

**CHAPTER 9
SECTION 6****REFUSAL OF LEAVE TO ENTER
(PROCEDURE)****1. POWER AND AUTHORITY TO REFUSE LEAVE TO ENTER****1.1. Immigration Act 1971**

The immigration officer's power to refuse leave to enter is derived from Section 3(1)(a) of the Immigration Act 1971.

1.2. The Rules

The Rules (HC 395) set out certain circumstances in which an immigration officer should refuse leave to enter, including, under Paragraph 320(1), the authority to do so where a person seeks entry for a purpose not covered by the Rules. Refusal action must not be taken unless this is justified by the Rules and, by virtue of Paragraph 10 of HC 395, the authority of a chief immigration officer or an Inspector must be obtained before refusal in every case. *Section 1* to this chapter provides general guidance for deciding whether or not to refuse leave to enter.

For further guidance in respect of decisions concerning passengers with outstanding asylum claims, see "Port Instructions for On-Entry Asylum applications" which is produced, under separate cover, by the Asylum Liaison Unit.

1.3. Administrative restrictions on removal

There are certain categories where, after refusal of leave to enter, the passenger should not be removed without the authority of Headquarters. The requirement to refer such cases to Passenger Casework Section will be found in the instructions covering the relevant subject matter. In the absence of specific instructions to refer to Passenger Casework Section, cases of doubt should be resolved at Inspector level.

2. NOTICE OF REFUSAL

When refusal of leave to enter has been authorised by a supervising officer, the passenger should be served personally with a notice in writing refusing leave to enter, giving the reasons for the decision, setting out the rights of appeal available to the passenger, advising him of the directions which will be given for his removal and, in cases where a right of appeal exists, the assistance available to him through the Immigrants Advisory

Service (IAS). The contents of the notice should be explained to the passenger, through an interpreter if necessary.

The appropriate forms are as follows:

- IS 82 where a right of appeal *before removal* exists (EC/Work Permit held)
- IS 82(Asylum) where, in addition to the above, there is a right of appeal (*before removal*) against the decision to refuse asylum
- IS 82A where the passenger presents a forged entry clearance or work permit or forged UK passport or Certificate of entitlement (*right of appeal from abroad*)
- IS 82A(Asylum) where, in addition to the above, there is a right of appeal (*before removal*) against the decision to refuse asylum
- IS 82B where *no right of appeal* exists (persons excluded at the personal direction of the Secretary of State on "non-conducive" grounds)
- IS 82B(Asylum) where there is a right of appeal (*before removal*) against the decision to refuse asylum but there is *no right of appeal against refusal on "non-conducive" grounds*
- IS 82C where right of appeal *from abroad* exists
- IS 82C(Asylum) where, in addition to the above, there is a right of appeal (*before removal*) against the decision to refuse asylum
- IS 82D where *no right of appeal* exists.
- IS 82D(Asylum) where there is a right of appeal (*before removal*) against the decision to refuse asylum but there is *no right of appeal against the refusal on other grounds*
- IS 82E (Asylum) to be used when an unsuccessful asylum claim is the sole ground for seeking entry to the United Kingdom (right of appeal *before removal*)
- IS 82(F) (Asylum) to be used when refusal of leave to enter includes:
- a) asylum grounds (right of appeal *before removal*);
 - b) other grounds which attract appeal *from abroad*;
 - c) other grounds which *do not attract a right of appeal*.

In cases where a proforma refusal form is completed in manuscript, the immigration officer should ensure that the wording of the reasons for refusal is legible on the copies of the form to be kept on file. The name of any official interpreter used in the examination should not appear on the forms; they should be completed "explained to you in (eg Punjabi) by an official interpreter".

3. THE "24 HOUR RULE"

3.1. Notice of refusal

It should be noted that, by virtue of Paragraph 6(1) of Schedule 2 to the Immigration Act 1971, unless a notice in writing, granting or refusing leave to enter is given within 24 hours of the conclusion of a person's examination or further examination, he is deemed to have been given leave to enter for **6 months on Code 3** and the immigration officer must, as soon as possible, give him written notice of that leave. It is therefore crucial that notice of refusal is served **as soon as possible** after the decision to refuse has been made.

See *Chapter 12, Section 3, "Notice of appeal"*, however, in the case of a person who was granted temporary admission by an immigration officer pending his examination, who fails to comply with the restriction requiring him to report to an immigration officer with a view to concluding his examination.

