Home Office

Immigration returns, enforcement and detention
General Instructions

Judicial reviews, injunctions and applications to the European Court of Human Rights: in relation to enforcement of immigration removal and deportation

Version 3.0

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About this guidance

This guidance sets out the judicial review (JR) process in enforcement cases where removal is being actively pursued and a JR has been threatened or lodged in relation to that removal. The guidance also sets out other barriers in relation to the removal process, including injunctions and applications to various Courts.

This guidance forms part of a suite of removals guidance. See also:

- Initial consideration and assessment of liability to removal
- Enforced removal: notice periods
- Arranging removal

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 and appeals 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 email the Guidance Rules and Forms team.

Publication

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

- version **3.0**
- published for Home Office staff on **29 April 2024**

Changes from last version of this guidance

This guidance has been updated to reflect the position in relation to removals to a safe third country. The judicial review section in Scotland has also been updated to reflect the position in Scotland.

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Terms used in this guidance

Administrative Court: the specialist court within the Queen's Bench Division of the High Court in England and Wales that deals with judicial review of immigration cases (among other things). The High Court in Northern Ireland and the Outer House of the Court of Session in Scotland deal with such cases in those jurisdictions. See: judicial review guidance.

AoS: Acknowledgement of Service. See: judicial review guidance.

Barrier test: an assessment as to whether the issues raised in the JR should be treated as a barrier to removal.

Certified claim: the effect of certifying a claim is that there will be only an out of country right of appeal or no right of appeal. See: certification and out of country appeals.

ECtHR: European Court of Human Rights.

Government Legal Department (GLD): The GLD act as the Secretary of State for the Home Department's solicitors. They provide legal services to the Home Office and other government departments. See: judicial review guidance.

Immigration factual summary (IFS): a document outlining an individual's case history up until the point of removal, which is served on an individual with the notice of intention to remove. See: completing the Immigration Factual Summary (IFS) and enforced removal: notice periods.

Injunction: an injunction against removal is an order granted by the Court or Tribunal which prohibits removal of an individual from the UK.

Litigation Operations: Litigation Operations will retain management of the JR. See: judicial review guidance.

Merits test: an assessment as to whether a judicial review is bound to fail either before a decision is taken not to defer removal or before a decision is taken to arrange removal following a removal request.

NCCU: National Command and Control Unit.

Notice of liability to remove: a notice which informs an individual that they are liable to removal. See: enforced removal: notice periods.

Notice of departure details: a notice provided to the individual prior to removal which details their removal arrangements, including country of return and date of departure. See: enforced removal: notice periods.

OSCU: Operational Support and Certification Unit.

Pre-action protocol (PAP): a written request to a department within the Home Office requesting a review of a decision.

Removal directions: this refers to the details of removal, for example, time of departure and destination which are given to the carrier. See: enforced removal: notice periods.

Rule 39 indication: a rule 39 indication is similar to an Administrative Court or UTIAC injunction but is made by the ECtHR and in this guidance translates to a request to defer removal.

UTIAC: Upper Tribunal (Immigration and Asylum Chamber). See: judicial review guidance.

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Initial referral and consideration

This document concerns challenges to active removal cases where a challenge is lodged against that removal.

Operational Support and Certification Unit (OSCU) should be immediately notified in all cases, where:

- a judicial review (JR) or injunction has been lodged and removal directions are in place

OSCU pre-referral consideration

This section tells you about the role of OSCU in relation to legal challenges raised at the point of removal and provides caseworkers and travel desk members with guidance on the associated processes.

If any challenges or representations are received following the service of removal directions (RDs) and within your individual business area's Service Level Agreement (SLA) you must make a referral to OSCU. OSCU will consider the referral and determine whether enforcement action can proceed. See also: Arranging Removal.

OSCU are able, where appropriate, to maintain removal directions on cases with special arrangements (including charter flights) or safe third country returns where a threat of JR is received. Such cases must have been served a Notice of Special Arrangements at the point of serving the Notice of Departure Details to the person, or that they will be removed to a safe third country.

Where a JR has been lodged prior to detention and a decision is made to detain that JR is not a barrier to removal. Guidance on detention can be found in Detention: General instructions

You must check your team's SLA for guidance on when to make a referral to OSCU.

For further information on making a referral to OSCU please see the "OSCU Service" Atlas training available on Metis.

Role of Litigation Operations

Where removal directions are in place OSCU will determine whether the JR is a barrier to removal. Litigation Operations will retain management of the JR.

Role of the case owner

You must support OSCU by providing and collating information as requested. You must retain ownership of case management. OSCU or Litigation Operations will deal with the JR and the decision as to whether it is a barrier to removal.

As part of your consideration, you should check that the Immigration Factual Summary (IFS) has been completed and is up to date. The IFS will provide you with important information about the history of the case and is an important document that may need to be disclosed in judicial review cases.

For information on completing the IFS see: completing the Immigration Factual Summary (IFS).

An immigration factual summary, must in all cases, be completed and served along with the notice of intention to remove. It has a number of functions:

- it outlines to the person being removed all of the different actions which have been taken on their case which have led to the SSHD notifying of their intention to remove them from the United Kingdom
- should the person lodge an application for judicial review (JR), their legal representative, Operational Support and Certification Unit (OSCU), and the Administrative Court or Upper Tribunal rely on the information contained within the summary in order to make a quick and informed decision concerning the person's case for JR and whether it is appropriate to maintain or defer removal
- additionally, the European Court of Human Rights (ECtHR) relies on the information contained within the summary to assess the merits of an application to them to impose interim measures under rule 39 of the ECtHR's Rules of Court
- it enables the Home Office to demonstrate to the court all the steps that have been taken to address a claim to remain in the UK, and to demonstrate that removal is now the appropriate course of action

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Judicial reviews

This guidance sets out the judicial review (JR) process in enforcement cases. There is also more general guidance in Appeals and litigation - Judicial reviews at the High Court and Upper Tribunal.

