



Home Office

Immigration returns, enforcement and detention  
General Instructions

# Judicial reviews, injunctions and applications to the European Court of Human Rights: in relation to enforcement of immigration removal and deportation

Version 1.0

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# About this guidance

This guidance sets out the judicial review (JR) process in enforcement cases where removal is being actively pursued and a JR has been threatened or lodged in relation to that removal. The guidance also sets out other barriers in relation to the removal process, including injunctions and applications to various Courts.

This guidance forms part of a suite of removals guidance. See also:

- Initial consideration and assessment of liability to removal
- Administrative removal: notification and implementation
- Arranging removal

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Enforcement Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **1.0**
- published for Home Office staff on **26 January 2023**

## Changes from last version of this guidance

- Guidance title change (previously Judicial Reviews and Injunctions)
- Content re-structured and updated
- 'Notice periods' section removed and placed in the 'Administrative Removal: notification and implementation' guidance
- Minor housekeeping changes

### Related content

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# Terms used in this guidance

Administrative Court: the specialist court within the Queen's Bench Division of the High Court in England and Wales that deals with judicial review of immigration cases (among other things). The High Court in Northern Ireland and the Outer House of the Court of Session in Scotland deal with such cases in those jurisdictions. See: judicial review guidance.

AoS: Acknowledgement of Service. See: judicial review guidance.

Barrier test: an assessment as to whether the issues raised in the JR should be treated as a barrier to removal.

Certified claim: the effect of certifying a claim is that there will be only an out of country right of appeal or no right of appeal. See: Certification and out of country appeals.

ECtHR: European Court of Human Rights.

Government Legal Department (GLD): The GLD act as the Secretary of State for the Home Department's solicitors. They provide legal services to the Home Office and other government departments. See: judicial review guidance.

Immigration factual summary (IFS): a document outlining an individual's case history up until the point of removal, which is served on an individual with notice of removal directions. See: Administrative removal: notification and implementation.

Injunction: an injunction against removal is an order granted by the Court or Tribunal which prohibits removal of an individual from the UK.

Litigation Operations: Litigation Operations will retain management of the JR. See: judicial review guidance.

Merits test: an assessment as to whether a judicial review is bound to fail either before a decision is taken not to defer removal or before a decision is taken to arrange removal following a removal request.

NCCU: National Command and Control Unit.

Notice of liability to removal: a notice which informs an individual that they are liable to removal. See: Administrative removal: notification and implementation.

Notice of removal directions: a notice provided to the individual prior to removal which details their removal arrangements, including country of return and flight information. See: Administrative removal: notification and implementation.

OSCU: Operational Support and Certification Unit.

[Pre-action protocol \(PAP\)](#): a written request to a department within the Home Office requesting a review of a decision.

Removal directions: this refers to the details of removal, for example, time of departure and destination. See: Administrative removal: notification and implementation.

[Rule 39 indication](#): a Rule 39 indication is similar to an Administrative Court or UTIAC injunction but is made by the ECtHR and in this guidance translates to a request to defer removal.

UTIAC: Upper Tribunal (Immigration and Asylum Chamber). See: judicial review guidance.

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# Initial referral and consideration

This document concerns challenges to active removal cases where a challenge is lodged against that removal.

Operational Support and Certification Unit (OSCU) should be immediately notified in all cases, where:

- a judicial review (JR) or injunction has been lodged and removal directions are in place

## OSCU pre-referral consideration

This section tells you about the role of OSCU in relation to legal challenges raised at the point of removal and provides caseworkers and travel desk members with guidance on the associated processes.

If any challenges or representations are received following the service of removal directions (RDs) and within your individual business area's Service Level Agreement (SLA) you must make a referral to OSCU. OSCU will consider the referral, and determine whether enforcement action can proceed. See also: Arranging Removal.

OSCU are able, where appropriate, to maintain removal directions on cases with [special arrangements \(including charter flights\)](#) where a threat of JR is received. Such cases must have been served an assertive letter at the point of serving RDs.

You must check your team's SLA for guidance on when to make a referral to OSCU.

For further information on making a referral to OSCU please see the "OSCU Service" Atlas training available on Metis.

## Role of Litigation Operations

Where removal directions are in place OSCU will determine whether the JR is a barrier to removal. Litigation Operations will retain management of the JR.

## Role of the case owner

You must support OSCU by providing and collating information as requested. You must retain ownership of case management. OSCU or Litigation Operations will deal with the JR and the decision as to whether it is a barrier to removal.

As part of your consideration, you should check that the Immigration Factual Summary (IFS) has been completed and is up to date. The IFS will provide you with important information about the history of the case and is an important document that may need to be disclosed in judicial review cases.

For information on completing the IFS see: Administrative removal: notification and implementation.

An immigration factual summary (ICD.2599) must, in all cases, be completed and served along with a notice of removal. It has a number of functions:

- it outlines to the person being removed all of the different actions which have been taken on their case which have led to the setting of removal directions
- should the person lodge an application for judicial review (JR), their legal representative, Operational Support and Certification Unit (OSCU), and the Administrative Court or Upper Tribunal rely on the information contained within the summary in order to make a quick and informed decision concerning the person's case for JR and whether it is appropriate to maintain or defer removal
- additionally, the European Court of Human Rights (ECtHR) relies on the information contained within the summary to assess the merits of an application to them to impose interim measures under rule 39 of the ECtHR's Rules of Court
- it enables the Home Office to demonstrate to the court all the steps that have been taken to address a claim to remain in the UK, and to demonstrate that removal is now the appropriate course of action

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# Judicial reviews

This guidance sets out the judicial review (JR) process in enforcement cases. There is also more general guidance in Appeals and litigation - Judicial reviews at the High Court and Upper Tribunal.

