

Chapter 51 – Administrative Removal Procedures

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51. Introduction

Administrative removal refers to individuals who are liable to removal under section 10 of the [Immigration & Asylum Act 1999](#) or section 47 of the [Immigration, Asylum and Nationality Act 2006](#). This guidance describes the process for, and the effect of, serving administrative removal decisions on those that have:

For Section 10:

- Overstayed;
- Breached a condition of leave to enter or remain;
- Sought or obtained leave to remain by deception;
- Indefinite leave revoked because they have ceased to be a refugee;
- Family members of the above;

The Immigration Act 2014 changes the way a person is removed from the UK and is being introduced in a phased manner starting from 20 October 2014 with those who have made a Tier 4 (student) application on or after that date. The consequence is that if, subsequent to such an application, it is established the person is to be removed then officers should follow the process laid out in chapter 50.14 for dealing with such cases

For Section 47

- Had a decision to refuse to vary or to curtail leave, and a decision is being made to administratively remove when statutorily extended leave comes to an end.

See Chapter 50 for further information on who section 10 decisions can be applied to.

See Chapter 7 for guidance on serving removal decisions on Illegal Entrants.

See Chapter 50 (EEA) for guidance on the administrative removal of EEA Nationals or their family members.

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51.1 Exercise of discretion in service of section 10

The Courts ([Thapa, \[2014\] EWHC 659 \(Admin\)](#)) require that when deciding to serve a removal decision on an offender officers must also consider that notwithstanding the fact that a person has been identified as a person liable to administrative removal that they have considered the exercise of discretion as to whether such a person should be served with a decision to remove.

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

The two stages:

First and foremost, consideration has to be given to the question of whether the person is in fact liable to admin removal. It is imperative that the facts are examined so as to determine whether the strength of the evidence is such that the offence is properly evidenced. If there are any doubts, then service of papers should be deferred pending further enquiries. Once this consideration has been completed, the file (IS126E) should be noted to show the basis for concluding that the individual is liable for administrative removal, including brief details of the relevant offence, overstayer, worker in breach, leave to remain by deception etc with extra details if the offence is not obvious or clear cut.

The next step is then to consider whether it would be fair in all the circumstances to treat the individual as a person liable to administrative removal and serve an IS151A notice on them. The key question when making this decision is whether the service of such a notice would disadvantage the individual in some way.

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

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

Suggested wording:

"I have considered all the information available to me and I am satisfied that [name] is liable to administrative removal as defined in section 10 of the

Immigration and Asylum Act 1999 on the basis that [detail - how and where the person was discovered and/or the basis for concluding that the person was liable to administrative removal].

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

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

Or

* It is appropriate to exercise the discretion not to treat him / her as a person liable to administrative removal for the following reasons

.....“

After papers have been served:

If, in the course of enquiries, the level of information available to officers changes - perhaps through interview, further interview, or representations received, officers should note that they have a continuing discretion as to whether to maintain or withdraw the notice of liability to administrative removal. If, as a result of information obtained at a later stage or as a result of a change in circumstances, it becomes apparent that an individual is being prejudiced as a result of the service of an IS151A notice and that it is unfair to maintain it, then the notice should be withdrawn.

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

Following the decision in Thapa it's best practice to record the use of discretion however in line with the later judgement of Bilal the failure to do so

would not render a decision to remove unlawful. Discretion must always be recorded, however, where “an issue is raised before the decision is made relating to the course to be followed or to particular mitigating circumstances relating to the applicant where that should be expressly considered in the decision”.

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51.2 Service of IS151A

The IS151A Part 1 (Notice that a person is to be treated as an illegal entrant/a person liable to administrative removal under section 10 of the Immigration & Asylum Act 1999) can be served on those liable to administrative removal (as outlined in the first five bullet points in the introduction paragraph above).

The Notice of Liability is not an appealable immigration decision. It informs the individual they are an illegal entrant/immigration offender and they are liable to detention and removal. It also allows reporting restrictions to be placed on the individual. See [Section 51.5](#) below.