Judicial review is the legal process that allows a person to challenge the lawfulness of a decision, action or failure to act of a public body such as a government department.

Immigration removal and deportation cases, where there has been an asylum or human rights claim, should not usually reach the stage of JR until completion of the statutory appeal process. The Immigration Act 2014 limited the number of appeal rights so there are now more cases in which people have no appeal right but can submit a JR against a decision.

In Scotland, JR is pursued by means of a petition to the Court of Session in Edinburgh. For further information see: judicial review guidance: Scotland.

In Northern Ireland, JR is pursued by means of an application to the High Court of Justice. For further information see: judicial review guidance: Northern Ireland.

Event types subject to judicial review

Types of event that could be subject to JR include:

- a failure to act in accordance with law and/or published rules and policy, such as a delay in issuing a document or making a decision
- a decision to set removal directions
- a refusal to accept that further submissions and/or representations amount to a fresh matter for consideration
- a decision to certify a claim as clearly unfounded
- continued detention

Pre-action protocol

The pre-action protocol (PAP) is contained in the Civil Procedure Rules and sets out the steps that must be taken before commencing an application for JR in England and Wales. This procedure does not apply where removal directions have been set as it is not appropriate in very urgent cases. In cases where removal directions have been set, you should state that a pre-action protocol is not appropriate and treat the case as a threat of judicial review. You must still review and respond to the proposed grounds of the judicial review and make a decision as to whether to maintain removal directions.

Further information can be found in the judicial review guidance – England and Wales.

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Judicial review process

The judicial review (JR) process for England and Wales is set out in the judicial review guidance. There are also separate guidance documents for the JR process in Scotland and in Northern Ireland.

Threat of judicial review

Threats of JR may take the following forms:

- letter before action
- letter before action under the pre-action protocol
- unsealed JR claim forms
- other representations raising a threat of judicial review

In all cases it is important that the contents of the threat of JR is considered and responded to.

Where a claimant believes that a legal error has been made in the consideration of their case, they will be able to make representations in a standard format to the Home Office as the proposed defendant. Where these representations are received, the following actions must be considered, by you, the case owner, unless responsibility has been transferred to Operational Support and Certification Unit (OSCU) as per the previous section:

- if you decide the representations made have merit, you must try to rectify the problem without the need of the JR process
- if you decide the representations have no merit, you must use the opportunity to fully explain the reasons for your decision and to answer any queries the claimant has made
- if you decide that some of the claim has merit but other parts do not, your response must fully cover the reasons for this decision, this must include a full explanation of what you agree with and how you will rectify this, and why you do not accept other claims
- you, the case owner will have a maximum of 14 days to respond in full to the matters raised by the claimant (if it is not possible to conclude the pre-action protocol; within 14 days an interim reply must be sent). If the applicant is detained, you must consider the matters raised by the claimant as soon as reasonably practical

It is not necessary to defer removal simply because there is a threat of JR, though it is important to satisfy yourself that the person concerned has had the opportunity to lodge a claim with the courts (particularly in certified or third country cases where there is no statutory in-country right of appeal).

Where a properly lodged claim is received (see JR claim form received below) this must be referred to OSCU to consider under Deferral of removal: consideration.

In all removal cases, if a person is unable to file a claim because the office of the relevant court or tribunal is closed, OSCU must still consider whether deferral is appropriate where a copy of detailed grounds is provided to the Home Office and will be lodged with the court or tribunal at the earliest opportunity. A decision on whether to defer in these circumstances will be taken by OSCU, see in this guidance: Out-of-hours claims before lodging with the court.

If a complete JR claim is submitted, removal directions can be maintained by OSCU where certain exceptions apply and the JR would not be a barrier to removal: See: Deferral of removal: consideration for information on when JR will not defer removal and see also: judicial review guidance for further information on stayed cases.

Judicial review claim form received/properly lodged

The Home Office will only consider deferring removal if a JR application made in England and Wales is properly lodged with the Administrative Court in accordance with Practice Direction 54A Section II of the Civil Procedure Rules, or properly lodged with the Upper Tribunal in accordance with the Tribunal Procedures (Upper Tribunal) Rules 2008 (as amended) and the Upper Tribunal Practice Direction.

Where a claim for judicial review is lodged with the court or tribunal, the rules require that the claimant immediately provides the SSHD with a copy of the claim form which should include a detailed statement of the claimant's grounds (or reasons why it is not possible to comply with that requirement).

Where a claimant is given notice of removal, they will be issued simultaneously with an Immigration Factual Summary (IFS), as previously discussed. The IFS provides relevant information about the case to enable the claimant's representatives, and the Administrative Court or Upper Tribunal to make a quick and informed decision concerning the application for JR. It also provides the relevant details where a copy of the JR claim should be sent to the Home Office team dealing with the case. Further information on how to complete an IFS can be found in: Completing the Immigration Factual Summary (IFS).

Failure to provide details of the claim (that is, grounds or further information relied upon by the claimant) in sufficient time for the SSHD to consider and take steps to defer removal, without good reason, will not necessarily result in removal being deferred.

All JR applications received in respect of cases where removal directions have been set must be referred to OSCU who will consider on an individual case by case basis whether deferral of the removal directions is necessary. If the timing of removal means that the JR needs to be considered outside OSCU's hours of operation, you must refer the JR to National Command and Control Unit by email.

The JR application, as received by the Home Office, may take the following forms:

Claim form issued with detailed grounds

The Home Office will normally defer removal where a JR application made in England and Wales has been properly lodged with the Administrative Court or the Upper Tribunal in accordance with the relevant procedure rules. However, removal will not automatically be deferred where one of the qualifying criteria set out in the section: Deferral of removal: consideration applies, subject to a consideration of the exceptions set out in this section, as to when judicial review proceedings will not defer removal.

Removal will also not automatically be deferred where the person is being removed by special arrangements (including by charter flight) (see in this guidance: Special arrangements) or safe third country removals.

