



Home Office

**Immigration Removals, Enforcement & Detention  
General Instructions**

# **Liability to administrative removal (non-EEA): consideration and notification**

Version 3.0

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# About this guidance

This guidance tells Immigration Enforcement Immigration Officers (IOs) and caseworkers who may be liable to administrative removal from the UK under [section 10 of the Immigration and Asylum Act 1999](#) (the 1999 Act), what factors to consider when deciding whether a person is liable to be removed, when and how to bring someone's leave to an end, how to serve a notice of liability to administrative removal, and how to notify a person of their liability to be detained.

## 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 also email the Guidance Rules and Forms team.

## Clearance and publication

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

- version **3.0**
- published for Home Office staff on **06 April 2017**

## Changes from last version of this guidance

Immigration Rules change: grace period for overstayers reduced from 90 to 30 days

### Related content

[Contents](#)

# Administrative removal: categories

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers about the categories of immigration breaches that may result in a person becoming liable to administrative removal from the UK under [section 10 of the Immigration and Asylum Act 1999](#) (the 1999 Act).

These include people who:

- require leave to enter or remain in the UK but do not have it (such as overstayers, illegal entrants, and those refused leave at a port of entry)
- are found to be breaching a restriction or condition of their visa to enter or remain in the UK
- seek or obtain leave by deception
- are family members of a person being removed

See also European Economic Area administrative removal: consideration and decision.

## Overstayers

A person who overstays their limited leave is liable to administrative removal under section 10 of the 1999 Act. When considering the applicability of section 10 removal powers it is best practice to apply the interpretation of overstaying as found in [paragraph 6 \(Interpretation\) of the Immigration Rules](#):

“Overstayed’ or ‘Overstaying’ means the applicant has stayed in the UK beyond the:

- time limit attached to the last period of leave granted, or
- period that his leave was extended under sections 3C or 3D of the Immigration Act 1971.’

Note that:

- an invalid application does not trigger section 3C (see [Mirza and Ors, R \(on the applications of\) v Secretary of State for the Home Department \[2016\] UKSC 63 \(14 December 2016\)](#))
- following amendments made to the appeals regime by the Immigration Act 2014 on 6 April 2015, curtailment and revocation decisions no longer give rise to a right of appeal, with the result that section 3D applies only to persons whose leave was curtailed or revoked **prior to that date**

## Workers in breach

Where a person is found to be working in breach of a restriction or prohibition on employment as set out in the conditions of their visa to enter or remain in the UK, their leave may be curtailed with immediate effect under [paragraph 323\(i\) with reference to 322\(3\) of the Immigration Rules](#), such that they become liable to administrative removal under [section 10 of the Immigration and Asylum Act 1999](#). The breach must be of sufficient gravity to warrant such action. There must be firm

and recent evidence (normally within 6 months, but consider on a case-by-case basis) of working in breach, including at least one of the following:

- an admission by the offender of working in breach
- a statement by the employer implicating the suspect
- documentary evidence such as pay slips, the offender's details on the pay roll, national insurance records, tax records, P45
- sight by the Immigration Officer (IO), or by a police officer who gives a statement to that effect, of the offender working, preferably on 2 or more separate occasions, or on one occasion over an extended period, or of wearing the employer's uniform

In practice, sight only evidence will be insufficient and must be backed up by other evidence.

Where the evidence points only to a breach many months in the past a warning must be issued and a report submitted.

See also Illegal working operations.

## Illegal entry

A person is an illegal entrant and liable to be removed under schedule 2 to the Immigration Act 1971 if they entered the UK unlawfully without leave, whether knowingly or not. Entry without leave includes:

- [clandestine entry](#)
- [unwitting evasion of the control](#)
- absconding from temporary admission, see Non-compliance and absconder process

## Returning illegal entrants

A person who has apparently returned to the UK and been granted entry having previously been dealt with as an illegal entrant or other offender will merit close questioning as to whether the full facts of their immigration history were known when they were granted leave.

### Related content

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# Illegal entry: by type

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers about the categories of illegal entry to the UK.

## Page contents:

[Clandestine entry](#)

[Unwitting evasion of the control](#)

[Illegal entry in breach of a deportation order](#)

[Re-entry in breach of a ban](#)

[Children as illegal entrants](#)

[Asylum seekers entering illegally](#)

[Students as illegal entrants](#)

[Crew entering illegally](#)

[No evidence of lawful entry \(NELE\)](#)

[NELE: entry checks](#)

[NELE: considering evidence following enquiries](#)

[NELE: administrative action without interview to treat a NELE as an illegal entrant](#)

[NELE: method of entry questionnaire](#)

[NELE: considering removal](#)

## Clandestine entry

People who enter the UK clandestinely and evade the immigration control are illegal entrants. Methods of clandestine entry include those who:

- enter concealed in a vehicle including:
  - cars
  - lorries
  - vans
  - caravans
  - motor homes
  - any other commercial vehicle
- arrive by sea at a port of entry but then do not pass through the control
- arrive at an uncontrolled point such as from a small boat or light aircraft and fail contact the nearest Border Force office to obtain clearance to enter the UK

A person who has entered without leave and is later detected outside a port of entry control area will be dealt with as an illegal entrant.

See also:

- clandestine entrants, see Entry without leave
- section 'Working with police' of Partnership working
- Clandestine entrants maritime juxtaposed and other locations

## Unwitting evasion of the control

Some people may unwittingly enter without leave, such as those who:

- present a passport to the Border Force officer on arrival who fails to endorse it when an endorsement is required for leave to enter to be granted
- by-pass the immigration control
- enter illegally from the Republic of Ireland

Others, despite no false representations being made, may be admitted by the Border Force officer on arrival in the erroneous belief that they are exempt from control or had right of abode, for instance, as a diplomat or holder of a British overseas citizen passport.

Such people are illegal entrants but the unwitting nature of their entry may be a mitigating factor and each case must be considered on its merits.

Where no mitigating factors exist a RED.0001, notice of liability to removal can be served.

If a person would have qualified for leave to enter, submit a report to a Home Office caseworking section, as it may be appropriate for them to be advised to apply for leave to remain.

### **Illegal entry in breach of a deportation order**

Under [section 33\(1\)\(a\) of the Immigration Act 1971](#), a person who enters or seeks to enter, or has entered, in breach of a deportation order is an illegal entrant. A deportation order against a person invalidates any leave to enter or remain in the UK given to them before the order is made or while it is in force.

See also Entry in breach of a deportation order.

### **Re-entry in breach of a ban**

Under the Immigration Rules offenders may be banned from returning to the UK for one year, 2 years, 5 years, 10 years or indefinitely depending on the particulars of each case. Since offenders subject to re-entry bans fall for mandatory refusal of leave, where such a person is encountered they will merit close examination as to whether they entered the UK illegally by deception.

For further information, see Re-entry bans.

### **Children as illegal entrants**

What to consider when investigating suspected illegal entry by children.

When considering cases involving children, the duty imposed by [section 55 of the Borders, Citizenship and Immigration Act 2009](#) with respect to having regard to the need to safeguard and promote the welfare of children must be complied with.