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51.3 Statement of reasons

To comply with the spirit of regulation 5(1) (a) of the Immigration (Notices) Regulations 2003, the IS151A Part 1 must contain a statement of reason(s). A non-exhaustive list of paragraphs that could be copied and pasted into the IS151A Part 1 is listed below. The wording should then be amended to fit the individual circumstances of the case:

◆ Home Office records show overstayed

<p>You are specifically considered a person who has overstayed their period of granted leave because landing card records show that on (insert date) you were granted leave to enter as a visitor for six months by an Immigration Officer at (insert Port). It was only in (insert date) that you applied to regularise your stay here.</p>

◆ **Passport shows overstayed**

You are specifically considered a person who has overstayed their period of granted leave because your passport shows you were given leave to enter as a visitor for six months by an Immigration Officer at **(insert Port)** on **(insert date)** and it was only in **(insert date)** that you applied to regularise your stay here.

◆ **Visa shows overstayed**

You are specifically considered a person who has overstayed their period of granted leave because you were issued with a visit visa on **(insert date)** which was valid until **(insert date)**. Holders of visit visas may only remain in the United Kingdom for a maximum of six months on any one visit, or until the visa expires if less than six months. You arrived in the United Kingdom on **(insert date)** and were landed in line with the visa (for example, until **(insert date)**). You did not however seek to regularise your position in the United Kingdom until **(insert date)**.

◆ **British Irish Visa Scheme (BIVS) Overstayer – Irish issued visa**

You are specifically considered a person who has overstayed their period of leave. You were issued with an Irish visa eligible under the British-Irish Visa Scheme (BIVS) on **(insert date)** which was valid until **(insert date)**, and given leave to land or be in the Republic of Ireland by the Irish authorities pursuant to that Irish visa which expired on **(insert date)**.

Holders of BIVS visas who travel on to the United Kingdom who fulfil the requirements of the BIVS are only permitted to stay in the United Kingdom for the remaining period of validity of the person's current permission to land or be in Ireland as endorsed in their passport.

You arrived in United Kingdom from the Republic of Ireland on **(insert date)** and had leave to enter the United Kingdom conferred by the Immigration (control of entry through the Republic of Ireland) Order 1972 as the holder of a BIVS visa until (insert date).

You did not however seek to regularise your position in the United Kingdom until **(insert date)**. **delete if not known*

◆ **British Irish Visa Scheme (BIVS) Overstayer – UK issued visa**

You are specifically considered a person who has overstayed their period of leave. You were issued with a United Kingdom visit visa eligible under the British-Irish Visa Scheme (BIVS) on **(insert date)** which was valid until **(insert date)**.

Holders of visit visas may only remain in the United Kingdom for a maximum

of six months on any one visit, or until the visa expires if less than six months.

You arrived in the United Kingdom on **(insert date)** and were landed in line with the visa (for example, until **(insert date)**). You did not however seek to regularise your position in the United Kingdom until **(insert date)**. **delete if not known*

◆ **No passport but applicant admits to being an overstayer**

You are specifically considered a person who has overstayed their period of granted leave because you admit to having arrived in the United Kingdom on **(insert date)** when you were permitted to enter as a visitor for six months. It was only in **(insert date)** that you applied to regularise your stay here.

◆ **Working in breach**

You are specifically considered a person who has failed to observe a condition of leave to enter or remain as you were admitted to the United Kingdom on **(insert date)** as a visitor on a condition that prohibited you from taking employment but on **(insert date)** you were observed to be working for **(insert employer)** who have confirmed that you were in full time employment with them. Note the Court in Thapa referred to in 51.1 above made it clear that it was not sufficient to simply say that the individual was observed working where the individual disputes this. We should in such circumstances provide other information if the employer had not confirmed that the individual was working there. For example “and you were seen wearing business overalls/uniform and were observed cooking/preparing food/serving etc”.

◆ **Spouse/Family member**

You are specifically considered a person who is liable to administrative removal because you are the spouse/ son/daughter of **(insert relation)** who is being administratively removed.

Levels of authority

The Notice of liability must be completed/authorised by an executive officer/immigration officer or above, in overstayer, breach, family member, deception or revocation cases (i.e. where this may lead to a decision under section 10(1)(a), 10(1)(b), 10(1)(ba) or 10(1)(c)).