3.2. Cancellation of refusal of leave to enter

There will be occasions when information comes to light which justifies the reversal of a refusal decision, and it is decided to cancel a refusal and grant leave to enter. Under Paragraph 6(3) of Schedule 2 to the 1971 Act, if a notice refusing leave to enter is cancelled but a notice giving indefinite or limited leave to enter is not served in its place within 24 hours, then the cancellation notice will be deemed to give 6 months limited leave, on Code 3.

In cases where it is decided to cancel refusal of leave to enter and grant indefinite or limited leave in its place, the refusal stamp in the passenger's passport should be endorsed "cancelled" and the indefinite or limited leave stamps should be endorsed as near to the refusal stamp as possible. Providing the cancellation of refusal and the granting of leave to enter are done at the same time, this will ensure that there is no break of the 24 hour rule.

4. REFUSAL FOLLOWING GRANT OF LEAVE TO ENTER

Under Paragraph 6(2) of Schedule 2 to the 1971 Act, a person who has been given a notice of leave to enter may be given a further notice, within 24 hours of the conclusion of his examination, cancelling that leave and refusing leave to enter. Both the notice cancelling the leave to enter and the notice of refusal must be given in writing (on form IS 84 and one of the forms in the IS 82 series respectively). The reasons for the decision

stated on the notice of refusal should not include details of the grant or cancellation of the original leave to enter.

In all such cases, the immigration officer should make a careful note of the time at which the examination was concluded and of the time of the action cancelling the leave to enter and refusing leave to enter. This may be required to counter a submission that the immigration officer acted beyond his power.

4.1. **Use of the power**

This power should generally be used where it is established that, had facts which come to light subsequent to the grant of leave to enter been known to the immigration officer at the time of his examination, refusal of leave to enter would have followed. It is important to note, however, that leave to enter must not be cancelled unless the immigration officer is in a position to refuse; *there is no power under the Act to require a person to submit to further examination if grant of leave to enter is cancelled* (but see paragraph 4.4, below).

4.2. **Customs and other prosecution cases**

This being so, when the immigration officer has given leave to enter and, for example, Customs examination subsequently reveals grounds for prosecution, *if this is justified under the Rules by the new circumstances which have arisen*, the immigration officer should cancel notice of leave to enter and refuse leave to enter.

Where refusal cannot be so justified or is not warranted eg. where the person being prosecuted has funds more than adequate to meet the likely fine for a minor offence, the leave to enter should stand.

4.4. **Further interview - where cancellation of leave to enter is being considered**

Examination under Paragraph 2 of Schedule 2 to the 1971 Act carries a legal obligation on the part of the passenger to provide information, and although this examination may be said to have been concluded when leave to enter was granted, the interests of natural

justice require that the passenger be given an opportunity to explain the changed circumstances which have led to consideration of cancellation of this leave under Paragraph 6(2) of Schedule 2.

There can be no objection therefore to a passenger being interviewed, *with his consent*, before a decision is made as to whether or not to exercise this power. It must be remembered however, that a passenger *already given* leave to enter is not under the same legal obligation to answer questions as is a passenger *seeking* leave to enter. Similarly, the immigration officer has no power under the Immigration Act to search a person who has been given leave to enter or any of his baggage or to retain any documents so found. Such examinations may only be undertaken with the *unequivocal consent* of the passenger and the file should be minuted accordingly.

5. PERSONS REFUSED ENTRY WHO THREATEN SUICIDE

Reference should be made to Passenger Casework Section if a person refused entry or detained pending further examination *threatens or attempts* suicide. Where a person *gives any indication* that he *may* attempt suicide, removal should not be effected without reference to Passenger Casework Section. The opinion of the Port Medical Inspector of the person's state of mind should be sought before details of the threatened or attempted suicide are passed to PCS. See also:

Chapter 1, Section 8 "Medical", entitled "Suicide threat from a person refused entry";

Chapter 31, Section 2, "Suicide Prevention in IS Accommodation".

And

Chapter 1 Section 10 "Human Rights" paragraph 8 "Policy on suicide threats."

7. RETENTION OF DOCUMENTS FOLLOWING EXAMINATION

Guidance is given in *Chapter 30, Section 1 "Further Examination"* on the power of the immigration officer to search a person, including his baggage, and the limitation on his power to detain documents.