Judicial review is the legal process that allows a person to challenge the lawfulness of a decision, action or failure to act of a public body such as a government department.

Immigration removal and deportation cases, where there has been an asylum or human rights claim, should not usually reach the stage of JR until completion of the statutory appeal process. [The Immigration Act 2014](#) limited the number of appeal rights so there are now more cases in which people have no appeal right but can submit a JR against a decision.

In Scotland, JR is pursued by means of a petition to the Court of Session in Edinburgh. For further information see: [judicial review guidance: Scotland](#).

In Northern Ireland, JR is pursued by means of an application to the High Court of Justice. For further information see: [judicial review guidance: Northern Ireland](#).

## Event types subject to judicial review

Types of event that could be subject to JR include:

- a failure to act in accordance with law and/or published rules and policy, such as a delay in issuing a document or making a decision
- a decision to set removal directions
- a refusal to accept that further submissions and/or representations amount to a fresh matter for consideration
- a decision to certify a claim as clearly unfounded
- continued detention

## Pre-action protocol

[The pre-action protocol](#) (PAP) is contained in the Civil Procedure Rules and sets out the steps that must be taken before commencing an application for JR in England and Wales. This procedure does not apply where removal directions have been set as it is not appropriate in very urgent cases. In cases where removal directions have been set, you should state that a pre-action protocol is not appropriate and treat the case as a [threat of judicial review](#). You must still review and respond to the proposed grounds of the judicial review and make a decision as to whether to maintain removal directions.

Further information can be found in the [judicial review guidance – England and Wales](#).

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# Judicial review process

The judicial review (JR) process for England and Wales is set out in the judicial review guidance. There are also separate guidance documents for the JR process in Scotland and in Northern Ireland.

## Threat of judicial review

Threats of JR may take the following forms:

- letter before action
- letter before action under the pre-action protocol
- unsealed JR claim forms
- other representations raising a threat of judicial review

In all cases it is important that the contents of the threat of JR is considered and responded to.

Where a claimant believes that a legal error has been made in the consideration of their case, they will be able to make representations in a standard format to the Home Office as the proposed defendant. Where these representations are received, the following actions must be considered, by you, the case owner, unless responsibility has been transferred to Operational Support and Certification Unit (OSCU) as per the previous section:

- if you decide the representations made have merit, you must try to rectify the problem without the need of the JR process
- if you decide the representations have no merit, you must use the opportunity to fully explain the reasons for your decision and to answer any queries the claimant has made
- if you decide that some of the claim has merit but other parts do not, your response must fully cover the reasons for this decision, this must include a full explanation of what you agree with and how you will rectify this, and why you do not accept other claims
- you, the case owner will have a maximum of 14 days to respond in full to the matters raised by the claimant (if it is not possible to conclude the pre-action protocol; within 14 days an interim reply must be sent). If the applicant is detained, you must consider the matters raised by the claimant as soon as reasonably practical

It is not necessary to defer removal simply because there is a threat of JR, though it is important to satisfy yourself that the person concerned has had the opportunity to lodge a claim with the courts (particularly in certified or third country cases where there is no statutory in-country right of appeal).

**Where a properly lodged claim is received (see [JR claim form received](#) below) this must be referred to OSCU to consider under [Deferral of removal: consideration](#).**

In all removal cases, if a person is unable to file a claim because the office of the relevant court or tribunal is closed, OSCU must still consider whether deferral is appropriate where a copy of detailed grounds is provided to the Home Office and will be lodged with the court or tribunal at the earliest opportunity. A decision on whether to defer in these circumstances will be taken by OSCU, see in this guidance: [Out-of-hours claims before lodging with the court.](#)

If a complete JR claim is submitted, removal directions can be maintained by OSCU where certain exceptions apply and the JR would not be a barrier to removal: See: [Deferral of removal: consideration](#) for information on when JR will not defer removal and see also: judicial review guidance for further information on stayed cases.

## Judicial review claim form received/properly lodged

The Home Office will only consider deferring removal if a JR application made in England and Wales is properly lodged with the Administrative Court in accordance with [Practice Direction 54A Section II](#) of the Civil Procedure Rules, or properly lodged with the Upper Tribunal in accordance with the [Tribunal Procedures \(Upper Tribunal\) Rules 2008](#) (as amended) and the [Upper Tribunal Practice Direction](#).

Where a claim for judicial review is lodged with the court or tribunal, the rules require that the claimant immediately provides the SSHD with a copy of the claim form which should include a detailed statement of the claimant's grounds (or reasons why it is not possible to comply with that requirement).

Where a claimant is given notice of removal, they will be issued simultaneously with an [Immigration Factual Summary \(IFS\)](#), as previously discussed. The IFS provides relevant information about the case to enable the claimant's representatives, and the Administrative Court or Upper Tribunal to make a quick and informed decision concerning the application for JR. It also provides the relevant details where a copy of the JR claim should be sent to the Home Office team dealing with the case. Further information on how to complete an IFS can be found in: Administrative removal: notification and implementation.