However, where the Notice of Liability is served during an enforcement encounter, a decision **must** also be made as to whether to detain or place on

reporting restrictions. This may require authorisation from a higher grade (see [51.5 below](#)).

Service

The Notice of Liability can be served in person or by post. However, in deception cases an interview under caution by an immigration officer may be required first. See Chapter 37 for further details on enforcement interviews.

The service of the IS151A Part 1 must be recorded on CID.

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51.4 Immigration Decision (section 10)

Following the service of an IS151A Part 1, an immigration decision should be served. It is best practice that the IS151A Part 1 and the immigration decision are served together, but there may be situations where this is not appropriate.

The immigration decision will trigger a right of appeal under Section 82 (2) (g) of the Nationality, Immigration and Asylum Act 2002. This will be either an in country or an out of country right of appeal:

- ◆ **Out of Country Right of Appeal (IS151A Part 2)** - This should be served where there has been no protection or human rights claim. It informs the individual that a decision has been made to remove them from the UK and that they can appeal against this decision but only from outside the UK.

If a protection or human rights claim is made **after** serving the IS151A Part 2, and removal directions are in place, then the case must be referred to OSCU. In all other cases, the decision should be withdrawn so that the claim can be considered.

- ◆ **In Country Right of Appeal (IS151B)** – This should be served where a protection or human rights claim has been made and refused. It informs the individual that a decision has been made to remove them from the UK and that their asylum/human rights claim has also been refused. It notifies them that they have an “in-country” right of appeal against the decision.

Where the immigration decision (IS151A Part 2 or IS151B) is taken on or after 16 June 2006, any leave to enter or remain is **invalidated** at the point of service.

The immigration decision (IS151A Part 2 or IS151B) must specify the country/territory to which the individual will be removed. Where the nationality of the individual is disputed, doubtful, they are a dual national, or where they are removable to more than one country/territory, more than one country/territory can be specified on the decision. See the Instruction on Nationality: Doubtful, Disputed and Other Cases for further information.

Family members

Section 10 immigration decisions must be served on any family members that will be removed at the same time as the main applicant. For guidance on decision notices that should be served on family members, see Chapters 50 and 45.

Levels of authority

The IS151A Part 2 or IS151B must be completed/authorised by a Executive Officer/Immigration Officer or above, in overstayer, breach, family member, deception or revocation cases (i.e. where it contains notice of a decision under section 10 (1) (a), 10 (1) (b), 10 (1) (ba), or 10 (1) (c)).

However, where the decision is served during an enforcement encounter, a decision **must** also be made as to whether to detain or place on reporting restrictions. This may require authorisation from a higher grade (see [51.5 below](#)).

Service

The decision can be served in person or by post (where delivery or receipt is recorded). The service of these immigration decisions, and the method of service, should be recorded on CID.

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51.4.1 British Irish Visa Scheme (BIVS) Working in breach - additional actions.

UK issued BIVS visas.

Following the administrative removal of any UK visa holder for working in breach while they are in the UK, you should consider whether it is appropriate to request revocation of the multiple entry BIVS visa by an entry clearance officer (ECO) under paragraph 30A(i) of the Immigration Rules paragraph.

To request revocation of the visa, you should complete the 'visa concerns process' through the Central Reference System (CRS). Guidance is located on pages 6-8 of the Border Force manual - Cancellation of entry clearance

Irish issued BIVS visas

Following the decision to administratively remove an Irish visa holder for working in breach of condition imposed in line with the BIVS scheme on the person's UK leave, the individual may, where there is extant time on the Irish visa, request to be removed to Ireland to continue their stay as a visitor.

In these cases, you must complete proforma IS 141 (BIVS) requesting a decision on admissibility to Ireland within 48hours of receipt of the form prior

to setting removal directions. The IS 141 (BIVS) form requires an UK unique reference number (URN) and AVATS number, both of which can be found on i-search.

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If Ireland confirms that the individual would be inadmissible to Ireland, you should arrange for removal outside the CTA.

If Ireland confirms that the individual would be permitted to re-enter Ireland from the UK on their current visa, removal directions should be set for Ireland.