Where third person deception has been used on the child's behalf, such as by a parent, even if the child is unaware of the deception employed, they may be treated as if they were party to the deception perpetrated by the third person. [Section 33\(1\) of the Immigration Act 1971](#) includes in the definition of an illegal entrant, a person entering or seeking to enter by means which include deception by another person.

See also section 'Administrative interviews: children' of Enforcement interviews.

## Asylum seekers entering illegally

Consideration when investigating the suspected illegal entry of a person who has claimed asylum.

The case of **Norman** established that a person who sought entry as a visitor when their true intention was to claim asylum was an illegal entrant. Had the Immigration Officer (IO) on arrival known that asylum was intended, then they would not have granted entry as a visitor.

## Students as illegal entrants

What to consider when investigating a suspected illegal entrant who entered the UK for study.

The case of **Adesina** (1988) established that it was sufficient for the Immigration Officer (IO) to show that if the person given leave to enter as a visitor intended studies on arrival, then they are an illegal entrant as, had the IO known that studies were intended, they would not have granted entry as a visitor. It is irrelevant to the illegal entry contention that leave to enter as a student might have been granted.

In the case of **Brakwah** (1989), it was held that somebody who enters wishing to study, if they can get into college, can properly be described as intending to study at the time when they seek entry to the country. That is, if they had it in mind to study, and it can be proved to the required standard that they lied when they said that they wished to enter for a few weeks as a visitor and that lie was the effective means of obtaining leave to enter for another purpose, then they can be treated as an illegal entrant.

## Crew entering illegally

Crew member of a ship or aircraft who are found to have entered the UK illegally, are liable to administrative removal under [section 10 of the Immigration and Asylum Act 1999](#).

### Definition of 'crew'

[Section 33\(1\) of the Immigration Act 1971](#) defines 'crew' as all people actually employed in the working or service of a ship or an aircraft. In practical terms, this may include for example waiters, croupiers, hairdressers, painters and repairmen arriving with the ship from abroad and departing with it or being repatriated. However, crew lists sometimes include supernumeraries and passengers. Such people may not be regarded as crew members and do not benefit from [section 8\(1\) of the Immigration Act 1971](#).

Where the above definition is met, serve form IS85A (notice to subject that they are to be removed as a crew member).

See also:

- Seamen
- Illegal entrants arriving on a merchant ship
- Seamen facing prosecution

## No evidence of lawful entry (NELE)

If an individual is unable or unwilling to provide any evidence that they have a legal basis to be in the UK and there is no trace of them within the Home Office or other relevant records, this may indicate that they are an illegal entrant. However, the absence of a passport and/or the lack of other corroborative evidence is not in itself sufficient grounds for treating them as an illegal entrant.

## NELE: entry checks

Extensive checks must be made in every case where the individual's method of entry is uncertain or unknown for information on how the individual entered the UK.

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### **NELE: considering evidence following enquiries**

It may be possible to show, following a full interview and carrying out as many checks as possible at the time, that there is sufficient weight of negative evidence to infer that the person last entered without leave or by deception. The evidence needs to be of sufficient strength and quality to justify a finding that deception has been used and must be scrutinised carefully by a senior officer before a decision is made.

The person must be given the opportunity to comment on the evidence, or lack of evidence, of their lawful entitlement to be in the UK and invited to comment on the reasons why they or anyone else cannot verify their right to enter or remain.

If, during interview, a person can make a case, which, at first sight appears to have merit, that they did obtain leave to enter, then you must prove on the balance of probabilities (for definition see [Leave to enter or remain by deception](#)) that deception was employed to obtain entry to the UK before illegal entry action can be considered, or, if that leave has expired, they can be treated as an overstayer. Both options may be considered depending on the circumstances of the case.

If the individual claims to have been given leave to enter the UK by virtue of a notice given orally under [article 8\(1\) of the Immigration \(Leave to Enter or Remain\) Order 2000](#), or to a responsible third party (such as a coach party leader) under article 9 of the 2000 Order, the onus is on the individual to show the manner and date of entry into the UK (such as a coach ticket or other evidence to show the date and means of entry). If they cannot do so, you must consider the individual merits of the case, which may show that it has been proven, on the balance of probabilities that the person is an illegal entrant.

Where, on the balance of probabilities, the weight of evidence suggests, that the person is not a British Citizen and has no known lawful right to reside in the UK it is reasonable to conclude that they are a person who is subject to control under the Immigration Act 1971. Where the person requiring leave has not been granted leave

under [section 3\(1\)a of the Immigration Act 1971](#) but has evidently entered the UK it is reasonable to conclude that they entered unlawfully.

Although the above conditions may be satisfied, the absence of material evidence to make a positive identification of the person and/or their nationality, the date and method of their entry to the UK means that the most careful consideration must be given to whether to detain them under [paragraph 16\(2\) of schedule 2 to the Immigration Act 1971](#) or [section 62 of the Nationality, Immigration and Asylum Act 2002](#). Detention in these cases must be approved by a grade not below that of Her Majesty's Inspector (HMI) from the outset and the file must remain under constant review to ensure that all avenues of enquiry are pursued. In cases of doubt, the HMI must refer to the deputy director or in their absence an operational assistant director.

## NELE: administrative action without interview to treat a NELE as an illegal entrant

Caseworkers may serve notice of liability to removal (RED.0001) without interview where there is clear evidence that an individual has entered illegally and the facts of the case are not in dispute.

Such cases may include those cases where the individual has given a statement, either directly or through their representative to the effect that they have entered illegally. Evidence to support this would take the form of an admission in the application on file, or during an asylum or other interview.

The caseworker must be able to demonstrate that they have pursued all reasonable lines of enquiry concerning the individual's method of entry into the UK before concluding on the balance of probabilities that the person has entered illegally.

See:

- [NELE: entry checks](#)
- [NELE: method of entry questionnaire](#)

If an individual states that they have been granted a visa to enter the UK this claim must be investigated and disproven before concluding that the applicant entered illegally. Caseworkers must minute the case file and complete CID notes to show what checks have been completed, and the outcome of those checks.

Service without an interview is **not** appropriate where:

- there are grounds to suspect illegal entry by verbal deception
- it is intended to prosecute the individual

## NELE: method of entry questionnaire

Where the person is not detained and the caseworker cannot determine the person's lawful entry they may invite the person to complete an Immigration Status questionnaire (ASL.1944). This must be sent to the person with accompanying guidance notes (ASL.1945) and a covering letter (ASL.1943) to complete detailing their entry into the UK.

The caseworker must minute the case file detailing all investigations made, to confirm that all reasonable efforts have been made to establish the individual's immigration status. They must review all the available evidence, including any non-co-operation by the individual, and on the balance of probabilities may conclude that the applicant is an illegal entrant.

### NELE: considering removal

Unless a disclaimer is signed and there is sufficient evidence to show that the person is acceptable to the country they wish to return to, authority to remove a person being treated as a NELE must be sought by an HMI from the Deputy Director, or in their absence from an operational Assistant Director.

In cases where a notice of liability to removal has been served without an interview the case must be reviewed before removal directions are set in order to verify that no new information has come to light since the service of the notice and that there are no compassionate circumstances or other factors that might mitigate against removal. Where new evidence or facts have emerged that were not known at the time of the original decision or the grounds for treating the person as an illegal entrant are being challenged, then the person must be interviewed and the case reviewed to decide whether the person remains liable to removal.