Failure to provide details of the claim (that is, grounds or further information relied upon by the claimant) in sufficient time for the SSHD to consider and take steps to defer removal, without good reason, will not necessarily result in removal being deferred.

All JR applications received in respect of cases where removal directions have been set must be referred to OSCU who will consider on an individual case by case basis whether deferral of the removal directions is necessary. If the timing of removal means that the JR needs to be considered outside OSCU's hours of operation, you must refer the JR to National Command and Control Unit by email.

The JR application, as received by the Home Office, may take the following forms:

## Claim form issued with detailed grounds

The Home Office will normally defer removal where a JR application made in England and Wales has been properly lodged with the Administrative Court or the Upper Tribunal in accordance with the relevant procedure rules. However, removal will not automatically be deferred where one of the qualifying criteria set out in the section: [Deferral of removal: consideration](#) applies, subject to a consideration of the exceptions set out in this section, as to when judicial review proceedings will not defer removal.

Removal will also not automatically be deferred where the person is being removed by special arrangements (including by charter flight) (see in this guidance: [Special arrangements](#)). See also: 'Special Arrangements' in Administrative removal: notification and implementation.

## Claim form issued with statement of reasons for non-compliance with the Practice Direction

In cases where the claim form has been issued and the person has provided a statement of reasons for non-compliance with the Practice Direction, the court will notify the Home Office and the matter will be placed before a judge for consideration as soon as practicable. In these circumstances, the Home Office will defer removal if:

- the court decides that good reason has been provided for failure to comply (and gives a direction, for example that detailed grounds be submitted by a specified date)
- permission to proceed to JR is granted
- the court has not yet considered the matter by the time and date of removal, in such circumstances, it will be necessary to defer removal until the court has reached a decision

## Out-of-hours claims before lodging with the court

Where it is not possible to file a claim in England and Wales due to the Administrative Court or Upper Tribunal office being closed, the Home Office may defer removal if provided with a copy of detailed grounds and subject to a consideration of the exceptions in accordance with the guidance on [Deferral of removal: consideration](#). The responsibility remains with the claimant to file the claim form as soon as possible on the next day the Administrative Court or Upper Tribunal office is open and to notify the Home Office that the claim form has been issued.

## Withdrawing an application for judicial review

In some cases, a person with an outstanding JR application may ask to leave the UK. Where a person wishes to make a voluntary departure, you must ask them to sign a disclaimer (form IS.101). A person can still pursue a judicial review from abroad although the claim could be academic, for example, if the challenge is about the removal or if they are challenging a decision to certify a protection or human

rights claim. You should seek confirmation as to whether the claimant intends to withdraw the JR and, if so, advise the claimant (or their legal representative) to contact the court or tribunal to withdraw their JR application so that the court file is closed. Ideally, this should be done before the person leaves the UK so that a notice of discontinuance can be filed, but it is not essential. Where a person wishes to continue with the JR after leaving the UK, the JR will continue to be dealt with by the relevant litigation handling team. See also: Voluntary and assisted returns.

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# Deferral of removal: consideration

This section tells you how to determine whether removal should be deferred in situations where removal arrangements are in place.

This guidance applies only to judicial review (JR) proceedings lodged in England and Wales. See also: [judicial review: England and Wales](#).

This section does not apply where the individual is being removed under special arrangements provisions. Instead, see the section: [special arrangements](#).

Where JR proceedings against removal are lodged, the removal will normally be deferred. However, in certain circumstances it will not be necessary to defer removal and the following section provides you with further information as to whether it is necessary to defer or not.

The first consideration is whether one or more of the following qualifying criteria are met:

- there has been less than 6 months since a previous JR or statutory appeal has been concluded on the same or similar issues, a JR will be on the same or similar issues unless it is lodged on completely different grounds
- there has been less than 6 months since a previous JR or statutory appeal has been concluded on the same evidence, even though the legal basis of the challenge is different from that previously lodged
- there has been less than 6 months since a previous JR or statutory appeal has been concluded and the issues being raised could reasonably have been raised at that previous JR or statutory appeal
- there has already been an order refusing an [injunction](#) against removal in the JR and no subsequent application for an injunction on removal has been granted
- where a JR renewal application has been made but an application for an injunction has already been refused in relation to that same JR application or an order has been made that renewal is no bar to removal (see [handling JRs involving simultaneous injunction applications](#))
- in Family Returns cases, where the family has been served with a notification of intention as part of the Family Returns Process and the five working day period has passed

Even where the qualifying criteria are met, removal will always be deferred in any of the following circumstances:

- an [injunction against removal](#) is granted by the court or tribunal
- this is the first JR challenge to a decision to certify a claim, the result of which being there is either no appeal, or any appeal right is out of country only, unless there has already been an order refusing an injunction against removal in the JR and no subsequent application for an injunction on removal has been granted
- permission has been granted in the JR

- a first challenge has been raised to a Single Competent Authority or Immigration Enforcement Competent Authority decision on a modern slavery claim

Where there is insufficient time before removal for Operational Support and Certification Unit (OSCU) to consider the merits and barriers tests of a case that meets the qualifying criteria, removal will initially be deferred but may be reinstated after the litigation handling team have assessed the merits of the claim. See: [the merits and barrier tests: JR cases.](#)

## The merits and barrier tests: judicial review cases

Where there is a judicial review challenge and:

- one or more of the [qualifying criteria](#) are met
- there are no reasons why removal must be deferred

you should go on to consider whether the JR is bound to fail on its merits and/or whether any of the issues raised in the JR are a barrier to removal.