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51.5 Immigration Decision (section 47 taken on or after 8 May 2013)

Section 51(3) of the Crime and Courts Act 2013 amended section 47 of the Immigration, Asylum and Nationality Act 2006 and allows for a decision to remove to be made where an individual has continuing leave during a period in which an appeal could be brought (statutorily extended leave under sections 3C(2)(b) or 3D(2)(a)). This means that a decision to administratively remove is made at the same time as a variation or curtailment decision. The section 47 decision should be included in the decision letter curtailing or refusing to vary leave.

Where it is not included in the decision letter the ICD4547 decision notice can be used. The section 47 decision must specify the country/territory which the individual will be removed to. Where the nationality of the individual is disputed, doubtful, they are a dual national, or where they are removable to more than one country/territory, more than one country/territory can be specified on the decision. A section 47 decision cannot be made once an appeal has been lodged.

A section 47 decision will trigger an additional right of appeal under section 82 (2) (ha) of the Nationality, Immigration and Asylum Act 2002. However, where an appeal is lodged, the issues arising from the two decisions (e.g. refusal to vary leave and the removal decision) will be dealt with in a single in-country appeal.

If an appeal is not made, or the appeal is unsuccessful, the individual is liable to detention, restrictions, and removal (see [Section 51.5](#) below). There is no need to make a further administrative removal decision (i.e. the service of an IS151A) under section 10 in order to enforce removal. Although see below for section 47 decisions taken before 8 May 2013.

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51.6 Immigration Decision (section 47 before 8 May 2013)

Although it was the intention of the original section 47 to allow for the service of a decision to remove to be made alongside a variation or curtailment decision the Courts found in *Ahmadi* (s. 47 decision: validity; *Sapkota*) [\[2012\] UKUT 00147](#) (IAC) that the wording of the Act was such that it did not allow for the decisions to be made at the same time. This was unsuccessfully challenged in the Court of Appeal with the result that Section 47 cases made before the Section 51(3) amendment on 8 May 2013 should be withdrawn when the matter proceeds to appeal.

An IS151A should be served where an appeal has not been made (and the period for lodging an appeal has passed) or where an appeal against the

refusal to vary or the decision to curtail leave has been dismissed. In a similar way where the section 47 part of the decision was allowed on appeal but the refusal of leave part of the decision was dismissed then an IS151A will need to be served. See 51.1

Family members

Dependants should also be served with a section 47 notice if they are being refused in line with the main applicant. This includes where a child has been born in the UK. Where the main applicant is served with an IS151A then the dependant child can also be served with an IS151A

Levels of authority and service

A section 47 decision must be completed/authorised by an Administrative Officer or above, where the first decision is a decision to refuse to vary leave (an appealable decision under section 82 (2) (d)), or a decision to curtail leave (an appealable decision under 82 (2) (e)).

The decisions can be served in person or by post (where delivery or receipt is recorded). The application decision, the section 47 decision, and the method of service, should be recorded on CID.

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51.7 Retention of documents

Where an individual is liable to removal, there is a power to retain documents which “may facilitate removal” under section 17 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004.

Where a notice of liability, section 10 decision or section 47 decision has been served, any travel document or passport that could facilitate the removal of the individual should be retained, unless there are no reasons to doubt that the individual genuinely intends to travel or there are other exceptional reasons why the documentation should be returned. For further guidance see [Retention of valuable documents](#) under Modernised Guidance.

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51.8 Detention and restrictions

An individual subject to administrative removal under section 10 can be detained or placed on restrictions where an IS151A Part 1 has been served.

Where a section 47 decision has been made, the individual would normally only be detained or placed on restrictions once their statutorily extended leave comes to end (i.e. they have exhausted their right of appeal). Detentions or restrictions may be appropriate however when dealing with a sham marriage or other abusive case. In a [written ministerial statement](#) on 26 June 2014 it was

made clear that where the individual has failed to comply with the conditions of their leave, or their character, conduct or associations make it undesirable to allow them to remain in the UK they will be liable to be detained or to report to the Home Office pending their removal from the UK.

