

# IMMIGRATION DIRECTORATES' INSTRUCTIONS

## CHAPTER 13

### SECTION 2 - ADMINISTRATIVE REMOVAL UNDER SECTION 10 OF THE 1999 ACT

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#### **1. INTRODUCTION**

Section 10 of the Immigration and Asylum Act 1999, contains the provisions under which certain categories of people who are in the United Kingdom unlawfully may be subjected to administrative removal procedures. Those categories are described at paragraph 2 below.

The removal procedures reflect those which apply in respect of illegal entrants. In the majority of cases, consideration of removal action will be dealt with by Local Enforcement Offices (LEOs) in the first instance. However, as with illegal entry cases, administrative removal cases will be referred to the relevant casework unit where representations have been made which cannot be dealt with by the Local Enforcement Office.

#### **2. THE POWER TO REMOVE UNDER SECTION 10**

Under section 10(1) of the Immigration and Asylum Act 1999 a person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if -

- he does not observe a condition of his limited leave to enter or remain or remains beyond the period of his limited leave (section 10(1)(a) of the 1999 Act)
- he uses deception in seeking leave to remain, irrespective of whether he is successful or not (section 10(1)(b) of the 1999 Act)
- his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 as someone who has ceased to be a refugee (section 10(1)(ba) of the 1999 Act)
- he belongs to the family of a person being removed under Section 10 (Section 10(1)(c) of the 1999 Act)

##### **2.1 Section 10(1)(a) - persons who overstay or otherwise breach their conditions**

Although it is an offence under section 24(1)(b) of the 1971 Act to knowingly overstay or otherwise breach a condition of leave, it is unusual to pursue a prosecution. However removal may be carried out under the administrative arrangements contained in Section 10(1)(a) of the 1999 Act for which there is no requirement that the person must knowingly have overstayed.

### **2.1.1 Section 10(1)(a) – overstaying**

A person who remains beyond the time limited by his leave is liable to removal under the powers contained in section 10 of the 1999 Act.

These procedures **do not** apply to overstayers who have made an application for leave to remain under the Regularisation Scheme for Overstayers.

### **2.1.2 Section 10(1)(a) - breach of conditions**

A person is liable to administrative removal under section 10 if he fails to comply with a condition of his limited leave e.g. if he is found to be working in breach of a restriction or prohibition on employment, if, where relevant, he fails to comply with a requirement to register with the police or he is found to be in breach of a condition requiring him to maintain and accommodate himself without recourse to public funds (as defined in the Immigration Rules). The breach must be of sufficient gravity to warrant such action.

In the case of a person found to be working in breach of a restriction or prohibition on employment, there must be firm and recent evidence (within 6 months) 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. Statutory codes of practice (under the Regulation of Investigatory Powers Act 2000) regulate the use of covert surveillance and covert human sources (informants).

### **2.2 Section 10(1)(b) - leave to remain by deception**

A person who uses deception in seeking to obtain leave to remain (including indefinite leave to remain) is liable to removal under section 10 powers, irrespective of whether or not he successfully obtains the leave. This provision only applies to persons who have practised deception from 1 October 1996. If it appears that leave to remain was obtained by deception prior to that date the case should be referred to the relevant casework unit for possible deportation action on non-conducive grounds under section 3(5)(a) of the Immigration Act 1971.

### **2.3 Section 10(1)(ba) – indefinite leave has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002**

A person who has ceased to be a refugee, or the dependant of such a person, may have his indefinite leave revoked under section 76(3) of the 2002 Act. A person whose leave has been revoked in this way may be liable to removal from the United Kingdom by way of directions under section 10(1)(ba) of the 1999 Act.

### **2.4 Section 10(1)(c) - family members**

The non-settled spouse or civil partner, or children under the age of 18 belonging to the family of a person in respect of whom removal directions have been given under section 10 are themselves liable to administrative removal. Directions may not be given in respect of a family member unless they have been given notice in writing that it is proposed to remove them. If the first person to be removed under section 10 has left the United Kingdom, notification cannot be

given to the family member if more than 8 weeks have elapsed since the first person's departure from the United Kingdom.

Where the spouse, civil partner or a child over the age of 16 is liable to administrative removal in his/her own right, action should be taken on that basis.

Where a child is liable to administrative removal under this section, the case should be considered (by virtue of paragraph 395C) in accordance with the requirements of paragraphs 365-368 of the Immigration Rules.

### **3. FACTORS TO BE TAKEN INTO ACCOUNT WHEN DECIDING WHETHER ADMINISTRATIVE REMOVAL UNDER SECTION 10 POWERS IS APPROPRIATE**

In all cases, paragraph 395C of the Immigration Rules requires that regard will be had to all known relevant factors before a decision to remove by way of directions under section 10 is taken. The factors included in paragraph 395C are:

- Age
- Length of residence in the United Kingdom
- Strength of connections with the United Kingdom
- Personal history including character, conduct and employment record.
- Domestic circumstances
- Previous criminal record and the nature of any offence of which the person has been convicted
- Compassionate circumstances
- Any representations received on the person's behalf

Due regard must also be had to the United Kingdom's obligations under both the 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights.

### **4. ADMINISTRATIVE REMOVAL PROCESS**

Where it has been established that a person is liable to administrative removal under section 10 he will be issued with a **Notice to a person liable to removal**, informing him of his immigration status and of his liability to detention and removal. Following the issue of such a notice, a decision may be taken, in appropriate cases, to detain the person. As an alternative to detention the person may be given temporary admission or temporary release subject to a restriction as to his place of residence and with a requirement to report to an immigration official or the police, pending removal. If after consideration of the person's case removal is considered to be the appropriate course of action that person will be served with a **Notice of Immigration Decision**, i.e. the decision to remove by way of directions under section 10. This notice also informs the person of his right of appeal against the removal decision in accordance with the Immigration (Notices) Regulations 2003.

### **5. INVALIDATION OF LEAVE**

On 16 June 2006 section 48 of the Immigration, Asylum and Nationality Act 2006 amended section 10(8) of the 1999 Act so that when a person is notified of a decision to remove him under section 10 of the 1999 Act any leave previously given is invalidated by that notification. This amendment is not retrospective. Therefore where a person with extant leave was served with a Notice of Immigration Decision to remove under section 10 before 16 June 2006 it is the giving of removal directions under section 10 that will invalidate any leave to enter or remain previously given to him, or given while the directions are in force.

### **6. REMOVAL ARRANGEMENTS**

The immigration officer will set removal directions in accordance with the Immigration (Removal Directions) Regulations 2000. Removal directions will usually be set at the end of the process, i.e. after any appeal brought within the United Kingdom has been concluded.

The costs of complying with removal directions (so far as reasonably incurred) are to be met by the Secretary of State.

## **7. PERSONS SUBJECT TO ADMINISTRATIVE REMOVAL WHO RETURN**

Unlike someone who has been deported, provided that they otherwise qualify for admission under the Immigration Rules, those subject to administrative removal under section 10 do not need to have the decision to remove them rescinded before they may return to the United Kingdom.

## **8. BRITISH CITIZENS AND THOSE WITH THE RIGHT OF ABODE**

A person who has the right of abode (see **Chapter 1 Section 1, "Right of abode"**) cannot be liable to administrative removal under Section 10 of the 1999 Act.

## **9. ALTERNATIVES TO ADMINISTRATIVE REMOVAL**

Whilst a person is subject to section 10 administrative removal it remains open to him to leave the United Kingdom voluntarily at any time.