When there are removal directions in place and a JR challenge is received as set out above, OSCU will consider the merits and barrier tests.

Where the JR is bound to fail and does not raise any issues which are a barrier to removal then removal does not need to be deferred.

## Merits Test

You must consider whether the JR is bound to fail either before the decision is taken not to defer removal or before a decision is taken to arrange removal following a removal request. Examples of when a JR is bound to fail are:

- the grounds for JR are very weak, for example they do not make sense, are clearly standard grounds or are generic (they do not refer to the specific circumstances of the claimant, unless the claim is a 'class issue' namely multiple claimants raising the same legal point)
- the JR is obviously unarguable on the facts
- there is clear authority on the legal point in issue

Concluding that a JR is not bound to fail does not mean that it is arguable and therefore that permission should be granted.

If a JR is bound to fail and therefore does not meet the merits test, it is not a barrier to removal.

## Barrier Test

You must also consider whether the issues raised in the JR should be treated as a barrier to removal in the following circumstances:



- where the JR raises new grounds, for example a first time asylum or human rights claim or further submissions that fall to be considered under [paragraph 353 of the Immigration Rules](#). See: [Fresh claims and/or further submissions](#)
- where the JR relies on new and relevant evidence that has not previously been considered by the SSHD in deciding a previous application or claim and (where a right of appeal was exercised against the refusal of that previous application or claim) by the court in an appeal, the nature of that evidence must be considered. If it amounts to a first-time asylum or human rights claim, or further submissions that fall to be considered under paragraph 353, refer to the section [Fresh claims and/or further submissions](#)

In OSCU, the decision on whether the JR meets the merits and barrier test, must be taken at a minimum HEO grade and countersigned at a minimum SEO grade. This does not apply to the litigation handling team who will work closely with GLD when applying the merit test.

## Removal enquiry following receipt of a judicial review: Immigration Enforcement

The enforcement or removal team will assess whether the individual case meets the qualifying criteria. If it does, they will ask the litigation handling team to apply the merits and barrier tests. No further removal action will be taken until the litigation handling team has considered the JR.

## Application of the merits and barrier test by the litigation handling team

Where the JR has merit and/or raises barriers to removal the litigation handling team will notify the enforcement or removal team and continue to manage the JR in accordance with the usual JR process. See: judicial review guidance.

Where the JR has no merit, and raises no barriers to removal, the litigation handling team will notify the enforcement or removal team. The litigation handling team will serve the Acknowledgement of Service (AoS) and continue to manage the JR in accordance with the usual JR process. See: judicial review guidance. The enforcement or removal team will write to the applicant notifying them that the JR is not suspensive of removal and they are commencing removal action.

Where the AoS is served before the enforcement or removal team has written to the applicant and it has been more than 7 days since the AoS has been lodged, the enforcement or removal team must re-confirm with the litigation handling team that the JR grounds have not been varied before they write out.

Where an injunction is granted at any time in the process removal must be deferred. See: [Injunctions in removal cases](#).

Where permission is granted on the JR, removal will be deferred and the JR will be handled in accordance with the usual JR process. See: judicial review guidance.

## Family cases

Families will be notified when invited to the family return conference that they have 5 working days from the date of invitation to the family return conference to bring a judicial review to challenge their removal from the UK. For further information on next steps following receipt of a judicial review in family cases, see: [process actions following receipt of a JR.](#)

## Process actions following receipt of a judicial review

If a JR is received and removal arrangements are in place or preparations for removal arrangements are being made, the JR must be passed to OSCU who will:

- check CID/Atlas to confirm that removal arrangements are in place or preparations are being made for removal arrangements
- create a JR record on the JR screen in CID, and the OSCU and Challenge service on Atlas
- in family cases, check CID/Atlas to establish whether 5 working days have expired following the invitation to the family return conference before proceeding with the following steps
- consider whether one or more of the qualifying criteria are met, if yes, apply the [merits and barrier tests](#) and decide whether to defer removal:
  - if removal deferred: pass the JR to the litigation handling team to manage the litigation
  - if removal not deferred: write to the person or their representatives to confirm that removal will not be deferred, pass the JR to the litigation handling team to manage the litigation

Where the applicant meets the qualifying criteria, but there was insufficient time before removal for OSCU to apply the merits and barrier tests (resulting in removal being deferred) the litigation handling team will, while filing the AoS, apply the merits and barrier tests. If the JR is bound to fail and there are no barriers to removal the litigation handling team will notify the enforcement or removal team and provide them with a copy of the JR grounds on request:

- the enforcement or removal team will re-instate removal arrangements and write to the applicant notifying them that the JR is not suspensive, and they are commencing removal directions
- the litigation handling team will serve the AoS

Where an injunction is granted at any stage in the process, removal must be deferred. In these circumstances, it will not be appropriate for the litigation handling team to undertake a merits test within 21 days of service of the JR (see [Removal enquiry following receipt of a judicial review: Immigration Enforcement and injunctions in removal cases](#)).