### Related content

[Contents](#)

# Administrative removal: considerations

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers about the factors to consider when assessing a person's circumstances, and whether they qualify for leave or whether they are liable to administrative removal.

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### [Liability to removal](#)

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[Overstaying specific grounds: sample wording](#)

### [Removal of family members](#)

[UK born children holding British citizenship](#)

[Family members specific grounds: sample wording](#)

## Liability to removal

When encountered, a person may satisfy you that they have outstanding leave to enter or remain but doubts may exist as to whether they continue to qualify for that leave. Where the individual's account seems credible then any necessary enquiries to establish exactly what they are doing can be followed up in a routine manner.

Enquiries must be made at the earliest opportunity to determine what action is appropriate in all the circumstances. If, despite the initial doubts, you are satisfied that the person does, in fact, continue to meet the requirements of the Immigration Rules then they must be released from detention without delay. Where, however, they no longer qualify under the rules, curtailment may be appropriate.

See also [Curtailment or revocation of leave by service of RED.0001](#).

## People not subject to, or exempt from, immigration control

British Citizens and people with a right of abode in the UK are not subject to immigration control. For more information concerning who is included within this definition see Common travel area.

Additionally, various categories of individuals are exempt from the requirement to have leave and so are not subject to administrative removal under section 10 of the Immigration and Asylum Act 1999 (as amended). These include:

- consular staff: under [section 8\(2\) of the Immigration Act 1971](#), in conjunction with the Exemption from Control Order 1972
- diplomats: under section 8(3) of the Immigration Act 1971 (as amended)
- members of HM Forces or certain other armed forces undergoing training in the UK (under section 8(4) of the Immigration Act 1971)

Consular staff and diplomats who have ceased to be exempt and require leave are to be treated as if they had been given leave to remain in the UK for a period of 90 days beginning on the day on which they ceased to be exempt (see [section 8A of the Immigration Act 1971](#)).

See guidance on persons exempt from control.

### Lodged applications: no CID record

The following is guidance on how to check if a suspected immigration offender has lodged an application which is not recorded on CID.

In instances where enforcement staff are provided with information that a suspected immigration offender has lodged an application with the Home Office for consideration, and a search of CID fails to find an application, enquiries may be made to establish whether an application has been made.

See also [Application or other action pending](#).

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## Leave to enter or remain by deception

This section provides guidance on how to consider a case of someone who obtained leave to enter or remain in the UK by deception.

This section relates only to illegal entry for the purposes of **administrative immigration control** and describes the types of breach that may result in a person being considered to be an illegal entrant under [section 33\(1\)\(a\) of the Immigration Act 1971](#) and liable to removal under [section 10 of the Immigration and Asylum Act 1999](#).

This section does **not** describe the burden of proof or types of evidence required to prosecute a person for the offence of illegal entry under [section 24\(1\)a of the Immigration Act 1971](#).

### Definitions of terms:

**Material deception:** this guidance makes reference to ‘material deception’. In this context ‘material deception’ means that the deception is used in relation to an issue which is or may be determinative of the application for leave. Whether or not it is necessary to prove that the deception used was material depends on the case types and these are described below.

Note: that where the relevant legislative provision requires the leave to have been obtained by deception, you must be able to show that leave would not have been granted but for the deception.

**Balance of probabilities:** the term ‘balance of probabilities’ is used extensively throughout this guidance in relation to the necessary standard of proof required to decide a person is an illegal entrant. Balance of probabilities, means that there is proof that the fact in issue more probably occurred than not.

**Burden of proof:** the onus, as always in such situations, is on the officer making the assertion to prove their case and the evidence needs to be of sufficient strength and quality to justify a finding that deception has been used and must be scrutinised carefully before a decision is made.

See also [Curtailment or revocation of leave by service of RED.0001](#).

To establish illegal entry by deception and thereby consider detention under [paragraph 16\(2\) of schedule 2 to the Immigration Act 1971](#) it must be shown that, on the balance of probabilities, the person has sought to enter the UK, or entered the country having obtained leave to do so, by practising some form of deceit or fraud.

Non-disclosure of a material fact (that is, one that is relevant to an issue which is or may be determinative of the application for leave) can also amount to entry by deception in breach of immigration law (ie if there was dishonest intent) and a person seeking/gaining leave to enter by such a deception is an illegal entrant as defined by [section 33\(1\) of the Immigration Act 1971](#).

**Where there is evidence of leave, the IO will have to prove illegal entry by deception on the balance of probabilities** that deception was employed to obtain entry to the UK before illegal entry action can be considered.

Where a person seeks or gains limited leave to remain by deception that leave needs to be curtailed before a removal can take place. Where they have indefinite leave however the leave needs to be revoked under [section 76 \(2\) of the Nationality, Immigration and Asylum Act 2002](#), as amended by the [Immigration Act 2014](#).

Evidence of deception must be clear and unambiguous. Where possible, obtain original documentary evidence, admissions or statements from 2 or more witnesses which substantiate that deception has been used.

The deception does not need to be material to the decision where it is 'active' deception (where a migrant submits false or fraudulently obtained documentation or makes a false statement). In contrast, where the deception relates to the non-disclosure of facts, it must be material to the immigration decision. In this context 'material' deception means that the deception is used in relation to an issue which is or may be determinative of the application for leave.

The evidence must always prove **on the balance of probability** (proof that the fact in issue more probably occurred than not) that deception had been used to gain the leave, whether or not an admission of deception is made. The onus, as always in such situations, is on the officer making the assertion to prove his case and the evidence needs to be of sufficient strength and quality to justify a finding that deception has been used and must be scrutinised carefully before a decision is made.

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## Use of forged documents

It is an offence under [section 26\(1\)\(d\) of the Immigration Act 1971](#) to alter documents issued, or made under or for the purposes of the Immigration Act 1971. It is also an offence to use or possess any passport, certificate of entitlement, entry clearance, work permit or other document which the holder knows, or has reasonable cause to believe, to be false. Where a foreign national has entered by presenting a British or European Economic Area (EEA) passport, to which they are not entitled, they have employed deception in breach of section 26(1)(c) of the Immigration Act 1971 and have entered illegally. In such cases:

- obtain details as to what type of passport was used

- establish the whereabouts of the passport
- decide whether the person's photograph was substituted
- establish the name and other details in the passport, or whether the person was a 'look-alike'
- establish the date of entry, if possible, and ensure that that date was the last entry to the UK

## Silent deception and duty of candour

When a person enters the UK, there is no positive duty of candour on them to disclose material facts to an IO who does not ask about them. Non-disclosure does not in itself constitute illegal entry, but a person's conduct, or conduct accompanied by silence, at their on-entry interview may indicate that they have entered illegally having deceived the entry clearance officer or the IO on arrival. For instance, a person who remains silent about a previous breach of the immigration laws, which they know would be detrimental to their application, may commit an offence under [section 24A of the Immigration Act 1971](#) if their non-disclosure of a fact alters the truth of what has been said.

Likewise, a person whose actions result in a false representation being made on their behalf to an entry clearance officer or an IO that they know to be material to the grant of leave to enter, and who remains silent, may have committed offences under section 24A. The age of the person and their relationship to the individual making the statement must be taken into account.

