Chapter 50 – Persons liable to administrative removal under section 10 (non EEA)

Return to Top

50. Introduction

Section 10(1) of the 1999 Act states that a person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer (IO), for reasons which include

a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;

b) he uses deception in seeking (whether successfully or not) leave to remain;
ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);
c) he belongs to the family of a person to whom directions have been given for administrative removal under section 10.

Section 1 of the Immigration Act 2014 replaces Section 10 of Immigration Act 1999. It is being implemented in phases and initially only applies to those applicants who have made an “in country” leave to remain application under Tier 4 on or after the 20 October 2014. It moves us to a “single removal decision” process: a person is liable to removal as a result of the decision to refuse them leave (subject to potential administrative reviews of the decision and timing constraints explained below) rather than needing a separate removal direction to be served. The changes reform the appeals system for students as there will no longer be a right of appeal against the refusal of a student application although for many cases there will be a less costly administrative review process to resolve caseworking errors.

Return to Top

50.1. Criminal Offences

It is an offence under section 24A of the 1971 Act, as amended by the 1999 Act, for a person:

(a) to obtain or seek to obtain leave to enter or remain by means which include deception by him, or

(b) to secure or seek to secure the avoidance, postponement or revocation of enforcement action against him by means which include deception.

"Enforcement action" includes the giving of directions for removal under section 10 of the 1999 Act. In addition, it is an offence under section 24(1) (b) of the 1971 Act for a person to knowingly overstay or otherwise knowingly fail to observe a condition of leave. Note though that for administrative removal under Section 10 there is no requirement that the person must knowingly have overstayed or otherwise knowingly failed to observe a condition of their leave.

Return to Top

50.2. Categories of those liable to administrative removal

These are:

- Overstayers

- Those who fail to observe a condition attached to the leave, for example:

  (i) a condition restricting his employment or occupation in the United Kingdom, examples include a Tier 4 PBS students who must be following a course of study in order to work; or a worker under Tier 2 who leaves his sponsor to work elsewhere;

  (ia) a condition restricting his studies in the United Kingdom;

  (ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;

  (iii) a condition requiring him to register with the police;

  (iv) a condition requiring him to report to an immigration officer or the Secretary of State; or

  (v) a condition about residence.

- Those who have obtained (or seek to obtain) leave to remain by deception

- Spouse of a person liable to administrative removal

- Dependent children aged under 18 of a person liable to administrative removal

- EEA nationals and their dependent family members who have been resident in the United Kingdom for more than three months and do not have or have ceased to have a right to reside under the Immigration (European Economic Area) Regulations 2006. For further information on EEA administrative removal, see Chapter 50 (EEA).

Return to Top

50.2.1 British Irish Visa Scheme (BIVS)

The British-Irish Visa Scheme, underpinned by amendments by the Immigration (Control of Entry through Republic of Ireland) Order 2014, allows for short term travel between the UK and Ireland, on the basis of one visit visa, by approved nationals who are visa-required for the purpose of travel to or entrance into both the UK and Ireland. The scheme does **not** apply to countries whose nationals are not visa-required in both the UK and Ireland. The following classes of visa come within the scope of the Scheme:

- **UK:** Visas granted to persons seeking leave to enter or remain in the UK as defined in Part 2 of the Immigration Rules of the UK, except those seeking leave to enter as (i) a Visitor in Transit or (ii) a Visitor seeking to enter for the purpose of marriage or to enter a civil partnership.

- **Ireland:** All short-stay 'C' visas, single-entry or multiple-entry, issued for the following purposes of travel to Ireland:
    - Visit (family/friend)
    - Visit (tourist)
    - Conference/Event
    - Business

Visas will be endorsed with the coding "BIVS" when confirmed as eligible for the Scheme.

Holders of BIVS visas will be subject to standard checks on arrival by the relevant border control authority, and enforcement action will be taken against those who are found to abuse the Scheme in either the Republic of Ireland or the UK. The visa holder must enter the state which issued the visa in the first instance.

The first phase of the Scheme commenced in China on the 28th October 2014, and is limited to Chinese nationals. The Scheme will be rolled out to India shortly after. Further rollout of the Scheme is subject to evaluation of phase one.

Overstayers and workers in breach

If you encounter the holder of a BIVS visa who has abused the conditions of their stay while in the UK, i.e. working in breach of the UK conditions, or overstaying, while in the UK; you must fully consider whether an administrative removal under Section 10(1) of the 1999 Act is appropriate. You will need to consider where and when the period of leave to enter the UK was conferred by the Immigration (Control of Entry through the Republic of Ireland) Order 1972 as amended in 2014 in order to determine if the holder of a visa issued by Ireland has overstayed:

- **First arrival into the common travel area**
  Holders of UK issued BIVS visas must enter the UK first, and direct travel to the Ireland will not be possible; the reverse applies for BIVS visas issued by the Ireland. If leave to enter the UK is conferred on arrival (in the case of a UK-issued BIVS), or leave to land is granted by the Irish authorities in line with a BIVS visa issued by Ireland, this will be limited to 90 days or less leave to land in Ireland for Irish issued visa, or 180 days or less leave to enter the UK for UK issued visas.

  Where permission to land, enter or reside is denied, the individual will be returned to the **country of embarkation**. The visa will be revoked or cancelled by the issuing country.

- **Subsequent travel to the other jurisdiction**
  Where holders of 'BIVS' endorsed visas travel on from the visa issuing country to the non-issuing country, the duration of stay permitted will vary (see below). If permission to enter is not granted, the individual will be **returned to the issuing country**. This

would include those refused leave to enter due to their permission to remain in the issuing country having expired.

Ireland – arrival from the UK only

If permission to enter is granted, the duration of stay permitted will be the shorter of the following periods:

- 90 days or less, or
- the remaining period of validity of the person's leave to enter the United Kingdom.