Where permission is granted in the JR, removal will be deferred and the JR will be handled in accordance with the usual JR process (refer to the judicial review guidance).

## Fresh claims and/or further submissions

A JR is not the right vehicle for raising new matters to the Secretary of State (for example a first time protection claim, human rights claim or further submissions that fall to be considered under [paragraph 353 of the Immigration Rules](#)). However, a JR which meets the qualifying criteria test might raise such matters.

Any new representations identified in the JR grounds, for example, first-time asylum or human rights claims, or further submissions will be dealt with in the same way as they would have been received in any other format. See: Further submissions guidance. First-time claims for asylum or humanitarian protection will need to be referred to Asylum Operations or to Foreign National Offender Returns Command for deportation cases. Any first-time human rights claims will also need to be considered. If OSCU receive any such new representations, they will consider deferring removal.

## Handling judicial reviews involving simultaneous injunction applications

If a decision has been taken to defer removal on the basis of a JR received simultaneously with an injunction application, the guidance on [injunctions in removal cases](#) must be followed.

The Administrative Court and UTIAC have standing instructions to telephone OSCU (or National Command and Control Unit (NCCU) outside OSCU's hours of operation) in advance of considering an application for an injunction. They will do so where they have not received confirmation of whether removal is to be deferred.

OSCU will advise the court whether removal is imminent and, if so, whether removal will be deferred as a result of the JR.

## Action when deferring removal

See: 'Deferral and cancellation of removals' in Arranging Removal and 'Cancellation of removal directions' in Administrative removal: notification and implementation.

## Action following a decision not to defer removal

You must close the JR barrier on the casework systems, update the systems and write to the person or their representatives to let them know that the removal will go ahead unless they obtain an injunction preventing removal. The letter must include reasons why removal is not being deferred.

If an injunction is obtained, all enforcement action must be deferred immediately. See: [Action when deferring removal](#).

If a decision is made not to defer removal but the removal fails for reasons unrelated to the JR proceedings, then removal directions may be re-set (or in certain

circumstances, a second notice period may not be required), provided that the reasons for the original decision that removal should not be deferred are still applicable. See: 'Where a second period of notification is not needed' in Administrative removal: notification and implementation.

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# Special arrangements (including charter flights)

Chartered flights are subject to special arrangements because of the complexity, practicality and cost of arranging an operation. For this reason, a judicial review (JR) application may not defer removal.

Special arrangements may also apply in other cases. For example, where complex medical needs require a significant number of medical escorts and special equipment.

Operational constraints will determine arrangements necessary for charter operations and other special cases. Details concerning these arrangements will be communicated to the Courts by Operational Support and Certification Unit (OSCU) in advance of the date planned for the operation using the template 'Notification of Special Arrangements – Court letter' which you can access externally via the [Returns Preparation landing page](#) on GOV.UK. The person being removed will also be notified of these arrangements and that removal will not necessarily be deferred in the event that a JR is lodged.

Where an individual notified of removal under special arrangement lodges a JR and provides a copy to the Home Office, the grounds will be considered by OSCU to determine if there is any basis for deferring removal. If removal is not deferred on receipt of a JR, the person concerned will be advised in a letter to be provided by OSCU of the need to obtain an injunction to prevent removal.

Individuals being removed by special arrangements (including charter flights) who wish to legally challenge their removal are normally required to seek injunctive relief as a JR application will not usually result in deferral of removal. See: [injunctions in removal cases](#). In these circumstances, the person will be given a minimum of 5 working days' notice of removal so they have the opportunity to take legal advice. The purpose of this extended period of notice of removal is to minimise the number of last-minute applications for injunctive relief to the Courts and to encourage people to inform the Home Office at the earliest opportunity of any further submissions they want to make.

If an individual being removed by charter flight is not subject to special arrangements, the standard 72 hours' notice period, or the exceptions to standard notification of removal applies, rather than 5 working days. See: 'exceptions to standard notification of removal' in Administrative removal: notification and implementation.

See also: [Administrative removal: notification and implementation](#) for further information on notice periods.

If an individual being removed by charter flight is not subject to special arrangements and submits a JR, it will be considered under the guidance set out above under

[Deferral of removal: consideration](#) to determine if any of the qualifying criteria apply and against the merits and barriers tests.

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# Commencement of judicial review proceedings

## Removal directions deferred: next steps

If removal directions have been deferred and judicial review (JR) proceedings have started, you can get more information on next steps from the JR caseworker. You will be able to identify the JR caseworker from CID and/or Atlas.

The JR caseworker will notify Government Legal department (GLD) and instruct them on the grounds for defence (it is important that you ensure that GLD can obtain instructions or they will not be able to get the case before a judge quickly).

Where summary grounds have been lodged and it is considered that the JR claim has no merit, GLD must be instructed by the appropriate JR unit to notify the court of this, with a request that the application is expedited. Where possible, detention can be maintained pending the outcome of the JR. See also [expedited process](#).

Removal directions must not be re-set until the appropriate JR unit has confirmed that the JR is no longer a barrier to removal.

