

## Detention services order 07/2011

### Notification of removal directions to detainees

#### Introduction

1. This detention services order (DSO) provides **revised** instructions and guidance to immigration removal centres (IRCs), short-term holding facilities (STHFs), the detainee escorting and population management unit (DEPMU) and escorting contractors in relation to the service of removal directions for immigration detainees. It also provides UK Border Agency staff with guidance on how to respond to an application for judicial review or notification of a court injunction preventing removal for those whose removal is already under way<sup>1</sup>.
2. This DSO is aligned with instructions provided in chapter 60 of the enforcement instructions issued on 1 September 2011 entitled 'Judicial review and injunctions'. It replaces DSO 02/2010 with immediate effect, copies of which should be destroyed and removed from local intranet sites.
3. This DSO is designed to ensure detainees are given full and proper notice of their removal directions but also provides for exceptions when limited or no notice of removal directions is required. For the purposes of this DSO, reference to detainees, includes residents held in pre-departure accommodation.
4. UK Border Agency staff are advised to read chapter 60 of the enforcement instructions alongside this DSO to fully understand how the agency manages judicial reviews and injunctions in relation to removals.

#### Setting and serving removal directions

5. The detainee's case owner is responsible for setting removal directions. However, as a matter of good practice, UK Border Agency staff working in IRCs and STHFs should liaise closely with the case owner to ensure they are set promptly where they are aware that a detainee can lawfully be removed.
6. Unless otherwise exempt (see paragraphs 26 - 38 below), notice of removal (normally removal directions) must be served on the detainee as soon as is practicably possible, but in any case no later than the minimum period set out below. Notice of removal

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<sup>1</sup> The definition of 'removal under way' for the purposes of this detention services' order is the point at which removal directions have been set by the case owner until the point at which the doors of the (air)craft have been shut.

should be accompanied by an immigration factual summary (ICD.2599), providing a chronology of the case history, including details of whether any appeal rights were exercised and past judicial review applications.

7. Chapter 60 of the enforcement instructions and guidance sets out that unless otherwise agreed with the UK Border Agency manager at the removal centre, short-term holding facility or pre-departure accommodation, case owners are required to provide the immigration removal centre or short-term holding facility with notice of removal and immigration factual summary by 3pm where the documents must be served on the same day. Staff must therefore ensure that documents received by 3pm must be served on the detainee on the same day as receipt. It is good practice for removal directions to be served by a UK Border Agency member of staff, but where this is not possible (for example, there is not a member of staff present), they may be served by a detainee custody officer or other member of the facility's staff.
8. The 'notice period' is the time between the service of the removal directions on the detainee being removed and the time for which the removal is scheduled.
9. Staff serving removal directions must satisfy themselves that the detainee has understood the implications of the documentation (for example, the date of their removal and flight details, including the destination). The services of an interpreter should be used if there is any doubt as to whether the detainee has understood. Detainees should, where possible, be given access to telephone facilities to enable instruction of and on-going contact with legal representatives.
10. Staff must keep clear records that removal directions have been served. Confirmation must be placed on CID once removal directions have been served, including the date and time, name of the serving officer, and any witnesses. A non-UK Border Agency member of staff serving the removal directions must provide confirmation in writing to the case owner that removal directions have been served, including the date and time of service, the name of the serving officer and any witnesses.
11. Staff must provide DEPMU with an assessment of the detainee's response to removal directions, in particular whether the detainee gave any indication whether or not he or she would be compliant, and of any medical concerns or other risk factors which will otherwise warrant the use of escorts, including medics, or other special arrangements.

## Enforcement cases

12. The following notice period applies to enforcement cases (administrative removal and deportation) except third country cases or those being removed on chartered flights:
  - **a minimum of 72 hours** must be allowed between informing a detainee of their removal directions and the removal itself
  - this 72 hour period must always include at least two working days
  - the last 24 hours of this period must include a working day unless the notice period already includes three working days.

13. The table below shows the latest time a detainee must be notified of removal directions in normal enforcement cases taking into account the 72 hours notice period and the provisions in terms of working days.
14. The table does not take account of bank holidays, which must be added as extra non-working days.

<b>Removal directions set for:</b>	<b>Notice must be served by latest:</b>
Midnight to 10am Monday	10am Wednesday
10am to 5pm Monday	Same time Thursday
5pm to midnight Monday	10am Friday
Midnight to 10am Tuesday	10am Friday
10am to 5pm Tuesday	Same time Friday
5pm to midnight Tuesday	Same time Saturday
Wednesday	Same time Sunday
Thursday	Same time Monday
Friday	Same time Tuesday
Midnight to 10am Saturday	Same time Wednesday
From 10am Saturday	10am Wednesday

15. There are occasions where the standard 72 hours notification period is not required (see paragraphs 26 to 38) which you should consider before giving notice of removal.
16. Persons detained for removal should be given access to telephone facilities to enable instruction of and on-going contact with legal representatives.

