

CHAPTER 14
SECTION 1

PERSONS EXEMPT FROM CONTROL

PERSONS WHO CEASE TO BE EXEMPT FROM CONTROL ON OR BEFORE 29
FEBRUARY 2000PERSONS WHO CEASE TO BE EXEMPT FROM CONTROL UNDER SECTION 8(4) OF THE
1971 ACT

1. INTRODUCTION

A person who is entitled to exemption from control under Section 8(2), (3) or (4) of the 1971 Act (as amended by the 1988 Act) and who subsequently loses that claim to exemption (e.g. a diplomat leaving his employment) does not commit any offence under the Act if he **fails to apply** for leave to remain in the United Kingdom. Nevertheless, such a person may be liable to administrative removal as an overstayer if he originally had limited leave to remain and that leave expired before he entered exempt employment or whilst he was exempt from control (see paragraph 4, below).

However, except in serious cases of overstaying, the objective should normally be to regularise a person's status by granting 28 days' leave, or some other period if he applies and is found eligible (see paragraph 2 and 3, below).

Occasionally the person may still have **continuing** limited leave which was granted prior to exemption. In such a case no action under this instruction is needed. The person can be dealt with under normal immigration procedures for those who have limited leave.

2. PERSONS WHO APPLY FOR LEAVE ON CESSATION OF EXEMPT STATUS

An application for leave to remain from a person who has ceased to be exempt and who was **not** an overstayer before his exemption should be considered in the normal way.

2.1. Procedure when granting leave to remain

If, once the application has been duly considered, it is decided to grant a period of limited leave the following procedures will apply:

- If the applicant had a unique arrival number immediately before being treated as exempt from control then that number should be used when notifying INDECS of the application/decision. If there is no existing computer record it will be necessary to set one up by creating personal details using the INDECS "on line working system";

- An INDECS entry should be made with result code 2 "Extension or change of condition granted".

2.2. Procedure when granting indefinite leave to remain

If it is decided to grant indefinite leave to remain, then normal procedures for settlement cases should be followed. An existing computer record should be updated in the normal way. Where no computer record exists it will be necessary to set one up - see **paragraph 2.1**, above.

2.3. Procedure when refusing leave

If it is decided to refuse leave, the applicant should be given 28 days leave to remain on condition that he does not take employment or engage in any business or profession (Code 3 conditions). This regularises his stay while he either leaves the country or lodges a fresh application.

The same procedure as that noted in **paragraph 2.1**, above will then apply except that form ICD 0299 should be used and INDECS notified of the decision using result code 4.

3. PERSONS WHO DO NOT APPLY FOR LEAVE ON CESSATION OF EXEMPT STATUS

If an individual who has ceased to be exempt comes to notice without making an application - his employer may notify the Government or he may enquire about his status - he should, subject to **paragraph 4** below, be given 28 days leave (see procedures set out in **paragraph 2.1** above) using form ICD 0297. His passport should not be requested and the unique number should therefore be entered on the form. However, if the person ceased to be exempt **more** than 6 months before he came to notice, then the procedures in **paragraph 4**, below, should take precedence.

4. OVERSTAYERS AND DEPORTATION/ADMINISTRATIVE REMOVAL

For those overstayers who come to light after 2 October 2000, administrative removal has replaced deportation action, however deportation action will continue in those cases where a notice of liability of intention to deport was served before 2 October 2000. (see **Chapter 13, Deportation and Administrative Removal**). The power to deport or remove under Section 10 of the 1999 Act does not apply to any person who is exempt from control by virtue of Section 8(3) of the 1971 Act (**Diplomats**) or exempt from any provision of the Act relating to deportation or administrative removal by virtue of an order under Section 8(2) (see also **Section 1 paragraph 2.2, "Consular officers and employees"** to this chapter).

A person who leaves employment which conveys exemption, or who otherwise loses his entitlement to exemption may be liable to administrative removal action as an overstayer without the necessity of imposing or re-imposing conditions.

4.1. **Possible administrative removal action - persons whose limited leave expired before entering exempt employment**

Under Section 10(1)(a) of the 1999 Act, such a person is liable to /administrative removal action from the day after his leave expired. Although administrative removal action cannot be pursued while the person remains in exempt employment, it can be initiated (or resumed if action had begun before the person had become exempt) as soon as that employment ceases. Although short periods of overstaying will normally be overlooked, any case where a person had overstayed his leave before entering exempt employment should be referred to the relevant local enforcement office for initial consideration. If it is decided not to proceed with administrative removal the case will be returned to Managed Migration for action as described in **paragraphs 2 and 3**, above.

4.2. **Possible administrative removal action - persons whose limited leave expired while exempt**

Such a person is technically an overstayer when his exempt employment ceases. However, administrative removal will not normally be appropriate unless there are exceptional circumstances (e.g. where deliberate and serious evasion is obvious or strongly suspected). Therefore, in any case where a person's limited leave expired while he was exempt from control and who has since left exempt employment the matter should be referred to the appropriate local enforcement office for consideration. If it is decided not to proceed with deportation the case will be returned to Managed Migration for action as described in paragraphs 2 and 3, above.

4.3. **Possible administrative removal action - persons who were exempt from control on entry or who have travelled and re-entered while exempt**

Such a person cannot be regarded as an overstayer on ceasing to be entitled to exemption, as he will not have had any leave to overstay. Administrative removal is only possible if a leave is subsequently imposed as in **paragraphs 2 and 3**, above and he then overstays that leave. There will be many cases where it is not possible to tell whether the person has travelled abroad and been re-admitted as exempt. However it will usually be safe to proceed on the basis that the person has not travelled, unless there is reasonably clear evidence to the contrary. Where it is clear that someone has been re-admitted as exempt after having left the Common Travel Area, any period of overstaying in an earlier stay should be ignored.

5. **SERVICE OF NOTICE OF IMPOSITION OF LEAVE**

Under Section 4(1) of the 1971 Act, a decision to impose leave on a person who has ceased to be exempt from control must be given to the person affected. Where a notice is handed to a person this requirement will clearly be satisfied. If the notice is sent by post it may be presumed to have been served if it is properly sent to the last known address.

Thus, if leave granted to a person who has ceased to be exempt is not properly notified, or if the notice is defective, the decision will not have taken effect and (unless that person falls to be considered under **paragraphs 4.1 or 4.2**, above administrative

removal action cannot be initiated. Unless it is thought probable that the person has embarked, the file should be sent to the local enforcement office.

In some cases, where a person falls into either of the categories described in **paragraphs 4.1 or 4.2** and the local enforcement office had decided not to initiate deportation proceedings in the first instance, the file should be referred back to them for further consideration if it is subsequently proved impossible to serve the Notice in accordance with Section 4(1) of the 1971 Act.

6. EFFECT OF APPEAL

Where leave was imposed before 2 October 2000, the person affected will have had the right to appeal against the imposition under section 14(2) of the Immigration Act 1971. If someone appeals under Section 14(2), from that point their conditions will be suspended **but their leave will continue to run** and will be limited to the period during which the Section 14(2) appeal is pending.

For further guidance on appeal rights please refer to Chapter 12.