## Third party deception

A person can be an illegal entrant if a third party has dishonestly secured their entry. It makes no difference that the entrant knows nothing of the breach of immigration law they are committing. In the case of **Khan** (1977), it was held that the person was an illegal entrant despite the fact that she was unaware that her husband had presented a false passport to secure her entry. In the case of children, the deception of a parent is imputed to the children.

See also [Children as illegal entrants](#).

## Deception when entry clearance has effect as leave to enter

[Article 4 of the Immigration \(Leave to Enter and Remain\) Order 2000](#) sets out the extent to which entry clearance has effect as leave to enter.

The Entry Clearance Officer (ECO) does not grant leave, but issues an entry clearance that has effect as leave to enter when the person arrives in the UK. An IO at a port of entry then conducts an examination to establish that:

- the passenger is the rightful holder of the document and that the visa (entry clearance) is genuine
- there has been no change of circumstances to cause the leave to be cancelled

Where a person has employed deception in their application for entry clearance in order to obtain an automatic conferral of leave to enter upon arrival in the UK, they will be guilty of an offence under [section 24A of the Immigration Act 1971](#), as they

will have obtained leave to enter by deception. It does not matter that the person deceived the ECO rather than the IO as the deception ultimately led to the obtaining of leave to enter.

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## Illegal entrants

### Illegal entry specific grounds: sample wording

When taking removal action against an illegal entrant, you must cite the specific grounds for concluding that the person is an illegal entrant within the relevant forms, for example, the RED.0001 and IS.96.

The following table provides sample wordings you use must use when citing those specific grounds:

Specific ground	Sample wording
No credible account of entry	You are specifically considered a person who has entered the United Kingdom without leave because you are unable to give a credible account of your entry to the United Kingdom.
Entered with assistance of agent	You are specifically considered a person who has entered the United Kingdom without leave because you admit to having entered the United Kingdom unlawfully with the assistance of an agent.
Clandestine entry	You are specifically considered a person who has entered without leave because you have admitted to entering the United Kingdom hidden in a vehicle.
Entry by presenting false or forged British or EEA passports	<p>You are specifically considered a person who has entered the UK without leave because you presented a <b>British Passport/EEA ID card/Passport</b> you were not entitled to and as a national of <b>[insert nationality]</b> you have therefore entered the UK without obtaining leave to enter which is a breach under section 3 (1) (a) and an offence under section 24(1)(a) Immigration Act 1971.</p> <p>Or</p> <p>You presented a counterfeit/forged <b>British Passport/EEA ID card/Passport</b> to gain entry into the UK and as a national of <b>[insert nationality]</b> you have entered the UK without obtaining leave to enter. You have therefore entered the UK</p>

Specific ground	Sample wording
	<p>without obtaining leave to enter which is a breach under section 3 (1) (a) and an offence under section 24(1)(a) Immigration Act 1971 (as amended).</p> <p>Or</p> <p>You are specifically considered a person who has entered by documentary deception because record checks have shown that the passport you claimed to have used for your last entry was reported lost by its <b>[insert nationality]</b> owner. In addition fingerprint evidence indicates that you are in fact an <b>[insert nationality]</b> national.</p>
Unable to show evidence of lawful entry (NELE)	<p>You are specifically considered a person who has been unable to show evidence of lawful entry because you cannot produce the passport on which you claim to have entered the United Kingdom and you have failed to complete/return a method of entry questionnaire when asked to do so.</p> <p>Or</p> <p>You are specifically considered a person who has been unable to show evidence of lawful entry because you cannot produce the passport on which you claim to have entered the United Kingdom.</p>
Entered in breach of a deportation order	<p>You are specifically considered a person who has entered in breach of a deportation order as you were removed from the United Kingdom on <b>[insert date]</b> after a deportation order was signed against you on <b>[insert date]</b>. That order has not been revoked and you returned to the United Kingdom on or around <b>[insert date]</b>.</p>

## Overstaying leave

For a definition see [Overstayers](#).

## Evidence of overstaying

There must be proof of overstaying, and the following are indications that the person is an overstayer:

- Home Office records including files and data records
- passport
- some other form of documentary evidence that is clearly related to the subject, their travel and entry to the UK, such as a landing card
- the offender's own admission as to their date of entry and duration of leave

Do not always accept at face value that the last entry in a passport is the last date of entry as they may have left and subsequently re-entered on another passport, clandestinely or in some other way, or because they last entered on or after 30 July 2000 under one of the provisions of the Immigration (Leave to Enter and Remain) Order 2000.

Where there is insufficient evidence to support the contention of overstaying, submit a report to the relevant casework section for consideration of further action. Where possible, the report must contain a statement about the person's claimed status and circumstances, and must refer to any other supporting evidence.

## Leave extended by 3C and 3D

When a person makes an in-time application for variation of their leave, and the leave then expires before a decision is taken, [section 3C of the Immigration Act 1971](#) (the 1971 Act) means that the leave, and any conditions attached to that leave, automatically extends to the point at which the decision on the application is made (note [that an invalid application does not trigger 3C leave](#) (Supreme Court decision)). The 3C leave continues during the period that an in-time appeal could be brought, even if no appeal is submitted. If no appeal is brought the leave ends at the same time as the deadline for raising an in-time appeal. If an appeal is lodged, the 3C leave and the conditions attached to that leave continue while the appeal (under [section 82 of the Nationality, Immigration and Asylum Act 2002](#)) is pending.

[Section 3D of the 1971 Act](#) provided a similar protection where a person's leave is curtailed or revoked and they have a right of appeal against that decision. Note, however, that as of 6 April 2015 curtailment and revocation of leave decisions do not give rise to a right of appeal. For more information see guidance 3C and 3D leave.

For people with an outstanding application, see [Completion of an IS.96](#).

## Overstaying specific grounds: sample wording

When taking removal action against an overstayer, you must cite the specific grounds for concluding that the person is an overstayer within the relevant forms, for example, the RED.0001 and IS.96.

The following table provides sample wordings you use must use when citing those specific grounds:

Specific ground	Sample wording
Home Office records show overstayed	You are specifically considered a person who has overstayed their period of granted leave because records show that on <b>[insert date]</b> you were granted leave to enter as a visitor for 6months by an Immigration Officer at <b>[insert port]</b> . It was only in <b>[insert date]</b> that you applied to regularise your stay here.
Passport shows overstayed	You are specifically considered a person who has overstayed their period of granted leave because your passport shows