### **Family cases (other than those identified as ‘port cases’)**

17. Since 1 March 2011, a new end-to-end process has been in place for working with families with children under 18 years of age. This includes the provision of pre-departure accommodation as part of the last ‘ensured return’ stage of the process. In very exceptional cases, families who are part of the ‘ensured return’ stage may be held at Tinsley House immigration removal centre where the independent family returns panel does not consider the family to be suitable for the pre-departure accommodation.

18. Families held in pre-departure accommodation or in Tinsley House are subject to the same notification periods as other enforcement cases unless one of more of the exceptions set out in paragraphs 26 to 38 below applies or the family is subject to a limited notice removal.

19. Limited notice removals are where families are informed that their departure from the UK is to take place within a specified period, but they are not provided with the exact date. That specified period will not be less than 72 hours and not more than 21 calendar days following the time and date of service of the notice. Limited notice of removal will not be suitable for every family, but case owners may consider such cases where non-compliance or disruption by the family has led to a previous failed return.

### Third country (TC) and non-suspensive appeal (NSA) cases

20. Third country (TC) and non-suspensive appeal (NSA) cases do not attract a statutory right of appeal before removal. In these cases, a minimum of **five working days** notice should be given between informing the detainee of the removal directions and the removal itself to allow him or her to access the courts.

21. The table below shows the notification times or earliest removal dates for TC and NSA cases. It does not take account of bank holidays, which must be added as extra non-working days.

Removal directions set for:	Notify by latest:
Monday	Same time the preceding Monday (seven days before).
Tuesday	Same time the preceding Tuesday (seven days before).
Wednesday	Same time the preceding Wednesday (seven days before).
Thursday	Same time the preceding Thursday (seven days before).
Friday	Same time the preceding Friday (seven days before).
Saturday	Same time the preceding Saturday (seven days before) or Friday of the previous week (eight days before) if you are not able to serve removal directions at the weekend.
Sunday	Same time the preceding Sunday (seven days before) or Friday of the previous week (nine days before) if you are not able to serve removal directions at the weekend.

22. There are instances where standard notification may not be required for NSA and third country cases (some family cases for example – see paragraph 31 below), which you should consider before setting removal directions

## **Chartered flights**

23. All detainees being removed by chartered flights (with special arrangements) must be given a minimum of **five working days** notice of removal so that they have an opportunity to seek legal advice. The purpose of this extended period of notice of removal directions is to minimise the number of last minute applications for injunctive relief to the High Court and to encourage detainees to inform the UK Border Agency at the earliest opportunity of any further representations they wish to make.
24. For operational reasons, the chartered flight may include detainees who have been provided with the standard 72 hours notice of removal rather than five working days.
25. To protect the safety of those on board a chartered aircraft to particular destinations, it may be necessary, for security reasons, to withhold the exact details of departure and or the destination. In these cases, all detainees will still be given the minimum of five working days notice of removal, but will be informed that they will be removed 'no sooner than five working days' from the date where removal directions are issued.

## **Special arrangements where standard notifications may not be required when serving removal directions**

26. This section details when you do not need to provide standard notification when serving removal directions. UK Border Agency staff should consider all relevant information and liaise with relevant representatives from the facility's management team in advance of serving removal directions to ascertain whether the detainee falls to be considered under special arrangements.
27. Standard notification of removal directions does not need to be given where:
  - (a) an exception applies or
  - (b) a second period of notification is not required following a failed or deferred removal.

## **Exceptions to standard periods of notice**

### **Port cases**

28. Detainees removed within seven calendar days of being refused leave to enter do not require the standard 72 hours notice.
29. Detainees being removed after seven calendar days notice of being refused leave to enter require the standard 72 hours notice.
30. Case owners should refer such detainees who raise a human rights claim to the operational support and certification unit (OSCU) to decide whether or not the claim can be certified and the removal directions held.

### **Third country (TC) and non-suspensive appeal (NSA) family cases**

31. Families who are third country or non-suspensive appeal cases **and** are being returned under the **ensured return stage** have already been given notice of removal under the **required return stage**. Such families therefore only require the standard 72 hours notice of removal, and not five working days.

### **Failed removal cases**

32. Where a detainee was provided with the standard notice of removal **and** the removal has either failed or has been deferred, it may not be necessary to provide a further period of notice where the new removal directions are re-set within 10 calendar days of the failed or deferred removal;

33. This could apply where:

- the flight cannot depart as scheduled due to a technical fault with the aircraft or transport difficulties with the relevant contractor including problems with the availability of aircraft, related aircrew or the scheduled departure slot
- the scheduled departure time of the flight has had to change for other reasons such as adverse weather conditions, industrial action or other significant factors that can be reasonably deemed to be outside of the UK Border Agency's control
- the detainee has attempted to frustrate their removal by being non-compliant, for example refusing to leave the immigration removal centre or board the vehicle
- where removal has been disrupted by another individual's behaviour
- removal was deferred following a JR of removal which has been concluded and the judge has given a finding of 'no merit' or 'renewal should not be a bar to removal'.

