

IMMIGRATION DIRECTORATE INSTRUCTIONS
CHAPTER 13
SECTION 5 - REVOCATION OF DEPORTATION ORDERS

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INTRODUCTION

The Rules relating to the revocation of deportation orders are contained in paragraphs 390-392 of the Immigration Rules. Applications may be made at any time either directly to the Home Office or through a post overseas by a deportee or his representative. Once a person has been deported, he/she must successfully apply for the deportation order to be revoked before applying for entry clearance in order to lawfully return to the United Kingdom.

European Economic Area (EEA) nationals do not require entry clearance in order to enter the United Kingdom. However where an EEA national is the subject of an extant deportation order he must still apply for revocation of the order if he wishes to return here. If the deportation order is revoked the person may lawfully re-enter the United Kingdom. Cases involving EEA nationals and the family members of EEA nationals are governed by the Immigration (European Economic Area) Regulations 2006. Separate guidance on EEA cases is contained in the European Casework Instructions available on the UKBA website.

2. REVOCATION CASES

2.1 Orders not yet enforced

A deportation order is **enforced** when the person to whom it relates is removed from the United Kingdom. Where the subject of a deportation order is still in the United Kingdom, consideration of whether the order should be revoked will normally be for the appropriate caseworking unit.

2.2 Invalid orders

An order is invalid if:

- the order was improperly made;
- the subject acquires a right of abode within the meaning of section 2 of the Immigration Act 1971 or is otherwise exempt by virtue of section 7 of that Act.
- The person was not in the UK on the date the order was signed.

Where there is reason to believe that an order may be invalid for one of these reasons, the file should be passed to the relevant casework unit dealing with the case.

An order **may** be invalid if:

- the subject has become a family member of an EEA national exercising Treaty rights in the United Kingdom.

Where there is reason to believe that this is the case, the file should be passed to the relevant casework unit who will liaise with European Casework.

2.3 Orders that have been enforced

Where a deportation order was properly made and the person is no longer in the United Kingdom, any application for revocation will be considered by the appropriate caseworking unit.

3. CONSIDERATION OF REVOCATION CASES

3.1 Factors to be taken into account

All the circumstances of the case must be considered. These should include:

- the grounds on which the order was made;
- the representations made in support of the application;
- the interests of the community including the maintenance of an effective immigration control and the prevention of crime;
- the interests of the applicant, including any compassionate circumstances.

3.2 Appropriate period of time to elapse before an order may be revoked:

3.2.1 Non criminal conviction cases

The Immigration Rules do not set any specific period after which revocation will be appropriate in deportations that have not followed a criminal conviction. Paragraph 391 indicates that revocation will not normally be authorised unless the situation has materially altered, either by a change in circumstances since the order was made, or by fresh information coming to light which was not available at the time the order was made. The passage of time since the person was deported may in itself amount to such a change of circumstances.

3.2.2 Criminal conviction cases

Paragraph 391 of the Immigration Rules set out the exclusion periods that should normally be applied in cases where a person has been deported following conviction for a criminal offence. These exclusion periods also apply in criminal cases where applications for revocation have been made before the deportation order has been enforced.

Custodial sentences of 30 months or less

Where the conviction is capable of becoming "spent" under the Rehabilitation of Offenders Act 1974, (i.e. where a person has received a custodial sentence of 30 months or less), continued exclusion for a period of no less than 10 years since the making of the deportation order should normally be the proper course.

This exclusion period does not apply where refusal to revoke a deportation order would result in a breach of the Human Rights Act or the Convention and Protocol Relating to the Status of Refugees. In other **exceptional cases** which would not amount to a breach of the Human Rights Act or the Convention and Protocol Relating to the Status of Refugees, if the situation has materially altered, either by a change in circumstances since the order was made, or by fresh information coming to light which was not available at the time the order was made, case workers should seek advice from senior

colleagues as to whether the “normal” exclusion periods should apply. Where a conviction is “spent” at time of application but 10 years have not passed, this in itself **does not** constitute an exceptional case for consideration outside the normal position and the 10 year ban should still be enforced.