Further information on the preparation of the judicial review documentation can be found in the judicial review guidance.

## Expedited process

Litigation Operations will consider whether a case is suitable for expedition, although the final decision rests with the Administrative Court. For further information on the expedited process, see judicial review guidance.

## Permission to apply for judicial review granted

If permission to apply for JR is granted either at the paper permission stage or oral hearing, the Home Office is required to lodge our Detailed Grounds of defence within 35 days. A full 'substantive' hearing is listed.

If permission to apply for judicial review is granted, all enforcement action must be deferred immediately and must not be resumed until the application is resolved. If the individual is detained, their detention must be regularly reviewed, in line with the detention - general instructions guidance. For further information on the permission and substantive hearing stages, see judicial review guidance.

## Permission to apply for judicial review refused

### Cases where no RDs are in place

Where a case is in between paper permission and oral permission stage, apply the same considerations as set out in the merits and barrier tests and apply the qualifying criteria.

If permission to apply for JR is refused and the court or tribunal decides that the application for JR is clearly without merit or that renewal is not a bar to removal, it will be made clear in the order refusing permission. Litigation Operations will update Home Office records accordingly. The normal removal process must then be followed. You must apply the merits and barrier tests and qualifying criteria outlined in this guidance if appropriate to do so.

In other cases where permission on the papers is refused but oral renewal remains a possibility, Litigation Operations will update Atlas, but you should not re-set removal directions until the time limit for oral renewal has passed unless the court or tribunal has found or ordered otherwise.

### Cases where RDs are in place

If RDs are in place and an application for renewal of the JR, or representations asserting that such an application will be or has been made, are received, these must be referred to the Operational Support and Certification Unit (OSCU) to consider in accordance with the guidance on [Deferral of removal: consideration](#). OSCU will notify the person and their legal representative if it is decided that removal will not be deferred pending any application for oral renewal.

For further information, see: judicial review guidance.

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# Application to the Court of Appeal or Supreme Court

The Home Office or the claimant can seek to appeal against the decision of the Administrative Court or the Upper Tribunal to the Court of Appeal and then to the Supreme Court, subject to the requirement for permission from a relevant court.

An application by a claimant for permission to appeal to the Court of Appeal or Supreme Court is not generally a barrier to removal. This is the case whether the challenge is in the Court of Appeal to a decision to refuse permission to proceed with a judicial review (JR) or to dismiss a JR following a grant of permission, or in the Supreme Court to a decision of the Court of Appeal.

If the claimant or their legal representative tells you that they intend to appeal to the Court of Appeal or the Supreme Court or that such an appeal has already been lodged, you must take the following action:

## Cases where RDs are in place

If RDs are in place you must refer the representations to Operational Support and Certification Unit who will determine whether RDs can remain in place and write to the claimant and any legal representatives to confirm if RDs are maintained.

## Cases where no RDs are in place

If no RDs are in place but can be set imminently you must contact Litigation Operations to confirm the appeal, or proposed appeal, is not a barrier to removal. If Litigation Operations confirm that the appeal, or proposed appeal, is not a barrier to removal then you must write to the claimant and any legal representatives confirming this.

Where further representations are made to the SSHD, these will need to be considered and addressed in the usual way to determine whether any information raised is a barrier to removal.

If permission is granted, or an injunction obtained, removal must be deferred immediately.

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# Stayed cases

For information on stayed cases, you should refer to the judicial review guidance – England and Wales.

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# Judicial review challenges other than to removal

You must not automatically defer removal directions in these cases. You must only potentially defer removal when [article 6 \(right to a fair trial\) of the European Convention of Human Rights](#) is cited and must decide this on a case by case basis.

If, for example, the applicant claims that their current detention is preventing them from securing a fair and public hearing in other legal proceedings within a reasonable time, you should consider deferring removal action even if the removal is not explicitly challenged in the JR claim. Note that the protection of article 6 does not generally extend to proceedings concerning the entry, stay and deportation of foreign nationals ([Maaouia v France \[2000\] ECHR 455](#)).

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# Injunctions in removal cases

An injunction is an order issued by a court requiring a party to do something or to refrain from doing something. In removal cases, an injunction might be put in place to prevent the Home Office removing a person from the UK.

If there is any reason to believe an injunction may have been granted, you must contact Operational Support and Certification Unit (OSCU) who will check with the Administrative Court during office hours, or with the Duty Judge outside of office hours to confirm verbally that an injunction has been issued. OSCU is open 7am to 9pm weekdays and 7am to 7pm at the weekend. Outside of OSCU opening times, contact the National Command and Control Unit (NCCU).

The removal must be stopped if enquiries confirm that an injunction has been issued.

## Injunction confirmed

If the removal is imminent (the person is en-route to, or at, the port of embarkation) or is in progress (the aircraft is on the ground and the doors are still open), OSCU, or NCCU out of hours, must immediately take all reasonable steps to ensure that the removal is stopped. In these cases, you must not wait until you have received written confirmation of the injunction before deferring the removal. Oral confirmation by the Duty Judge is sufficient. OSCU, or NCCU (out of hours) must:

- if the removal is escorted, immediately notify the Detainee Escorting and Population Management Unit (DEPMU) that removal must be deferred, DEPMU will inform the escort officers
- confirm to the legal representative, or the applicant if they do not have a legal representative, that the removal has been stopped and/or did not proceed

OSCU or NCCU and you, the caseworker, must clearly minute the file, CID/Atlas records, and any other internal notes to confirm what action was taken to attempt to stop the removal. If removal cannot be stopped and proceeds contrary to the injunction, see: [Injunction received but it proves too late to halt the removal](#).