Specific ground	Sample wording
	<p>you were given leave to enter as a visitor for 6months by an Immigration Officer at <b>[insert port]</b> on <b>[insert date]</b> and it was only in <b>[insert date]</b> that you applied to regularise your stay here.</p>
<p>Visa shows overstayed</p>	<p>You are specifically considered a person who has overstayed their period of granted leave because you were issued with a visit visa on <b>[insert date]</b> which was valid until <b>[insert date]</b>. Holders of visit visas may only remain in the United Kingdom for a maximum of 6months on any one visit, or until the visa expires if less than 6months. You arrived in the United Kingdom on <b>[insert date]</b> and were landed in line with the visa <b>[for example, until [insert date]]</b>. You did not however apply for leave to remain in the United Kingdom until <b>[insert date]</b>.</p>
<p>British Irish Visa Scheme (BIVS) Overstayer: Irish issued visa</p> <p>See also Common travel area</p>	<p>You are specifically considered a person who has overstayed their period of leave. You were issued with an Irish visa eligible under the British-Irish Visa Scheme (BIVS) on <b>[insert date]</b> which was valid until <b>[insert date]</b>, and given leave to land or be in the Republic of Ireland by the Irish authorities pursuant to that Irish visa which expired on <b>[insert date]</b>.</p> <p>Holders of BIVS visas who travel on to the United Kingdom who fulfil the requirements of the BIVS are only permitted to stay in the United Kingdom for the remaining period of validity of the person's current permission to land or be in Ireland as endorsed in their passport.</p> <p>You arrived in the United Kingdom from the Republic of Ireland on <b>[insert date]</b> and had leave to enter the United Kingdom conferred by the Immigration (control of entry through the Republic of Ireland) Order 1972 as the holder of a BIVS visa until <b>[insert date]</b>.</p> <p>You did not however seek to regularise your position in the United Kingdom until <b>[insert date]</b>. *delete if not known</p>
<p>British Irish Visa Scheme (BIVS) Overstayer: UK issued visa</p> <p>See also Common travel area</p>	<p>You are specifically considered a person who has overstayed their period of leave. You were issued with a United Kingdom visit visa eligible under the British-Irish Visa Scheme (BIVS) on <b>[insert date]</b> which was valid until <b>[insert date]</b>.</p> <p>Holders of visit visas may only remain in the United Kingdom for a maximum of 6months on any one visit, or until the visa expires if less than 6months.</p> <p>You arrived in the United Kingdom on <b>[insert date]</b> and were landed in line with the visa <b>[for example, until [insert date]]</b>.</p>

Specific ground	Sample wording
	You did not however seek to regularise your position in the United Kingdom until <b>[insert date]</b> . *delete if not known.
No passport but applicant admits to being an overstayer	You are specifically considered a person who has overstayed their period of granted leave because you admit to having arrived in the United Kingdom on <b>[insert date]</b> when you were permitted to enter as a visitor for 6months. It was only in <b>[insert date]</b> that you applied to regularise your stay here.

## Removal of family members

The following is guidance on removal of family members of a person being removed or who has been removed.

See also Family separations.

Section 10 of the Immigration and Asylum Act 1999 (as amended by the [Immigration Act 2014](#)) also provides for the removal of family members and now includes relatives beyond spouses and children. The section provides for the removal of family members as follows:

for the purposes of section 10(2) of the Immigration and Asylum Act 1999 (as amended), the following shall be regarded as members of the migrant's family provided they are not British citizens or entitled to enter or remain in the UK by virtue of an enforceable European Union (EU) right or of any provision made under section 2(2) of the European Communities Act 1972:

- (a) their partner
- (b) their child, or a child living in the same household as the person being removed in circumstances where they have care of the child
- (c) where the person being removed is a child their parent
- (d) an adult dependent relative

And where the family member has leave to enter or remain in the UK, that leave was granted on the basis of their family life with the migrant or if they do not have leave would not qualify to remain in their own right but would be granted leave on the basis of their family life with the migrant if the migrant had leave to enter or remain.

Note that under section 10(6) of the Immigration and Asylum Act 1999 a notice given to a family member under subsection 10(2) invalidates any leave to enter or remain in the UK previously given to the family member.

The [Immigration \(Removal of Family Members\) Regulations 2014](#) govern the time period for removal of family members (same as now) and how to serve the notice of removal.

If a family member is not encountered with the main applicant but comes to attention later, removal can take place provided the removal occurs within 8 weeks from the

removal of the main applicant. After that period the family member must be treated in their own right.

Family members will be served with the RED.0001 FAM form unless they are liable for removal in their own right, for example, an overstayer when they will be served with a RED.0001 or similar form.

### UK born children holding British citizenship

UK-born children who are British citizens by virtue of the fact that one of their parents is British or settled here:

- are **not** liable to removal
- must **not** be served with either the IS.92 (UK) or the RED.0001 FAM
- may still be expected to accompany their parent abroad

### Family member specific grounds: sample wording

When taking removal action against the family member of someone who is being administratively removed, you must cite the specific grounds within any relevant forms, for example, the RED.0001, RED.0001 FAM or IS.96.

The following table provides sample wordings you must use when citing those specific grounds (this must be used only when they cannot be treated as an illegal entrant or overstayer in their own right):

Specific ground	Sample wording
Spouse or Family member	You are specifically considered a person who is liable to administrative removal because you are the <b>spouse/son/daughter/child living in the same household as a person liable to administrative removal in circumstances where that person has care of the child /adult dependent relative of [insert relation]</b> who is being administratively removed. You were previously granted leave to enter/remain as a family member and/or would not qualify for leave in your own right. Also you are not a British citizen or entitled to remain by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.

#### Related content

[Contents](#)

# Liability to removal: notification

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers about the notification of liability to removal, including changes brought in by the [Immigration Act 2014](#); single power of removal; appeal rights; administrative reviews; and curtailment.

## Page Contents

[Single power of removal](#)

[Appeals](#)

[Enforcement gap cases: human rights applications before 6 April 2015](#)

[Administrative review](#)

[Summary of changes in legal basis](#)

## Single power of removal

The single power of removal is set out in section 10 of the Immigration and Asylum Act 1999 as amended by the [Immigration Act 2014](#). It outlines the different circumstances in which notice of liability to removal can be served and guidance on serving RED (Removal, Enforcement and Detention) notices.

Under section 10 of the Immigration and Asylum Act 1999 a person who requires, but does not have, leave to enter or remain in the UK is liable to removal. No removal **decision** is required but the person must still be notified of their liability to removal.

If a person has leave but is subject to enforcement action for breach of conditions or deception, their leave must be brought to an end to make them removable.

See [Bringing leave to an end via a RED.0001](#).

Removals under the European Economic Area (EEA) Regulations have not changed and forms IS.151A (EEA) and IS.151B (EEA) will continue to be used.

See also European Economic Area administrative removal: consideration and decision.

## Appeals

Since 6 April 2015 the right of appeal only arises when the Secretary of State:

- refuses a human rights claim
- refuses a protection claim, namely a claim for refugee or humanitarian protection status
- revokes protection status, namely refugee or humanitarian protection status

No other decision made on or after 6 April 2015 will attract a right of appeal (except for those subject to transitional arrangements).

Further information on appeals under the Immigration Act 2014 can be found at [Immigration Act 2014: appeals](#).

See also [Appeal rights in cases before 6 April 2015](#).

## Enforcement gap cases: human rights applications before 6 April 2015

Before 6 April 2015, the refusal of an application to remain on human rights grounds did not attract a right of appeal if the person had no leave at the time the application was made. However, having raised human rights, individuals could then receive a right of appeal against a subsequent decision to remove them unless certification under section 96 of the Nationality, Immigration and Asylum Act 2002 was appropriate.

For those with children in the UK, it was also open to them to request a removal decision which in turn could trigger the right of appeal. For more on this see [Requests to reconsider human rights claims decided before 6 Apr 2015](#).

## Administrative review

There is no right of appeal against the refusal of an application for work or study points-based system (PBS) leave (except for some [transitional arrangements](#)).