Not only must these limits on the immigration officer's power to detain documents be strictly observed, but the normal practice, unless he is of the opinion that a document may be needed in connection with an appeal, or for proceedings relating to an offence, should be to return all documents to the passenger *as soon as they have been properly examined*. In appropriate cases a photocopy of the document should be made and retained for future reference. If a passenger requests a receipt for documents detained by the immigration officer a receipt should be given. This applies irrespective of the length of time for which the documents are to be detained but the receipt should only be issued if the passenger requests it.

The passport or travel document of a person refused leave to enter should be detained by the immigration officer until the person is removed. A locally issued receipt for a passport should only be given when specifically requested by a passenger. Requests from a passenger, or his representative, for the return of a passport or travel document, after refusal but before removal, should normally be refused unless there is a valid reason for it (eg to obtain a foreign visa or have the document revalidated). The chief immigration officer must be satisfied that there is no risk of the passenger absconding or defacing the passport in an attempt to frustrate removal.

If a person is encountered embarking with a refusal stamp in his passport (and no subsequent endorsement of leave to enter), the immigration officer should note the details of the person's departure and destination and inform the port accordingly. No embarkation card is required.

8. COSTS OF DETENTION AND ESCORT - NOTIFICATION

8.1. Exceptions to liability of carriers

Under Paragraph 19 of Schedule 2 to the Immigration Act 1971, where a person is refused leave to enter and removal directions are given, the owners or agents of the ship or aircraft in which he arrived are liable to pay the expenses incurred in respect of the custody, accommodation and maintenance of that person, for any period not exceeding 14 days, while he was detained or liable to detention. This does not apply if:

- * the person holds a certificate of entitlement, current entry clearance or work permit; or
- * if he holds a document purporting to be one of those documents unless its falsity is *reasonably apparent*, or

- * if the person is given leave to enter before removal directions are carried out.

In order to advise the owners or agents and Group 4 Security that a person refused leave to enter holds such a document, the foot of IS 83 (Notice of removal directions) should be endorsed by the immigration officer "Passenger holds certificate of entitlement to right of abode/current entry clearance/current work permit". The immigration officer should ensure that the endorsement appears on the copy of IS 83 given to Group 4. (Where a revised version of form IS 83 has been approved for use at certain ports, the relevant boxes should be appropriately endorsed in all cases.)

8.2. **Detention costs in respect of holders of DAT visas**

Under Paragraph 19(1)(2) of Schedule 2 to the Immigration Act 1971 a carrier is not liable for detention costs in respect of a current entry clearance holder who is refused entry. Since a direct airside transit visa is not an entry clearance a carrier does not technically benefit from this provision. However, if the holder of such a visa has been brought in good faith, detention costs should not be charged to the carrier if the passenger is refused leave to enter and detained pending removal.

8.3. **Form IS 91 - notification of whether or not carrier is to be charged for costs**

When a person is detained in a prison, remand centre, place of safety or port detention centre, IS 91 should be completed to indicate either that the cost of the first 14 days' detention and any escort should be charged to the relevant owners or agents, or that there is no charge (ie that the owners or agents are not responsible for the costs). If the owners or agents subsequently cease to be responsible for detention costs, eg because the person is given leave to enter, makes a voluntary departure or is deported, the port must notify the detention contractor or the prison concerned even if, in the meanwhile, the person has been given temporary admission or transferred to other detention accommodation. This notification should be made on form IS 106B.

8.4. **Costs of detention, escort and removal - passenger's liability**

Many carriers stipulate in their conditions of issue of tickets that expenses incurred due to the passenger failing to comply with laws, regulations and other requirements of the countries to which they are conveyed, are to be refunded to the carrier. It has been accepted by the Home Office that passengers whose tickets were issued subject to such conditions are liable to refund the costs of their detention, escort and removal to the carrying company. On those occasions when involvement is unavoidable, officers should inform passengers that the matter of recovery from them of any costs is between the passenger and the carrying company and that *the immigration officer cannot intervene*.

8.5. **Disclosure of air tickets to airlines**

On occasion, airline representatives request copies of a passenger's onward or return ticket. In response to any such request a copy of the *inbound ticket only* should be given (if it has not already been provided). This coupon may show details of a return or onward journey and, if so, it is acceptable for airlines to be given this. Ports should not, however, provide details of any other tickets carried by a person refused leave to enter, whether or not they have been issued by the same airline, without the specific agreement of the passenger concerned.

