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CHAPTER 20 SECTION 1

EVASION OF CONTROL

1. INTRODUCTION

This Section provides guidance concerning the procedures for dealing with suspected illegal entrants to the United Kingdom and persons who have overstayed their leave here, or who are working in breach or claiming in breach of their conditions of stay.

NB: It should be noted that, while the following guidance includes some advice concerning "on entry" procedures, enforcement officers work to a separate set of instructions, as laid out in the Operational Enforcement Manual (OEM). The OEM is produced independently by Operational Enforcement Policy of the Border and Immigration Agency Enforcement & Compliance Directorate (E&C). The OEM contains general guidance and procedural procedures regarding evasion of the control, illegal entry, deportation, appeal rights, offences against the immigration laws and procedures for investigation.

2. ILLEGAL ENTRANTS

Section 33(1) of the Immigration Act 1971 (as amended by the 1996 Act) defines an illegal entrant as

- "(a) a person unlawfully entering or seeking to enter the United Kingdom in breach of a deportation order of the immigration laws; or
- (b) entering or seeking to enter by means which include deception by another person"

and includes also a person who **has entered** as mentioned in paragraph (a) or (b) above."

A person found to be an illegal entrant is liable to be detained under Paragraph 16(2) of Schedule 2 to the Act pending the giving of removal directions and subsequent removal from the United Kingdom. United Kingdom born children of illegal entrants are not illegal entrants themselves however, section 73 of the Nationality, Immigration & Asylum Act 2002 allows the service of removal directions on the family members of illegal entrants.

2.1. Categories of illegal entrant

A person is an illegal entrant if:

- he entered the United Kingdom unlawfully without leave - it is sufficient to show that he was in breach of Section 3(1)(a) of the 1971 Act, not that he knowingly entered in breach of Section 24A of the Act; or
- he entered unlawfully in breach of a deportation order; or
- he obtained leave by deception (including silent deception) **provided** that the deception was sufficient to amount to an offence under Section 24(1)(a) of the 1971 Act **and** "material" (i.e. sufficient to influence an immigration officer to grant leave

which he would otherwise have been bound to refuse had the true facts been known); or

- he obtains or seeks to obtain leave to enter in the United Kingdom by means which include deception by him, under Section 24(1)(aa) of the 1971 Act as amended by the 1996 Act. Where a deceptive illegal entrant has subsequently been granted leave to remain but the leave to remain was gained by the same deception used to obtain entry, it is possible to treat him as an illegal entrant. This is restricted to those whose leave to remain by deception was obtained on or after 1 October 1996.

2.2. Examples of illegal entry

Illegal entry may be encountered when the person concerned is attempting to gain, or has gained:

entry without leave -clandestinely; or

-by posing as a British citizen, or as a person with the right of abode, or as a person exempt from control under section 8(3) of the 1971 Act; or

-illegal entry from the Republic of Ireland or the Common Travel Area in circumstances not permitted by the 1971 Act or the Immigration (Control of Entry through Republic of Ireland) Order 1972, as amended.

entry by deception -by deceiving the immigration officer on arrival as to his true intentions; or

-by producing falsified documents, including false passports.

2.3. Rights of appeal for illegal entrants

“An illegal entrant may appeal under Section 82(h) of the Nationality, Immigration and Asylum Act 2002 to the appropriate authorities against directions given for removal from the United Kingdom. By virtue of Section 92 of the 2002 Act, this appeal is exercisable only from abroad, unless a person has appealed on Human Rights or Asylum grounds. For further guidance on appeals please see **Chapter 12 Appeals**.”

2.4. Illegal entrants detected on arrival

A person who seeks leave to enter at the arrivals control in breach of a deportation order or by verbal deception or by misrepresentation should normally be dealt with as a passenger refusal, but the option to treat such a person as an illegal entrant should be considered if there is a possibility of prosecuting others for facilitation. However, a person who has entered without leave and is later detected in the control area should normally be dealt with as an illegal entrant.

A report on form IS 126E should be submitted whenever a person is detected seeking to enter or having entered the United Kingdom illegally and is dealt with under the Immigration Act 1971. The report should be comprehensive on the circumstances of

entry and include arrangements made for the removal of the person. Most such persons will be detained for more than 48 hours and will be reported in accordance with the procedures noted in **Chapter 32 "Port Cases involving Prosecution"**. Reports should, however, also be submitted when illegal entrants are removed within that time.

A statement on form IS128c need only be prepared when an appeal is made (see paragraph 2.3, above) and should be confined to the grounds on which an appeal can properly be made. All information for Headquarters which is not relevant to an appeal should be included in a covering report on form IS 126. The arrival details on form IS 128c should not be completed as these may be in issue at the appeal and should be included in the body of the statement.

2.5. Illegal entrants - after entry

Cases referred to Enforcement & Compliance caseworking units - cases should be referred to the relevant Local Enforcement Office (LEO) **only** when the subject of the file has:

- re-entered the United Kingdom in breach of a deportation order; or
- entered clandestinely, or on forged documents; or
- deceived the immigration officer on arrival as to his true intention, which was to claim asylum.

In a case where notice of illegal entry has been served and marriage to a person settled in the United Kingdom remedies as a factor, any necessary enquiries into the circumstances and background to the marriage will be taken forward by the relevant LEO.

Cases which are not appropriate for referral to an Enforcement & Compliance caseworking unit - in a case where the above noted criteria cannot be met (e.g. there is no more than a suspicion that the subject may have gained entry by deception) the matter should, in the first instance, be treated as an application for further leave to remain under the Immigration Rules.

Illegal Entrants who seek to return

Under the current rules, there is no bar to an illegal entrant seeking to return here immediately and any application for entry clearance, which has been referred by an entry clearance officer, made by a person previously removed as an illegal entrant should be considered under the immigration Rules in the normal way, but a decision in the case should **not** be taken at less than HEO/CIO level. In any cases of difficulty, for example if it is claimed that removal was unlawful, the file should be referred to the relevant LEO.

2.7. Illegal entrants - further guidance

Chapter 9 provides guidance concerning general grounds for the refusal of entry clearance, leave to enter or variation of leave to enter or remain.

Chapter 12 provides guidance on appeals work and procedures.

Chapter 13 provides guidance on deportation procedures and after-entry conviction cases.

Chapter 24 provides guidance concerning disclosure policy and data protection.

3. OVERSTAYERS/PERSONS WORKING IN BREACH OF CONDITIONS

3.1. Overstayers who come to notice when embarking

Persons who have overstayed a limited leave to enter should not be detained for prosecution nor should their departure be delayed by the examination process.

3.2. Overstayers - after entry

In order to assist in the identification of overstayers it is important that caseworkers update CID system **whenever:**

- an application is refused (whether the application was "in time" or "out of time");
- they receive a file following the withdrawal or dismissal of an appeal; or
- representations or a request for further consideration of the case (including Minister's cases) have been dealt with and the subject granted leave to remain.

3.3. Overstayers - action following appeal

When an appeal is withdrawn or dismissed, the Presenting Officer's Unit (POU) will forward the file to the relevant Local Enforcement Office. These teams will ascertain if the person concerned is removable. The case will then be forwarded to be starred and operational enforcement officers may then attempt to locate the person concerned and remove them from the United Kingdom (see **Chapter 13 "Deportation"** for further information about such procedures).

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