In cases where a person considerably delayed the enforcement of a deportation order through non-compliance, consideration should be given as to whether a lengthier exclusion period should apply. In such cases the provisions of section 7(3) of the Rehabilitation of Offenders Act 1974 may allow evidence relating to a spent conviction to be admitted in evidence before the appellate authorities if, in the light of any relevant considerations, the Tribunal decides that justice cannot be done in the case except by admitting or requiring evidence relating to the person’s spent convictions.

Custodial sentences of more than 30 months

In cases where the criminal conviction can never become “spent”, (custodial sentences of more than 30 months), continued exclusion from the United Kingdom should normally be the proper course. Applications for revocation should be refused unless refusal to revoke the deportation order would be contrary to the Human Rights Act or the Convention and Protocol Relating to the Status of Refugees or other exceptional circumstances apply.

4. LEVEL OF DECISION TAKING

4.1 Revocation of unenforced or invalid deportation orders

A decision to revoke an unenforced or invalid deportation order must be taken at a grade not less than Senior Caseworker.

4.2 Revocation of enforced deportation orders

A decision to revoke a properly made deportation order after it has been enforced will be taken in Managed Migration Directorate at no less than HEO level and a decision not to revoke a deportation order should be taken at no less than EO level. A decision to **refuse** to revoke an order made on the basis of a conviction which is now spent and to

seek to rely on the exemption of provisions of Section 7(3) of the Rehabilitation of Offenders Act 1974 in any subsequent proceedings must not be taken at less than Senior Caseworker level.

5. REVOCATION ACTION

5.1 Endorsement of order

Once a decision has been made to revoke a deportation order the back of the **original** order should be endorsed with the following text:

"In pursuance of the power conferred upon him by Section 5(2) of the Immigration Act 1971, the Secretary of State hereby revokes this deportation order."

The back of the order should be signed and dated by the decision maker who should also print his or her name after the signature and show his grade and group.

5.2 Routing of file

Once any necessary action to notify the deportee or Entry Clearance Officer (ECO) of the revocation has been taken (see **paragraph 5.3 "Notification of decision"**, below), the file should be routed as follows:

- Update CID with revocation reason if a criminal case
- Lay by.

5.3 Notification of decision

Decisions on applications to the Home Office for revocation should be notified to the applicant or his representative. Where the application has been made at an overseas post the decision should be communicated through the Entry Clearance Officer (ECO).

- Where it is decided to revoke the deportation order, a letter should be sent explaining this and warning that revocation gives no entitlement to entry.

ANNEX A provides the text for letters to be sent to successful applicants or their representatives in respect of cases where the deportation order has been enforced.

Refusal to revoke an enforced deportation order (non EEA cases)

A decision to refuse to revoke a deportation order attracts a right of appeal from abroad. Refusal decision notice ICD.2929 should be used, and the applicant given 28 calendar days after the date of service in which to lodge an appeal. The decision notice together with appeal form ICD.2163 (AIT-3) should be sent to the applicant's representative if the application was made direct to the Home Office from within the United Kingdom. If the application was made from abroad, whether direct or through the Entry Clearance Officer (ECO), the notice should be sent to the ECO for onward transmission.

Refusal to revoke an unenforced deportation order (non EEA cases)

Refusal decision notice ICD.1078 and appeal form ICD.2163 (AIT-3) should be used when refusing to revoke an unenforced deportation order.

EEA cases

For advice on EEA cases please refer to the European Casework Instructions.

ANNEX A: REVOCATION OF DEPORTATION ORDERS
LETTER TO APPLICANT WHEN REVOCATION IS GRANTED

Dear

Thank you for your letter of applying for revocation of the deportation order made on against you/your client.

You will be pleased to learn that the order has now been revoked. However, I must make it clear that revocation of a deportation order does not entitle you/your client to re-enter the United Kingdom: it only makes you/your client eligible to apply for admission under the Immigration Rules.

If you/your client wish(es) to travel to the United Kingdom, it would be advisable to apply for prior entry clearance from the nearest British mission in the country where you/your client is living.

Yours sincerely