Claim form issued with statement of reasons for non-compliance with the Practice Direction

In cases where the claim form has been issued and the person has provided a statement of reasons for non-compliance with the Practice Direction, the court will notify the Home Office and the matter will be placed before a judge for consideration as soon as practicable. In these circumstances, the Home Office will defer removal if:

- the court decides that good reason has been provided for failure to comply (and gives a direction, for example that detailed grounds be submitted by a specified date)
- permission to proceed to JR is granted
- the court has not yet considered the matter by the time and date of removal, in such circumstances, it will be necessary to defer removal until the court has reached a decision

Out-of-hours claims before lodging with the court

Where it is not possible to file a claim in England and Wales due to the Administrative Court or Upper Tribunal office being closed, the Home Office may defer removal if provided with a copy of detailed grounds and subject to a consideration of the exceptions in accordance with the guidance on Deferral of removal: consideration. The responsibility remains with the claimant to file the claim form as soon as possible on the next day the Administrative Court or Upper Tribunal office is open and to notify the Home Office that the claim form has been issued.

Withdrawing an application for judicial review

In some cases, a person with an outstanding JR application may ask to leave the UK. Where a person wishes to make a voluntary departure, you must ask them to sign a disclaimer (form IS.101). A person can still pursue a judicial review from abroad although the claim could be academic, for example, if the challenge is about the removal or if they are challenging a decision to certify a protection or human rights claim. You should seek confirmation as to whether the claimant intends to withdraw the JR and, if so, advise the claimant (or their legal representative) to

contact the court or tribunal to withdraw their JR application so that the court file is closed. Ideally, this should be done before the person leaves the UK so that a notice of discontinuance can be filed, but it is not essential. Where a person wishes to continue with the JR after leaving the UK, the JR will continue to be dealt with by the relevant litigation handling team. See also: Voluntary and assisted returns.

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Deferral of removal: consideration

This section tells you how to determine whether removal should be deferred in situations where removal arrangements are in place.

This guidance applies only to judicial review (JR) proceedings lodged in England and Wales. See also: judicial review: England and Wales.

This section does not apply where the individual is being removed under special arrangements provisions. Instead, see the section: special arrangements or where removal is to a safe third country instead see the section Safe third country removals.

Where JR proceedings against removal are lodged, the removal will normally be deferred. However, in certain circumstances it will not be necessary to defer removal and the following section provides you with further information as to whether it is necessary to defer or not.

The first consideration is whether one or more of the following qualifying criteria are met:

- there has been less than 6 months since a previous JR or statutory appeal has been concluded on the same or similar issues, a JR will be on the same or similar issues unless it is lodged on completely different grounds
- there has been less than 6 months since a previous JR or statutory appeal has been concluded on the same evidence, even though the legal basis of the challenge is different from that previously lodged
- there has been less than 6 months since a previous JR or statutory appeal has been concluded and the issues being raised could reasonably have been raised at that previous JR or statutory appeal
- there has already been an order refusing an injunction against removal in the JR and no subsequent application for an injunction on removal has been granted
- where a JR renewal application has been made but an application for an injunction has already been refused in relation to that same JR application or an order has been made that renewal is no bar to removal (see handling JRs involving simultaneous injunction applications)
- in Family Returns cases, where the family has been served with a notification of intention as part of the Family Returns Process and the five working day period has passed

Even where the qualifying criteria are met, removal will always be deferred in any of the following circumstances:

- an injunction against removal is granted by the court or tribunal
- this is the first JR challenge to a decision to certify a claim, the result of which being there is either no appeal, or any appeal right is out of country only, unless there has already been an order refusing an injunction against removal

in the JR and no subsequent application for an injunction on removal has been granted
- permission has been granted in the JR
- a first challenge has been raised to a Single Competent Authority or Immigration Enforcement Competent Authority decision on a modern slavery claim

Where there is insufficient time before removal for Operational Support and Certification Unit (OSCU) to consider the merits and barriers tests of a case that meets the qualifying criteria, removal will initially be deferred but may be reinstated after the litigation handling team have assessed the merits of the claim. See: the merits and barrier tests: JR cases.

The merits and barrier tests: judicial review cases

Where there is a judicial review challenge and:

- one or more of the qualifying criteria are met
- there are no reasons why removal must be deferred

you should go on to consider whether the JR is bound to fail on its merits and/or whether any of the issues raised in the JR are a barrier to removal.

When there are removal directions in place and a JR challenge is received as set out above, OSCU will consider the merits and barrier tests.

Where the JR is bound to fail and does not raise any issues which are a barrier to removal then removal does not need to be deferred.

Merits Test

You must consider whether the JR is bound to fail either before the decision is taken not to defer removal or before a decision is taken to arrange removal following a removal request. Examples of when a JR is bound to fail are:

- the grounds for JR are very weak, for example they do not make sense, are clearly standard grounds or are generic (they do not refer to the specific circumstances of the claimant, unless the claim is a ‘class issue’ namely multiple claimants raising the same legal point)
- the JR is obviously unarguable on the facts
- there is clear authority on the legal point in issue

Concluding that a JR is not bound to fail does not mean that it is arguable and therefore that permission should be granted.

If a JR is bound to fail and therefore does not meet the merits test, it is not a barrier to removal.

Barrier Test

You must also consider whether the issues raised in the JR should be treated as a barrier to removal in the following circumstances:

- where the JR raises new grounds, for example a first time asylum or human rights claim or further submissions that fall to be considered under paragraph 353 of the Immigration Rules. See: Fresh claims and / or further submissions
- where the JR relies on new and relevant evidence that has not previously been considered by the SSHD in deciding a previous application or claim and (where a right of appeal was exercised against the refusal of that previous application or claim) by the court in an appeal, the nature of that evidence must be considered. If it amounts to a first-time asylum or human rights claim, or further submissions that fall to be considered under paragraph 353, refer to the section Fresh claims and / or further submissions

In OSCU, the decision on whether the JR meets the merits and barrier test, must be taken at a minimum HEO grade and countersigned at a minimum SEO grade. This does not apply to the litigation handling team who will work closely with GLD when applying the merit test.

