



## Detention Services Order 03/2014

### Service of Removal Directions

**Process:** To provide instructions and guidance on the service of removal directions in immigration detention facilities

**Implementation Date:** April 2014 (reissued March 2016)

**Review Date:** March 2018

#### Contains Mandatory Instructions

**For Action:** Home Office staff and suppliers operating in Immigration Removal Centres, Residential Short Term Holding Facilities and the Pre-departure Accommodation

**For Information:** N/A

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**Processes Affected:** Service of removal directions

**Assumptions:** All staff will have the necessary knowledge to follow these procedures.

**Notes:** This is a revision of DSO 7/2011. Home Office staff operating in centres should pay particular attention to the serving of removal directions, notice period and exceptions sections.

**Issued:** March 2016

**Version:** 1.0

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## **Introduction**

1. This detention services order (DSO) provides updated instructions and guidance to immigration removal centres (IRCs), short-term holding facilities (STHFs), the pre-departure accommodation (PDA), the detainee escorting and population management unit (DEPMU) and escorting suppliers in relation to the service of removal directions for immigration detainees. It also provides Immigration Enforcement (IE) and UK Visas & Immigration (UKVI) staff with guidance on how to respond to an application for judicial review or notification of a court injunction preventing removal for those whose removal is already under way<sup>1</sup>.
2. This DSO is aligned with instructions provided in chapter 60 of the enforcement instructions & guidance (EIG) issued on 1 September 2011 entitled 'Judicial review and injunctions'. This DSO is designed to ensure detainees are given full and proper notice of their removal directions but also provides for exceptions when service of limited or no notice of removal directions is required.
3. IE and UKVI staff are advised to read chapter 60 of the EIG alongside this DSO to fully understand how judicial reviews and injunctions in relation to removals are managed.
4. Onsite Home Office Immigration Enforcement (HOIE) staff should pay particular attention to
5. References to "centre" in this document cover IRCs, STHFs and PDA.

## **Setting and serving removal directions**

6. The detainee's case owner is responsible for setting removal directions. However, as a matter of good practice, onsite HOIE staff should liaise closely with the case owner to ensure they are set promptly where they are aware that a detainee can lawfully be removed.
7. In Detained Asylum Cases (DAC), UKVI staff will both set removal directions and serve them.
8. Unless otherwise exempt (see paragraphs 26 - 42 below), notice of removal (normally removal directions) must be served on the detainee as soon as is practicably possible, but in any case no later than the minimum period set out below. Notice of removal should be accompanied by an immigration factual summary (ICD.2599), providing a chronology of the case history, including details of whether any appeal rights were exercised, and past judicial review applications.
9. Chapter 60 of the EIG sets out that, unless otherwise agreed with the HOIE manager at the centre, case owners are required to provide the centre with the notice of removal, immigration factual summary and ISE 303 Acknowledgement of Travel

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<sup>1</sup> The definition of 'removal under way' for the purposes of this detention services' order is the point at which removal directions have been set by the case owner until the point at which the doors of the (air)craft have been shut.

Arrangements Notification (if provided) by 3pm, where the documents must be served on the same day. HOIE centre staff must therefore ensure that documents received by 3pm are served on the detainee on the same day as receipt. It is good practice for removal directions to be served by HOIE centre staff, or UKVI staff for DAC, but where this is not possible (for example, there is not a member of staff present), they may be served by a detainee custody officer (DCO) or other member of the centre's staff.

**Note: In order to expedite service of removal directions, case owners must telephone the centre prior to sending paperwork to inform the relevant staff (whether HOIE or DCOs) that the paperwork is being sent and to confirm how and to whom it will be sent. This is especially important where documents are to be served by DCOs.**