34. However, there are instances where standard notice must continue to be given:

- the detainee is being removed to a different country than specified on the failed or deferred removal directions
- further representations have been received and refused since the earlier failed or deferred removal directions
- there has been more than 10 calendar days since the initial failed or deferred removal directions.

35. A further period of notice is not required for removals re-set within the 10 calendar days where the detainee was previously due to transit via a different city but is now being removed on a direct flight. For example, where a detainee was to be removed on a flight from London to Abidjan via Lagos, but the new removal directions are on a direct flight from London to Abidjan, no further notice is required.

36. A further period of notice is also not required for removals re-set within the 10 calendar days where a place of transit is **introduced** in the new removal directions which is in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or Switzerland.
37. A further period of notice **is required** where a transit point is introduced in the new removal directions which is in a country not listed in paragraph 36 above.
38. For example, if the original removal directions were set from London to Abidjan via Lagos and the new removal directions changed the place of transit from Lagos to Paris, a new period of notice is **not** required. However, if the transit point changed from Lagos to Nairobi, a new notice period **would** be required.

### Handling of judicial reviews

39. Judicial review is the legal process that allows a person to challenge the lawfulness of a decision, action or failure to act of a public body such as a government department. Types of events that could be subject to a judicial review are:
- a failure to act – such as a delay in issuing a document or making a decision
  - the setting of removal directions – which usually means that the person believes their removal would infringe their rights (for example, under the Refugee Convention or the European Convention on Human Rights)
  - a refusal to accept that further submissions amount to a fresh claim
  - a decision to certify a claim for asylum as clearly unfounded
  - a decision to detain or maintain detention.
40. Judicial review in Scotland is pursued by means of a petition to the Court of Session in Edinburgh.
41. Responsibility for handling judicial review applications and a decision whether or not to defer removal rests with the case owner. Chapter 60 of the enforcement instructions and guidance provide full guidance to case owners. UK Border Agency staff working at DEPMU, in immigration removal centres, short-term holding facilities or pre-departure accommodation are advised to read the guidance, however, to familiarise themselves with the handling of judicial reviews.
42. Legal representatives should correspond directly with the case-owning office about any application for a judicial review or indeed a request for removal directions to be deferred. Legal representatives who attempt to make representations to either an removal centre, short-term holding facility, pre-departure accommodation or DEPMU should normally be referred to the case-owner. However, if the enquiry by a legal representative is made outside of the operating hours of the case working office, the

legal representative should be referred to the UK Border Agency's command and control unit.

43. If the removal is imminent, the matter should be referred to the OSCU for advice, or in their absence to the duty director for detention services to take a decision whether or not the removal should be deferred.

### **Injunctions in removal cases**

44. An injunction is an order from a court requiring an individual or a body (for example, the agency) to do something or to refrain from doing something. For example, a court may issue an injunction preventing a detainee's removal.

45. Injunctions are normally valid for a specific period of time after which the injunction must either be renewed by a court or it lapses. The most common form of injunction detention services will encounter will be an injunction not to remove an individual from the United Kingdom.

46. An injunction may be granted verbally over the telephone, particular if reference is made to a duty judge after the court has closed.

47. Legal representatives who have persuaded a court to issue an injunction should liaise with the case owner directly. Those who attempt to contact the IRC, STHF, DEPMU or escorts directly should normally be referred to the case working office. However, if the removal is imminent, staff should take immediate steps outlined below.

48. If a legal representative claims to have obtained an injunction preventing removal, you should seek to confirm the facts, ideally (time permitting) in writing by either requesting a faxed copy of the injunction or a letter confirming the details (for example, 'Mr. Justice X has this evening at [time] granted an injunction over the telephone barring removal').

49. You should alert the case owner without delay and provide full details given by the legal representative, and seek instruction. If there is insufficient time (the removal is imminent), you should advise DEPMU without delay to halt the removal with escorts.

50. DEPMU should take all reasonable steps without delay, including advising the escorting contractor and the removals facilitation unit (RFU) to halt the removal. It is vitally important that clear records are kept of conversations and telephone calls, which are dated, timed and signed setting out what action has been taken to attempt to stop the removal. These should be placed onto CID and include:

- the name of the person informing you that an injunction has been granted, and the firm they represent
- the date and time you were made aware of an injunction
- the name of the judge issuing the injunction, and the date and time of issue
- whether confirmation of the injunction was provided, and if so the date and time received

- details of other units or staff contracted to defer the removal directions, including the name, date and time of the call.

51. Whether or not the removal is successfully halted, you should inform the operational support and certification unit (OSCU) of the fact that you were notified of an injunction without delay, the action taken to try and halt the removal and whether or not you were successful. If you were unable to halt the removal and you are unable to contact OSCU, you should inform the duty director for detention services at once.

52. Any queries about this DSO should be addressed to the head of operations for detention services.

December 2011