Removal enquiry following receipt of a judicial review: Immigration Enforcement

The enforcement or removal team will assess whether the individual case meets the qualifying criteria. If it does, they will ask the litigation handling team to apply the merits and barrier tests. No further removal action will be taken until the litigation handling team has considered the JR.

Application of the merits and barrier test by the litigation handling team

Where the JR has merit and/or raises barriers to removal the litigation handling team will notify the enforcement or removal team and continue to manage the JR in accordance with the usual JR process. See: judicial review guidance.

Where the JR has no merit, and raises no barriers to removal, the litigation handling team will notify the enforcement or removal team. The litigation handling team will serve the Acknowledgement of Service (AoS) and continue to manage the JR in accordance with the usual JR process. See: judicial review guidance. The enforcement or removal team will write to the applicant notifying them that the JR is not suspensive of removal and they are commencing removal action.

Where the AoS is served before the enforcement or removal team has written to the applicant and it has been more than 7 days since the AoS has been lodged, the enforcement or removal team must re-confirm with the litigation handling team that the JR grounds have not been varied before they write out.

Where an injunction is granted at any time in the process removal must be deferred. See: Injunctions in removal cases.

Where permission is granted on the JR, removal will be deferred and the JR will be handled in accordance with the usual JR process. See: judicial review guidance.

Family cases

Families will be notified when invited to the family return conference that they have 5 working days from the date of invitation to the family return conference to bring a judicial review to challenge their removal from the UK. For further information on next steps following receipt of a judicial review in family cases, see: process actions following receipt of a JR.

Process actions following receipt of a judicial review

If a JR is received and removal arrangements are in place or preparations for removal arrangements are being made, the JR must be passed to OSCU who will:

- check CID/Atlas to confirm that removal arrangements are in place or preparations are being made for removal arrangements
- create a JR record on the JR screen in CID, and the OSCU and Challenge service on Atlas
- in family cases, check CID/Atlas to establish whether 5 working days have expired following the invitation to the family return conference before proceeding with the following steps
- consider whether one or more of the qualifying criteria are met, if yes, apply the merits and barrier tests and decide whether to defer removal:
  - if removal deferred: pass the JR to the litigation handling team to manage the litigation
  - if removal not deferred: write to the person or their representatives to confirm that removal will not be deferred, pass the JR to the litigation handling team to manage the litigation

Where the applicant meets the qualifying criteria, but there was insufficient time before removal for OSCU to apply the merits and barrier tests (resulting in removal being deferred) the litigation handling team will, while filing the AoS, apply the merits and barrier tests. If the JR is bound to fail and there are no barriers to removal the litigation handling team will notify the enforcement or removal team and provide them with a copy of the JR grounds on request:

- the enforcement or removal team will re-instate removal arrangements and write to the applicant notifying them that the JR is not suspensive, and they are commencing removal directions
- the litigation handling team will serve the AoS

Where an injunction is granted at any stage in the process, removal must be deferred. In these circumstances, it will not be appropriate for the litigation handling team to undertake a merits test within 21 days of service of the JR (see Removal

enquiry following receipt of a judicial review: Immigration Enforcement and injunctions in removal cases).

Where permission is granted in the JR, removal will be deferred and the JR will be handled in accordance with the usual JR process (refer to the judicial review guidance).

Fresh claims and/or further submissions

A JR is not the right vehicle for raising new matters to the Secretary of State (for example a first time protection claim, human rights claim or further submissions that fall to be considered under paragraph 353 of the Immigration Rules). However, a JR which meets the qualifying criteria test might raise such matters.

Any new representations identified in the JR grounds, for example, first-time asylum or human rights claims, or further submissions will be dealt with in the same way as they would having been received in any other format. See: Further submissions guidance. First-time claims for asylum or humanitarian protection will need to be referred to Asylum Operations or to Foreign National Offender Returns Command for deportation cases. Any first-time human rights claims will also need to be considered. If OSCU receive any such new representations, they will consider deferring removal.

Handling judicial reviews involving simultaneous injunction applications

If a decision has been taken to defer removal on the basis of a JR received simultaneously with an injunction application, the guidance on injunctions in removal cases must be followed.

The Administrative Court and UTIAC have standing instructions to telephone OSCU (or National Command and Control Unit (NCCU) outside OSCU's hours of operation) in advance of considering an application for an injunction. They will do so where they have not received confirmation of whether removal is to be deferred.

OSCU will advise the court whether removal is imminent and, if so, whether removal will be deferred as a result of the JR.

Action when deferring removal

For information on the action to take when deferring removal see the guidance on: 'Deferral and cancellation of removals' in Arranging Removal and Enforced removal: notice periods

Action following a decision not to defer removal

You must close the JR barrier on the casework systems, update the systems and write to the person or their representatives to let them know that the removal will go

ahead unless they obtain an injunction preventing removal. The letter must include reasons why removal is not being deferred.

If an injunction is obtained, all enforcement action must be deferred immediately. See: Action when deferring removal for further information.

If a decision is made not to defer removal but the removal fails for reasons unrelated to the JR proceedings, the removal may be rearranged (or in certain circumstances, a second notice period may not be required), provided that the reasons for the original decision that removal should not be deferred are still applicable. See: Enforced removal: notice periods for further information

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Special arrangements (including charter flights)

Chartered flights are subject to special arrangements because of the complexity, practicality or cost of arranging an operation. For this reason, a judicial review (JR) application may not defer removal.

Special arrangements may also apply in other cases where removal may be on a scheduled flight. For example, where complex medical needs require a significant number of medical escorts and special equipment, where a person is highly disruptive or repeatedly disruptive, or where the person's removal is to a safe third country as designated in legislation, Schedule 3, Part 2 of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (legislation.gov.uk or Rwanda following Royal Assent of the Safety of Rwanda (Immigration and Asylum) Act 2024. This is not an exhaustive list and other cases will need to be considered on a case by case basis to determine if special arrangements are justified, but special arrangements should not be used for otherwise routine removals on scheduled flights.