United Kingdom – arrival from Ireland only

Where a person holds a valid 'BIVS' endorsed Irish Visa and has extant leave to land or remain in Ireland they may enter the UK and remain for the duration of their leave to land/ remain in Ireland, as shown by the appropriate stamp in their passport rather than the dates printed on the visa, which are the dates between which the visa may be used for initial travel to Ireland.

- **Re-entry into the country of first arrival**

  A holder of a UK issued BIVS visa who re-enters the UK from Ireland, having entered Ireland under the terms of the Scheme, will be allowed a maximum stay of the leave to enter originally conferred by the entry clearance on the person's arrival in the UK.

Any discretionary factors and extenuating circumstances should be fully considered and evidenced as with any administrative removal, and existing processes set out in section 50.5 - overstayers, 50.5.2 – workers in breach, and EIG Chapter 51 – Administrative removal should be followed.

Removal directions should be set directly to the country from which the person originally departed on their journey (or other country where the person can be returned to, if appropriate) rather than to the BIVS partner country.

Information on administrative removals of individuals travelling under the Scheme will be maintained by each jurisdiction and shared on request.

Return to Top

50.3. Those exempt from administrative removal

The following are exempt from administrative removal:

- British citizens, including:

  (a) anyone born in the UK or the Falkland Islands prior to 1 January 1983;

  (b) anyone born in the UK or the Falkland Islands on or after 1 January 1983, or in any other qualifying territory (see below) on or after 21 May 2002, whose father (if legitimate) or mother is a British citizen or settled in the UK or relevant territory (as the case may be);

  Note: An illegitimate child whose father is British did not automatically qualify for British citizenship before 1 July 2006, but may be legitimated by the subsequent marriage of his parents. See information leaflet BN1 for more details

  (c) anyone who was a British overseas territories citizen immediately before 21 May 2002 by connection with a "qualifying territory" (i.e. a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus);

- those with the right of abode in the UK;

- Irish & Commonwealth citizens: under section 7 of the 1971 Act, Irish and Commonwealth citizens who have been ordinarily resident in the United Kingdom and Islands for the last five years at the date of any decision to remove (note the person would have to have been ordinarily resident in the UK when the Act came into force 1/1/1973);

- Diplomats: under section 8(3) of the 1971 Act, as amended by section 4 of the 1988 Act, and section 6 of the 1999 Act, those who are exempt from control by virtue of their diplomatic status;

- Consular staff: under section 8(4) of the 1971 Act, those who are exempt from control by virtue of their consular status;

- under section 2(1)(b) of the 1971 Act, children born outside the UK prior to 1 January 1983 who are Commonwealth citizens and have a mother who was a citizen of the UK and

Colonies by birth at the time of the birth and therefore have the right of abode but are not British citizens;

Return to Top

50.4. Powers of arrest those liable to administrative removal

Persons liable to removal under section 10 of the Immigration and Asylum Act 1999 may be subject to the powers of detention and arrest in Schedule 2 of the Immigration Act 1971. Therefore, where there are reasonable grounds for suspecting that a person may be subject to removal directions an Immigration Officer may detain (under paragraph 16(2) of Schedule 2) pending:

a) a decision whether or not to give such directions; or

b) removal in pursuance of such directions.

Where the person is liable to detention under paragraph 16 they may be arrested without warrant by an Immigration Officer (or a constable) under paragraph 17(1) of Schedule 2.

Under paragraph 17(2) of Schedule 2 to the Immigration Act 1971, a warrant can be sought to enter premises to administratively arrest an immigration offender

Further guidance on the exercise of the power of arrest is given in chapters 31 and 33.

Return to Top

50.5. Section 10(1)(a) – Overstayers

A person who overstays his limited leave is liable to administrative removal under section 10. When considering the applicability of s10 removal powers it is best practice to apply the interpretation of overstaying as found in paragraph 6 of the Immigration Rules:

> "'Overstayed' or 'Overstaying' means the applicant has stayed in the UK beyond the latest of
>
> (i) the time limit attached to the last period of leave granted, or

(ii) beyond the period that his leave was extended under sections 3C or 3D of the Immigration Act 1971, or

(iii) the date that an applicant receives the notice of invalidity declaring that an application for leave to remain is not a valid application, provided the application was submitted before the time limit attached to the last period of leave expired."

Return to Top

50.5.1 Evidence of overstaying

There must be proof of overstaying, and the following are indications that the person is an overstayer:

- Home Office file,
- Passport*,
- landing card,
- or the offender's own admission under caution as to his date of entry and duration of leave.

*You should not always accept at face value that the last entry in a passport is the last date of entry as he or she may have left and subsequently re-entered on another passport, clandestinely or in some other way, or because they last entered on or after 30 July 2000 under one of the provisions of the Immigration (Leave to Enter and Remain) Order 2000 (see chapters 2.1, 3.9 and 3.12).

Continuing leave: When a person makes an in-time application for variation of his leave, and the leave then expires before a decision is taken, section 3C of the 1971 Act means that the leave, and any conditions attached to that leave, automatically extends to the point at which the decision on the application is made (including a decision to reject the application as invalid). The 3C leave continues during the period that an in-time appeal could be brought, even if no appeal is submitted. If no appeal is brought the leave ends at the same time as the deadline for raising an in-time appeal. If an appeal is lodged, the 3C leave and the conditions attached to that leave continue while the appeal (under section 82 of the 2002 Act) is pending.

Section 3D of the 1971 Act provides a similar protection where a person's leave is curtailed. For more information see guidance on 3C/3D. This protects the immigration status of that person and prevents him from becoming liable to administrative removal as an overstayer during that period (however, he **may** be liable for administrative removal for another reason e.g. working or claiming in breach or obtaining leave by deception. Removal action may still be taken if this is the case regardless of the provisions of section 3C of the 1971 Act where an application is pending but not where an appeal is pending).

