

## Chapter 62 – Re-entry Bans

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### 62.1 Introduction

This instruction sets out the policy, processes, and procedures relating to mandatory re-entry bans. It tells you when the varying levels of re-entry ban should be applied and provides guidance on recording bans at the point at which an individual leaves the United Kingdom (UK).

The instruction is based on [paragraphs A320 and 320\(7B\) of the Immigration Rules](#) which set out the general grounds on which entry clearance or leave to enter the United Kingdom is to be refused.

### Background

Individuals seeking to come to the UK may be refused entry because they are the subject of a one year, two year, five year, or ten year re-entry ban. Individuals may be the subject of a re-entry ban where they have previously breached the UK's immigration laws by:

- (a) overstaying;
- (b) breaching a condition attached to their leave;
- (c) being an Illegal Entrant;
- (d) using deception in an application for entry clearance, leave to enter or remain (whether successful or not).

### Definition of overstaying

When determining whether a re-entry ban applies by virtue of paragraph 320(7B) the period of overstaying must be calculated in accordance with the interpretation of overstaying under paragraph 6 of the Immigration Rules:

'Overstayed' or 'overstaying' means the applicant has stayed in the UK beyond the latest of:

- (i) the time limit attached to the last period of leave granted, or
- (ii) beyond the period that his leave was extended under sections 3C or 3D of the Immigration Act 1971, or

- (iii) the date that an applicant receives the notice of invalidity declaring that an application for leave to remain is not a valid application, provided the application was submitted before the time limit attached to the last period of leave expired.

## **62.2 Voluntary departure at individual's own expense (one year bans)**

Illegal entrants, those who breach a condition attached to their leave, and those who overstay their lawful leave by more than 90 days, who leave the UK voluntarily at their own expense are ordinarily subject to a mandatory one year re-entry ban unless they are applying for entry clearance as a Family Member (under Appendix FM of the immigration rules) or they were under 18 at the time of their most recent breach (as set out at paragraphs A320 and 320(7B) of the Immigration Rules).

## **62.3 Voluntary departure at the Secretary of State's expense**

Individuals who breach our immigration laws and leave the UK voluntarily at the expense (directly or indirectly) of the Secretary of State are subject to two or five year re-entry bans. This includes those who leave the UK via an Assisted Voluntary Return (AVR) programme or otherwise voluntarily.

### **Person left the UK via an AVR programme**

Those who leave the UK voluntarily at the Secretary of State's expense may do so via an AVR programme. For further details on AVR programmes and the processes for managing AVR departures, staff should refer to chapter 46 and the AVR Guidance.

### **Person left the UK otherwise voluntarily at the Secretary of State's expense**

Not all people who leave the UK voluntarily at the Secretary of State's expense will necessarily depart via an AVR programme. Some may express a desire to leave the UK, but departure via an AVR programme is not pursued because they do not wish to return via this route, are not eligible to return via this route or because their application has been rejected or excluded.

Those who leave the UK voluntarily, but their flight ticket is purchased by the Secretary of State (self check-in removals for example) are also recorded as voluntary departures at our expense.

## **62.4 Two year re-entry bans**

Where paragraph 320(7B) of the Immigration Rules applies, individuals who leave the UK voluntarily at the Secretary of State's expense are subject to a mandatory two year re-entry ban if the date of their departure was no more

than six months after the date on which they were given notice of their removal decision or no more than six months after the date on which they no longer had a pending appeal against that decision, whichever is the later.

### **Resetting the six month time period**

In some cases, the six month time window in which a person must depart to benefit from a two year ban, rather than a five year ban, may be re-set to start again. The six month clock will have been re-set where:

- The removal decision was substituted for a new removal decision where a fault is found with the original decision.
- The person was appeal rights exhausted (ARE), but then lodged an out-of-time notice of appeal with the Tribunal seeking an extension of that time limit and the Tribunal extended the time limit. In these circumstances, the six month clock starts on the date the person was given notice of their removal decision or the date on which the subsequent out-of-time appeal was eventually dismissed, whichever is the later.
- The person made further submissions to the Secretary of State which following consideration under paragraph 353 of the Immigration Rules, are refused but found to constitute a fresh claim. In these circumstances, the six month clock restarts on the date the person is given notice of their new removal decision (which accompanies the refusal of their fresh claim) or the date on which they exhaust their appeal rights against that decision, whichever is the later.
- The person made further submissions to the Secretary of State which were only determined more than 12 months after their submission. In these circumstances, the six month time limit restarts from the point where the further submissions are determined and found not to constitute a fresh claim.

### **62.5 Five year re-entry bans**

Where paragraph 320(7B) of the Immigration Rules applies, and where the lesser two year ban set out above (62.4) does not apply, those who leave the UK voluntarily at the Secretary of State's expense (directly or indirectly) more than six months after they are given notice of their removal decision or more than six months after the exhaustion of their subsequent appeal rights (depending on which is the later date) are subject to a mandatory five year re-entry ban.

## **62.6 Enforced removal or deportation (ten year bans)**

Individuals removed as the subject of a deportation order will continue to be excluded whilst the order is extant. The criteria for the revocation of a deportation order are contained in paragraphs 390-392 of the Immigration Rules. Where paragraph 320(7B) of the Immigration Rules applies and the individual was forcibly removed from the UK they are subject to a mandatory ten year re-entry ban. For the purposes of this re-entry ban, an enforced removal is one where the person refuses to leave the UK voluntarily and the UK Border Agency enforces their departure in order to ensure they leave. Enforcement includes the use of detention powers immediately prior to departure from the UK if applicable.

## **62.7 Recording departure**

Once it is confirmed that an individual has departed voluntarily or their removal has been enforced, whoever is responsible for recording their departure must ensure that the date and the manner of the departure is properly and promptly recorded on CID. This is, in part, so that the correct re-entry ban can be considered, and applied if necessary, where the individual applies to return to the UK before their mandatory ban expires.

Where applicable, staff responsible for recording the departure must carefully check the person's CID record to ensure that the date on which they were last served notice of a removal decision has been correctly recorded. Where the person appealed against that decision, staff must also check that the date on which they exhausted their appeal rights has been recorded. Where either or both of these dates have not been entered on CID without reasonable explanation, staff must, where possible, examine the person's Home Office file and any other UK Border Agency related databases or paperwork in order to confirm and record these dates.

## **62.8 Criminality rules changes**

Changes to the general grounds for refusal under part 9 of the Immigration Rules came into effect on 13 December 2012. The changes provide for mandatory or discretionary refusal of entry clearance and leave to enter or remain where the applicant has a criminal history or due to their character, conduct or associations.

The length of time for which refusal will remain appropriate will depend on the date and length of sentence imposed, and the person's character, conduct or associations.

Full guidance on criminality and general grounds for refusal and a link to part 9 of the Immigration Rules can be found on the criminal history page on horizon.

## Revision History -

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
6 April 2011	Enforcement Policy Team, IBPD	New chapter	Gail Adams, director for enforcement	V1
19 September 2012	Enforcement Policy Team, IBPD	Changes to overstayer rules	Sonia Dower, Director, Operational Policy and Rules Unit.	V2
13 December 2012	Enforcement Operational Policy	Amendment to 62.3 Addition of 62.8	Sonia Dower, Director, Operational Policy and Rules Unit.	V3
27 November 2013	Enforcement & Returns Operational Policy	Revision history included in external version, minor formatting changes	Kristian Armstrong, Head of Asylum, Enforcement and Criminality Policy	V4