

Removal/deportation

Forced removal, sometimes called “administrative removal” is when the Home Office enforces your removal from the UK if you don't have any leave to remain: if your application for leave to remain (including an asylum claim) has been refused, or you did have some form of leave to remain/a visa but it has now expired.

Deportation, legally speaking in the UK, is the enforced removal of someone "for the public good", usually after serving a criminal sentence in the UK.

Removals and deportations are usually carried out either on a commercial airline (one person being removed/deported, usually escorted by security guards, and the other passengers are the public travelling for holiday or business) or by private charter flight (usually lots of people being removed/deported to the same country at the same time).

Removals

You are at risk of removal if you do not have any leave to remain in the UK and haven't applied for any; if your asylum or immigration application is refused; or the leave you had has expired.

For information on deportation following a criminal sentence, see the section below.

Since 2015, the Home Office has been able to inform someone they are liable to removal, and then remove that person at any given point during a **three month removal window**.

This is a change to the former legal obligation of issuing "removal directions" which would specify the date, time and flight number of the removal. Although the Home Office may still in some cases issue "courtesy letters" containing this information, there is no legal obligation to do so (apart from those cases where the removal window cannot be used, such as family cases and people with independent evidence that they are an "Adult at Risk" in terms of detention policy).

The Home Office must give you notice that you are liable to removal, and cannot lawfully remove you during this notice period. During this notice period, you may be able to legally challenge the removal (see below). Once that notice period is over, the three month removal window begins and you can be removed, without notice, at any point during it.

The general notice period is **seven calendar days** if you are not detained, or just **72 hours if you are detained**. The 72 hours must include at least two working days.

In cases of charter flight removals, the notice period is **five working days** even if you are detained.

These notice periods do not apply in port cases, where leave to enter is refused and

removal will take place within seven days (in non-asylum applications, where a visa may have been applied for but entry is refused). The notice period for Dublin/third country removals is five working days. See Dublin section.

Challenging a removal

You should not be removed from the UK if you have **an asylum claim pending**, unless it has been decided the UK is not responsible for your asylum claim under the Dublin Regulations

You should not be removed from the UK if you have **an appeal pending in the UK** (either you have a hearing coming up, or if you have had a hearing but the decision has not yet been made). Remember not everyone has the right to appeal in the UK. See Appeals section.

You should not be removed from the UK if you have **submitted a fresh claim and a decision has not yet been made on whether it is a fresh claim or not**. You should keep proof of submitting a fresh claim. See Fresh Claims section.

You should not be removed from the UK if you have an **injunction** preventing that removal. See Judicial Reviews section.

There are also other cases where **judicial review proceedings** may suspend removal.

Home Office guidance brought in in November 2016 states that if judicial review proceedings are brought *within the three month removal window*, this will not be enough to suspend removal, and an injunction will be required. (Read more in the Judicial Reviews section).

You should also not be removed from the UK if it would breach the UK's obligations under the Refugee Convention, or the European Convention on Human Rights, or EEA treaty rights.

There may be other reasons you can challenge your removal, such as if other legal proceedings are ongoing in other areas of law (e.g. family law), or if the proper procedure for removal has not been followed.

Deportation after a criminal sentence

If a deportation order has been made against you, you will be issued with **notice of deportation arrangements**, and this should be in keeping with the removal notice periods above.

To prevent your deportation, you need to prove that it would breach your rights under the Refugee Convention or the Human Rights Convention.

The immigration rules are now weighted very much in favour of deporting a person after a criminal sentence.

The rules state that if you were sentenced for **more than twelve months**, your deportation is "conducive to the public good and in the public interest". The rules also say that your deportation is "conducive to the public good and in the public interest" if your offending "caused serious harm" as determined by the Home Office, or you are a "persistent offender who shows a particular disregard for the law" (irrespective of how long you were sentenced for).

If you are liable to deportation, your spouse or civil partner and/or your child (if they are under 18) are also liable to be deported unless they have settled status in the UK in their own right, or have been living apart from you.

If you were sentenced to **more than four years**, the Home Office guidance says you will need to have "very compelling circumstances" in order for a deportation order not to be made or to be revoked. Remember, however, that a court may have a different (more generous) interpretation of what counts as those circumstances than the Home Office.

If you have been sentenced for **less than four years but more than twelve months**, or your offending is deemed to fall into the "causing serious harm" category described above, the immigration rules say that deportation would be proportionate except if deportation would be in breach of your Article 8 rights to family and private life AND:

(1) you have a **child under the age of 18** in the UK,

- you have a "genuine and subsisting parental relationship" with your child;
- your child is a British citizen or has lived in the UK for at least seven years immediately prior to the decision to deport you;
- it would be "unduly harsh" for your child to live in the country to which you will be deported, and
- it would be "unduly harsh" for your child to remain in the UK without you.