This means that someone who has made an in-time application and has appealed against the decision to refuse is not liable to administrative removal until the appeal has been disposed of.

Persons who have overstayed for a short period may be served removal directions if there is no evidence of intention to leave the United Kingdom.

Where there is insufficient evidence to support the contention of overstaying, a report should be submitted to the relevant casework section for consideration of further action. Where possible, the report should contain a statement made under caution about the suspect's claimed status and circumstances, and should refer to any other supporting evidence.

Continuing leave and student's right to work: Subject to paragraph 50.7.4 below, where a Tier 4 student's leave is extended by virtue of sections 3C or 3D of the immigration Act 1971, such extended leave will continue to have effect subject to the conditions that applied to it immediately prior to it being extended under such provisions of the 1971 Act. Therefore, a student who when section 3C or 3D leave commences has ceased studying, and has thereby lost the right to work, will not re-acquire their right to work by virtue of their leave being extended under the 1971 Act.

Return to Top

50.5.2 Section 10(1)(a) - Working in breach

A person is liable to administrative removal under section 10 if found to be working in breach of a restriction or prohibition on employment. The breach must be of sufficient gravity to

warrant such action. There must be firm and recent evidence (normally within six months - in other cases a warning should be issued and a report submitted) of working in breach, including one of the following:

- an admission under caution by the offender of working in breach;
- a statement by the employer implicating the suspect;
- documentary evidence such as pay slips, the offender's details on the pay roll, NI records, tax records, P45;
- sight by the IO, or by a police officer who gives a statement to that effect, of the offender working, preferably on two or more separate occasions, or on one occasion over an extended period, or of wearing the employer's uniform. In practice, this should generally be backed up by other evidence.

Return to Top

50.6 Overstaying and working in breach

Where there is evidence of both overstaying and working in breach, persons should not be made subject to section 10 for both they should be treated as overstayers, unless they claim to have in-time applications, but this cannot be substantiated. See annex A for actions to be taken when it is claimed that an application has been made that is not on CID.

Return to Top

50.7. Students who work

Not all students are entitled to work. Some students are entitled by virtue of the conditions of their leave to take employment either as part of the course they are undertaking or simply as part-time / vacation work. Whether they are permitted to work at all and the duration of work they may undertake during term time depends on the type of course being studied and the type of sponsoring organisation. Further details of permission to work granted to students are provided below.

Permitted employment for students

Date of application	Education Provider	Course Type	Age of migrant?	Work Conditions
Before 2 March 2010	Any	Any	n/a	- Max. 20 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than half of total length of course). - Employment as Student Union Sabbatical Officer (max 2 years). - Employment as a postgraduate doctor or dentist on a recognised Foundation programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
From 3 March 2010 to 3 July 2011 (inclusive)	Any	- Degree level (NQF 6 and above) - Foundation degree course (NQF 5)	n/a	- Max. 20 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than half of total length of course). - Employment as Student Union Sabbatical Officer (max 2 years). - Employment as a postgraduate doctor or dentist on a recognised Foundation programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
	Any	Below degree level (NQF 5 and below) (excluding foundation degree course)	n/a	- Max. 10 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than half of total length of course). - Employment as Student Union Sabbatical Officer (max 2 years). - Employment as a postgraduate doctor or dentist on a recognised Foundation programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
On or after 4 July 2011	Tier 4 (General) Students Higher Education Institution (i.e.	Degree level (NQF 6) or above	n/a	- Max. 20 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than half of total length of course)* - Employment as Student Union

	University) or sponsored by an overseas HEI to undertake a short-term Study Abroad Programme in the UK.			Sabbatical Officer (max 2 years) - Employment as a postgraduate doctor or dentist on a recognised Foundation programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
		Below degree level (NQF 5 and below)	n/a	- Max. 10 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than half of total length of course).* - Employment as Student Union Sabbatical Officer (max 2 years) - Employment as a postgraduate doctor or dentist on a recognised Foundation programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
	Tier 4 (General) Students at a publicly-funded Further Education College	Any	n/a	- Max. 10 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than a third of the total length of course).* - Employment as Student Union Sabbatical Officer (max 2 years) - Employment as a postgraduate doctor or dentist on a recognised Foundation programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
	Tier 4 (General) Students privately funded Further Education College	Any	n/a	No work allowed.
	Tier 4 (Child) Students (Children under 16 yrs of age may only be educated at independent fee paying schools)	Any	Aged 16 or over	- Max. 10 hours per week during term time - Any duration during vacations. - Employment as part of course related work placement (no more than half of total length of course) - Employment as Student Union Sabbatical Officer (max 2 years) - Employment as a postgraduate doctor or dentist on a recognised Foundation

				programme. - No self-employment - No employment as a professional sports person (including a sports coach) or an entertainer.
			Under 16	No work allowed

* For Tier 4 (General) Student cases that were granted leave between 4 July 2011 and 5 April 2012 (inclusive), employment as part of a course-related work placement was restricted to half the total length of the course undertaken in the UK. For Tier 4 (General) Student cases granted leave from 6 April 2012 onwards employment as part of a course-related work placement is restricted to no more than one third of the total length of the course undertaken in the UK unless the student is following a course at degree level or above and is sponsored by an HEI or by an overseas HEI to undertake a short-term Study Abroad Programme in the UK, or there is a statutory duty for the course length to be longer than one third of the course length.

Visitors are not permitted to undertake work whilst in the UK, this includes work placements that form part of a course/period of study undertaken as a student/child visitor.