10. The 'notice period' is the time between the service of the removal directions on the detainee being removed and the time for which the removal is scheduled.
11. Staff serving removal directions must satisfy themselves that the detainee has understood the implications of the documentation (for example, the date of his or her removal and flight details, including the destination). The services of an interpreter should be used if there is any doubt as to whether the detainee has understood. This may be achieved by telephone interpreting where needed. Detainees must be given access to telephone facilities after service of the removal directions to enable instruction of and contact with legal representatives. This requirement may be satisfied by detainees using their personal mobile telephones to do so.
12. The Home Office IE IRC team must keep clear records that removal directions have been served. Confirmation must be placed on the Casework Information Database (CID) once removal directions have been served, including the date and time of service, name of the serving officer, and any witnesses. The ISE 303 acknowledgement form, if provided, must be presented to the detainee and completed as appropriate. The form should then be faxed back to the caseworker following service of the removal directions. All staff to note that a detainee does not need to sign the ISE303 to render it valid. Notification of the removal direction details should be provided to IRC supplier staff and to healthcare staff to support preparation for removal.
13. Staff serving removal directions must advise DEPMU and the case owner, via both an email and a note on CID, if the detainee displays an adverse reaction to removal directions. This should include whether the detainee gave any indication whether or not he or she would be compliant, and of any medical concerns or other risk factors which will otherwise warrant the use of escorts, including a medical escort or other special arrangements.

## **Enforcement cases**

14. The following notice period applies to normal enforcement cases (administrative removal and deportation), but not to third country cases or those being removed on chartered flights:

- **a minimum of 72 hours** must be allowed between informing a detainee of removal directions and the removal itself
- this 72 hour period must always include at least two working days
- the last 24 hours of this period must include a working day unless the notice period already includes three working days.

15. The table below shows the latest time a detainee must be notified of removal directions in normal enforcement cases; taking into account the 72 hours notice period and the provisions in terms of working days. In the event that the removal directions are to be served by non-HOIE staff the case owner must satisfy him/herself that the appropriate time frame for service has been selected and must specify the time period during which service must take place on the covering fax header sheet.

16. The table does not take account of bank holidays, which must be added as extra non-working days.

<b>Removal directions set for:</b>	<b>Notice must be served by latest:</b>
Midnight to 10am Monday	10am Wednesday
10am to 5pm Monday	Same time Thursday
5pm to midnight Monday	10am Friday
Midnight to 10am Tuesday	10am Friday
10am to 5pm Tuesday	Same time Friday
5pm to midnight Tuesday	Same time Saturday
Wednesday	Same time Sunday
Thursday	Same time Monday
Friday	Same time Tuesday
Midnight to 10am Saturday	Same time Wednesday
From 10am Saturday	10am Wednesday
Sunday	10am Wednesday

15. There are occasions where the standard 72 hours notification period is not required (see paragraphs 26 to 42) which you should consider before giving notice of removal.

### Family cases (other than those identified as ‘port cases’)

16. Since 1 March 2011, a new end-to-end process has been in place for working with families with children under 18 years of age. This includes the provision of PDA as part of the last ‘ensured return’ stage of the process. In very exceptional cases, families who are part of the ‘ensured return’ stage may be held at Tinsley House IRC where the independent family returns panel does not consider the family to be suitable for the PDA.
18. Families held in PDA or in Tinsley House (when the IRC is being used as an alternative to PDA) are subject to the same notification periods as other enforcement cases, unless one or more of the exceptions set out in paragraphs 26 to 42 below applies or the family is subject to a limited notice removal.

### Third country (TC) and non-suspensive appeal (NSA) cases

19. Third country (TC) and non-suspensive appeal (NSA) cases do not attract a statutory (in-country) right of appeal before removal. In these cases, a minimum of **five working days** notice should be given between informing the detainee of the removal directions and the removal itself to allow him or her to access the courts.
20. The table below shows the notification times or earliest removal dates for TC and NSA cases. It does not take account of bank holidays, which must be added as extra non-working days. In the event that the removal directions are to be served by non-HOIE staff the case owner must satisfy him/herself that the appropriate time frame for service has been selected and must specify the time period during which service must take place on the covering fax header sheet.

Removal directions set for:	Notify by latest:
Monday	Same time the preceding Monday (seven days before).
Tuesday	Same time the preceding Tuesday (seven days before).
Wednesday	Same time the preceding Wednesday (seven days before).
Thursday	Same time the preceding Thursday (seven days before).
Friday	Same time the preceding Friday (seven days before).
Saturday	Same time the preceding Saturday (seven days before) or Friday of the previous week (eight days before) if you are not able to serve removal directions at the weekend.
Sunday	Same time the preceding Sunday (seven days before) or Friday of the previous week (nine days before) if you are not able to serve removal directions at the weekend.

22. There are instances where standard notification may not be required for NSA and third country cases (some family cases for example – see paragraph 35 below), which case owners should consider before setting removal directions.