9. COMMUNICATION WITH FRIENDS ETC BY PERSONS REFUSED ENTRY

Before removal a passenger should normally be given the opportunity to telephone friends or relatives in this country, or his High Commission or Consul, if he asks to do so. Persons detained awaiting further examination may also be allowed to communicate with friends etc, *unless this would prejudice the immigration officer's enquiries*. Immigration officers should not listen to telephone conversations on an extension without the permission of the passenger.

The immigration officer should himself communicate with friends or hosts of the person detained where this would assist his enquiries or where inconvenience or distress could be avoided by doing so, eg where a host is expecting the arrival of a young person.

Guidance on complying with this procedure in security, political, or other special cases is given in paragraph 9.4. below. If the immigration officer considers, in any particular case, that there is justification for restricting a passenger's contact with other people in circumstances not covered below (for example, where contact might prejudice a criminal enquiry) he should seek advice from a Headquarters Assistant Director (Immigration) or the weekend duty officer as soon as possible and before removal.

9.1. Communication with the press

Communication with the press by persons refused entry should, as far as possible, be prevented. If the press make enquiries about persons detained they should be advised to contact the Home Office Press Section (Tel: 0171-273-4620). No details of any kind concerning persons detained should be given to the press by an immigration officer.

9.2. Communication with legal advisers or the Immigrants Advisory Service

A person under refusal may be allowed to telephone legal advisers or the IAS. The immigration officer should not give any specific advice to the passenger to contact the IAS except in cases where a right of appeal before removal exists.

9.3. Citizens of Hong Kong

Citizens of Hong Kong who are refused entry should be given the special telephone number of the Hong Kong Government Advisory Service (0171-499-9821). At weekends and public holidays the number will be 0860-520877. The operating hours are 9 am to 1 pm and 2 pm to 5.30 pm on weekdays and 9.30 am to 5.30 pm on weekends and public holidays.

9.4. **Security and Political cases**

Where a person is refused leave to enter or is likely to be, on security or political grounds at the personal direction of the Secretary of State:

- * if there is advance knowledge of his intention to travel, instructions about communication will normally be given in advance; but
- * where instructions have not been given and in cases which have not had prior consideration eg a terrorist or person of political or security interest identified at the port, a Headquarters Assistant Director or the weekend duty officer should be consulted as soon as possible, before contact is permitted.

It should be noted that there is no legal obligation to permit communication with other persons. If a right of appeal exists before removal (not in cases where the Home Secretary has given a personal directive) however, contact with other persons should normally be allowed, with the approval of Passenger Casework Section.

9.5. **Security and Political cases - Enquiries from third parties**

If enquiries are made other than by the Press about a person detained while the matter is being considered at Headquarters, the enquirer should be informed either that examination is continuing or that the passenger has been refused leave to enter and will be sent back.

9.7. **Access to person detained**

Access to persons refused entry may be permitted in the same circumstances as telephone communication, as outlined above. IAS should be given access only to persons who have a right of appeal before removal or to persons who have been advised of their right to apply for bail under Paragraph 22 of Schedule 2. If the case is one where asylum has been sought and, after consideration at Headquarters, has been refused, it will be for Headquarters to decide whether or not IAS should be informed. Asylum cases might be represented by other agencies and access should be permitted following refusal of leave to enter, and this should be noted in any subsequent report to ALU. Representatives of other organisations should be denied access to passengers if their sole intention is to prepare a case for appeal from abroad.

Similarly, access to persons detained pending further examination may be permitted unless this would prejudice the immigration officer's enquiries.

Arrangements should be made with those responsible for detention to keep a record of all visitors allowed access to passengers detained, either under refusal or pending further examination.

10. OTHER INSTRUCTIONS TO BE CONSULTED

<i>Removal</i>	-	<i>Chapter 9</i>	<i>Section 8</i>
<i>Detention</i>	-	<i>Chapter 31</i>	<i>Section 1</i>
<i>The immigration officer's explanatory statement</i>	-	<i>Chapter 9</i>	<i>Section 7</i>
<i>Prosecution cases at ports</i>	-	<i>Chapter 32</i>	

Enquiries to: Passenger Casework Section, ISHQ