Operational constraints will determine arrangements necessary for charter operations and other special cases. Details concerning these arrangements will be communicated to the Courts by Operational Support and Certification Unit (OSCU) in advance of the date planned for the operation using the template 'Notification of Special Arrangements – Court letter' which you can access externally via the Returns Preparation landing page on GOV.UK. The person being removed will also be notified of these arrangements and that removal will not necessarily be deferred in the event that a JR is lodged.

Where an individual notified of removal under special arrangement lodges a JR and provides a copy to the Home Office, the grounds will be considered by OSCU to determine if there is any basis for deferring removal. If removal is not deferred on receipt of a JR, the person concerned will be advised in a letter to be provided by OSCU of the need to obtain an injunction to prevent removal.

Individuals being removed by special arrangements (including charter flights) who wish to legally challenge their removal are normally required to seek injunctive relief as a JR application will not usually result in deferral of removal. For further information see:

- Injunctions in removal cases
- Safe third country removals

For further information on notice periods see also: Enforced removal: notice periods.

If an individual being removed by charter flight is not subject to special arrangements and submits a JR, it will be considered under the guidance set out above under Deferral of removal: consideration to determine if any of the qualifying criteria apply and against the merits and barriers tests.

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Safe third country removals

Safe third country removals are where the person is not being removed to their country of origin or the country in which they were habitually resident prior to coming to the UK. A safe country is a country designated as safe in legislation if listed in Schedule 3, Part 2 of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 or Rwanda following Royal Assent of the Safety of Rwanda (Immigration and Asylum) Act 2024. A safe third country removal can be by special arrangements but also applies to removals that are not being made by special arrangements.

Where an individual is to be removed to a safe third country, any JR lodged after that person has been detained pending removal action will not normally defer removal unless an injunction is obtained from the court. Where an injunction is granted, removal must not proceed. Where an oral-inter parties hearing is listed to consider injunctive relief, removal must be suspended until after the hearing, if an injunction is granted removal cannot proceed.

JRs lodged in Scotland will also not normally defer removal and a person will have to apply for an interim order. Where an interim order is applied for that will suspend removal until after an oral hearing. If after the oral hearing no interim order is granted, removal can proceed.

JRs lodged in Northern Ireland will also not normally defer removal and a person will have to apply for an injunction in order to suspend removal. Where an injunction is granted, removal must not proceed. Where an oral inter parties, hearing is listed to consider injunctive relief removal must be suspended until after the hearing if an injunction is granted removal cannot proceed.

As with any other case a JR lodged prior to detention in a safe third country case will not automatically defer removal.

If an individual lodges a JR and provides a copy to the Home Office, the grounds will be considered by OSCU. As removal will not generally be deferred in these circumstances, the person concerned will be advised in a letter to be provided by OSCU of the need to obtain an injunction in order to prevent removal. OSCU may still consider deferral on a case-by-case basis.

As above, the Safety of Rwanda Act (Immigration and Asylum) Act 2024 provides that Rwanda is to be treated as a safe third country by decision-makers. Where a state has been designated as a safe third country it is presumed that an individual can be removed there safely. Accordingly, it is presumed that any judicial review claim lodged after the individual has been detained pending removal action can be pursued from outside the UK. For this reason, where it is proposed to remove an individual to Rwanda a judicial review claim will not normally defer removal unless the individual has obtained an injunction from the court

For further information see: Injunctions in removal cases.

Details concerning any third safe country removals will be communicated to the Courts by Operational Support and Certification Unit (OSCU) in advance of the date planned for the operation using the template ‘Notification of Special Arrangements – Court letter’ which you can access externally via the Returns Preparation landing page on GOV.UK. The person being removed will also be notified of these arrangements and that removal will not necessarily be deferred in the event that a JR is lodged.

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Commencement of judicial review proceedings

Removal deferred: next steps

If removal has been deferred and judicial review (JR) proceedings have started, you can get more information on next steps from the JR caseworker. You will be able to identify the JR caseworker from Atlas.

The JR caseworker will notify Government Legal department (GLD) and instruct them on the grounds for defence (it is important that you ensure that GLD can obtain instructions, or they will not be able to get the case before a judge quickly).

Where summary grounds have been lodged and it is considered that the JR claim has no merit, GLD must be instructed by the appropriate JR unit to notify the court of this, with a request that the application is expedited. Where possible, detention can be maintained pending the outcome of the JR. See also expedited process.

Removal must not be rearranged until the appropriate JR unit has confirmed that the JR is no longer a barrier to removal.

Further information on the preparation of the judicial review documentation can be found in the judicial review guidance.

Expedited process

Litigation Operations will consider whether a case is suitable for expedition, although the final decision rests with the Administrative Court. For further information on the expedited process, see judicial review guidance.

Permission to apply for judicial review granted

If permission to apply for JR is granted either at the paper permission stage or oral hearing, the Home Office is required to lodge our Detailed Grounds of defence within 35 days. A full ‘substantive’ hearing is listed.

If permission to apply for judicial review is granted, all enforcement action must be deferred immediately and must not be resumed until the application is resolved. If the individual is detained, their detention must be regularly reviewed, in line with the detention - general instructions guidance. For further information on the permission and substantive hearing stages, see judicial review guidance.

Permission to apply for judicial review refused

Cases where removal has not been arranged

Where a case is in between paper permission and oral permission stage, apply the same considerations as set out in the merits and barrier tests and apply the qualifying criteria.

If permission to apply for JR is refused and the court or tribunal decides that the application for JR is clearly without merit or that renewal is not a bar to removal, it will be made clear in the order refusing permission. Litigation Operations will update Home Office records accordingly. The normal removal process must then be followed. You must apply the merits and barrier tests and qualifying criteria outlined in this guidance if appropriate to do so.

