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47. Removal of illegal entrants

The powers to remove an illegal entrant are found in paragraphs 9 and 10 of Schedule 2 to the 1971 Act and enable an IO to give any directions for removal as are authorised in paragraph 8 of Schedule 2 to the 1971 Act. This allows for an illegal entrant to be removed by ship or aircraft to a country or territory of which he is a national or citizen, or in which he has obtained a passport or other document or identity, or in which he embarked for the United Kingdom, or to which there is reason to believe that he will be admitted.

Where an illegal entrant has entered the UK by deception and there is evidence of the inbound carrier, he may be removed at the carrier's expense under paragraph 9 of Schedule 2 to the 1971 Act which was reinforced by paragraph 6 of Schedule 2 to the 1996 Act which amended paragraph 9 to state that any leave to enter obtained by deception may be disregarded.

Where an illegal entrant has entered without leave in breach of section 3(1)(a) of the 1971 Act or where the inbound carrier is not known, he may be removed at public expense under paragraph 10 of Schedule 2 to the 1971 Act.

Where a person obtained leave to enter by deception and has since been granted leave to remain by the same deception, he should be removed at public expense under paragraph 10 of Schedule 2 to the 1971 Act.

The power to remove an illegal entrant who has entered through the Channel Tunnel is found in Schedule 4 of the Channel Tunnel (International Arrangements) Order 1993.

Removal is usually to the country of which the illegal entrant is a citizen or a national, but removal may be to a third country provided the illegal entrant is acceptable there.

For removal of Third Country asylum cases and "Dublin Convention" cases, see Chapters 27 and 28. The power to remove a seaman deserter is found in paragraphs 12 and 13 of Schedule 2 to the 1971 Act. A seaman deserter may also be removed to a country or territory in which he was engaged as a member of the crew of the ship or aircraft in which he arrived in the United Kingdom.

47.1. Levels of authority for removal

The normal level of authority required for the removal of an illegal entrant is Senior Case-worker, or an Inspector in cases covered by delegated authority (see Chapter 54). Some cases require ministerial authority (see 47.4).

Authority to remove a person being dealt with as a **NELE** must be sought by the Inspector from the Deputy Director, unless a disclaimer is signed and there is sufficient evidence to show that the person is acceptable to the country he wishes to return to (see 4.3).

Cases where delegated authority has previously been given but now require authority from the relevant casework department are outlined in 47.3.

Removal of seaman deserters may be authorised by a CIO (See Chapter 6).

Same day removals must be authorised by an Assistant Director.

47.2. Delegated authority

Certain designated Inspectors (see list at 15.12) have devolved powers to authorise the removal of illegal entrants if:

- ◆ the contention of illegal entry is sound and clear cut;
- ◆ there are no extenuating compassionate circumstances to be considered such as those outlined in Chapter 30;
- ◆ the illegal entrant does not claim to have been in the United Kingdom for more than ten years.

47.3. Authority required - extenuating compassionate circumstances

In all cases where there are extenuating compassionate circumstances such as those outlined in Chapter 30, removal must be authorised by a Senior Case-worker in the relevant casework department.

If a case is particularly sensitive or contentious, the authority of an Assistant Director is required for removal.

Individual cases in which delegated authority has been given but now need to be referred for authority for removal are where:

- ◆ representations from an MP are received;
- ◆ significant new circumstances emerge that place the case outside the scope for delegated authority.

OSCU will act as an initial point of contact in cases where permission to move for judicial review is sought on an operational issue (e.g. detention or illegal entry contention). The casework is responsible for other issues (compassionate circumstances, application of marriage policy etc). The relevant casework department will advise as and when such a person becomes removable.

47.4. Ministerial authority

Ministerial authority, which will be sought by the relevant casework unit, is required in cases where:

- ◆ an MP has made representations to the Minister;
- ◆ a high level of media interest is likely;
- ◆ there are significant community relations implications

47.5. Procedures for paragraph 9 removals

If there is evidence of the inward carrier, such as a ticket or landing card, removal is effected under paragraph 9 and is at the carrier's expense:

- ◆ obtain the appropriate authority for removal;
- ◆ ensure there is a valid document or, with the authority of an Inspector, issue an EU Standard Pro-forma letter if accepted by the country concerned (see 9.1), or follow the documentation procedures set out at 52;
- ◆ request a booking from the inward carrier by faxing form IS152a (directions to remove an illegal entrant - carrier's expense) and a copy of the evidence that they were the inward carrier; request escorts if necessary - see 58.1;
- ◆ obtain a locator reference;
- ◆ inform the DC of removal directions (if detained) who will request a copy of form IS152a for the captain of the flight;
- ◆ inform the prison/police of removal arrangements (if so detained), providing a copy of the removal directions;
- ◆ serve form IS151D ;
- ◆ fax a copy of RDs to the Operational Support and Certification Unit (OSCU)
- ◆ in all detained or other priority cases;
- ◆ if subject makes a human rights claim **refer to chapter 21.**
- ◆ if on temporary release serve IS96 Self Check-in (temporary release - illegal entrant) on the subject. Advise him to check in at the port of departure (and collect documentation from the Immigration Office where necessary) at least two hours before the flight and to embark at least one hour before;
- ◆ follow procedures for removals via a second port if appropriate (see 49).

47.5.1. Procedures for deferral of removal

If removal has to be deferred for any reason, inform the port of departure, the DC, the relevant casework unit (if detained for less than 28 days) or MODCU (if detained for 28 days or more), and the inward carrier.

47.6. Procedures for paragraph 10 removals

If there is no evidence of the inward carrier (e.g. clandestine entry, Code 5N endorsement, NELE), removal is effected under paragraph 10 at the expense of the Secretary of State.

47.6.1. Authorisation – public expense removals

◆ obtain authority for a public expense removal from an Inspector. The Inspector must complete form IS107A (HMI Authorisation for a Public Expense Removal)* and also confirm if escorts are considered necessary. The form should remain on the case file and be signed by the authorising Inspector as soon as practicable. Indicate on the IS107A whether it is an asylum or a non-asylum case.

* If an Inspector is not available to complete form IS107A, their verbal authority must be obtained. It is then necessary to print the Inspector's name on the form and state how the authorisation was obtained.

◆ ensure there is a valid document or, with the authority of an Inspector, issue an EU Standard Pro-forma letter if accepted by the country concerned (see 9.1), or follow the documentation procedures set out at 24.6;