

ILPA information sheet

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Steve Symonds ILPA Legal Officer 020-4790 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Removals and Judicial Review 3

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On 11 January 2010, the UK Border Agency changed its policy about removals and judicial review. Previous information sheets on “Removals and Judicial Review” now provide background only. The information given in those information sheets no longer applies except where this information sheet expressly states that the information remains correct.

Removal directions

Removal directions are issued to people when the UK Border Agency intends to remove them from the UK. Usually these will set out the date and time of the intended removal, and the destination and method of the removal. Often people receive removal directions very shortly before the date on which the UK Border Agency intends to remove them. For many of these people there will be no right of appeal. Often, these people will be in detention at the time they receive removal directions.

Judicial review

If there is no other right of appeal or review available, an unlawful action (or inaction) by Government or by a Government agency can be challenged by judicial review. The UK Border Agency is a Government agency for these purposes. Removal directions may be challenged by judicial review. Applications for judicial review are considered by the Administrative Court (that is the relevant part of the High Court).

Some further information about judicial review is given in the “What is judicial review?” section of the September 2007 “Removals and Judicial Review” information sheet. The information in that section remains correct.

Most attempts to challenge removal by judicial review will relate to fresh claims. For further information, please see the information sheet on “Fresh Asylum Claims”; and the information sheets on “Making Asylum Claims and Further Submissions”.

Relevant policy and practice

Two documents are particularly important in relation to judicial review challenges to removals. Paragraph 18 of practice direction 54 in the Civil Procedure Rules is correctly referred to in the “Relevant policy and practice” section of the September 2007 “Removals and Judicial Review” information sheet.

The UK Border Agency policy is now set out in chapter 60 of the Enforcement Instructions and Guidance. This is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionand>

Timescales

The UK Border Agency policy sets out certain minimum requirements. There must be at least three days between when a person is given removal directions and when he or she will be removed from the UK. At least two of these days must be a working day. The last 24 hours before removal must include a working day.

There are exceptions to these minimum requirements; and these exceptions were extended on 11 January. If a case falls within the exceptions, it may be that the person is given no (or very much less) time between being informed of his or her removal and the removal taking place. The exceptions include:

- where the person has just arrived in the UK and is to be removed immediately from the port at which he or she arrived (as long as the removal is not delayed by more than seven days)
- where the person is an unaccompanied child
- where the person is considered to be at risk of suicide or self-harm
- where the person is considered to be a risk to the health and safety of others (including other detainees, UK Border Agency officials and other staff)
- where the person has previously disrupted his or her removal, and it is considered he or she will do so again
- where the person has given written consent to the removal
- where an attempt at removal is abandoned and is reset to take place within 10 days

The UK Border Agency policy also sets out new provisions that:

- permit the separation of families for the purpose of removal
- reduce the protection given to claimants in judicial review proceedings, where the claimant's case is stayed (placed on hold) while awaiting a decision in another case

Other UK Border Agency obligations

The UK Border Agency policy requires that when removal directions are given to an individual, a copy must also be given to any legal representative he or she has on record with the UK Border Agency. It also requires that someone who is detained is given access to telephone facilities so that he or she can take legal advice.

When will removal be postponed or cancelled?

In most cases the UK Border Agency will not cancel or postpone the removal simply because a lawyer has threatened to apply for judicial review. In many cases, it may be necessary to make an application for judicial review before the UK Border Agency will defer a removal; and in some cases it will be necessary to obtain an order (called an injunction) from the Administrative Court. The circumstances in which the UK Border Agency should defer removal are more fully explained in the UK Border Agency policy.

Access to justice

A lawyer will often need to take several and detailed steps (including obtaining, considering and preparing complex papers) before a removal can be deferred. Where the UK Border Agency does not give the minimum three days notice of removal (as described above), or gives no notice at all, this can mean that a person is denied any opportunity for his or her case to be considered by a lawyer and, if necessary, brought before a court. This can result in unlawful removals, including to places where the person is at risk of persecution. In some cases, lawyers have succeeded in getting the courts to order the UK Border Agency to arrange for someone to be brought back to the UK.