In other cases where permission on the papers is refused but oral renewal remains a possibility, Litigation Operations will update Atlas, but you should not re-set removal directions until the time limit for oral renewal has passed unless the court or tribunal has found or ordered otherwise.

Cases where removal has been arranged

If RDs are in place and an application for renewal of the JR, or representations asserting that such an application will be or has been made, are received, these must be referred to the Operational Support and Certification Unit (OSCU) to consider in accordance with the guidance on Deferral of removal: consideration. OSCU will notify the person and their legal representative if it is decided that removal will not be deferred pending any application for oral renewal.

For further information, see: judicial review guidance.

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Application to the Court of Appeal or Supreme Court

The Home Office or the claimant can seek to appeal against the decision of the Administrative Court or the Upper Tribunal to the Court of Appeal and then to the Supreme Court, subject to the requirement for permission from a relevant court.

An application by a claimant for permission to appeal to the Court of Appeal or Supreme Court is not generally a barrier to removal. This is the case whether the challenge is in the Court of Appeal to a decision to refuse permission to proceed with a judicial review (JR) or to dismiss a JR following a grant of permission, or in the Supreme Court to a decision of the Court of Appeal.

If the claimant or their legal representative tells you that they intend to appeal to the Court of Appeal or the Supreme Court or that such an appeal has already been lodged, you must take the following action:

Cases where removal has been arranged

If RDs are in place you must refer the representations to Operational Support and Certification Unit who will determine whether RDs can remain in place and write to the claimant and any legal representatives to confirm if RDs are maintained.

Cases where removal has not been arranged

If no RDs are in place but can be set imminently you must contact Litigation Operations to confirm the appeal, or proposed appeal, is not a barrier to removal. If Litigation Operations confirm that the appeal, or proposed appeal, is not a barrier to removal then you must write to the claimant and any legal representatives confirming this.

Where further representations are made to the SSHD, these will need to be considered and addressed in the usual way to determine whether any information raised is a barrier to removal.

If permission is granted, or an injunction obtained, removal must be deferred immediately.

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Stayed cases

For information on stayed cases, you should refer to the judicial review guidance – England and Wales.

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Judicial review challenges other than to removal

You must not automatically defer removal directions in these cases. You must only potentially defer removal when article 6 (right to a fair trial) of the European Convention of Human Rights is cited and must decide this on a case by case basis.

If, for example, the applicant claims that their current detention is preventing them from securing a fair and public hearing in other legal proceedings within a reasonable time, you should consider deferring removal action even if the removal is not explicitly challenged in the JR claim. Note that the protection of article 6 does not generally extend to proceedings concerning the entry, stay and deportation of foreign nationals (Maaouia v France [2000] ECHR 455).

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Injunctions in removal cases

An injunction is an order issued by a court requiring a party to do something or to refrain from doing something. In removal cases, an injunction might be put in place to prevent the Home Office removing a person from the UK.

If there is any reason to believe an injunction may have been granted, you must contact Operational Support and Certification Unit (OSCU) who will check with the Administrative Court during office hours, or with the Duty Judge outside of office hours to confirm verbally that an injunction has been issued. OSCU is open 7am to 9pm weekdays and 7am to 7pm at the weekend. Outside of OSCU opening times, contact the National Command and Control Unit (NCCU).

The removal must be stopped if enquiries confirm that an injunction has been issued.

Injunction confirmed

If the removal is imminent (the person is en-route to, or at, the port of embarkation) or is in progress (the aircraft is on the ground and the doors are still open), OSCU, or NCCU out of hours, must immediately take all reasonable steps to ensure that the removal is stopped. In these cases, you must not wait until you have received written confirmation of the injunction before deferring the removal. Oral confirmation by the Duty Judge is sufficient. OSCU, or NCCU (out of hours) must:

- if the removal is escorted, immediately notify the Detainee Escorting and Population Management Unit (DEPMU) that removal must be deferred, DEPMU will inform the escort officers
- confirm to the legal representative, or the applicant if they do not have a legal representative, that the removal has been stopped and/or did not proceed

OSCU or NCCU and you, the caseworker, must clearly minute the file, Atlas records, and any other internal notes to confirm what action was taken to attempt to stop the removal. If removal cannot be stopped and proceeds contrary to the injunction, see: Injunction received but it proves too late to halt the removal.

Out of hours and urgent injunctions

When a person is given the notice of departure details, they are served the immigration factual summary which advises them that any urgent application for an injunction preventing removal or order granting or refusing an injunction must be sent to the Home Office team handling their case. The immigration factual summary provides the appropriate telephone and fax numbers to use (see: role of the case owner and enforced removal: notice periods for additional information). Outside of normal office hours (9am to 5pm weekdays) or during a public holiday, the urgent application or order must be sent to NCCU.

If an urgent injunction is not sent to NCCU, but another Home Office premises, there is a risk that the information will not be actioned before the person's scheduled removal and they will be removed from the UK despite the injunction being granted.

You must keep OSCU updated of any developments on the case. Where an injunction is received but you are of the opinion that the removal must not be pursued for other reasons, you must still inform OSCU that an injunction has been issued.

OSCU operate from 7am to 9pm weekdays and from 7am to 7pm at weekends. Between those hours you must forward any last-minute challenges to removal to OSCU to deal with.

You must ensure that, outside of your usual working hours and during weekends, or bank and public holidays, legal representatives know that urgent queries relating to any injunction against an imminent removal must be made to NCCU at the number below.

All answerphone and voicemail messages for all areas must be updated to include the following:

Team or area	Message
Immigration Compliance and Enforcement (ICE) teams	This office is now closed and will re-open at (insert time), for out of hours assistance, please call the National Command and Control Unit on 0300 134 999 or email the National Command and Control Unit at CommandandControlUnit@homeoffice.gov.uk .
Other areas	This office is now closed and will re-open at (insert time), for assistance with the service of injunctions or last minute judicial reviews please call the National Command and Control Unit (NCCU) on 0300 134 999.