Return to Top

50.7. 1 Students must be following a course to legally work

Under the Immigration Rules paragraphs 245ZW(c)(iii) (for on entry) and 245ZY(c)(iii) (for leave to remain) set out the rules on Tier 4 (General) Student working (245ZZB(c)(iii) and 245ZZD(c)(iii) set out the rules for Tier 4 (Child) Students) and state that the right to work either 20 hours or 10 hours per week, or no work rights at all, arises from the type of institution that the migrant is sponsored by and the particular course the student is following. Therefore any Tier 4 (General) Student encountered working must be:

(1) Following a course of study; and

(2) Following that course of study at the appropriate level and type of institution that permits them to work the number of hours that they are working. A student who has moved to a new sponsor or is undertaking a new course which does not permit the student to work at all or the number of hours he is working then the student is in breach of his conditions but see paragraph 50.7.2 below for further details on students switching colleges. Where the student is working in breach then enforcement action further to section 10 of the 1999 Act can be taken against them.

Officers will need to establish:

(1) The type of sponsoring body;
(2) The exact course the individual is on and whether sponsorship continues. Officers may need to contact the sponsoring organisation for this.

However you must be certain that where the conditions of a student's leave permit work that the student in question is not working during a vacation or during the period of leave granted before a course commences or after the course ends, which varies depending on the duration of the course. The following table sets out the periods of leave to be granted before and after a course to Tier 4 (General) Students (often referred to as the wrap-up period) under paragraphs 245ZW(b) and 245ZY(b) of the Rules, as applicable:

Type of course	**Period of leave to remain to be granted before the course starts**	**Period of leave to remain to be granted after the course ends**
12 months or more	1 month	4 months
6 months or more but less than 12 months	1 month	2 months
Pre-sessional course of less than 6 months	1 month	1 month
Course of less than 6 months that is not a pre-sessional course	7 days	7 days
Postgraduate doctor or dentist	1 month	1 month

If the grant of entry clearance or leave to remain is being made less than 1 month, or in the case of a course of less than 6 months that is not a pre-sessional course, less than 7 days before the start of the course, entry clearance / leave to remain will be granted with immediate effect.

Students who have a right to work are allowed to work full time during vacations and during the period of leave that is granted before a course commences or after the course ends. A student who is following the required course of study or who has successfully completed their course and is found working full time during these periods would not be in breach of their conditions of stay. However a student who has ceased studying before completion of their course would have no right to undertake part time or vacation employment as they are no longer following a course of study, independently of whether his leave has been curtailed.

Return to Top

50.7.2 Students who switch college

Students are allowed under Tier 4 guidance to switch educational establishments but they must seek permission to do so. They can start a new course **before** approval has been given where:

- They have applied to the Home Office for permission to stay and study with a Tier 4 sponsor which has a highly trusted sponsor rating; and
- Their permission to stay and study in the UK with the former sponsor is still valid; and
- Their prospective Tier 4 sponsor has assigned a confirmation of acceptance for studies to them for the new course; or
- If they applied for leave prior to 5 October 2009, they have told the Home Office about changing their Tier 4 sponsor.

  As the student is permitted to start the course they can undertake part time/vacation work assuming the level of course is such that it would allow for employment (see 50.7 above).

A student cannot start the new course until we have approved the new application where they are applying to us for permission to stay and study with a sponsor that does not have highly trusted sponsor rating. In such circumstances, they also cannot undertake part time/vacation work until such time as permission is granted.

Any student encountered who has changed his educational establishment without seeking approval can be considered for section 10 action if he has failed to seek permission to change college (breach of condition restricting study).

(Note though that a student who is following an approved course of study can additionally undertake supplementary study at any other institution as long as this does not interfere with their main course)

Return to Top

50.7.3 Students who completed their course early but have not had their leave curtailed to provide for a revised wrap-up period in line with their new course completion date

Migrants working for periods in excess of the wrap up period allowed normally at the end of a course (see 50.7.1) will be liable to action under Section 10 for working in breach. If it appears the sponsor has failed to notify the Home Office of the student completing the course refer to Sponsorship Investigations Team (SIT) as the sponsoring body may be failing in their duty to notify that the student is no longer attending.

Official - sensitive – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only

Official - sensitive – do not disclose – end of section

Return to Top

50.7.4 Students seeking to remain in another capacity

Students can only undertake part time/vacation work where they are attending the course and have permission to do so.

There is provision in the Rules however for a person to be allowed to take employment where they have an outstanding in time Tier 2 application (including to work as a postgraduate Dentist or a Dentist in Training) which is supported by a Certificate of Sponsorship assigned by a licensed Tier 2 Sponsor and made following successful completion of course at degree level or above with a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution (para 245ZT /245ZY).

Some self-employment is allowed where the person has made an application for leave to remain as a Tier 1 (Graduate Entrepreneur) Migrant which is supported by an endorsement from a qualifying Higher Education Institution and which is made following successful completion of a course at degree level or above at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution

Some employment is allowed where a migrant has successfully completed a PhD at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution and has been granted leave to remain as a Tier 4 (General) Student

on the doctorate extension scheme or has made a valid application for leave to remain as a Tier 4 (General) Student on the doctorate extension scheme but has not yet received a decision on that application.

Also employment as a postgraduate Dentist or a Dentist in Training is allowed where the migrant has a pending in time application for leave to remain as a Tier 4 (General) Student supported by a confirmation of acceptance for studies assigned by a highly trusted sponsor to sponsor the migrant to do a recognised Foundation Programme.

Return to Top

50.7.5 Sponsor licence revoked or sponsor has ceased to trade

The right to work is dependent on the student (i) following a course of study at the appropriate academic level (ii) with a Sponsor of the specified academic status. If the Sponsor no longer has a sponsor licence because it has been revoked, the student can no longer meet these requirements and therefore will be in breach of their conditions if they are found working. If the Sponsor has ceased trading, the student is unable to meet either requirement and would therefore be in breach of their conditions if they are found working.

In both of these situations, the student will normally be subject to enforcement action under section 10. Where the student is encountered in circumstances where it is not appropriate to take enforcement action then their details should be passed to the Sponsorship Investigation Team (see 50.7.3) with a request that consideration be given to curtailment action.. A student with curtailed leave is normally no longer legally able to undertake part time/vacation work.