A refusal decision on the following application, would attract an administrative review:

- in country Tier 4 applications made by either a main applicant or their dependant(s) on or after 20 October 2014
- in country Tiers 1, 2 or 5 applications made by either a main applicant or their dependant(s) on or after 2 March 2015, including indefinite leave to remain applications under those routes
- in country applications where the decision was made on or after 6 April 2015, unless the applicant applied as a visitor or made a protection or human rights claim

An unsuccessful applicant may also apply for administrative review to challenge alleged errors in the caseworker's decision. This could be the decision to refuse the application, or where an application is granted but a review is requested of the period or conditions of leave granted.

In-time applications continue to have 3C leave until any administrative review is concluded.

Administrative reviews must be lodged within 14 calendar days from the date the applicant receives the notice or biometric residence permit (BRP) (or 7 days if in detention).

## Summary of changes in legal basis

The following table shows where the Immigration Act 2014 changed the legal basis for administrative removal.

<b>Grounds</b>	<b>Old basis: pre Immigration Act 2014 cases</b>	<b>New basis: Immigration Act 2014 cases</b>
Breach of conditions of leave	Section 10(1)(a) of the Immigration and Asylum Act 1999	Paragraphs 323(i) / 322(3) of the Immigration Rules for breach of conditions.  Paragraphs 323(i) / 322(4) of the Immigration Rules for failure to maintain or accommodate themselves or dependants without recourse to public funds.
Overstays leave	Section 10(1)(a) of the Immigration and Asylum Act 1999	Section 10(1) of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014).
Uses deception (successfully or not) in seeking leave to remain	Section 10(1)(b) of the Immigration and Asylum Act 1999	Paragraph 323(ia) of the Immigration Rules.
Family member of person liable to removal under section 10	Section 10(1)(c) of the Immigration and Asylum Act 1999	Section 10(2) to (6) of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014).
Revocation of indefinite leave to remain (ILR) gained by deception	Section 10(1)(b) of the Immigration and Asylum Act 1999	Section 76 (2)(a) of the Nationality, Immigration and Asylum Act 2002

See also:

- European Economic Area administrative removal: consideration and decision
- [Removal under previous legislation: transitional](#)

## Application or other action pending

If a person encountered without leave or in breach of their conditions has a pending application, or pending appeal or administrative review, you must not serve form RED.0001. Use form IS.96 to require them to report to the Home Office. Alternatively, if it is appropriate to detain them, serve forms IS.91 and IS.91R as well.

See:

- [Completion of an IS.96](#) for more information on completing and serving the IS.96
- Contact management
- Detention and temporary release

Where an application is still outstanding, you must immediately contact the relevant casework team for expedition with evidence of the breach or deception if applicable. If the application is refused, notice of liability to removal will be served as a casework decision.

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**Official – sensitive: start of section**

The information on this page has been removed as it is restricted for internal Home Office use.

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**Official – sensitive: end of section**

Where a person has already been served notice of liability to removal in a letter or casework decision (such as following an unsuccessful administrative review), a RED.0001 may be served in these circumstances but is not legally required as notice has already been given.

**Related content**

[Contents](#)

# Curtailment or revocation of leave by service of RED.0001

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers how to complete and serve a RED.0001 to curtail or revoke leave.

## Page Contents

[Curtailment of leave to enter or remain](#)

[Revocation of indefinite leave to remain](#)

[Bringing leave to an end via RED.0001](#)

[Curtailment decisions: sample wordings](#)

[Using RED notices](#)

[Section 120 notice and notices of liability to removal](#)

[Removal window notification](#)

[Completion of an IS.96](#)

## Curtailment of leave to enter or remain

Limited leave to enter or remain can be curtailed with immediate effect on the basis of:

- the making of false representations and/or failure to disclose material facts under paragraph 323(i) of the Immigration Rules with reference to paragraph 322(2) - (note that there must be dishonest intent)
- using deception in seeking (whether successfully or not) leave to remain or a variation of leave to remain under paragraph 323(ia) of the Immigration Rules

Indefinite leave to enter or remain can be revoked under section 76(2)(a) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) where that leave was obtained by deception.

See also [Leave to enter or remain by deception](#).

Where curtailing limited leave on the basis of deception, it may be possible to rely on either paragraph 323(i) of the Immigration Rules (with reference to paragraph 322(2)), or paragraph 323(ia).

[Paragraph 323 of the Immigration Rules](#) states in material part:

A person's leave to enter or remain may be curtailed:

- i. on any of the grounds set out in paragraph 322(2)-(5A) above (except where this paragraph applies in respect of a person granted leave under Appendix Armed Forces "paragraph 322(2)-(5A) above" is to read as if it said "paragraph 322(2) and (3) above and paragraph 8(e) and (g) of Appendix Armed Forces")
- ia if he uses deception in seeking (whether successfully or not) leave to remain or a variation of leave to remain

Paragraph 322(2) refers to:

The making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave.

Note that paragraph 323(ia) requires the holder of the leave to have exercised the deception.

## Revocation of indefinite leave to remain

To revoke indefinite leave to remain (ILR), it is necessary that the leave was obtained by material deception (for definition see [Leave to enter or remain by deception](#)):

[Section 76 of the Nationality, Immigration and Asylum Act 2002](#) states:

- (2) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if:
  - (a) the leave was obtained by deception

## Bringing leave to an end via RED.0001

You must include clear evidence and reasoning for your decision and cite the appropriate legal basis for curtailment.

## Curtailment decisions: sample wordings

The following table provides sample wording that could apply when dealing with a worker in breach, and deception cases.

Specific ground	Sample wording
Workers and claimants in breach	<p>On <b>[insert date]</b> you were granted leave to remain in the United Kingdom until <b>[insert date]</b> on condition that you <b>[do not access public funds]</b> and that employment <b>[is prohibited]</b> <b>[is limited to 20/10 hours a week during term time provided you are studying at [name of sponsor]]</b>.</p> <p>You are specifically considered a person who has failed to observe a condition of leave to enter or remain because on <b>[insert date]</b> you were observed to be working for <b>[insert employer]</b> and you were observed <b>[state evidence of working]</b>. <b>[Name of employer]</b> has confirmed that you were in employment with them for <b>x</b> hours a week in excess of the hours you could legally work.</p> <p>It is not considered that the circumstances in your case are such that discretion should be exercised in your favour. The Secretary of State therefore curtails your leave to <b>[enter or</b></p>

Specific ground	Sample wording
	<b>remain in]</b> the United Kingdom under paragraph 323(i) with reference to 322(3) of the Immigration Rules so as to expire with immediate effect.
Deception: seeking or gaining leave to remain or a variation of leave to remain	You have used deception in seeking or gaining leave to remain or a variation of leave to remain, namely, you <b>[insert details]</b> . It is not considered that the circumstances in your case are such that discretion should be exercised in your favour. The Secretary of State therefore curtails your leave to <b>[enter or remain in]</b> the United Kingdom with immediate effect under paragraph 323(ia) of the Immigration Rules.
Deception: indefinite leave to enter or remain	You are specifically considered a person who has gained indefinite leave to enter or remain by deception because (justify reasons for decision) It is not considered that the circumstances in your case are such that discretion should be exercised in your favour. The Secretary of State therefore revokes your indefinite leave to <b>[enter or remain in]</b> the United Kingdom under Section 76 (2) of the Nationality, Immigration and Asylum Act 2002(as amended).