OR

(2) you have a "genuine and subsisting relationship" with a **partner** who is in the UK and is a **British Citizen or settled in the UK**, and

- the relationship was formed at a time when you were in the UK lawfully and your immigration status was "not precarious"; and
- it would be unduly harsh for your partner to live in the country to which you are being deported, because of compelling circumstances over and above very significant difficulties which would be faced by you and your partner in continuing your family life together outside the UK and which could not be overcome or would entail very serious hardship for you and your partner; and

- it would be unduly harsh for your partner to remain in the UK without you.

You **also** need to show that you have been lawfully resident in the UK for most of your life; and you are "socially and culturally integrated in the UK"; and there would be "very significant obstacles" to integration into the country to which you are being deported.

The Home Office guidance says that you must provide "original, independent and verifiable documentary evidence" of all of these factors. See Rights of the Child section of the Toolkit for ideas on how you evidence some of these factors.

Remember that the Home Office is likely to take a very restricted view on who meets the circumstances above. A judge in court may not agree.

The Home Office cannot dictate in the immigration rules exactly what Article 8 means and what would be a disproportionate breach for every case. A judge may find that even if you don't meet the requirements of the immigration rules, you would suffer a disproportionate breach of your Article 8 rights if you were deported.

See below for legal challenges to deportations.

Appealing the decision to deport you

There is no longer an automatic right to appeal a decision to deport you.

You may have grounds, however, for a claim that does have the right of appeal if refused - a human rights claim based on Article 8 family life in the UK, for example).

Generally, there is no legal aid available if you have the right to appeal while in the UK, unless the appeal is based on refugee grounds or Article 3 human rights grounds.

Read more in BID's factsheets on appealing deportations:

<http://www.biduk.org/pages/6>

Asylum or human rights claim

If at the time of a decision to deport you, there are asylum or human rights grounds that mean you need to stay in the UK and you have not already informed the Home Office of these or made an application, you need to do so now.

Read the Asylum, Human Rights and Rights of the Child sections of this Toolkit to see if these may be relevant to you, and how to apply.

Around the time of the decision to deport you, you will have been issued with a "**one-stop notice**". On this form, you can state any reasons you have not already told the Home

Office why you need to stay in the UK. You need to make sure you send the form back by the date specified on the one-stop notice. If you miss the deadline, attach your reasons for why you are sending it late - but it is important for your case to try and send it back in time.

If you do not mention asylum and human rights reasons you need to stay in the UK on the one-stop notice, and then make an asylum or human rights application, the Home Office may certify your application, meaning you have no right to appeal a refusal.

If this happens to you, you may have the option of a judicial review.

Judicial review

If you do not have the right to appeal the deportation decision, and you have not yet made a human rights or asylum application that you need to make, you may have the option of applying for a judicial review (including an injunction to stop your deportation) particularly if your deportation is going to happen very soon.

Judicial reviews are very complicated, however, and very hard to do without a lawyer. Read more in the *Judicial Review* section of the Toolkit.

See next page for the Action Section....

ACTION SECTION

- **Airline campaigning**

This is a last-minute action if someone has been issued with a courtesy letter that specifies the date/time of the removal/deportation flight.

Taking action for the right to remain cannot just be about stopping a flight – if contacting the airline successfully stops the flight, this may buy some time for other actions to be taken and for legal avenues to be pursued.

Read more here in the *Airline Campaigning* section of the Toolkit:
<http://righttoremain.org.uk/toolkit/airline.html>

- **Contact your MP**

This action is more likely to succeed if you are already in contact with your MP about your case. Your MP may be able to contact the Home Office directly (asking to speak to or meet with the Home Secretary or Immigration Minister specifically if necessary) and ask them to cancel the removal/deportation while important legal actions are taken.

Read more in the *Politicians* section of the Toolkit:
<http://righttoremain.org.uk/toolkit/politicians.html>

- **Prepare yourself for return**

It is hard to allow yourself the space and the time to think about what will happen if you are removed/deported. It is hard for both the person facing removal/deportation, and supporters, because it can feel like admitting defeat before the fight is over. But some people may find it helpful to think through what might happen, and what they can do to prepare themselves. Read more in the *Preparing for Return* section of the Toolkit:

<http://righttoremain.org.uk/toolkit/return.html>