Return to Top

50.7.6 The Zhou Judgement (this only applies to students where their last student application was pre the PBS system i.e. before 30/3/2009)

The Zhou judgement has been the cause of some confusion when dealing with students who take employment. Zhou entered the United Kingdom as a student and enrolled on a full time course of study. He subsequently stopped attending his course but continued to work for 20

hours each week. As he was no longer attending a course, he was removed as a person who was in breach of their conditions (i.e. he was no longer considered to be a 'student'). However, the judge found that despite his non-attendance, he retained the student conditions he had been granted on arrival. He was therefore not considered to be in breach of the conditions of his grant of leave and his removal was deemed unlawful.

The Zhou judgement did not affect our policy when dealing with students who are working hours in excess of their permitted employment. Any student found to be working in excess of 20 hours per week during term-time may be liable to enforcement action as a worker in breach.

If a person who has been granted student conditions prior to PBS has ceased attending, but is still keeping to their student conditions of employment, refer the case to the relevant case-worker who may decide to curtail leave.

Rules have changed since this case and as paragraphs 245ZW(c)(iii) and 245ZY(c)(iii) of the Rules now states that the right to work depends on the level of course studied and the type of sponsor, the Zhou judgement is only relevant for those students whose last application as a student was made prior to PBS (30 March 2009).

Return to Top

50.7.7 Testing credibility

When encountered a person may satisfy you that they have outstanding leave to enter or remain but doubts may exist as to whether they continue to qualify for that leave. Where the individual's account seems credible then any necessary enquiries to establish exactly what they are doing can be followed up in a routine manner. However, if the account seems too incredible, for example a student is encountered working during term time in remote area miles away from their claimed place of study, and there are doubts that the individual might not be readily contactable in the days ahead then a short period of detention could be considered.

Clearly in these cases enquiries must be made at the earliest opportunity to determine what action is appropriate in all the circumstances. If, despite the initial doubts, you are satisfied that the person does, in fact, continue to meet the normal requirements of the Rules then they should be released from detention without delay. Where, however, they no longer qualify under the Rules action under Section 10 may be appropriate where there has been a breach of their conditions of stay otherwise curtailment action may be the preferred way forward. See also guidance on curtailment.

As a guide when students are encountered you should establish

- where they attend their studies
- what they are studying, and
- if they are in term time or vacation time.

You should also contact the place of study and get confirmation that he remains a student and is regularly attending. If there are any doubts over the information being provided by the college you should let the Sponsorship Investigations Team know so they can have regard for this in their dealings with the college.

Return to Top

50. 8 Curtailment of current leave

Where a person no longer qualifies for the leave they have been granted then under Section3(3)(a) of the Immigration Act 1971and paragraph 323 or 323A of the Rules that leave may be curtailed. Full guidance on this is available in the curtailment instruction under modernised guidance. It may be used when a person has failed to comply with certain requirements of the Rules or has lost the justification for his presence here.

Although a person's leave can be curtailed where they have **breached** their conditions of stay by, for example, working whilst here as a student in excess of the hours permitted under the Rules, it is normally more appropriate to consider Section 10 action in such cases where a person has come to attention during an enforcement visit.

Return to Top

50.8.1 Migrants with curtailed leave

Caution needs to be exercised for decisions to curtail leave to 60 days in decisions taken before 12 July 2013. This follows the Tribunal decision in the case of Syed (curtailment of leave – notice) [2013] UKUT 144 IAC) which made it clear that the notices regulations did not apply to these decisions and that the Home Office needed to be able to show the curtailment notice was given to the migrant in writing.

The Immigration (Leave to Enter and Remain) (Amendment) Order 2013 (the Order) has however rectified this position and means that from 12 July 2013 the notice may now be served to:

a) An address for correspondence provided by the person or their representative (postal or e-mail).
b) Where no address for correspondence has been provided:
   (i) the last known or usual place of abode, place of study or place of business, or the last known or usual place of business of the person's representative (postal), or
   (ii) the last known e-mail address for the person, including at the person's last known place of study or business, or the last known e-mail address of the person's representative (e-mail).

If attempts to serve in line with (a) or (b) are not possible or fail, the notice will be deemed to be given when it is placed on the migrant's file with a record of the reasons for this.

Unless the contrary is proved, a notice varying leave is deemed to be served on the second day after it was posted, or on the day that it was sent if it was served by e-mail.

Accordingly, if a person comes to attention who has had their leave curtailed on or after 12 July 2013, such that leave remains (typically to 60 days), the notice of curtailment was served in accordance with the Order and the 60 day period has passed, then the individual is liable to removal under section 10 of the 1999 Act as an overstayer. They can accordingly be served with an IS151A. A student with curtailed leave is no longer legally able to undertake part time/vacation work

For cases curtailed before 12 July 2013, such that some leave remains (again typically to 60 days), pre-12 July 2013 practice continues to apply. Therefore the following steps need to be taken in those cases.

You need to establish that the notice of curtailment was correctly served. The onus of proving that the notice was effectively served is on the Home Office and the following checks are required:

1. If Home Office records show that the pre-12 July 2013 notice of curtailment to 60 days was served to file or returned by post as undeliverable it has no effect. The migrant may not be served with an IS151A as an overstayer. In line with the Curtailment Modernised Guidance, where the original leave has more than 60 days remaining, the officer must make a fresh curtailment decision on the same grounds, giving the migrant 60 days leave from that point.

2. If, when interviewed, the migrant claims not to have received the notice of curtailment, the officer must establish whether the notice was served to the correct address for the migrant. The address of an educational institution is not sufficient unless you can show that, on the balance of probabilities, the migrant subsequently received the notice from the college.