For examples of curtailment wording see:

- Curtailment: letter templates and wording
- general grounds for refusal: Refusal wording

For more information on how to consider curtailment, see Curtailment. This guidance also includes information on considering the exercise of discretion if the curtailment is not on a mandatory ground.

See also [Workers in breach](#).

## Using RED notices

RED notices are used to tell an individual:

- they are liable to removal
- the country to which they will be removed

The notices also include:

- information on the consequences of being in the UK illegally
- information about any help that might be available to return home

- a [section 120 notice](#) which requires the migrant to raise with the Home Office, as soon as reasonably practicable, any grounds not previously raised as to why they should be allowed to remain in or not be removed from the UK.

The migrant has an ongoing duty to raise new grounds under [section 120 of the Nationality, Immigration and Asylum Act 2002](#) while in the UK without leave.

They will also be reminded of their ongoing duty during any contact management and reporting events by service of a RED.0002 (reminder).

For more information on the Section 120 notice and the ongoing duty, see Appeals: One-stop system.

See also:

- [RED notices: completion and service](#)
- [Overstaying leave](#)

## Section 120 notice and notices of liability to removal

Some persons may make late human rights or protection claims that could have been made earlier. A person resisting removal may try and make a late claim in an attempt to frustrate their removal.

To address this behaviour, the removal's process requires that a section 120 notice is served in every case. This notice requires the person to make any further claim now or as soon as reasonably practicable after it arises. For more advice on 120 notices see section 'Late claims' of Rights of appeal.

## Removal window notification

The 'Liability for Removal' sections of the RED.0001 (and similar forms) now have 3 options:

- 1) **'You will not be removed for the first seven calendar days after you receive this notice. Following the end of this seven day period, and for up to 3 months from the date of this notice, you may be removed without further notice'**: this box must be ticked for people who are not detained and who therefore have a 7 day notice period in which to seek legal advice before the 3 month removal window begins.
- 2) **'You will not be removed before (insert date and time). After this time, and for up to 3 months from the date of this notice, you may be removed without further notice'**: this box must be ticked for people who are detained and who therefore have a minimum period of 72 hours in which to seek legal advice before the 3 month removal window begins, the 72 hour period will need to be calculated in accordance with the instructions in '2.4 The notice period' of Judicial review and injunctions.
- 3) **'You will be given further notice about your removal'**: this box must be ticked for the following:

- family cases
- people without leave who have a protection (asylum or humanitarian protection) or human rights claim or administrative review or appeal pending
- where the Home Office has evidence (beyond a self declaration) that a person is suffering from a condition listed as a risk factor in the Adults at risk policy or other condition that would result in the person being regarded as an adult at risk under that policy

Individuals will be notified of a 3 month removal window during which they will be removable, with the exception those who meet the criteria listed in option 3 above.

Protection or human rights claimants without leave will receive a fresh notice starting the 3 month removal window (RED.0004 (fresh)) when they are appeal rights exhausted (ARE) and they become removable.

Vulnerable groups and families **must not** be removed through the 3 month removal window and will receive a further notice by way of removal directions (IS.151D) or limited notice of removal (IS.151G).

## Completion of an IS.96

This section gives you guidance on how to complete the IS.96 form in enforcement cases. The 'IS.96 Ports' notices are not affected by the changes set out below.

See also Reporting – standards of operational practice.

Form IS.96 is used to:

- inform a person of their liability to detention and conditions attached to their temporary admission
- vary leave and impose conditions where they have not previously been notified, (such as persons walking into asylum screening unit (ASU) as illegal entrants claiming asylum, or where they still have extant or 3C leave but are likely to be removed from the UK)

If the person is being detained rather than placed on reporting conditions, the IS.96 must accompany but not replace the appropriate IS.91 detention notices.

In the 'Liability to detention' section there are 2 options:

- 1) **'You are a person without leave who has been served with a notice of liability to removal'**: this box must be ticked for people who have already been notified, either in a RED.0001, RED.0001 FAM, or other refusal decision which includes notice of liability to removal. You do not need to complete the 'Statement of Specific Reasons' section as the person will already have been provided with the reasons why they are liable to removal.
- 2) **'You are a person where there is reasonable suspicion that you may be liable to removal from the United Kingdom'**: this box must be ticked for the following categories:

- people without leave but who are not yet liable to removal due to an outstanding application or a pending administrative review or appeal (such as illegal entrants claiming asylum or overstayers making a human rights claim)
- people without leave who have not been notified of liability to removal but have asked to make a voluntary departure (such as 'lorry drops')
- people with extant or 3C leave who have an application pending where there is reasonable suspicion that their case falls for refusal under the Immigration Rules making them liable to removal (such as general grounds for refusal where there is evidence of a sham marriage, or curtailment for deception or breach of conditions)
- people with extant or 3C leave who have an administrative review or appeal pending where there is reasonable suspicion that, following an adverse decision, their behaviour (such as entering a sham marriage or breach of conditions) will make them liable to removal
- family members of such persons listed within option 1 or 2 (see above) who haven't yet received a separate RED.0001 FAM

You must also complete the 'Statement of Specific Reasons' section providing evidence and the legal basis for why you consider the person to be liable to detention and removal (such as the reasons why they are considered to be an overstayer or to have entered the UK illegally or evidence of breach of conditions or sham marriage). For family members you must include the name of the main person who is liable to be or has been removed and the family member's relationship to that person.

In the 'Restrictions' section there are now 2 options:

- 1) **'I hereby authorise the variation of your leave subject to the following restrictions'**: this box must be ticked where the person has extant or 3C leave which is being varied under [section 3\(3\)\(a\) of the Immigration Act 1971](#).
- 2) **'I hereby authorise your (further) temporary admission to the United Kingdom subject to the following restrictions'**: this box must be ticked where the person has no leave to enter or remain.

The rest of the notice, detailing the reporting conditions, is unchanged. If the person is being detained then the 'Restrictions' section of the IS.96 must be left blank or struck through and the appropriate IS.91 detention notices must be served.

See also Reporting – standards of operational practice.

## Related content

[Contents](#)

# RED notices: completion and service

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers how to complete and serve RED notices when processing non-EEA administrative removal cases.

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## RED notices by type

### RED.0001

Form RED.0001 is used to:

- make a decision to curtail or revoke existing leave, for example when a person with extant (not 3C) leave is found working in breach, this makes them liable to removal
- give notice that a person has no leave (such as an overstayer) and is therefore liable to removal

You must include details of how you have come to this conclusion on the form (for example the circumstances in which you encountered them and the details of their expired leave). The last page of the RED.0001 includes instructions on where to send the response to the section 120 notice (the RED.0003 form). If a person is detained, this must be filled in with the relevant National removals Command (NRC) caseworker details.

RED.0001 does not invalidate a pending application. This needs to be refused separately, see [Application or other action pending](#).

See also [Curtailment or revocation of leave by service of RED.0001](#).

There are further variations of the RED.0001:

- 1) **RED.0001 (c)**: this is similar to the RED.0001 but is served where the person is not detained and it is more appropriate for the migrant to be directed towards making a charged application if they wish to raise an article 8 human right application, for example where they have a settled partner or child here. Nothing in this prevents consideration of an article 8 claim without requiring a fee being paid in cases where it is deemed appropriate to detain.