## Out of hours and urgent injunctions

When a person is given notice of removal, they are served the immigration factual summary which advises them that any urgent application for an injunction preventing removal or order granting or refusing an injunction must be sent to the Home Office team handling their case. The immigration factual summary provides the appropriate telephone and fax numbers to use (see: [role of the case owner](#) and Administrative removal: notification and implementation for additional information). Outside of normal office hours (9am to 5pm weekdays) or during a public holiday, the urgent application or order must be sent to NCCU.

If an urgent injunction is not sent to NCCU, but another Home Office premises, there is a risk that the information will not be actioned before the person's scheduled removal and they will be removed from the UK despite the injunction being granted.

You must keep OSCU updated of any developments on the case. Where an injunction is received but you are of the opinion that the removal must not be pursued for other reasons, you must still inform OSCU that an injunction has been issued.

OSCU operate from 7am to 9pm weekdays and from 7am to 7pm at weekends. Between those hours you must forward any last-minute challenges to removal to OSCU to deal with.

You must ensure that, outside of your usual working hours and during weekends, or bank and public holidays, legal representatives know that urgent queries relating to any injunction against an imminent removal must be made to NCCU at the number below.

All answer-phone and voicemail messages for all areas must be updated to include the following:

<b>Team or area</b>	<b>Message</b>
Immigration Compliance and Enforcement (ICE) teams	The information in this section has been removed as it is restricted for internal Home Office use.
Other areas	The information in this section has been removed as it is restricted for internal Home Office use.

## **Injunction received, but it proves too late to halt the removal**

Where a removal has already taken place, because the injunction arrived too late to halt the removal (for example after the doors of the aircraft have closed), take the following actions:

- you must inform the Court and OSCU as soon as possible that the person was removed
- if you can quickly trace or contact the person (perhaps through their legal representatives in the UK or, through DEPMU, any escorting officers who may be escorting them), you must make every effort to assist their return to the UK
- if it is not possible to return the person quickly, due to difficulties in tracing and/or organising their return, you must continue to try to facilitate the return while ensuring that the court is kept aware of progress
- you must update Atlas regarding all actions taken, this must include times of events, such as telephone calls from representatives or court staff, so that we are able to show that the Home Office has acted in a timely fashion
- the grade 7 for the area that owns the case and has actioned it to the point of removal must notify the director for that area of work, the director of OSCU and the Rapid Response Team (RRT) of the removal immediately with all

available information while further enquiries are being made and to put them on notice that an urgent submission to the Minister will be prepared

- immediately following the removal an urgent submission must be sent, via the relevant Director General, to the Home Secretary, this must contain a chronology of events, detailing the efforts made to halt the removal and why these were unsuccessful. It must also contain details of any efforts being made to facilitate the person's return

## **Injunction received, but removal has already taken place**

Where an injunction is received but removal was not prevented, take the following actions:

- you must inform the court as soon as possible that the individual was removed
- you must contact Government Legal Department (GLD) and seek their advice
- you must inform OSCU
- the grade 7 for the area that owns the case and has actioned it to the point of removal must notify the Director for that area of work, the director of OSCU and the Rapid Response Team (RRT) of the removal immediately
- immediately following the removal an urgent submission must be sent, through the relevant director general, to the Home Secretary, this must contain a chronology of events detailing the efforts made to halt the removal and why these were unsuccessful, it must also contain details of any legal advice received from GLD

The case must be referred to the litigation caseworker managing the JR to review the full facts of the case to consider whether the order has been obtained without any merit. If Litigation Operations believe this to be the case, they can instruct GLD to apply for the Court order to be discharged, bearing in mind that a decision to make such an application must be made quickly and in consultation with Home Office Legal Advisers and GLD. Note that you must continue to try to facilitate the individual's return whilst this application is being processed.

Where, despite all efforts made, it is not possible to return the individual to the UK, Litigation Operations must instruct GLD to approach the court again to explain the full extent of steps taken, why return is not possible and to ask that the order is discharged. Any decision not to pursue return must be taken at SCS level.

## **Information that must be recorded**

When handling allegations of injunctions, you must maintain a clear record of all the actions taken on Atlas/CID. You must include the following details as part of your notes:

- who informed you about the injunction and the time you were told or became aware
- whether the injunction was confirmed by the legal representative or the Duty Judge and, if so, the time confirmation was obtained

- if no confirmation was received, the steps taken to confirm the existence or otherwise of the injunction
- details of other units or staff you contacted to defer the removal in DEPMU, OSCU or NCCU, include the time these units were notified to defer the removal and the time they confirmed removal was deferred (if times are different)
- where an unlawful removal has taken place, details of all actions that have been taken to trace the person and return them to the UK

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# Applications to the European Court of Human Rights

[The Human Rights Act 1998](#) came into force on 2 October 2000, incorporating rights and freedoms guaranteed under the European Convention on Human Rights into domestic law. A decision to refuse a human rights claim is subject to an appeal under [section 82 of the Nationality, Immigration and Asylum Act 2002](#). It is still possible for an application to be made to the European Court of Human Rights (ECtHR), in Strasbourg, but it is unlikely that such an application will be accepted until appeal rights in the UK have been exhausted.