The revised notice must **not** be served if the migrant has less than 60 days extant leave remaining. Before serving a revised notice however officers should have regard to the case as a whole and consideration should be given to Section 10 action if it should transpire that although the individual was unaware of the curtailment decision he was in fact working in breach of conditions of stay and as aresult is liable to removal action anyway.

Return to Top

50.9. Domestic workers

For guidance see under Domestic Workers in Modernised guidance.

Return to Top

50.10. Offshore working

UK immigration legislation does not cover offshore oil platforms. The Immigration Acts do not apply to the continental shelf, so immigration control cannot be exercised in offshore waters. Overseas workers whose employment is wholly off shore do not require work permits, however they do require leave to enter or remain in the UK.

Refer to Enforcement and Returns Operational Policy if further advice is needed.

Return to Top

50.11. Recourse to public funds

The 1996 Act introduced a restriction on the use of public funds for certain persons subject to control. From 8 November 1996, the grant of leave to enter or remain has, where appropriate, included the requirement" that the holder is required to maintain and accommodate himself and any dependants without recourse to public funds".

A person whose leave to enter or remain prohibits recourse to public funds is liable to removal if found to be in receipt of a public fund (see 50.11.1). Action may therefore be initiated under section 10 provided that one of the following is available:

- an admission under caution that the person has been in receipt of public funds; and/or
- a statement from an official from the relevant benefit agency that public funds have been claimed.

A person whose passport endorsement does not expressly prohibit recourse to public funds does not breach a condition of his leave nor commit a criminal offence under section 24(1)(b)(ii) of the 1971 Act if he or she is in receipt of public funds (Those on temporary admission or illegal entrants who have not been granted leave are not liable to enforcement action in this category, as they have not been granted leave which prohibits recourse to public funds).

When a person started claiming public funds before a restriction was endorsed in his or her passport, there may have been a legitimate entitlement to claim e.g. Child Benefit. In such a case, a report should be sent to the relevant casework section to enable an approach to be

made to the relevant benefit agency with a request that they review the claim. If, after interview, it appears that the person may qualify for benefits, submit a report to the relevant casework section.

Return to Top

50.11.1. List of public funds

For a definition of what constitutes public funds see paragraph 6 of Immigration Rules

Return to Top

50.12. Section 10(1)(b) - Leave to remain by deception

Any person who uses deception in seeking leave to remain (whether leave has been granted or not) since 1 October 1996 comes within the terms of section 10 of the 1999 Act. Where an offence of deception appears to have been committed prior to that date, the facts should be reported to the relevant casework unit for possible deportation action on non-conducive grounds under section 3(5) (a) of the 1971 Act.

The evidence of deception should be clear and unambiguous in order to initiate action under section 10. Where possible, original documentary evidence, admissions under caution or statements from two or more witnesses should be obtained which substantiate that an offence has been committed before authority is given to initiate action under section 10 of the 1999 Act. The deception must be **material** - in other words, had the officer known the truth, the leave would not have been given. The evidence must always prove **to a high degree of probability** that deception had been used to gain the leave, whether or not an admission of deception is made. The onus - as always in such situations - is on the officer making the assertion to prove the case.

Return to Top

50.13. Section 10(1) (c) - Removal of family members (Spouse and children under 18)

When considering cases involving children regard must be given to the duty imposed by S.55 of the Borders, Citizenship and Immigration Act 2009 with respect to safeguarding and promoting the welfare of children. Additional information is set out in chapter 45 of the Enforcement Instructions and Guidance on family cases.

To ensure parents are in no doubt as to our removal intentions with regard to their children, removal action may be initiated under section 10(1)(c) against the non-settled spouse of a person liable to administrative removal action and against any dependent children who have neither the right of abode nor are settled here, (but those listed in paragraph 50.3 are exempt from administrative removal). Where a spouse or child are themselves offenders (e.g. overstayers) officers should serve them with removal notices in their own right as once the child turns 18 they would no longer be liable to removal under 10(1)(c)

The following categories of **children** are liable for removal action:

- Children born abroad who are not settled here
- Children born in the UK on or after 1 January 1983, where neither parent is a British citizen or settled here. (Children born in the UK after 1 January 1983 are entitled to apply for British citizenship once they have completed 10 years' residence, or 5 years if the parents are BOTCs. This does not, however, preclude enforcement action being initiated against them prior to their entitlement to British citizenship).

Removal action will not normally be taken in respect of a **spouse** of a person who is being removed where:

- he has qualified for settlement in his own right

- he has been living apart from the offender

A child will not normally be removed where:

- he and his mother or father are living apart from the offender, or

- he has left home and has established himself on an independent basis, or

- he married before removal came into prospect

The following factors should also be taken into account:

- regard to the duty to safeguard and promote the welfare of any child affected by Home Office actions,

- the ability of the spouse to maintain himself and any children in the UK, or to be maintained by relatives and friends in the UK without charge to public funds, not merely for a short period, but for the foreseeable future,

- in the case of a child of school age, the effect of removal on his education,

- the practicability of any plans for the child's care and maintenance in this country if one or both his parents were removed, and

- any representations made by or on behalf of the spouse or child.

Directions may not be given under section 10(1)(c) above unless the person concerned has been given written warning of such an intention that such action is intended (i.e. served with an IS151A Parts 1 & 2). This warning should be given at as early a stage as possible, and ideally before the first person is actually removed. It cannot be given more than eight weeks after the other person's removal and where more than eight weeks have elapsed, removal under section 10(1)(c) is not possible Action is not possible under section 10(1)(c) if the person concerned ceases to be a member of the other person's family.

Return to Top

50.14 Tier 4 applications made on or after 20 October 2014

The single power of removal in Section 1 of the Immigration Act 2014 replaces Section 10 of the Immigration Act 1999. It means that a person who requires but does not have leave

to remain in the UK is liable to removal. It is being implemented in phases and initially only applies to individuals who have made an "in country" leave to remain application under Tier 4 on or after the 20 October 2014.