Family members

As mentioned at 51.1 above, the service of the IS151A on all family members subject to administrative removal under section 10 allows for each family member to be served with an IS96. However, whereas adults can (and should in some cases) receive both residence and reporting restrictions; children must **only** receive a residence restriction, in line with The Home Office's policy on children and reporting, which can be found in the [Reporting - Standards of Operational Practice](#) document.

Serving IS96s on all family members is important because, should they:

- fail to comply with a required, or invited, reporting or contact management event, and
- leave the address they are required to live at

they will have failed to comply with a condition of temporary release, resulting in quick and robust failure to report actions to regain contact with the family, as detailed in [Chapter 19 absconders](#).

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51.9 Removal directions

After the service of the removal decision, an IS151D (Removal Directions) can be served on the individual. The IS151D informs the individual of the specific details of their removal from the UK. Only one country/territory can be specified on the IS.151D. It also informs the applicant that no appeal can be brought against Removal Directions.

Individuals, who are subject to removal following an abuse of the British-Irish Visa Scheme (BIVS), should be removed 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, rather than returned to Ireland.

Removal cannot take place when an appeal is pending or until the time limit for lodging such an appeal has expired. Therefore, following the service of the IS151B, you must allow **at least** 10 working days (or **at least** 5 working days in the case of an individual in detention) before serving the IS151D. There is no need to delay the service of an IS151D where the person has been served with an IS151A part 2 as the right of appeal can only be exercised from abroad. You would still need to provide the normal notice period for removal directions, usually at least 72 hours. For more details see [Chapter 60](#)

Removal Directions (IS151D) must be authorised at Senior Executive Officer/Her Majesty's Inspector or above. However, in some cases the level of authorisation may be higher, for example see [Chapter 45](#) for the return process for families with children.

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Revision history

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change
		OEM Revision		1
1.5.09	Judith Craig - Complex advice team	Revision of chapter and 51.2 added	Judith Craig/ Steph Hutchinson-Hudson	2
24.05.10	Professional Standards Enforcement	Revision to opening paragraphs	Gail Adams	3
12.12.11	Enforcement Policy	Re-draft Clarified levels of authority Added Section 47 Added Retention of Documents	Richard Quinn	4

13.2.12	Enforcement Policy	Amended references to Chapter 53 Added Family Members Amended level of authority	Richard Quinn	5
27.2.12	Enforcement Policy	Minor amendment to 51.3 to show decision "despatched" under GCID rather than served	Steph Hutchison-Hudson	5.1
16-07-12	Enforcement guidance, SID	Minor amendment to include EEA Admin removal link	Sonia Dower	6
06.02.2013	Enforcement Guidance, OPRU	Addition to 51.5 "service of IS96 on all family members"	Sonia Dower	7
14.03.2013	Enforcement Guidance, OPRU	Service of IS151a to promulgate removal directions in s47 cases	Sonia Dower	8
3 May 2013	Enforcement & Returns Operational Policy	Change to 51.3 to cover new Section 47 decisions taken following changes by Crime and Courts Act 2013	Sonia Dower	9
22 May 2013	Enforcement & Returns Operational Policy	Changes to 51.3 & 51.4 on position following the Court of Appeal judgement in Ahmadi Restriction removed from CID entries	Sonia Dower	10
27 November 2013	Enforcement Operational Policy	Restriction applied to sections 51.1, 51.2, 51.4. Renumbering of paragraphs	Kristian Armstrong	11
1 May 2014	Enforcement Operational Policy	Revision to 51.1 to reflect need to show exercise of discretion and addition to 51.3 on evidence of employment. Minor renumbering of paragraphs	Kristian Armstrong	12
7 August 2014	Enforcement Operational Policy	Revision to 51.8 on detaining or placing restrictions on persons served with section 47 notice	Kristian Armstrong	13

4/11/2014	Enforcement Operational Policy	General housekeeping (hyperlinking and official markings)New Content – advice on 2014 Act changes in introduction. 51.1 use of discretion following case of Bilal	Kristian Armstrong	14
08/01/2015	Enforcement Operational Policy	New Content – Sections 51.3 & 51.9 - on the British Irish Visa Scheme	Kristian Armstrong	15

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