### **Charter flights**

23. Some chartered flights may be subject to special arrangements because of the complexity, practicality and cost of arranging an operation. Detainees being removed by charter flights subject to special arrangements must be given a minimum of **five working days** notice of removal so that he or she may seek legal advice. The purpose of this extended period of notice of removal directions is to minimise the number of last minute applications for injunctive relief to the Upper Tribunal or High Court and to encourage detainees to inform the Home Office at the earliest opportunity of any further representations they wish to make.

24. For operational reasons, the charter flight may include detainees who have been provided with the standard 72 hours notice of removal rather than five working days. Where a JR application is made in these cases this will normally result in the deferral of removal.

25. To protect the safety of those on board a charter aircraft to particular destinations, it may be necessary, for security reasons, to withhold the exact details of departure and or the destination. In these cases, all detainees will still be given the minimum of five working days notice of removal, but will be informed that they will be removed 'no sooner than five working days' from the date where removal directions are issued.

### **Exceptions to standard periods of notice**

26. This section details when providing standard notification when serving removal directions is not required.

27. Standard notification of removal directions does not need to be given where:

(a) an exception applies or

(b) a second period of notification is not required following a failed or deferred removal.

### **Limited notice removals**

28. Limited notice removals are where families or certain enforcement cases are informed that their departure from the UK is to take place within a specified period, but they are not provided with the exact date. That specified period will not be less than 72 hours and not more than 21 calendar days following the time and date of service of the notice. Limited notice of removal will not be suitable for every family or enforcement case, but case owners may consider such cases where non-compliance or disruption by the family or individual has led to a previous failed return.

## Removals under Immigration Act 2014 (IA2014)

29. There is no requirement to serve removal directions on detainees who are being removed under the provisions of the IA 2014. This means that a detainee can be removed from an IRC without being given any notification of their removal.
30. In IA2014 cases, the detainee is notified of a 'removal window' during which removal can take place without any further notice, during a three month period. In these cases a liability to remove notice is served giving three or five working days notice before the 'removal window' opens.
31. If a detainee submits an appeal or claim e.g. a HR claim during the 'removal window' and the appeal or claim is later refused, then a new liability to remove notice is served, providing a new three or five day notice period before the 'removal window' opens again. In these cases a detainee cannot be removed until after the 'removal window' opens again.

## Port cases

32. Detainees removed **within** seven calendar days of being refused leave to enter **do not** require the standard 72 hours' notice.
33. Detainees being removed **after** seven calendar day's notice of being refused leave to enter **require** the standard 72 hours' notice.
34. Case owners should refer such detainees where standard notification is not required and who raise a human rights claim to the operational support and certification unit (OSCU) to decide whether or not the claim can be certified and the removal directions held.

## Third country (TC) and non-suspensive appeal (NSA) family cases

35. Families who are third country or non-suspensive appeal cases **and** are being returned under the **ensured return stage** have already been given notice of removal under the **required return stage**. Such families therefore only require the standard 72 hours' notice of removal, and not five working days.

## Failed removal cases

36. Where a detainee was provided with the standard notice of removal **and** the removal has either failed or has been deferred, it may not be necessary to provide a further period of notice where the new removal directions are re-set within 10 calendar days of the failed or deferred removal;
37. This could apply where:
- the flight cannot depart as scheduled due to a technical fault with the aircraft or transport difficulties with the relevant contractor including problems with the availability of aircraft, related aircrew or the scheduled departure slot



- the scheduled departure time of the flight has had to change for other reasons such as adverse weather conditions, industrial action or other significant factors that can be reasonably deemed to be outside of IE or UKVI's control
- the detainee has attempted to frustrate their removal by being non-compliant, for example refusing to leave the centre or board the vehicle
- where removal has been disrupted by another individual's behaviour
- removal was deferred following a JR of removal which has been concluded and the judge has given a finding of 'no merit' or 'renewal should not act as a bar to removal'.

38. However, there are instances where standard notice must continue to be given:

- the detainee is being removed to a different country than specified on the failed or deferred removal directions
- further representations have been received and refused since the earlier failed or deferred removal directions
- more than 10 calendar days have passed since the initial failed or deferred removal directions.
- In certain circumstances where there has been a change of (removal) route (see points 35 to 38 below for circumstances)

39. A further period of notice is not required for removals re-set within the 10 calendar days where the detainee was previously due to transit via a different city, but is now being removed on a direct flight. For example, where a detainee was to be removed on a flight from London to Abidjan via Lagos, but the new removal directions are on a direct flight from London to Abidjan, no further notice is required.