Where a person in this category has their application refused they will be served with a single decision. This will make their leave status clear and also their liability to removal (subject to the outcome of any administrative review where appropriate). No further removal decision or removal directions will need to be served.

The new provisions will continue to apply to persons in this category if they make a subsequent asylum claim or human rights application, or if their leave is curtailed for breach of conditions. Section 50.14.1 provides guidance to immigration officers on serving a single decision for breach of conditions or deception. See also below for corresponding changes to the appeals system.

The amended Section 10 states:

10 Removal of persons unlawfully in the United Kingdom

(1) A person may be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer if the person requires leave to enter or remain in the United Kingdom but does not have it.

This makes a migrant removable as a consequence of having no leave rather than requiring a separate decision to be made. Under the new process, a single decision will make clear a migrant 's status: e.g., that they are being refused an extension of leave, or that their leave is being curtailed with immediate effect. It will also inform them that they are, or will be, liable to removal if they do not depart voluntarily, and will include the country to which they will be removed. It will notify them that there will be a period of 72 hours[1], beginning after they become liable to removal, during which they will not be removed, and will advise them of the need to seek legal advice as soon as possible. No further removal decision needs to be made. A section120 notice will inform them of their duty to raise with the Home Office at the earliest opportunity any reason why they should be allowed to remain in the UK. The single decision will also provide information about voluntary departure and the consequences of remaining in the UK illegally.

[1] In some cases this will be five days – eg where an appeal has been certified as not suspensive of removal. See chapter 60 for further details.

Under corresponding changes to the appeals system a person whose Tier 4 application was made on or after 20 October 2014 will be able to apply for an administrative review where they allege a case working error has been made. They will have no right of appeal unless they raise a subsequent asylum or human rights claim which is refused. There is no right of appeal or administrative review against a decision to curtail leave. Certain applications (those other than for Tier 4, human rights or asylum) will take the person out of the new process altogether.

When a Tier 4 application is refused under the new process, the migrant will be advised that an application for administrative review can be made. If their initial application was in time then they will have 3C leave (where appropriate) for 14 calendar days to allow them to make this application, which will then continue while the administrative review is pending. Where the migrant made an out of time application for leave to remain they can still apply for administrative review, although they will not have 3C leave. Administrative review is a bar to removal while it is pending. If the migrant does not seek an administrative review or their application is unsuccessful and they have no remaining leave, they will be liable to removal.

See under modernised guidance for instructions on the consideration of Tier 4 applications and administrative review process

Return to Top

Official-Sensitive – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only

Official-Sensitive – do not disclose –end of section

50.14.1 Encounters

Where a migrant comes to notice, for example, in an illegal working operation and it transpires that he has made an in-country Tier 4 application on or after 20 October 2014 he will fall to be considered under the new Section 10 process.

If, following checks of the person's application history, it is clear that the person continues to be subject to the new enforcement powers officers must use the correct enforcement forms. The:

- **RED.0001** form replaces the IS151A for person who is encountered and the
- **RED.0001 FAM** form replaces the IS 151A for family members of a person subject to the RED.0001.

Under the new process, if a migrant has extant leave but has breached the conditions of this leave or used deception, a decision to curtail the leave with immediate effect needs to be taken (under the Immigration Rules). This makes them liable to removal. The grounds for taking the curtailment action are the same as those for taking a section 10 decision under the old section 10 powers; it is just the legal basis which is relied on that has changed. There is no appeal against the decision.

The following table sets out all the changes in legal basis:

Grounds	Old basis – Pre-IA 2014 cases	New basis – IA 2014 Cases
Breach of conditions of leave	S10(1)(a) of the Immigration and Asylum Act 1999	Paragraphs 323(i) / 322(3) of the Immigration Rules for breach of conditions. Paragraphs 323(i) / 322(4) of the immigration Rules for failure to maintain or accommodate himself or dependants without

		recourse to public funds.
Overstays leave	S10(1)(a) of the Immigration and Asylum Act 1999	S10(1) of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014)
Uses deception (successfully or not) in seeking leave to remain	S10(1)(b) of the Immigration and Asylum Act 1999	Paragraph 323(ia) of the Immigration Rules.*
Family member of person liable to removal under s10	S10(1)(d) of the Immigration and Asylum Act 1999	S10(2) to (6) of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014)

*Note this particular immigration rule is subject to transitional arrangements and will only apply to people who have made an application type which means that they are subject to the appeals, administrative review and single decision provisions brought in under the Immigration Act 2014.

As an example this form of wording could apply when dealing with a worker in breach.

DECISION

On [insert date- which will be on or after 20/10/2014] you applied to remain under Tier 4 of the points based system. On [insert date] you were granted leave to remain in the United Kingdom until [insert date]...on condition that you [do not access public funds] and that employment [is prohibited] [is limited to 20/10 hours a week during term time provided you are studying at [name of sponsor]].

You are specifically considered a person who has failed to observe a condition of leave to enter or remain because on [insert date] you were observed to be working for [insert employer] and you were observed [state evidence of working]. [Name of employer] has confirmed that you were in employment with them for x hours a week in excess of the hours you could legally work.

It is not considered that the circumstances in your case are such that discretion should be exercised in your favour. The Secretary of State therefore curtails your leave to [enter/remain in] the United Kingdom under paragraph 323(i) with reference to 322(3) of the Immigration Rules so as to expire on the date shown at the bottom of this notice.

For other examples of curtailment wording see guidance on curtailment and general grounds for refusal

On the last page of the **RED.0001** the address where the response to the s120 notice (the RED.0003 form) should be sent to must be completed with the relevant NRC details where the person is detained.