Injunction received, but it proves too late to halt the removal

Where a removal has already taken place, because the injunction arrived too late to halt the removal (for example after the doors of the aircraft have closed), take the following actions:

- you must inform the Court and OSCU as soon as possible that the person was removed
- if you can quickly trace or contact the person (perhaps through their legal representatives in the UK or, through DEPMU, any escorting officers who may be escorting them), you must make every effort to assist their return to the UK
- if it is not possible to return the person quickly, due to difficulties in tracing and/or organising their return, you must continue to try to facilitate the return while ensuring that the court is kept aware of progress
- you must update Atlas regarding all actions taken, this must include times of events, such as telephone calls from representatives or court staff, so that we are able to show that the Home Office has acted in a timely fashion
- the grade 7 for the area that owns the case and has actioned it to the point of removal must notify the director for that area of work, the director of OSCU and the Rapid Response Team (RRT) of the removal immediately with all available

information while further enquiries are being made and to put them on notice that an urgent submission to the Minister will be prepared
- immediately following the removal an urgent submission must be sent, via the relevant Director General, to the Home Secretary, this must contain a chronology of events, detailing the efforts made to halt the removal and why these were unsuccessful. It must also contain details of any efforts being made to facilitate the person's return

Injunction received, but removal has already taken place

Where an injunction is received but removal was not prevented, take the following actions:

- you must inform the court as soon as possible that the individual was removed
- you must contact Government Legal Department (GLD) and seek their advice
- you must inform OSCU
- the grade 7 for the area that owns the case and has actioned it to the point of removal must notify the Director for that area of work, the director of OSCU and the Rapid Response Team (RRT) of the removal immediately
- immediately following the removal an urgent submission must be sent, through the relevant director general, to the Home Secretary, this must contain a chronology of events detailing the efforts made to halt the removal and why these were unsuccessful, it must also contain details of any legal advice received from GLD

The case must be referred to the litigation caseworker managing the JR to review the full facts of the case to consider whether the order has been obtained without any merit. If Litigation Operations believe this to be the case, they can instruct GLD to apply for the Court order to be discharged, bearing in mind that a decision to make such an application must be made quickly and in consultation with Home Office Legal Advisers and GLD. Note that you must continue to try to facilitate the individual's return whilst this application is being processed.

Where, despite all efforts made, it is not possible to return the individual to the UK, Litigation Operations must instruct GLD to approach the court again to explain the full extent of steps taken, why return is not possible and to ask that the order is discharged. Any decision not to pursue return must be taken at SCS level.

Information that must be recorded

When handling allegations of injunctions, you must maintain a clear record of all the actions taken on Atlas. You must include the following details as part of your notes:

- who informed you about the injunction and the time you were told or became aware
- whether the injunction was confirmed by the legal representative or the Duty Judge and, if so, the time confirmation was obtained
- if no confirmation was received, the steps taken to confirm the existence or otherwise of the injunction

- details of other units or staff you contacted to defer the removal in DEPMU, OSCU or NCCU, include the time these units were notified to defer the removal and the time they confirmed removal was deferred (if times are different)
- where an unlawful removal has taken place, details of all actions that have been taken to trace the person and return them to the UK

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Applications to the European Court of Human Rights

The Human Rights Act 1998 came into force on 2 October 2000, incorporating rights and freedoms guaranteed under the European Convention on Human Rights into domestic law. A decision to refuse a human rights claim is subject to an appeal under section 82 of the Nationality, Immigration and Asylum Act 2002. It is still possible for an application to be made to the European Court of Human Rights (ECtHR), in Strasbourg, but it is unlikely that such an application will be accepted until appeal rights in the UK have been exhausted.

An application made to the ECtHR does not in itself require the suspension of removal. However, when applying it is possible to ask the Court, in effect, to order the suspension of removal action as an interim measure to allow the Court to consider the substantive matter in full before removal takes place. The technical procedure to achieve this is by making a request under rule 39 of the ECtHR's Rules of Court. In response to such a request, the ECtHR may give a 'rule 39 indication' indicating that the person must not be removed. This must be treated in the same way as an injunction. This does not apply where the person is being removed to Rwanda (unless they are a national of Rwanda).

Parliament legislated in the Safety of Rwanda (Asylum and Immigration) Act 2024 to give Ministers discretion about whether to comply with a rule 39 where a person is being removed to Rwanda. In such cases, Ministers will consider whether to comply with a rule 39 indication taking account of any policy, operational and legal advice on the specific facts of the case. Where a Minister of the Crown decides not to comply with a Rule 39 indication, this decision must be implemented and the person removed from the UK. This reflects Cabinet Office guidance which sets out that it is the responsibility of civil servants – operating under the Civil Service Code – to implement a Ministerial decision not to comply with a Rule 39 indication.

Rule 39 indications from the ECtHR

All enquiries relating to threats of, or applications for, rule 39 indications must be directed to the Operational Support and Certification Unit (OSCU) duty officer in the first instance. Ongoing litigation (should a rule 39 indication be granted) is received from the Foreign Commonwealth and Development Office (FCDO) and will be handled by Litigation Operations.

A rule 39 indication is similar to an Administrative Court injunction but is made by the ECtHR. Where you have been notified that a rule 39 indication has been made, you must:

- defer removal immediately
- where the person is detained, make sure this development is considered in relation to any decision to continue with detention

If an individual subsequently wishes to withdraw their rule 39 application, that must be communicated to the Court. The Court may wish to confirm this with the applicant, and you must take no action to enable removal of a person (including by voluntary departure) until you receive confirmation that the Court has accepted the application as withdrawn.

This does not apply if the person is being removed to Rwanda.

Third country removals to Rwanda

Section 5 of the Safety of Rwanda (Asylum and Immigration) Act 2024 provides that it is for a Minister of the Crown (and only a Minister of the Crown) to decide whether to comply with a rule 39 interim measure where the person is being removed to Rwanda (and the person is not a Rwandan national).