40. A further period of notice is also not required for removals re-set within the 10 calendar days where a place of transit is **introduced** in the new removal directions which is in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or Switzerland.

41. A further period of notice **is required** where a transit point is introduced in the new removal directions, which is in a country not listed in paragraph 36 above.

42. For example, if the original removal directions were set from London to Abidjan via Lagos and the new removal directions changed the place of transit from Lagos to Paris, a new period of notice is **not** required. However, if the transit point changed from Lagos to Nairobi, a new notice period **would** be required.

## Handling of judicial reviews

43. 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. Types of events that could be subject to a judicial review are:

- a failure to act – such as a delay in issuing a document or making a decision
- the setting of removal directions – which usually means that the person believes their removal would infringe their rights (for example, under the Refugee Convention or the European Convention on Human Rights)
- a refusal to accept that further submissions amount to a fresh claim
- a decision to certify a claim for asylum as clearly unfounded
- a decision to detain or maintain detention.

44. Judicial review in Scotland is pursued by means of a petition to the Court of Session in Edinburgh.

45. Responsibility for handling judicial review applications and a decision whether or not to defer removal rests with the case owner. Chapter 60 of the EIG provide full guidance to case owners. Immigration Enforcement staff working at DEPMU, in immigration removal centres, short-term holding facilities or pre-departure accommodation are advised to read the guidance to familiarise themselves with the handling of judicial reviews.

46. Legal representatives should correspond directly with the case-owning office about any application for a judicial review or indeed a request for removal directions to be deferred. Legal representatives who attempt to make representations to a centre or DEPMU should normally be referred to the case-owner. However, if the enquiry by a legal representative is made outside of the operating hours of the case working office, the legal representative should be referred to Immigration Enforcement's command and control unit, who will also assist in UKVI cases including DAC and TC Unit.

47. If the removal is imminent, the matter should be referred to the OSCU for advice, or in their absence to the duty director for detention operations to take a decision whether or not the removal should be deferred.

### **Injunctions in removal cases**

48. An injunction is an order from a court requiring an individual or a body (for example, IE) to do something or to refrain from doing something. For example, a court may issue an injunction preventing a detainee's removal.

49. Injunctions are normally valid for a specific period of time after which the injunction must either be renewed by a court or it lapses. The most common form of injunction detention operations will encounter will be an injunction not to remove an individual from the United Kingdom.

50. An injunction may be granted verbally over the telephone, particularly if reference is made to a duty judge after the court has closed.
51. Legal representatives who have persuaded a court to issue an injunction should liaise with the case owner directly. Those who attempt to contact the centre, DEPMU or escorts directly should normally be referred to the case working office. However, if the removal is imminent, staff should take immediate steps outlined below.
52. If a legal representative claims to have obtained an injunction preventing removal, staff should seek to confirm the facts, ideally (time permitting) in writing by either requesting a faxed copy of the injunction or a letter confirming the details (for example, 'Mr. Justice X has this evening at [time] granted an injunction over the telephone barring removal').
53. The case owner should be alerted without delay and provided with full details given by the legal representative; centre staff should seek the caseworker's instruction. If there is insufficient time (the removal is imminent), DEPMU should be advised without delay to halt the removal.
54. DEPMU should take all reasonable steps without delay, including advising the escorting supplier conveying the detainee to the airport or accompanying the detainee on the removal, and the removals facilitation unit (RFU) at the port of removal to halt the removal. It is vitally important that clear records are kept of conversations and telephone calls, which are dated, timed and signed setting out what action has been taken to attempt to stop the removal. These should be placed onto CID and include:
- the name of the person informing you that an injunction has been granted, and the firm they represent
  - the date and time you were made aware of an injunction
  - the name of the judge issuing the injunction, and the date and time of issue
  - whether confirmation of the injunction was provided, and if so the date and time received
  - details of other units or staff contacted to defer the removal directions, including the name, date and time of the call.
55. Whether or not the removal is successfully halted, the OSCU should be notified without delay of the fact that notification of an injunction has been received, the action taken to try and halt the removal and whether or not this was successful. If the removal could not be halted or there was an inability to contact OSCU the duty director for detention operations should be notified at once.
56. Any queries about this DSO should be addressed to the head of operations for detention.

## Revision History

Review date	Reviewed by	Review outcome	Next review