The service of all **RED** forms must be recorded in CID case notes. It is important to record them all as:
- the **RED.0001** places the duty on the migrant to notify the Home Office of any changing circumstance or new reason for wishing to remain in the UK
- the **RED.0003** gives them the means to respond (note however it's not a prescribed form and the migrant can respond to the s120 in any way they please).
- the reminder (**RED.0002**) must also be recorded to assist in the certification of late claims..

Where removal action is delayed, for example where we need to obtain a travel document, the migrant can be reminded of the continuing need to provide details at the earliest opportunity by the service of a **RED.0002** and another **RED.0003**. Again the service should be recorded for the same reasons as given before.
RED forms are available on the CID document generator either under enforcement forms or under Removals/decision notices

Return to Top

50.14.2 Section 120 notices

The Section 120 notice served with the single decision requires the migrant to raise with the Home Office at the earliest opportunity any grounds on which they wish to remain in the United Kingdom. The migrant will also be reminded of their duty to provide such information in a timely manner during any contact management and reporting events.
As indicated before records of such warnings must be retained in CID notes so that consideration can be given to certifying any subsequent asylum and/or human rights claim as 'clearly unfounded' under section 94 or under 96 where the matter could have been raised earlier.

Official-Sensitive – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only

Official-Sensitive – do not disclose –end of section

50.14.3 Examples of cases suitable for treatment under the new Section 10

Scenario A

Whilst on an enforcement visit an Afghani national is encountered who has current leave to remain having applied under Tier 4 after 20 October 2014. He has restricted work conditions to 10 hours per week in term time You encounter him working in a butcher's in term time and he admits under caution that he is working in excess of his conditions, the roster also indicates that he is working six days a week, eight hours per day.

As he has breached his conditions of leave after making a Tier 4 application (post 20/10/2014) he falls to be dealt with under the new process. His leave falls to be curtailed under paragraph 323(i) with reference to 322(3) of the Immigration Rules and service of a RED.0001 is appropriate subject to any mitigating circumstances raised.

Scenario B

Tier 4 application for leave as a student was made post 20/10/2014 and leave to remain was granted. He then comes to notice and it is established that false bank statements were used in support of the application. When encountered the migrant would fall to be considered under the new single decision process and leave curtailed on a RED.0001 under 322(1A) of the Immigration Rules which states:

> (1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

Return to Top

50.14.4 Family members of migrants who made Tier 4 applications on or after 20 October 2014

The new section 10 also provides for the removal of family members and now includes relatives beyond spouses and children. The Section states:-

Section 10(2) Where a person ("P") is liable to be or has been removed from the United Kingdom under subsection (1), a member of P's family who meets the following three conditions may also be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer, provided that the Secretary of State or immigration officer has given the family member written notice of the intention to remove him or her.

(3) The first condition is that the family member is—

(a)P's partner,

(b)P's child, or a child living in the same household as P in circumstances where P has care of the child,

(c)in a case where P is a child, P's parent, or

(d)an adult dependent relative of P.

(4) The second condition is that—

(a)in a case where the family member has leave to enter or remain in the United Kingdom, that leave was granted on the basis of his or her family life with P;

(b)in a case where the family member does not have leave to enter or remain in the United Kingdom, in the opinion of the Secretary of State or immigration officer the family member—

(i) would not, on making an application for such leave, be granted leave in his or her own right, but

(ii) would be granted leave on the basis of his or her family life with P, if P had leave to enter or remain.

(5) The third condition is that the family member is neither a British citizen, nor is he or she entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.

So the family member may be removed if their leave was granted on the basis of the relationship to the principal, or would be if they had leave.

Notice of removal will invalidate any leave for family members under the new Section 10(6).

The Immigration (Removal of Family Members) Regulations 2014 govern the time period for removal of family members (same as now) and how we will serve the notice of removal.

If the family member is not encountered with the main applicant but comes to attention later removal can take place provided the removal occurs within eight weeks from the removal of the main applicant. After that period the family member should be treated in their own right.

Family members will be served with the **RED.0001 FAM** form.

Return to Top

50.14.5 Removal

Single decision cases will not have removal directions served on them, although removal directions will continue to be served on the carrier. The single decision notice includes the country to which a migrant will be removed, and a period of 72 hours (or five days for charter flights and NSA cases) following the expiry of their leave during which they will not be removable. See Chapter 60 EIG for further detail on removing these cases.

Return to Top

Annex A

Action to be taken when it is claimed an application has been made but it is not on CID

In instances where enforcement staff are provided with information that a suspected immigration offender has lodged an application with the Home Office for consideration, and a search of CID fails to find an application, enquiries may be made to establish whether an application has been made.

Official - sensitive – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only

Official - sensitive – do not disclose – end of section

Return to Top

Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
28-02-12	EID	Delete reference to 395c	Richard Quinn	V4
July 2012	SID	Delete section 50.3.1 (no longer relevant, and insert one line in 50.2 as EEA Admin removals now possible.	Sonia Dower	V5
27/11/2013	Enforcement and Returns Operational Policy	Minor formatting changes, inclusion of restriction box in external version, inclusion of revision history in external version. Amendment to 50.3 on children born in UK	Kristian Armstrong Head of Asylum Enforcement and Criminality Policy	V6
28July 2014	Enforcement and Returns Operational Policy	Change to 50.2 to clarify conditions attached to stay,deletion of 50.5.1 re-regularisation of overstayers scheme,changes to 50.7 on students working, 50.9 domestic workers, new annex A.	Kristian Armstrong Head of Enforcement and Criminality Policy Angela Perfect Central Operations	V7
/10/2014	Enforcement Operational Policy	General housekeeping, hyper-linking, official sensitive markings, re-instating missing heading for 50.5.2, and new content – 50.14 on tier 4 applications made after 20/10/2014	Kristian Armstrong	V8
08/01/2015	Enforcement Operational Policy	General housekeeping, hyper- new content – Sections 50.2.1 - British Irish Visa Scheme	Kristian Armstrong	V9

Return to Top