

Requests for removal decisions

Requests for removal decisions

About this guidance

About this guidance Accepting a request for a removal decision Responding to the PAP	<p>This guidance tells you what to do if you receive a 'letter before claim' or a Pre-Action Protocol (PAP) dated on or after 13 February 2012 from an applicant who has made an application for leave to remain which has been refused with no right of appeal.</p> <p>When an application for leave to remain from an applicant with no current leave is refused, for example, an overstayer or illegal entrant, the decision is not an appealable immigration decision for the purposes of section 82(2) of the Nationality, Immigration and Asylum Act 2002.</p> <p>However, the applicant cannot be removed until a removal decision is served. This decision is an appealable immigration decision under section 82(2) of the Nationality, Immigration and Asylum Act 2002.</p> <p>There is no requirement to make a removal decision at the same time as refusing leave to remain in these cases, although this is common practice in asylum cases. The applicant is expected to leave the UK voluntarily when the application is refused.</p> <p>This guidance only applies if a person:</p> <ul style="list-style-type: none">• has made a valid 'out of time' application for leave to remain which is refused• did not receive a removal decision when the application for leave to remain was refused• failed to leave the UK voluntarily• has requested in a PAP, or letter before action, that a removal decision is made. <p>For more information about judicial reviews or PAPs, see related link: IDI chapter 27: Judicial review</p> <p>Information on administrative removal decisions is in the enforcement instructions and guidance. See related links:</p>	<p>In this section</p> <p>Changes to this guidance</p> <p>Contact</p> <p>Information owner</p> <p>Links to staff intranet removed</p> <p>External links</p> <p>Nationality, Immigration & Asylum Act 2002</p> <p>Daley-Murdock [2011]</p>
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	<ul style="list-style-type: none"> • 01 Illegal entrants • 7 Service of notice of illegal entry: Procedures • 50 Persons liable to administrative removal under Section 10 • 51 Administrative removal.. <p>Changes to this guidance – This page tells you what has changed since the previous version of this guidance.</p> <p>Contact – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.</p> <p>Information owner – This page tells you about this version of the guidance and who owns it.</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	
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Changes to this guidance

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This page lists the changes to the requests for removal decisions guidance, with the most recent at the top.

Date of the change	Details of the change
22 August 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Accepting a request for a removal decision:<ul style="list-style-type: none">○ third paragraph has been amended to be clearer• Minor housekeeping changes.
14 February 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
	For previous changes you will need to access the archived guidance. See related link: Request for removal decisions – archive.

See also

[Contact](#)

[Information owner](#)

Links to staff intranet removed

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Accepting a request for a removal decision

About this guidance Accepting a request for a removal decision Responding to the PAP	<p>This page tells you when to grant a request for a removal decision.</p> <p>The Home Office is not required to routinely make a removal decision at the same time as refusing leave to remain from an applicant with no current leave.</p> <p>If a removal decision is not made and served alongside a decision to refuse of an out of time application for leave to remain, a removal decision will be made if the applicant later requests it and it is appropriate to do so.</p> <p>When making a decision to accept a request, you must consider:</p> <ul style="list-style-type: none">• the need to promote the welfare of children who are in the UK• any direct cost in supporting the applicant and dependants being met by the Home Office or a local authority (under section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989), and• exceptional and compelling circumstances. <p>You can make a removal decision when requested in the following cases:</p> <ul style="list-style-type: none">• the refused application for leave to remain included a dependant child under 18 resident in the UK for three years or more• the applicant has a dependant child under the age of 18 who is a British citizen• the applicant is being supported by the Home Office or has provided evidence of being supported by a local authority (under section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989), or• there are other exceptional and compelling reasons to make a removal decision at this time. <p>A decision to serve a removal decision on the basis of exceptional and compelling reasons</p>	<p>Links to staff intranet removed</p> <p>External links</p> <p>Borders, Citizenship and Immigration Act 2009</p> <p>National Assistance Act 1948</p> <p>Children Act 1989</p>
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	must be agreed by a higher executive officer (HEO) senior case worker (SCW) or above.	
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Responding to the Pre-action protocol (PAP)

About this guidance Accepting a request for a removal decision Responding to the PAP	<p>This page tells you how to respond to a PAP or letter before action where a request for a removal decision has been made.</p> <p>First review the refused application for leave to remain and any further information submitted and consider if the decision should be maintained.</p> <p>If the original refusal decision was incorrect or made on incorrect grounds, a new decision must be made and either leave granted or a new refusal decision served on the applicant.</p> <p>If you decide the refusal decision must be maintained, you must consider the information in the refused application for leave to remain and any relevant Home Office databases. You must then decide if the applicant meets the criteria for a removal decision to be made.</p> <p>Criteria Met If one or more of the criteria outlined above are met, you must send the applicant the criteria met letter. See related links for a copy of the letter.</p> <p>A removal decision must be made and served within three months of the date of this response. For guidance on making and serving administrative removal decisions see related links:</p> <ul style="list-style-type: none">• 01 Illegal entrants• 7 Service of notice of illegal entry: Procedures• 50 Persons liable to administrative removal under Section 10• 51 Administrative removal. <p>Criteria Not Met If the criteria outlined above are not met, you must send the applicant the criteria not met letter. See related links for a copy of the letter.</p>	<p>Links to staff intranet removed</p> <p>External links</p> <p>Nationality, Immigration & Asylum Act 2002</p> <p>Daley-Murdock [2011]</p>
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	On completing the response, the file must be sent to off site storage or an immigration, compliance and engagement (ICE) team, depending on local arrangements.	
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Contact

About this guidance Accepting a request for a removal decision Responding to the PAP	<p>This page explains who to contact for more help when considering a request for removal decisions.</p> <p>If you have read this guidance and still need more help, you must first ask your senior caseworker or line manager.</p> <p>If the question is about the correct decision on an individual case and cannot be answered at that level, you may, through your HEO or above, email the relevant operational policy team.</p> <p>If the question is about the application of this policy and cannot be answered at that level, you may, through your HEO or above, email: IBPD Enforcement Policy (see related link).</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the content needs amending you must contact the enforcement policy team who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	Related links Changes to this guidance Information owner Links to staff intranet removed
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Information owner

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This page tells you about this version of the requests for removal decisions guidance and who owns it.

Version	4.0
Valid from date	22 August 2013
Policy owner	Enforcement Policy
Cleared by director	Kristian Armstrong
Director's role	Director, IBPD
Clearance date	10 February 2012
This version approved for publication by	Julia Dolby
Approver's role	Grade 7, enforcement policy team
Approval date	6 August 2013

Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending, you must contact the IBPD enforcement policy team (see related link), who will ask the MGT to update the guidance, if appropriate.

The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.

Related links

[Changes to this guidance](#)

[Contact](#)

Links to staff intranet removed