An application made to the ECtHR does not in itself require the suspension of removal. However, when applying it is possible to ask the Court, in effect, to order the suspension of removal action as an interim measure to allow the Court to consider the substantive matter in full before removal takes place. The technical procedure to achieve this is by making a request under [rule 39 of the ECtHR's Rules of Court](#). In response to such a request, the ECtHR will (where appropriate) give a 'rule 39 indication' indicating that the person must not be removed. This must be treated in the same way as an injunction.

## Rule 39 indications from the ECtHR

All enquiries relating to threats of, or applications for, rule 39 indications must be directed to the Operational Support and Certification Unit (OSCU) duty officer in the first instance. Ongoing litigation (should a rule 39 indication be granted) is received from the Foreign Commonwealth and Development Office (FCDO) and will be handled by Litigation Operations.

A Rule 39 indication is similar to an Administrative Court injunction but is made by the ECtHR. Where you have been notified that a rule 39 indication has been made, you must:

- defer removal immediately
- where the person is detained, make sure this development is considered in relation to any decision to continue with detention

If an individual subsequently wishes to withdraw their rule 39 application, that must be communicated to the Court. The Court may wish to confirm this with the applicant, and you must take no action to enable removal of a person (including by voluntary departure) until you receive confirmation that the Court has accepted the application as withdrawn.

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# Judicial review in Scotland

Judicial review (JR) in Scotland is pursued by means of a petition to the Court of Session in Edinburgh. There are several differences in the way cases are handled in Scotland.

If the court accepts the petition for JR they will grant First Orders. At this stage, the petitioner may also seek interim orders to suspend the removal directions until the court has an opportunity to consider the case in full. Where an application for interim orders is made then the case will go to an oral hearing with both parties present before the scheduled removal.

The Office of the Advocate General (OAG) will make representations on this application for interim suspension of removal directions before First Orders are granted. The granting of First Orders allows the person bringing the case to serve the petition on the OAG. Following First Orders the case will proceed to the permission stage, which was introduced by the [Court Reform \(Scotland\) Act 2014](#).

## Case-owners receiving Scottish judicial reviews

Where a person has been granted First Orders and removal directions are in place, you must ask them for a copy of the court order (interlocutor) granting First Orders and their petition for judicial review. You must then immediately refer the case to Litigation Operations Scotland and Northern Ireland (Lit Ops SNI) to manage the litigation and to the Operational Support and Certification Unit (OSCU) to decide whether the JR is a barrier to removal. Where removal directions are in place OSCU will normally advise to suspend removal when a person has been granted First Orders, but there are exceptions to this.

## Operational Support and Certification Unit caseworkers

Where a person has been granted First Orders, you must not automatically defer removal where:

- there has been less than 3 months since a JR (in Scotland or elsewhere in the UK) or statutory appeal has been concluded on the same or similar issues
- there has been less than 3 months since a previous JR (in Scotland or elsewhere in the UK) or statutory appeal has been concluded and the issues being raised could reasonably have been raised at that previous JR or statutory appeal
- an interim order to suspend removal has already been refused, and no subsequent application for an interim order has been granted
- the person is being removed by special arrangements (including by charter flight)
- removal is at the Ensured Return stage of the [Family Returns Process](#)

If you decide that removal will not be deferred, you must immediately notify the person or his legal representatives in writing that removal will go ahead unless they obtain an interim order preventing removal. If an interim order is granted, removal cannot take place until the petition is determined.

If an appeal is marked (called a reclaiming motion) against a decision of the Court of Session dismissing a petition for JR that will not of itself prevent removal directions being set. Removal directions can be set if, after consultation with the OAG, it is considered that an appeal is obviously lacking in merit. Generally, removal directions will not be set within the 21 days during which a reclaiming motion can be marked. If a reclaiming motion is marked and removal directions are subsequently set, the petitioner (via their legal representatives where applicable) must be advised that to have their removal cancelled they must seek and obtain from the Inner House of the Court of Session an interim order suspending those removal directions.

### **Failed returns where the judicial review is not a barrier**

If a decision is made not to defer removal, in line with the exceptions set out in the first 4 bullet points above, but the removal fails for reasons unrelated to the JR proceedings, then removal directions may be re-set (or in some circumstances a second period of notification may not be needed), provided that the reasons for the original decision that the JR should not suspend removal are still applicable. Removal must be suspended if an interim order is obtained.

See also: Administrative removal: notification and implementation in particular 'where a second period of notification is not needed'.

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# Judicial review in Northern Ireland

Judicial review (JR) in Northern Ireland is pursued by means of an application to the High Court of Justice. Leave to apply for JR is made by one side only in the case (known as *ex parte* or without notice) setting out the relief sought, and the grounds of review relied upon.

Applications for JR in Northern Ireland must be brought to the attention of the Crown Solicitor's Office (CSO) through the litigation team at Festival Court in Glasgow, who act on the Home Office's behalf in these cases, and who can provide advice on how to proceed.

Criminal cases are dealt with by Litigation Operations in Croydon.

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