Where you have been notified that a rule 39 interim measure has been made, you must consider whether it is necessary to defer or cancel the person's removal while consideration is given to whether or not to comply with the rule 39. The person must not be removed until a Minister of the Crown has made a decision about whether to comply with the rule 39.

Where a Minister of the Crown has decided to comply with a rule 39 interim measure and the person is detained, you must consider whether the person's detention remains appropriate. This will depend on the individual facts of the case including for example, whether the person is due to be removed on an alternative date.

Where a Minister of the Crown has decided not to comply with a rule 39 interim measure and has instructed that the person must be removed from the UK, you must continue with arrangements for their removal.

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Judicial review in Scotland

Judicial review (JR) in Scotland is pursued by means of a petition to the Court of Session in Edinburgh. The procedure is similar to that in England & Wales, but there are a number of differences in terminology and in the way cases are handled.

All immigration litigation in Scotland is handled by the Office of the Advocate General for Scotland (OAG) on behalf of the Secretary of State for the Home Department.

All Scottish cases involving petitions for JR and removal orders must immediately be referred to Litigation Operations Scotland and Northern Ireland (Lit Ops SNI) to manage the litigation, to the Operational Support and Certification Unit (OSCU) to decide whether the JR is a barrier to removal and to The Office of the Advocate General ("OAG") who will be responsible for conducting the litigation on behalf of the SSHD. If a decision is taken to defer a removal order then OSCU will proceed to immediately issue a letter confirming that position.

Judicial Review and barriers to removal directions

In the majority of cases the raising of JR proceedings will act as a barrier to removal. The onus is on the petitioner to produce a copy of the JR application. In addition, the petitioner is obliged to demonstrate that the court has accepted this JR. The court's receipt showing that a petition has been lodged and accepted acts as sufficient proof for that purpose. The court's receipt is typically referred to as the registration interlocutor. Only upon receipt of both the JR petition and the registration interlocutor can the SSHD proceed to consider whether removal directions should be deferred. The JR will continue to act as a barrier to removal until such time as the case is determined by the court.

When a party is dissatisfied with a decision by the Outer House of the Court of Session, they can seek to review that interlocutor by lodging what is called a reclaiming motion. This is the equivalent of appealing that decision. Such appeals are determined by the Inner House of the Court of Session. If a reclaiming motion is lodged, seeking to appeal a decision of the Outer House dismissing a JR, that will not of itself prevent removal directions being set. In those circumstances removal directions should only be set following consultation with OAG given the likelihood of such directions being successfully suspended by means of an interim order. Removal directions will not be set within the 21-day period during which a reclaiming motion against dismissal can be marked.

Exceptions

There are exceptions to the general rule that the intimation of JR proceedings upon the SSHD together with a registration interlocutor will result in the deferral of removal directions. Those exceptions are as follows:

- there has been a similar JR or statutory appeal within the past 3 months (in Scotland or elsewhere in the UK) which has been concluded on the same or similar issues

- there has been a similar JR or statutory appeal concluded within the past 3 months where the issues now being raised could reasonably have been raised at that previous JR or statutory appeal
- the removal is by 'special arrangement' - including by charter flight
- interim orders have already been sought and have been refused by the court
- removal is at the Ensured Return stage of the Family Returns Process

In addition where the guidance in Special arrangements (including charter flights) or the guidance in Safe third country removals apply removal will only be suspended if the conditions set out in those sections of this guidance are met.

Where any of the exceptions apply then the JR is not an automatic barrier to removal. (For example, if an assertive letter has been issued then the presentation of a JR and a registration interlocutor would not of itself be sufficient to prevent removal from taking place.) If you decide that removal will not be deferred, you must immediately notify the person or his legal representatives in writing that removal will go ahead unless they obtain an interim order preventing removal. In that situation the petitioner must apply to the court for interim orders in order to prevent removal taking place.

Interim Order

An Interim order is broadly equivalent to an interim injunction. In the context of removals, a grant of an interim order by the court temporarily prohibits the Home Office from removing a person from the UK. In order to oppose the grant of an interim order the SSHD would need to be in a position to argue that the petitioner does not have a prima facie case- ie a good arguable case.

Upon receipt of a petition seeking an interim order, the Office of the Advocate General (OAG) will take urgent instructions on whether the application for interim orders is to be defended. The court will assign a hearing at relatively short notice. Once assigned this hearing can only be discharged with the agreement of the petitioner. The petitioner will insist upon written confirmation from the SSHD that removal directions have been deferred, prior to agreeing any such discharge. If interim orders are to be opposed, Counsel will be instructed to make representations. If an interim order is granted, removal cannot take place until the JR is determined.

First Orders

When the petition has been lodged, the petitioner's agents will intimate a copy of the JR petition and the registration interlocutor to OAG. A few days after the petition for JR has been lodged with the court, the court issues a First Orders interlocutor. This document allows the petition to be formally served on OAG. SSHD has 21 days from service to lodge Answers to the petition. The First Orders interlocutor should not be confused with the registration interlocutor which is the court's receipt showing that a JR has been lodged and accepted.

Failed returns where the judicial review is not a barrier

If a decision is made not to defer removal, in line with the exceptions set out above, but the removal fails for reasons unrelated to the JR proceedings, then removal directions may be re-set (or in some circumstances a second period of notification may not be needed), provided that the reasons for the original decision that the JR should not suspend removal are still applicable.

For further information see enforced removal: notice periods.

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Judicial review in Northern Ireland

Judicial review (JR) in Northern Ireland is pursued by means of an application to the High Court of Justice. Leave to apply for JR is made by one side only in the case (known as ex parte or without notice) setting out the relief sought, and the grounds of review relied upon.

Applications for JR in Northern Ireland must be brought to the attention of the Crown Solicitor's Office (CSO) through the litigation team at Festival Court in Glasgow, who act on the Home Office's behalf in these cases, and who can provide advice on how to proceed.

Criminal cases are dealt with by Litigation Operations in Croydon.

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