- 2) **RED.0001 FAM:** this form replaces the IS.151A for family members of a person subject to the RED.0001.

## RED.0002

RED.0002 forms are [section 120 notices](#) and a reminder notice of the section 120 duty. There are 3 RED.0002 notices, the first 2 forms are section 120 notices, and the third is a reminder notice of the section 120 duty:

- 1) **RED.0002 (charged):** used where a person is directed towards making a charged application if they wish to make an article 8 claim (for example they are not detained and there is no operational reason to waive the requirement).
- 2) **RED.0002 (enforcement non-charged):** used where a person is not directed towards making a charged application (for example where removals casework are preparing a case for tasking to enforcement, or where a person is detained). If necessary you can fill in a time limit for response (for example if while not detained, they were given 14 days to respond to an earlier section 120, but they are now detained and this period needs to be shortened).
- 3) **RED.0002 (reminder):** reminds a person both of their liability to removal and their section 120 duty and may be adapted to refer to either charged or non-charged applications, this may be served at reporting events.

## RED.0003

This form is served with the [RED.0001](#), for the migrant to respond to the [section 120 notice](#) contained in the RED.0001.

## RED.0004 (fresh)

This form is served where a new 3 month removal window is being set and must only be served where there is a realistic possibility of removal within the new period.

Service of this form requires that a new 72-hour notice period is given. It must not be used to keep the window open ad infinitum, but to extend it where removal is expected within that period, for instance, where removal is being rearranged following a delay in receiving a travel document.

## RED.0004 (extension)

This form is served before a removal window expires, in order to extend that window by 28 days, provided that removal is expected within that period.

Where it is known that removal is unlikely to take place within 28 days you must not serve a RED.0004, instead allow the removal window to lapse. When it then becomes known that removal is likely within a 3 month period serve a new [RED.0004 \(fresh\)](#).

## When to serve RED.0001

[RED.0001](#) contains options which must be deleted as appropriate, depending on whether the person has no leave, or leave is being curtailed or revoked. The blue

'instructions' text tells you when and how to use the options. You must ensure that you select the appropriate option and delete others.

If a migrant has extant (not 3C) leave but has, for example, breached the conditions of this leave (such as when encountered working illegally) or used deception to obtain it, you must consider whether to curtail their leave with immediate effect, for more information on how to consider curtailment, see Curtailment.

If you decide to curtail leave under the Immigration Rules, use the space on the RED.0001 to curtail their extant leave with immediate effect. You must include full evidence and reasoning for the decision. See [Bringing leave to an end via RED.0001](#) and legal reasoning. There is no appeal or administrative review against the decision to curtail leave. Once the decision to curtail leave is served, they are liable to removal as a person with no leave and the RED.0001 notifies them of this.

If a migrant now has no leave, or never had leave, that is, you encounter them as an overstayer or an illegal entrant, there is no outstanding application. You must include full evidence and reasoning why they are now liable for removal.

## Authority levels

Following service of a form RED.0001 authority to enforce administrative removal is required at Her Majesty's Inspector (HMI) or Senior Executive Officer (SEO) level.

## Recording service of RED notices on CID

The service of RED forms must be recorded on CID. This is important because the:

- RED.0001 places the duty on the migrant to notify the Home Office of any changing circumstance or new reason for wishing to remain in the UK
- RED.0003 gives the migrant the means to respond when making a non-charged application, however it's not a prescribed form and they can respond to the section 120 in any way they please
- reminder (RED.0002) will assist in considering the certification of any subsequent asylum and/or human rights claim under section 96 of the Nationality, Immigration and Asylum Act 2002 if the matter should have been raised earlier

Where removal action is delayed, for example where the Home Office needs to obtain a travel document, the migrant can be reminded of the continuing need to provide details at the earliest opportunity by the service of a RED.0002. More information on section 120 is available in the One-stop system guidance.

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**Related content**

[Contents](#)

# Removal under previous legislation: transitional

This page tells Immigration Enforcement Immigration Officers (IOs) and caseworkers how to process non-EEA administrative removal cases decided before the implementation of the Immigration Act 2014.

## Page Contents

[Previous legislation: administrative removal forms](#)

[Previous legislation: decisions](#)

[Appeal rights in cases before 6 April 2015](#)

## Previous legislation: administrative removal forms

Under previous procedures in use before implementation of the Immigration Act 2014, form IS.151A gave notice that a person was an illegal entrant, overstayer or similar, an IS.151A Part 2 or an IS.151B was the removal decision:

- **IS.151A:** informed a person that they are an illegal entrant or an immigration offender (overstayer or worker in breach) and that they were liable for detention and removal
- **IS.151A Part 2:** informed a person they have been served with an IS.151A informing them of their immigration status and liability for removal:
  - it also stated that a decision had been taken to remove them and they may appeal the decision from outside the UK (the country they are to be removed to had to be specified on the form)
- **IS.151B:** informed a person a decision had been taken to remove them and their asylum/human rights claim was refused:
  - it informed the person that they have an in-country right of appeal (the country they are to be removed to had to be specified on the form)

Forms IS.151A, IS.151A Part 2 and IS.151B have been replaced with form RED.0001.

New notice of liability to removal may be served on any person who requires leave and does not have it (it is no longer restricted by the date of application for certain types of leave).

## Previous legislation: decisions

There are limited circumstances where a person can still be removed under the old system of removal decisions (IS.151A, IS.151A Part 2, IS.151B, [section 47 of the Immigration, Asylum and Nationality Act 2006](#)).

Decisions can now only be made under this section to the extent it was saved for certain applications at the time the law was changed. These cases fall into 2 categories, where:

- an old style removal decision was correctly served on a person before 6 April 2015 there is no need to re-serve a new notice of liability to removal

- a person made an in-country application for Tier 4 before 20 October 2014, or for Tiers 1, 2 or 5 before 2 March 2015 and this application was decided on or after 6 April 2015:
  - these applications retain a transitional right of appeal if they were made in time and a section 47 decision must be made by the caseworker at the point of refusal if the person now has 3C leave

## Appeal rights in cases before 6 April 2015

These appeal rights continue to exist for decisions made on or after 6 April 2015 in relation to:

- an application made before 20 October 2014 for leave to remain as a Tier 4 migrant or their family member
- an application made before 2 March 2015 for leave to remain as a Tier 1 migrant, Tier 2 migrant or Tier 5 migrant or their family member
- any other application made before 6 April 2015 where the outcome would have been an appealable decision under the pre-Immigration Act 2014 regime, unless the decision was a refusal of an asylum or human rights claim

There is no right of appeal against the refusal of an application for work or study (points-based system (PBS)) leave. For transitional arrangements where a Tier 4 application was made before 20 October 2014, or a Tier 1, 2 or 5 application before 2 March 2015 see [Removal under previous legislation: transitional](#). An unsuccessful applicant may apply for administrative review to challenge alleged case working errors. In-time applications continue to have 3C leave until the administrative review is concluded.

There is no right of appeal or administrative review against a decision to curtail leave or against the service of notice of liability to removal where a person has no leave.

See also:

- Appeals guidance
- Key facts: In country administrative review
- [Immigration Act 2014: appeals](#)

### Related content

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