**

The procedures to be followed once authority to serve papers is obtained are as follows:

- ◆ Serve form 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). This informs the person that they are an illegal entrant/immigration offender and they are liable to removal and detention;

Serve immigration decision to remove, either:

- ◆ IS151A part 2 – (Notice of decision to remove an illegal entrant/ a person liable to administrative removal) This notice informs a person 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 ; or
- ◆ IS151B - (where asylum or Human Rights claim has been refused) this notice informs a person 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;

- ◆ For both the IS151A part 2 and the IS151B, it is possible to specify more than one country to which the person may be removed. This is for disputed nationality cases, dual nationals etc. The IS151D, however, must only have the country to which actual removal directions are set;
  - ◆ When removal directions are served on the individual being removed, they should always be copied to legal representatives and should usually also be accompanied by a short factual summary of the case (ICD 2599). This summary should include a chronology of the case history, including details of whether any appeal rights were exercised and past applications for judicial review. For more details refer to [Chapter 60](#);
  - ◆ Following the service of the IS151B you should allow **at least** 10 working days (or **at least** 5 working days in the case of a person in detention) before serving the IS151D Removal Directions. We cannot lawfully effect removal when an appeal is pending, or until the time limit for lodging such an appeal has expired. The IS151D informs the person of specific details of their removal from the UK. It also informs the applicant that no appeal can be brought against this decision;
  - ◆ Further checks need to be undertaken on internal databases to ascertain that the appeal rights are exhausted (ARE), and there are no barriers to removal before the IS151D is served ;
  - ◆ If asylum or HR is claimed after serving the IS151A part 2, and removal directions are in place, then refer to OSCU for advice before suspending the removal directions. Otherwise, withdraw the IS151A part 2 and, where the applicant will get an in country appeal right, serve an IS151B with any refusal of the claim.
- .
- Note that for de facto overstayers or where the facts of the case are not in dispute, service of an IS151A notice may be made by post or fax in the absence of an interview under caution.

### Family cases

Note that each family member (i.e. spouse and child under 18 liable to removal) must be served with an IS151A, as future immigration decisions and removal directions will have to be served on each member of the family in their own right.

**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 IS96 and inform the relevant enforcement office of reporting conditions.

**Temporary release in family cases**

Form IS96 must be served on all family members liable to removal.

All family members must be subject to residence restrictions. In addition the main applicant is also subject to reporting restrictions and the spouse can be placed on reporting on a case-by-case basis. See section 3.2 of the [Reporting- standards of operational practice](#) document for further details. Children, however, must **only** receive a residence restriction, in line with UKBA's policy on children and reporting, which can be found in 7.1 of 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](#).

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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. A caseworker may not issue an IS151A in cases where an interview under caution is required – refer these to an Immigration Officer.

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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